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Evaluating the Effectiveness of the Shift from Medical Model to the Social Model in Indian Disability Law Since 2016

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Abstract

In this research paper, there will be an analysis of the transformation from the medical to social model of disability in Indian law post the implementation of the Rights of Persons with Disabilities (RPWD) Act, 2016. The Indian legal system has had legislation such as the Persons with Disabilities Act, 1995 which defined the concept of disability in terms of individualistic and medical terms which focused on diagnosis and fixed percentages of disability. In compliance with the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the RPWD Act 2016 adopted the rights based approach to disability, increased the number of disabilities from 7 to 21. By adopting a multi-dimensional approach, this research examines legislative provisions, administrative procedures, and important cases from the Supreme Court of India such as *Jeeja Ghosh* (2016), *Vikash Kumar* (2021) and *Rajive Raturi* (2024). It is shown that even though the judiciary has continuously constitutionalized the social model in the Constitution's Article 14, 19, and 21, the implementation of these processes is significantly hindered by medicalization. There have been gatekeeping requirements for important entitlements requiring mandatory medical evaluation of 40% "benchmark disability," allocation of quotas excluding new disabilities like mental disorders, and different laws regarding legal capacity. Conclusively, the paper asserts that the disability law in India at present is a combination of the two models: highly progressive in terms of its judicial doctrine and theory, but still structurally dependent on the use of medical models in the administration of certification, guardianship, and quota implementation. For meaningful equality, there is a need to integrate both models in the local context.

Keywords: Disability in India, Legal Framework, Disability in Academia, Laws on Disability, Social Model in Indian Disability Law

1. Introduction

Disability is not uncommon in India and nearly 27 million people are affected by it in the country which made up 2.21% of the Indian population as of 2011, the last officially recorded census of India (NSO, as cited in PARI, 2021). More detailed and recent surveys like the National Family Health Survey (2019-2021) estimate the disability percentage in the country to be 0.93% using an activity-limitation criteria and identifying that locomotor disabilities in

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the country account for 45% of the identified disability population, followed by mental and then speech disabilities (Pattnaik et. al., 2023). This statistical divergence itself is an evidence of the conceptual disagreements in this discourse that have long characterised India's disability laws. Moreover, it was precisely this divergence in opinions that led to the legal shift from a medical disability model to a social disability model.

For much of India's modern legal and policy history, disability has been seen through medical definitions and classification alongside rehabilitation and charitable reasons. Ghai (2015) observed that with passing time, although India is far from being perfect in handling disability, an increase in focus on scientific understandings of impairment and departure from religious and charitable concerns can be observed (p.xvi). The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (i.e the PWD Act) categorized and defined disabilities into seven types through specific medical criteria (p. 89). Ghai goes on to argue that despite the emergence of disability-related laws, the Indian general opinion on the subject seems to still be dominated by medical understandings of disability, keeping the socio-economic and political dimensions aside as secondary topics of discussion (pp.225-228) and hence, the previous framework remained largely involved in medical, rehabilitative and a 'corrective' measures This approach is what is loosely referred to as the 'medical model' by the experts of the field which is, in essence; understanding disability as pathologically diagnosable, measurable and curable

The convention of UNCRPD (Convention on the Rights of Persons with Disabilities) in 2006 brought about a doctrinal obligation with it and India adopted it in 2007 (DEPD, 2025). Nine years after the process of ratification, the Parliament passed the Rights of Persons with Disabilities Act, 2016 (RPWD Act) that altered the 1995 legislation and incorporated the idea that disability also results from the disabling environment and not just bodily distortions (Ministry of Law and Justice, 2016). According to the UN Convention, disability is a result of the interaction of bodily impairments with societal attitudes and physical barriers, which hinder their participation in society (UN, 2006, pp.1, 4). This concept is based on a social model of disability formulated in Britain close to the mid-1970s by activists and scholars within the field of disability (UPIAS and TDA, 1975). .

This research seeks to examine the extent to which the shift from 2016 has transformed the Indian disability law framework in a decade. It plans to do so by going through various stages of methodology. Firstly, it lays down the conceptual framework for distinguishing between the medical and social models of disability and the criticisms associated with each of them. Then, there will be an examination of the pre-2016 legal framework followed by the examination of the RPWD Act and how it applies the social model of disability. After that, an analysis of the judicial pronouncements in the form of landmark decisions of the Supreme Court of India from 2016 onwards on the transformation of the disability laws towards adopting the social model will follow. Finally, it will look at the empirical evidence for implementation in terms of employment statistics, certification practices and accessibility measures.

