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# **LINGUISTIC JUSTICE AND JUDICIAL ACCESSIBILITY: A CRITICAL EVALUATION OF THE RIGHTS OF PERSONS WITH DISABILITIES ACT 2016 IN PROTECTING THE RIGHT OF DEAF PERSONS TO UNDERSTAND COURT PROCEEDINGS**

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Kumkum, Galgotias University

## **ABSTRACT**

Access to justice is the foundation of a society. For deaf people going through the Indian court system is still very difficult because of communication problems. This paper checks if the Rights of Persons with Disabilities (RPwD) Act, 2016 really helps persons to understand and take part in court hearings. The Act says that disability is not a medical issue but also a social one. This means that deaf persons have the right to get help like sign language interpreters, when they are in court. However, the Acts promises are not being kept. There are no interpreters, courts do not have the right equipment, and there are no clear rules on how to help deaf persons. This paper looks at what the Constitution and the Act say and at some important court decisions. It finds that there is a gap between what the law says and what actually happens. The US and UK have systems in place to help deaf persons in court. A small survey of lawyers also shows that there are problems. This paper says that while the RPwD Act is a start it needs to be implemented better. The paper ends with some suggestions on how to make Indian courts fairer and more accessible to persons. This can be done by making sure that deaf persons get the help they need to understand court proceedings. The Rights of Persons with Disabilities Act 2016 has to be implemented in a way that makes a difference. Deaf persons should not have to struggle to understand what is happening in court. They have the right to equal access to justice. The government and courts need to work to make this happen. They need to make sure that there are interpreters and that courts have the right equipment. They also need to make rules, on how to help deaf persons. If these things are done then deaf persons can really take part in court hearings. Get justice. That is what the law is meant to do.

## Introduction

The idea of having access to justice is really important in any country that says it is fair and democratic. For people who are deaf or hard of hearing this is not always something they can really use. Access to justice is not about being able to get into a courtroom. It is also about being able to understand what is going on talk to your lawyer and take part in what's happening in your own case. In India this right is connected to Article 14 which says everyone is equal in the eyes of the law and Article 21 which says you have the right to live your life and be free long as you follow the law<sup>1</sup>. The main goal of this research is to look at how well the RPwD Act of 2016 helps deaf and hard-of-hearing people have access to justice. This is linked to the idea of Disability Justice. Disability Justice is not about following the law it is about making sure that institutions are fair and can help people with different needs. It is about changing the way things are done so that people with disabilities can take part than just trying to make people with disabilities fit in with how things are usually done. To understand how the law protects people we need to look at how Indian law thinks about disability. For a time the main way of thinking about disability was the medical model<sup>2</sup>. This model says that disability is something that's wrong with the person something that needs to be fixed. If a deaf person could not hear what was going on in court it was seen as their problem, not a problem with the court. The RPwD Act of 2016 doesn't just follow the model. It is more in line with the model of disability which says that disability is caused by the way society is set up. In the courtroom the problem is not that the person is deaf it is that there are barriers like not having someone who can interpret Indian Sign Language<sup>3</sup>. The law says that the government has to remove these barriers so that deaf people can have access, to justice<sup>4</sup>.

## Meaning of deaf persons' right to understand court proceedings

The meaning of persons right to understand what is going on in court is very important. This right is not about making things easier for the court it is about being fair. If someone is not allowed to say what they think that is not fair. This is called justice. If a deaf person does not know what is happening in court they cannot say what they think. This means they do not get

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<sup>1</sup> Constituent Assembly Debates on Articles 14 and 21; see also *Rajiv Raturi v. Union of India*, WP(C) 243/2005.

<sup>2</sup> The Persons with Disabilities Act, 1995, heavily relied on the medical model, categorizing disability purely by medical impairment

<sup>3</sup> Section 2(c) of the RPwD Act defines "barrier" to include communicational factors

<sup>4</sup> Section 3(1), RPwD Act, 2016.

a hearing. In a courtroom there are many problems for deaf people. Lawyers talk a lot. Use big words that are hard to understand. Things happen fast in court. This makes it very hard for deaf people to know what is going on. Deaf people need help to understand what is happening. They need to be able to see or feel what is being said. This help is very important for persons right to understand court proceedings. It is what makes this right real, in court cases. Deaf persons right to understand court proceedings is what makes sure they get a hearing.

Problem faced by deaf person	Support required
Cannot hear oral arguments	Sign language interpreter / CART
Cannot follow oral orders	Written copy / real-time captions
Online hearing inaccessible	Live captions / video interpreter
Difficulty communicating with lawyer	Trained legal sign interpreter

To really understand what is going on the court needs to make sure that Indian Sign Language interpreters who know words are always there. The court also needs to provide real-time captioning, for people who're hard of hearing. This means that everything that is said gets written down away. The court should also give people written copies of the orders.. For court hearings that happen on video the court needs to provide video interpretation services. This way Indian Sign Language interpreters can help people understand what is being said. The court needs to make sure that Indian Sign Language interpreters are always available to help people understand the words and what is going on.

