

## **Bridging the Gap: Examining Structural, Legal, and Social Determinants of Health Rights for Persons with Disabilities in India**

**Dr. Rakesh Kumar <sup>1</sup>, Dr. Sonal Sharma <sup>2</sup>, Mr. Ravinder Sharma <sup>3</sup>**

<sup>1</sup>Associate Professor, TMCLLS, Faculty of Law, Teerthanker Mahaveer University, Moradabad, U.P., India, Email:ID :rakeshkumarjnu@gmail.com

<sup>2</sup>Assistant Professor, Shri Ram College of Commerce, University of Delhi, New Delhi, India, Email:ID: prof.sonalsharma@gmail.com

<sup>3</sup>Assistant Professor, TMCLLS, Faculty of Law, Teerthanker Mahaveer University, Moradabad, U.P., India

### **ABSTRACT**

The right to health is a fundamental human right recognized under international and constitutional frameworks, and it assumes special significance for persons with disabilities in India. Even with the implementation of progressive legal reforms such as the Rights of Persons with Disabilities Act, 2016 and India's accession to the United Nations Convention on the Rights of Persons with Disabilities, persons with disabilities have continued to encounter significant obstacles in accessing affordable, accessible, and high-quality health services. Some of the common obstacles that have emerged for persons with disabilities include insufficient medical facilities, lack of accessibility in hospitals and clinics, discrimination, financial barriers, lack of skilled health professionals, and ignorance about disability-sensitive approaches in delivering health care. It is the responsibility of the State, as per the constitutional duty mentioned in Articles 14, 15, 21, and 41 of the Constitution of India, to uphold the interests of the marginalized groups and provide equality, dignity, and healthcare services. Furthermore, judicial activism has expanded the scope of the right to life under Article 21 to also include the right to health care. This study will analyze the legal and policy framework relating to the rights to healthcare of persons with disabilities along with the difficulties in implementing it. This study will discuss why it is essential to have a rights-based inclusive approach towards health care for ensuring equality and social justice. Accountability needs to be improved, accessibility increased, awareness created, and financial budget allocated for securing the health rights of persons with disabilities in India.

**Keywords:** Disability Rights, Right to Health, Inclusive Healthcare, Accessibility, Rights of Persons with Disabilities Act, 2016

### **INTRODUCTION:**

Health care is a fundamental human dignity. The right to health is considered a basic human right that allows a person to have a dignified life free of discrimination and participate equally in society. As far as persons with disabilities (PwDs) are concerned, the importance of receiving proper healthcare becomes even more important since people with disabilities require regular visits to healthcare facilities for treatment and rehabilitation, use of assistive technologies, etc. Still, despite significant progress in medicine and legislation on disabilities, there are many issues faced by persons with disabilities when it comes to healthcare.

India has one of the highest numbers of persons with disabilities in the world. According to the Census of India, there are millions of citizens with various types of physical, sensory, intellectual, and psychosocial disabilities. Such persons face discrimination and other problems that prevent them from enjoying good health outcomes. Moreover, in rural areas where such issues prevail, the lack of healthcare facilities and accessibility becomes even more prominent.

The acknowledgment of disability rights has moved from a welfare-based perspective to a rights-based paradigm that focuses on equality, autonomy, and social integration. This is evident from international instruments such as the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities) and domestic instruments like RPwD Act (Rights of Persons with Disabilities Act, 2016). Nevertheless, even though such progress has been made, obstacles still exist, making it hard to guarantee the enjoyment of health rights by individuals with disabilities.

This paper focuses on the laws and policies that constitute the right to health of persons with disabilities in India. It also provides some obstacles faced by persons with disabilities when accessing health care services and proposes ways of ensuring that effective health systems are built for substantive equality.

### **Concept of Right to Health**

The right to health goes beyond the absence of sickness; rather, it refers to access to healthcare facilities, sanitation, nutrition, potable water, and conditions that are conducive to good health physically and psychologically. According to the World Health Organization, health is a state of

complete physical, mental, and social well-being and not just the absence of disease or illness.

The right to health is protected in Article 25 of the Universal Declaration of Human Rights (UDHR), where it stipulates the right to an adequate standard of living and medical care. Just like that, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ensures the right of enjoying the highest standard of physical and mental health.