2. Models Of Indian Disability Law In India: Medical And Social

2.1 The Medical and Personal-Tragedy models

Although the term 'medical model' is now widely in use in disability studies, Mike Oliver, a British sociologist, disabled rights activist and writer, chose to discuss this 'individualised' understanding of disability as the 'individual model of disability'. According to him, the social model brings public attention to the societal hindrances that lead to disability and so**,** should not be confused with the personal restrictions that come with impairment (Oliver, 1996, pp.31, 39, 51). Oliver also clearly differentiates between aspects of disabled people's lives that require medical intervention and those that require socio-political attention, arguing that the inability to mark this distinction has been a factor in the 'medicalisation of disability' (p.33). This is the reason why what is often understood as the 'medical model' is, according to Oliver, part of a wider individual model that is an unhappy but private concern of an individual due to bodily impairment and not a commentary on their social relations or standing.

When it comes to the Indian context, the medical/individual model of ascertaining disability finds its clearest legal representation in the Persons with Disabilities (PwD) Act of 1995. Under the act, access to State welfare was largely dependent on medical certifications and percentage of impairment which was 'officially' determined. Not only were these certifications and issued cards a source of public humiliation to the concerned people, they were also at times withdrawn or not issued based on the strict conditions of disability due to the lack of coordination between local administrations and medical boards (Ghai, 2015, pp.93-94). The Indian response to disability is so historically dominated by medical interpretation that it sidelined real life rehabilitation and welfare (pp.225–226). This clearly implies that any shift towards a 'rights-based' approach has to move beyond this strict medical-welfare and recognize disability as a matter of equality, social participation and rights. Moreover, Indian researchers of the national policies on disability note that during this period, the UN 'Decade of Disabled Persons' (1983-1992) also affected the policies of India. It was seen as a highly progressive initiative which emphasized on the need for a rehabilitation oriented approach, which in turn led to the formation of the Rehabilitation Council of India in 1986 (iPleaders, 2022).

2.2 The 'Social Model'

The origins of the social model can be traced back to the Union of the Physically Impaired Against Segregation (UPIAS) mentioned in the previous sub-section which was a group of disabled activists in Britain who gave definitions of two terms in their 1976 pamphlet: 'impairment' as a condition marked by certain physical or mental disorders and 'disability' which refers to systematic exclusion and constraints placed on people with impairments by society (UPIAS and TDA, 1975, pp. 13-14). Basically, the crux of the social model is that what actually disables people with physical impairments is the society's structural failure to be inclusive and not necessarily people's bodies. Oliver discusses this in his books *Social Work with Disabled People* in 1983 and *Politics of Disablement* in 1990, which are now read as a groundbreaking publication in the emerging field of disability studies. In his later reflections, Oliver also mentioned that the social model was never meant to provide an all-encompassing account of every aspect of impairment and disability. It was developed to at least encourage

social workers to rethink their approach towards disabled people. The model was then propagated by the disabled people's movement and acquired more political force. Oliver hence urges to abstain against using the model as a comprehensive account of disabled people's experiences (Oliver, 2009, pp.10-11).

In application to law and policy, the social model suggests that the duty of the state is not just to enable curing or categorizing the disability but also, removing and preventing social, institutional and communication barriers that convert impairment into exclusion. This is an important point of discussion because it takes away the burden of coming up with 'a solution' from the individual with disability to the state and society that needs to redesign their environment and modify their institutions to prohibit discrimination. The principles can also be found in the preamble and articles of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) as mentioned in the introductory chapter.

2.3 The social model has also garnered a lot of internal and external criticism over the years and a critical analysis of its influence of the social model on Indian law is impossible without going through these criticisms. According to (Shakespeare et. al., 2017), disability cannot be truly understood only by analyzing just one dimension of a disabled person's life. They challenge strict adherence of any such model that explains disability only through social or individual factors. He believes in a multi-dimensional understanding of disability which includes all three; biological, social and psychological aspects (pp.12-16). According to this, any approach which leaves no room for revision can end up hampering the interests of disabled people rather than helping them.