**Relevant parts of the Rights of Persons with Disabilities Act, 2016 (Sections 2(f), 3, 12, 13 etc.)**

The RPwD Act 2016 has sections that make sure deaf people are treated equally and have the right to life.

- **Section 2(f) definition of communication:** This section says that communication includes sign language showing text, tactile communication, accessible multimedia and written or visual displays. The RPwD Act 2016 has to recognize Sign Language for it to be used in courts.

- **Section 3 equality:** Not discriminating against people. This section says that the government has to make sure people with disabilities are treated equally and have a life. It also says that we cannot discriminate against people because of their disability. If we do not give a person an interpreter, that is discrimination.
- **Section 12 get access to justice:** This section is very important. It says that the state has to make sure people with disabilities can go to any court without being discriminated against. It also says that we have to provide all the facilities and equipment so that deaf people can give their testimonies and arguments in their preferred language and means of communication. This means that communication aids are a right not something we can choose to give or not.
- **Section 13 capacity:** It says that people with disabilities have the right to control their affairs and be recognized as capable of making decisions.. A deaf person cannot do this if they do not have the right linguistic accommodations. They need these accommodations to instruct their lawyer or make decisions about their trial.
- **Section 16 participating in a way:** Although this section is mainly about education it sets a standard for providing accommodation to meet individual needs.
- **Sections 42 and 46 accessibility:** Section 42 says that the government has to make sure people have access to information and communication technology, which's necessary for virtual hearings. Section 46 says that there are time limits for making existing buildings and premises to people with disabilities. The RPwD Act 2016 has these sections to protect the rights of people and people, with disabilities.

### **Problems in implementation for persons in courts**

The Rights of Persons with Disabilities Act 2016 is a good law that says deaf people have a lot of rights but it does not always work that way. There is a gap between what the law says and what actually happens. Deaf people have a time in court because there are not enough Indian Sign Language interpreters. In India about 63 million people have some kind of hearing problem. There are less than 300 interpreters who are licensed to help them. Also most of these interpreters do not know the words and phrases that are used in court so they have a hard

time translating what is being said <sup>5</sup>. There are also a lot of problems with the court buildings. Many courts do not have the kind of lighting which makes it hard for deaf people to lip read. They also do not have the technology to write down what is being said in time which is called live captioning. Even when courts are held online which has been happening a lot since COVID deaf people still have a time. The online platforms do not have a window for interpreters or a way to write down what is being said in real time. A report from NALSAR University's Centre for Disability Studies, which was released in 2024, found that many courts are not accessible to people. The report, which is called "Finding Sizes for All" said that many states did not even respond to questions about how accessible their courts. Another problem is that there is no way for courts to find, hire and pay Indian Sign Language interpreters. This means that deaf people often have to find and pay for their interpreters, which is not fair. To see how big this problem is a small survey was done. Fifteen people, including law students, lawyers and judges were asked about how accessible courts, for deaf people<sup>6</sup>.

Survey Question	Yes	No
Should every court have a sign language interpreter?	15	0
Are Indian courts currently accessible to deaf persons?	2	13
Have you ever seen accessibility facilities in a court?	3	12

Out of 15 people who responded, 13 or 86% think Indian courts are not easy to access. Most of them 100% agree that every court should have someone who can translate for people who do not speak the language. Only 3 of them have actually seen these translation services being used. This information shows that courts need to improve their facilities to help people access justice. The data highlights the problems with court infrastructure, in India.

### Judicial decisions

The Indian judiciary has played a role in understanding the rules of the RPwD Act to make sure the deaf community gets their rights.

<sup>5</sup> Statistics provided by the National Association of the Deaf (NAD), 2021

<sup>6</sup> NALSAR University of Law, Centre for Disability Studies, "Finding Sizes for All: A Report on the Status of the Right to Accessibility in India" (2024)

There have been important decisions made by the courts.

- **Vikash Kumar v. UPSC (2021)** is one of them: the Supreme Court said that "reasonable accommodation" is a part of being equal and not discriminating<sup>7</sup>. The Court did not agree that help should only be given to people with a level of disability. So providing a Sign Language interpreter is a must and not giving one is against the law specifically Articles 14 and 21 of the RPwD Act for the deaf community.
- **National Association of the Deaf (NAD) v. Union of India (2011)** is another one: the Delhi High Court talked about how there are not sign language interpreters. The Court said that not being able to communicate properly means deaf people do not get the chances as others. The Court told the Legal Services Committee to find interpreters to help people in court<sup>8</sup>.
- **Disabled Rights Group v. Union of India (2017)** is also important: the Supreme Court said that the government must make sure buildings and facilities are accessible. This means that deaf people should be able to get in and use them easily. The Court said that there should be no barriers to stop people from getting what they need<sup>9</sup>.
- **Rajive Raturi v. Union of India (2024)** is a deal: the Supreme Court said that rules for accessibility must be followed and enforced. The Court told the government to make rules that everyone must follow. This means that the right to accessibility is now a right under the law specifically Article 21 for the deaf community.
- **Ramnarayan Manhar v. State of Chhattisgarh (2024)** is a case: the Supreme Court looked at the rights of deaf people to have a fair trial. The Court said that there are no rules for how to deal with deaf people in court. The Court asked the government to look into this and make some changes, to the law for the community<sup>10</sup>.