In respect to persons with disabilities, the right of health refers to the provision of health services and facilities to accommodate them.

### **International Legal Framework**

Convention on the Rights of Persons with Disabilities of the United Nations (UNCRPD)

The UNCRPD, adopted in 2006, marks an important paradigm shift in relation to disability rights. The Indian nation ratified the Convention in 2007 and committed itself to protecting and promoting disability rights.

Article 25 of the UNCRPD specifically mentions that individuals with disabilities have the right to attain the highest standards of health without discrimination. The State Parties must:

- Provide specific health-care services for persons with disabilities.
- Ensure equitable access to health-care services.
- Prevent discriminatory denial of health care.
- Provision of services as close as possible to their communities.
- Conduct disability-specific training of health-care personnel.

Dignity, autonomy, participation, and equality are the core principles of healthcare under the UNCRPD.

### Sustainable Development Goals (SDGs)

The Sustainable Development Goals set by the United Nations prioritize universal health coverage and “leave no one behind” principle. Disability-inclusive health care is key to attaining goals 3 and 10 (Good Health & Well-being and Reduced Inequalities respectively).

### Constitutional Framework of India

Though the Constitution of India does not mention the right to health as a fundamental right, through judicial interpretation, it is included under Article 21, which ensures right to life and personal liberty.

#### Article 14: Equality Before the Law

Article 14 of the Constitution ensures that every person shall be equally protected by the law, which means equal treatment in terms of healthcare services for people with disabilities. Any form of discriminatory practice would be a violation of Article 14.

#### Article 15: Non-Discrimination

The provision of Article 15 prohibits any form of discrimination against people with disabilities, and affirmative action measures can be taken in their favor.

### Article 21: Right to Health

Through consistent interpretation, it has been made clear that the right to life under Article 21 includes the right to good health as well as right to health services in order to live with dignity.

### Directive Principles of State Policy

Under the Directive Principles of State Policy, the following articles are relevant to the topic of health rights of people with disabilities:

- Article 38: Social justice and welfare
- Article 39(e): Protection of health of workers
- Article 41: Assistance in case of disablement
- Article 47: Improvement of public health

### Judicial Interpretation of Health Rights

The Indian Judiciary has been very prominent in increasing the ambit of the right to health.

In the case of Consumer Education and Research Center v. Union of India (1995), the Supreme Court held that the right to health and medical treatment is an inherent part of the right to life guaranteed under Article 21.

Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996) was a case where the Court held that the State had a duty to provide proper medical facilities; otherwise, it would be violating Article 21.

In State of Punjab v. Mohinder Singh Chawla (1997), the Supreme Court again stated that the protection of human life should always be the primary consideration and that the right to health is a fundamental part of the right to life.

All these landmark decisions have paved the way for the recognition of healthcare as a fundamental right and will have repercussions for people with disabilities who require equal access to healthcare facilities.

### Rights of Persons with Disabilities Act, 2016

The Rights of Persons with Disabilities Act, 2016 is one of the major pieces of legislation relating to the disability laws in India. Being enacted for harmonizing domestic law with the UNCRPD, this law broadens the scope of recognized disabilities along with using a rights-based approach.

#### Provisions Pertaining to Health

Section 25 of the said Act creates duties for the government with regard to providing health care for people with disabilities. According to this provision, the authorities have to:

- Offer free healthcare under certain circumstances.
- Carry out screening and disability prevention programs.
- Guarantee access in health institutions.
- Foster the provision of rehabilitation services.
- Formulate insurance plans for people with disabilities..

### Significance of the Act

The RPwD Act can be understood as an evolution from charity-based approaches to governance towards rights-based governance. This law acknowledges that people with disabilities are rights-holders who have the right to equality and access to health care facilities.

#### Healthcare Access Challenges for People with Disabilities

Even with the laws in place, persons with disabilities still find it difficult to access health care due to various challenges.

#### Challenges of Physical Accessibility

For instance, many hospitals and health care centers lack ramps, elevators, and accessible restrooms. There are no provisions for touch paths, sign languages, and other forms of accessibility within these facilities.

#### Language Barriers

Another important issue in accessing healthcare among people with disabilities is the language barrier. Communication challenges are common when people with disabilities try to access healthcare. Doctors and other health workers do not understand sign language.