This perspective is not merely a scholarly thought but has also been adopted as a crucial component of the World Health Organization's classification of functioning, disability and health (ICF), wherein disability is conceived as a complex interaction between the health condition and contextual, environmental and personal elements. More importantly, in the context of Indian psychiatric scholarship on the RPWD Act, the Act itself can be said to be based on a bio-psycho-social philosophy and not only a social philosophy (Balakrishnan et. al., 2019, p.1), insofar as a "paradigm shift from the stigmatizing medical approach to the medical-social approach" should reflect in Indian law. The RPWD Act was such an effort, even if not fully successful (pp.1, 122). This is an important point for this research too, since the RPWD Act is not an expression of a purely social model as conceptualized by the UPIAS or Oliver. It goes further to include medical certification as a pre-requisite to most benefits while apparently working on the terminology of the social model; its definitions and objectives. The various criticisms of the act will form the subject matter of chapter 7.

3. Pre-2016 Legal Framework

Before 2016, India's engagement with the topic of disability was characterized by a number of instruments which reflected the individual/medical model already discussed. Firstly, the PWD Act of 1995 was the primary general disability legislation (Math et. al., 2019, p.S809) and it identified seven types of disabilities namely blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation, and mental illness (Balakrishnan et. al., 2019, p.120). For each of them, there was provision of a certificate of a certain percentage

(generally, 40%) of a medical condition which was mandatory as an eligibility criteria for reservation in education and employment (Math et. al., 2019, p.S810, S814). Secondly, the National Trust for Welfare of People with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 provided an additional piece of legislation, with the guardianship scheme specifically applicable to four types of intellectual and developmental disabilities, and it included local-level committees, which could appoint guardians for people who were recognized as not being able to handle themselves (National Trust, 1999, pp.4, 10, 11). Both pieces of legislation were produced within the context of the still largely welfare-oriented legal environment.

This was not an occurrence out of the blue because there were already several decades when, in colonial times and post-independence, disability was addressed within the Indian legal system with custodial approaches like lunacy and vagrancy laws that regarded disabled people more as individuals who needed to be confined or helped by others than as rights-bearers. The United Nations proclamation of the decade of 1983 to 1992 as the Decade of Disabled Persons made the Government of India set up rehabilitation structures like the Rehabilitation Council of India in 1986, and subsequently to formulate a National Policy for Persons with Disabilities in 2006, both of which, although marking some positive developments in providing services, continued to see disability as something to manage professionally rather than as something that triggers civil and political rights[1]. In this context of welfare institutions, it was within this paradigm that the socially-oriented and right-based vocabulary of the UNCRPD became a relatively radical suggestion to Indian policy makers. The driving force from outside that pressured the Indian government into reforms was its early participation in the activities of the UNCRPD. India became one of the first states parties to sign the Convention on 30 March 2007 on the very day of its opening for signature and to ratify it on 1 October 2007[2].

It meant three main obligations for India; the implementation of the Convention, harmonization of the national legislation with the provisions of the Convention and regular reporting on compliance with its terms (DEPD. 2025). However, since the UNCRPD itself is constructed within the concept of social model, this harmonization automatically meant an overhaul of the entire medical model of 1995.

The process turned out to be protracted and controversial. A draft Rights of Persons with Disabilities Bill was moved in the Rajya Sabha in February 2014 by the previous government, recommending an increase in the reservation of posts in government employment and education from 3% to 5%, along with the addition of more disabilities to the list (PIB, 2014). The bill lapsed owing to the change of government that same year, and its revised version was subsequently passed in parliament after further amendments to the draft, the most significant one being the reduction in the reservation increase from 5% to 4%. The Rights of Persons with Disabilities Act, 2016 was given presidential assent in December 2016, repealing the PWD Act 1995 (Ministry of Law and Justice, 2016). However, the crucial Supreme Court judgment in the case of *Jeeja Ghosh v. Union of India* in 2016, which will be discussed in chapter 5, was

[1] As discussed in Chapter 2
[2] As discussed in Chapter 1

rendered several months prior to the enactment of the new act, while the older Act was still operational, yet it anticipated many rights-based principles of the RPWD Act.