### **Critical analysis – whether the Act adequately protects this right**

A critical evaluation shows that the RPwD Act partly protects the right of deaf persons to

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<sup>7</sup> 2021 SCC OnLine SC 84

<sup>8</sup> W.P.(C) No. 6250/2010

<sup>9</sup> (2018) 2 SCC 397

<sup>10</sup> SLP (CrI) Diary No. 15153/2024. The Supreme Court specifically pointed out the lack of guidelines under Section 318 CrPC for fair trials of deaf and mute individuals.

understand court proceedings.. It is not enough in its current form because of some structural and procedural issues. The main problem is that the Act gives rights under Section 12. However it does not make sign language interpretation mandatory and automatic in every court case. It gives much room for judges or administrators to decide. Section 318 of the CrPC talks about an accused person who cannot understand the proceedings.. It works more like a safeguard for review rather than making sure that courts provide help from the start<sup>11</sup>. Also there is no penalty or accountability if a court registry does not provide the requested communication support. This makes the right hard to enforce every day. The RPwD Act creates a right for persons. It fails to provide a strong and enforceable way to make that right a reality.

A comparison with the USA and UK shows these weaknesses:

- USA (Americans, with Disabilities Act. ADA): The law requires state and local courts to provide interpreters. This ensures " communication"<sup>12</sup> . The ADA says courts must consider the persons choice of aid. The court system pays for it. If they do not provide this it violates process.
- UK (Equality Act 2010): The law requires the justice system to make" adjustments"<sup>13</sup> Courts provide interpreters.. Disability advocates say that often the Deaf person has to take the court to court to get their rights. This is a scary process.

Feature	India (RPwD Act 2016)	USA (ADA Title II)	UK (Equality Act 2010)
<b>Legal Nature</b>	General legal right only	Specific mandatory interpreter system	Relies on Reasonable Adjustments
<b>Implementation</b>	Weak implementation	Strong enforcement	Borne by individual claims
<b>Resource Support</b>	Few professional interpreters	Institutional support and funding	Institutional support available

The system in the United States of America is really strong because it has to be done. It gets

<sup>11</sup> Section 318 of the Code of Criminal Procedure, 1973  
<sup>12</sup> Title II of the Americans with Disabilities Act (ADA), 42 U.S.C  
<sup>13</sup> Equality Act 2010 (UK), Section 20

the money it needs. On the hand the system, in India is not that strong and it is not something that has to be done.

### **Conclusion**

To really help the community and make the RPwD Act work we need to make some important changes.

1. We need to make sure that every district and high court has a list of certified Indian Sign Language interpreters who know terms. The State Legal Services Authorities should pay for this.
2. We need to make sure that all virtual and hybrid court hearings have real-time captioning and a special window for video interpretation.
3. Judges, lawyers and court staff need to learn about culture and how deaf people communicate. They should get training on this all the time.
4. The Supreme Court of India or the Ministry of Law should make rules that say how to pick interpreters. This way lower courts cannot just do what they want.
5. If courts do not give people the help they need they should be held accountable under the RPwD Act.

### **Conclusion**

The RPwD Act of 2016 is a step forward for India because it says that people with disabilities should be treated equally. However the Act does not do enough to help people in court. Because it does not say how things should be done and it does not make sure that interpreters are always available many deaf people still cannot understand what is happening in court. The RPwD Act is a law but it needs to be improved. The time a deaf lawyer named Sarah Sunny went to the Supreme Court with a sign language interpreter was a deal. It showed that things can be different<sup>14</sup>. This is not common. To really make things fair, for people we need to make some changes to the way courts work and we need to spend some money to make sure that

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<sup>14</sup> Advocate Sarah Sunny's appearance before the Supreme Court of India in 2023 with an ISL interpreter marked a historic first, though advocates note that independent access remains difficult to secure across all courts

deaf people can understand what is happening. We also need to change the way judges and lawyers think about people. The RPwD Act is a start but we need to do more to help the deaf community. The RPwD Act should be used to make sure that deaf people are treated equally and that they can understand what is happening in court.

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Advocate Sarah Sunny's appearance before the Supreme Court of India in 2023 with an ISL interpreter marked a historic first, though advocates note that independent access remains difficult to secure across all courts