4. The Legality Of The Social Model: The Rwpd Act Of 2016

One of the most evident departures from the previous act through the RPWD Act is the change in the definitional framework of the act. Section 2 of the Act states that a person with disability is an individual suffering from any long-term physical, mental, intellectual, or sensory impairments that, "in interaction with barriers," limit their ability to effectively participate in the society as a whole on an equal footing with other people (Math et. al., 2019, pp.S809-810). This wording is a literal replication of the definition provided by the UNCRPD, and serves as one of the most obvious indications of the social-model approach of the Act, which defines disability as an interaction of impairment with the environment rather than a static characteristic of the person (Teachers Institute, 2025). Furthermore, the RPWD Act extended the list of disabilities from seven to twenty-one, which included autism spectrum disorder, specific learning disabilities, thalassemia, hemophilia, sickle cell disease, chronic neurological disorders, including Parkinson's disease, multiple sclerosis and acid attack survivors (Ghogare, 2024, pp.2-3).

Substantively, there are several provisions which can be traced back to the social model paradigm. In Chapter II of the Act, there are various provisions such as equality and non-discrimination like sections 3 and 5, and most importantly, "reasonable accommodation," which is provided as a statutory duty to ensure necessary and appropriate modification without putting an unnecessary burden, and this is a duty which is owed by the state to the persons with disabilities to ensure equal enjoyment of rights (Ministry of Law and Justice, 2016, p.5). The concept of reasonable accommodation has been adopted directly from the international anti-discrimination law and Article 2 of UNCRPD, thereby operationalizing the social model paradigm which emphasizes on the removal of barriers, not the ‘improvement’ of impairments. In *Rajive Raturi v. Union of India*, the Supreme Court of India stated that the social model of disability emphasizes the societal barriers rather than the person’s own condition and draws a distinction between ‘accessibility’, which deals with the removal of environmental/infrastructure barriers” and “reasonable accommodation”, which is individual adjustment to provide equal access (Casemine, 2024). Section 40 of the Act provides for the statutory duty to notify the Central Government rules for ensuring accessibility in physical infrastructure, transportation and ICTs (Ministry of Law and Justice, 2016, p.15).

In addition to this, the Act also restructures the entitlement structure that was inherited from 1995. Section 32 and section 34 reserve places for persons with disabilities in higher education and government jobs to a minimum of 5 percent and 4 percent, respectively. Moreover, these sections also sub-divide the quota for employment among different disabilities, including for the very first time separate quotas for mental disorders, intellectual disabilities, specific learning disabilities and autism spectrum disorders (Ministry of Law and Justice, 2016, p.13). At an institutional level, the Act provides for a multi-tiered structure for the implementation of the law. This includes establishing a "Chief Commissioner for Persons with Disabilities" at the Union Level and State Commissioners in every state, having quasi-judicial powers like conducting suo motu inquiries for the violation of the rights of persons with disabilities, along

with a Special Court for trying offences under this act (pp.23, 27). Furthermore, Chapter VI of the Act also stipulates an "Equal Opportunity Policy" for every government and private institution that employs a certain number of persons with disabilities (p.10).

However, even with this social model terminology, the Act retains the medically certified 'benchmark disability' as the gateway for access to nearly all the substantial entitlements. Persons with benchmark disability are those who are medically certified to be suffering from at least 40% of a prescribed disability under the certification process of a competent authority as per government guidelines (Ministry of Law and Justice, 2016, p.3). The reservation in education and employment as well as the majority of affirmative entitlements under this Act are accessible only to persons meeting this criterion, implying that the rights in the Act are provided via a gatekeeping mechanism that is almost identical to the one in the 1995 Act. This contradiction, of terminologies used and eligibility criteria for access, is no mere coincidence; it is, as will be argued in Section 7, the most important drawback of the Act.

5. Judicial Interpretation Of The Social Model Post 2016

While the RPWD Act laid out the framework based on the social model of disability rights through its text, it is the role of the Supreme Court of India that has mattered most in entrenching this model within the Constitution, especially in relation to the protections under Article 14, equality, and Article 21, the right to life with dignity. There have been three judgments in the time period immediately preceding and following the passing of the Act up to 2024.

5.1 Jeeja Ghosh v. Union of India (2016)

Delivered on 12th May 2016, several months before the RPWD Act came into force through a presidential assent, the landmark case of Jeeja Ghosh v. Union of India was about the de-boarding of a disability rights activist suffering from cerebral palsy from an airplane without any prior consent from the passenger who was carrying a valid boarding pass. In the verdict written by Justice A. K. Sikri, Joseph Shapiro's remark that "nondisabled Americans do not understand disabled ones" was mentioned in the introduction, which put the case in the context of rights consciousness. The Court found that the conduct of the airline on the basis of the stereotypical, unqualified judgment on the petitioner's fitness to travel was discriminatory in nature towards her dignity under Article 21 and awarded compensation of ₹10,00,000 for the insult caused to her (Sikri, 2016). Several publications like (Lunawat and Sindhi, 2026) and judicial decisions by the Supreme Court since then refer to *Jeeja Ghosh* with regard to the affirmation that the dignity of people with disabilities requires positive discrimination rather than negative non-discrimination, and that courts need to undo the stereotypes and prevent the exclusion of such individuals from the process of travel or admission.

5.2 Vikash Kumar v. Union Public Service Commission (2021)

A second important decision was delivered by a three-member bench including Justice D.Y. Chandrachud, dated 11 February 2021, dealt with the case of a Civil Services Examination candidate who suffered from dysgraphia (writer's cramp). This was not one of the twenty-one disabilities mentioned under the RPWD Act and thus could not be considered a "benchmark

disability". The Union Public Service Commission denied the candidate the use of a scribe as assistance stating that assistance could be provided to candidates only for benchmark disabilities as per the guidelines followed for the examinations. However, the Court rejected this interpretation and held that providing reasonable accommodation for a person with a disability as envisaged under the RPWD Act is not restricted only to those above the benchmark level, and failing to do so would defeat the very objective of the legislation (Chandrachud, 2021).

This particular case is relevant to the current discussion since it clearly articulates reasonable accommodation as an affirmative duty, not as a choice whether or not to grant it. The court said: "When competent persons with disabilities are unable to realize their full potential due to the barriers posed in their path, our society suffers, as much, if not more, as do the disabled people involved. It further noted that the UPSC's contention that admission of any other category of scribes apart from those provided would increase the chances of cheating during the examinations cannot be used as a justification for denying accommodation, equating denial of accommodation to candidates with disabilities to imposing a dress code on everyone to prevent cheating of some (Chandrachud, 2021). In relation to *Vikash Kumar*, it can be said that this judgment constitutionally strengthened the right to reasonable accommodation, extending its scope to beyond the act's standard of disability.

Third and doctrinally most significant of these cases is *Rajive Raturi v. Union of India*, pronounced on 8 November 2024 by a Bench presided over by Chief Justice D. Y. Chandrachud, from a writ petition that was first filed in 2005 by a disabled human rights activist demanding accessible public spaces. This case had already generated an initial set of eleven directions in 2017 mandating states and union territories to enhance accessibility; in 2023, the Court being unhappy with the speed of implementation, asked the Centre for Disability Studies at NALSAR University of Law to compile an evidentiary report (Casemine, 2024), which was subsequently published as "Finding Sizes for All: A Report on the Status of the Right to Accessibility in India" (Gonapa, 2025).

What sets this 2024 judgment apart from the Court's previous judgments concerning disability is that it explicitly takes up the theory surrounding the medical and social models of disability. The judgment contains a dedicated section called "Reaffirming Disability as a Social Model" that explains how the medical model sees disability as an individual problem or disability which requires treatment, and how the social model given by Mike Oliver in 1983 reorients the discussion from the person's impairment to the barriers they face in society. On this basis, and drawing from *Jeeja Ghosh* and *Vikash Kumar* case precedent, the Court found that the right to accessibility is a core feature of the RPWD Act, and a fundamental right derived from Articles 14, 19, and 21 of the Indian Constitution, without which the exercise of the other constitutional rights enjoyed by persons with disabilities would be futile (Chandrachud, 2024).

In the context of the specific issue that came before it, the court held that the rule 15 of Rights of Persons with Disabilities Rules, 2017 that made the accessibility guidelines under the Act recommendatory in nature and not mandatory went beyond the powers granted to it under Section 40 of the parent Act. In this manner, it ordered the Union Government to formulate rules mandating accessibility within three months and taking into account the requirements of

both retrofitting existing structures and construction of new structures (Kohli, 2024). The judgment serves two purposes in this discussion in the following way: firstly, it provides the most complete judicial interpretation so far of the social model as a constitutional interpretive tool in India, and secondly, the very fact that nineteen years after the initial petition and seven years since the RPWD Act came into effect, there is such a judgment is itself evidence of the slow implementation of the principle in practice.

6. Measuring The Effectiveness Of The Implementation

The assessment of how effective the transition from the medical to social model paradigm is should be based not on doctrinal opinions but on practice statistics, and the information available indicates a much less clear-cut picture than some of the conclusions mentioned above might imply (Ghogare, 2024, p.3). First of all, the extended definition introduced by the RPWD Act has resulted in an increased number of people officially considered eligible for receiving disability benefits since while the 1995 Act enumerated only seven categories, the 2016 Act enumerated twenty-one categories (p.1) including autism, specific learning disabilities, as well as a variety of chronic neurological and haematological diseases that were completely excluded from the law before (pp.2-3). In terms of the government reservation quota, the share of disabled people increased from 3% to 4% of which 1% belongs to individuals with mental illnesses, intellectual disabilities, specific learning disabilities, as well as autism spectrum disorder, who previously did not exist in the 1995 Act at all (Balakrishnan et. al., 2019, pp.120, 122).

In contrast, however, such legal entitlements do not necessarily equate to meaningful representation. Analysis of all 18 employment vacancies advertised through the Union Public Service Commission during the calendar year 2020 and involving 1,370 positions indicates that although there were sufficient posts reserved (57 posts) for persons with benchmark disabilities to satisfy the mandated 4% quota, there was not one post reserved for persons with disabling mental health conditions, the very group that was created by the 2016 Act; only 7 of the 1,370 posts could be described as being suitable for persons with disabling mental health conditions (Angothu et. al., 2022, p.230). Agatha et al. concluded that, in spite of the fact that the employment reservation scheme is a well-intentioned policy scheme, it was actually inadvertently excluding from consideration those who it was supposed to newly include under this quota policy (p.230). In essence, this is just another example of what has been shown throughout the literature: namely, that without administrative capability in terms of identifying posts which are suitable for particular categories of disability, statutory entitlement does not make much difference (p.232).

Budgetary and institutional implementation capacity indices support this conservative evaluation. Despite the Union government allocating funds to the extent of ₹1,275 crore to the Department of Empowerment of Persons with Disabilities in the 2025-26 financial year, analyses based on departmental data have noted that implementation across the states remains far from uniform, with minimal rehabilitation facilities consisting of merely five Composite Rehabilitation Centers, four Regional Rehabilitation Centers, and 120 District Disability Rehabilitation Centers in the entire country (IMPRI, 2026). These numbers indicate that the issue with implementation goes beyond that of statutory design, as it lacks the administrative

commitment needed in relation to the goals outlined by the RPWD Act through its social model approach. Observations on the state-level implementation of the RPWD Act have pointed out that many states have either delayed or entirely failed to appoint State Commissioners for people with disabilities despite repeated judicial reminders, thereby creating a gap in theoretical premise and actual implementation of the act (Insights Editor, 2025). In fact, the *Rajive Raturi* case itself is the best example of the implementational gaps; the Supreme Court's proceedings revealed that many states have not responded properly to information sought regarding the compliance with accessibility requirements, or have not accepted all 21 disability categories mentioned in the Act, which was cited as the reason behind underreporting and service denial (Gonapa, 2025). It is clear from the fact that the Court has compelled the Union Government to issue mandatory rules on accessibility, through the Supreme Court's own commissioned report, as late as November 2024 under an existing law, i.e., the RPWD Act of 2016.

7. Persistence Of The Medicalization Model Within The Framework

From the above discussion, it should be clearly noted that the impact of the social model on Indian disability law is significant in terms of legislation and constitutional principles, but much more constricted when it comes to implementation. This section will focus on four particular areas where the medical model still prevails within the rights-based RPWD framework.

7.1 Benchmark Disability And The Returning Of The Percentage

The most crucial element of medical model embeddedness in the RPWD Act is that very threshold level of disability (Angothu et. al., 2022, p.230). Even though disability is defined in social model terms as a dynamic relation between impairment and barriers, the vast majority of rights guaranteed under the act, reservations in education and employment, all kinds of tax and travel discounts and disability pensions are still predicated upon certification of at least 40% impairment by a government medical authority (Ministry of Law and Justice, 2016, p.3). Thus, essentially unchanged from the 1995 Act, the design of this Act reproduces the certification process and introduces a medical condition into the process of granting rights.

The literature on psychiatric research on the certification norms of the Act has been especially harsh on this structure. Math et al. (2019) note that the certification norms have identified very specific categories of medical professionals, such as ‘pediatric neurologist’ and ‘rehabilitation psychologist’, to certify different disability diagnoses. This caused serious bottlenecks in a country that lacks an adequate supply of such experts, causing people to oscillate between different hospitals. Moreover, the guidelines for diagnosis of several disorders, including autism, had not been made available years after the Act came into operation (p.S813). Similarly, Balakrishnan et al. (2019) find a worrying trend towards "centralizing the process of disability certification" in addition to the confusion regarding the selection of screening tools and the allocation of certification resources, leading to an under-representation of mental disorders in reservation and legal matters by the Act (pp.119, 122-124). The fact that the threshold continues to be defined in terms of a percentage, subject to medical certification, remains at odds with the core tenet of the social model of disability which indicates that

disability is not an immutable characteristic of the body but a relational one, created by the environment; this act, in this regard, carries the epistemology of the model it seeks to replace.

7.2 Fragmented Legality: RPWD, National Trust Act And MHCA

The second structural problem in this respect arises from the law of legal capacity and guardianship, which is fragmented into three statutes that are not coordinated with each other (Math et. al., 2019, p.S810). According to Section 14 of the RPWD Act, there is a concept of "limited guardianship," which is a form of joint or supported decision-making and is supposed to embody the principle of the will and preferences of the disabled individual as per the UNCRPD, but its implementation is limited only to individuals who are capable of engaging in joint decision-making and does not clarify its relationship with any guardianships under other statues (Balakrishnan et. al., 2018, p.121) (Ministry of Law and Justice, 2016, p.7). The National Trust Act, 1999 provides for another type of guardianship, which is plenary in nature and pertains to four particular types of intellectual and developmental disabilities (Ministry of Law and Justice, 2016, p.19), while the Mental Healthcare Act, 2017 (MHCA) provides a third alternative, a ‘nominated representative’ and is limited to healthcare and treatment decisions and pertains to persons with mental illness (Balakrishnan et. al, 2019, p.121).

In academic analyses of the correlation between the MHCA and the World Health Organization Checklist on Mental Health Legislation (WHO-RB), the problem of mismatch in these frameworks is pointed out as one of the primary concerns (Duffy and Kelly, 2017, p.1). Scholars also note that it is unclear how guardianship and nominated representatives will be related in the Rights of Persons with Disability (RPWD Act 2016) and the MHCA 2017 (p.3, 19). Moreover, doubts persist about the sufficiency of the framework's provisions with regards to different and unique challenges presented by mental illness (p.3, p.22). In the current state, significant groups of population remain unaccounted for under any of the frameworks due to the fact that they cannot be covered by participatory limited guardianship under the RPWD Act, as this framework requires some level of joint decision-making on mutual understanding and trust or nominated representatives of the MHCA (Ministry of Law and Justice, 2016, p.7). Thus, even though each framework aims at providing individuals with the set of their rights, in general they create an incoherent system which contradicts the very social model principle of respect to the individual's autonomy and legal personhood.

7.3 Employment Quotas

The reservation clauses mentioned in the RPWD Act of 2016 are formally in line with the social model in a sense that the state must keep the disabled people in mind while structuring job opportunities, instead of demanding these people to access an unstructured labor market (Angothu et. al, 2022, pp.230-231). That being said, the implementation of this reservation system relies upon an earlier administrative action which involves identifying certain job positions for certain types of disability based on medical assessments regarding what a person with a certain impairment is capable of (pp.231-232). Without carrying out such identification, the formal 4% quota of the RPWD Act would be fulfilled unreasonably, as has been done in the UPSC's 2020 vacancy notification. This is how one can see that even the social model, if

working as an entitlement system, can have a medical logic of "what this body or mind cannot do" functioning within it (pp.230, 232-233).

7.4 Accessibility: From Recommendations To Compulsory Standards

Lastly, the proceedings leading to *Rajive Raturi v. Union of India* (2024) presents an example of the disharmony between the theoretical and practical aspects of the social model. A key characteristic of the social model is reflected in Section 40 of the RPwD Act, which mandates the Central Government to prepare accessibility standards. However, the rule 15 of the 2017 laws incorporated sectoral standards which were mostly recommendatory in nature. The Supreme Court therefore held that many of these constituted recommendations and declared Rule 15(1) goes against the RPwD Act. The court further instructed the Union Government to explain the basics of mandatory non-accessibility rules in under three months, while continuing to run the existing accessibility initiatives (Chandrachud, 2024). The NALSAR-CDS report commissioned by the court also recorded various accessibility barriers in public infrastructure like transport, government websites and educational institutions, while 14 States and 5 Union Territories did not reply to requests for accessibility information. It is further important to know that many states did not formally recognise all 21 disability categories under the RPWD Act which resulted in under-reporting and lack of services (Gonapa, 2025). Here, accessibility provides a microcosm of the broader argument; although the social model has been included into the legal and constitutional understanding of disability, its practical and uniform enforcement has remained insufficient.

8. Evaluating The Adequacy Of The Social Model In India

A thorough evaluation of the efficacy of the social model in influencing Indian law requires analyzing literature that debates whether the social model of disability that is based on a specific historical context and theories of British scholars can be applied to India considering the diverse social, economic and political contexts here. In her seminal book, Rethinking Disability in India (2015) discussed earlier in the paper, Ghai attempted to construct a true transnational theory of disability, which would be based on both national and international social policies, autobiographical writing and Indian religious and cultural materials, instead of transplanting a theoretical perspective from someone without change. This is quite significant because although the Indian discourse on disability has embraced the language of the social model of disability, it still keeps the idea of marking people with physical and intellectual disabilities as deficient persons. Another concern is that disability has not been recognized in the Indian scholarship and society as a critical and serious category of discourse comparable to caste, gender and religion, despite the interaction between these forms of marginalization.

What is important here is how this critique is relevant to the current discussion in that it warns against considering the adoption of the language of the social model into the law itself as sufficient evidence of transformative change. Ghai's analysis is useful here, for she situates disability within India's specific socio-cultural and political contexts and questions the approaches which are derived from Western disability theory, the ones that place excessive emphasis on individual freewill. Her emphasis on interdependence and the vital intersections between disability and gender suggest that a practically transformative understanding of

disability should consider the social structures through which lead to exclusion instead of treating accessibility or participation as problems of individual impairment (Johri, 2024). This supports the argument that the social model, despite being incorporated into legal and constitutional mechanisms, still requires further developments which focus on interdependence, gender and social structures shaping disabled people's real experiences.

9. Conclusion

In this paper, we have traced the transition from a medical model to a social model of disability through three spheres of Indian law: legislative, judicial, and administrative. In the sphere of legislative framing, the RPWD Act 2016 is undoubtedly a departure from the welfare and classification model that the 1995 Act espouses, and incorporates the relational definition of disability, statutory reasonable accommodation, institutional mandates and the twenty-one-category approach to impairment of the UNCRPD. In the sphere of judicial interpretation, this transition has even been clearer: the cases of *Jeeja Ghosh* (2016), *Vikash Kumar* (2021) and *Rajive Raturi* (2024) have seen the Court increasingly, and in the last case explicitly, constitutionalise the social model as an interpretative basis for Articles 14, 19 and 21 of the Constitution, going further than reasonable accommodation as a threshold disability determination within the ambit of the statute to declare accessibility as a stand-alone fundamental right.

On the level of implementation, however, the facts collected in Sections 6 and 7 lend themselves to a significantly more restrained evaluation. First of all, the disability criteria employed remain deeply tied to a requirement of medical diagnosis for almost every right that is conferred by the new Act, thus reiterating the epistemic framework of the model that the latter seeks to supersede. Capacity law has continued to operate in isolation from other relevant pieces of legislation, meaning that there still exist vulnerable groups who lack appropriate legal protection. Moreover, employment reservation, despite having been formally broadened, has actually become inaccessible to an entire group of persons with disabling mental health problems for whom the 2016 Act amendments were introduced. Finally, it took another decade and the decision of the Supreme Court in 2024 to make accessible guidelines obligatory under a statute already seven years old.

What emerges is, in effect, a hybrid system; a social model paradigmatic system that has advanced far beyond the current system in terms of its social-model language, its constitutional principle and its judicial doctrine but has yet to develop any new forms of bureaucratic or administrative practice in which those elements find an institutionalized structure. It should be added that even the full implementation of such a system will not be enough to deliver the substance of equality that the drafters of the RPWD act and the disability jurisprudence of the Indian supreme court have in their various ways attempted to establish. Reform in the future must therefore take place on two simultaneous tracks: the further doctrinal work of judicial and legislative affirmation of social-model principle, as accomplished in *Rajive Raturi*, and a more intense effort to bring the practices of certification, guardianship and quota administration into alignment with that principle, so that the rights thus established can become available to the disabled Indians whom the 2016 reform law was designed to serve.

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