#### Financial Challenges

Persons with disabilities face issues such as unemployment and poverty, which affect their ability to pay for their healthcare needs.

#### Social Stigma and Discrimination

Prejudices within society continue to impact the access to healthcare facilities among persons with disabilities.

#### Shortage of Trained Healthcare Professionals

There is a deficit of trained healthcare professionals who provide disability-inclusive services. Most students studying in medical schools receive minimum knowledge about disability rights and practices in the field of healthcare.

#### Rural-Urban Divide

Specialized healthcare facilities that provide services to persons with disabilities are largely concentrated in urban locations. Persons with disabilities residing in rural settings usually have to cover long distances to obtain medical services, leading to delayed healthcare interventions.

#### Government Initiatives and Programs

Various efforts have been made by the Government of India to enhance the provision of healthcare services to persons with disabilities.

#### Accessible India Campaign (Sugamya Bharat Abhiyan)

The Accessible India Campaign targets improvements in public buildings, public transport, and IT infrastructure with the focus on accessibility. Among other aspects, accessible healthcare facilities constitute an essential part of the program.

#### Ayushman Bharat Scheme

Ayushman Bharat Scheme offers health insurance cover for those who are economically disadvantaged. People with disabilities stand to gain financial help in terms of

hospitalization and medical care through Ayushman Bharat Scheme.

#### National Health Mission

The National Health Mission is a scheme aimed at providing an inclusive health care system using primary health centers, maternal health care schemes, and community based health care. Efforts have been made for dealing with disability problems through national health policies.

#### Rehabilitation Programs

Rehabilitation centers run by the government offer physical therapy, occupational therapy, speech therapy, and devices for assistance. Community-based rehabilitation programs work towards promoting independent living and social inclusion.

#### Importance of Inclusive Healthcare

In order for the healthcare systems to offer inclusive care, it is necessary for them to be designed with diverse requirements of all people in mind. This involves equality, participation, and access.

Important features of inclusive healthcare include:

- Universal accessibility of healthcare facilities.
- The provision of assistive technologies.
- Easily accessible communication.
- Reasonably priced healthcare services.
- Disability sensitive training in medicine.
- Community involvement in policymaking.

Inclusive healthcare is advantageous not just for persons with disabilities, but also elderly people and pregnant mothers.

#### Implementation Issues

While there are adequate legislative provisions, the implementation of such provisions is not strong.

#### Insufficient Budgeting

Provision of healthcare for persons living with disabilities may be faced by budgetary constraints. The availability of financial resources affects infrastructure development and provision of rehabilitation.

#### Poor Monitoring

Implementation of provisions is difficult without effective monitoring and reporting systems. Adherence to the standards of accessibility by healthcare facilities has been irregular.

#### Data Limitations

Health statistics on disability have been inadequate. Lack of data poses a challenge to decision-making on allocation of resources.

#### Low Awareness Levels

There is little knowledge about disability among both healthcare professionals and the general population.

#### Recommendations

To improve the health rights of people with disabilities, the following recommendations are made:

1. Provide universal accessibility to healthcare institutions through rigorous implementation of accessibility guidelines.
2. Increase the financial provision for disability-specific healthcare programs and rehabilitation initiatives.
3. Encourage disability research in healthcare and nursing education courses.
4. Provide health insurance that would cover rehabilitation, assistive devices, and long-term care.
5. Promote community-based rehabilitation, especially in rural communities.
6. Provide accessible health information in braille, sign language, audio recordings, and electronic media.
7. Encourage efficient monitoring and complaint resolution mechanisms.
8. Initiate campaigns that would dispel stigma attached to persons with disabilities.
9. Conduct research on disability issues in health care.
10. Involve persons with disabilities in health care policy and program planning processes.

## REFERENCES

1. Baxi, U. (n.d.). *Human rights in a posthuman world*. Oxford University Press.
2. Constitution of India. (1950).
3. Consumer Education and Research Centre v. Union of India, (1995) 3 SCC 42.
4. Ministry of Health and Family Welfare, Government of India. (2017). National Health policy 2017. [https://www.nhp.gov.in/nhpfiles/national\\_health\\_policy\\_2017.pdf](https://www.nhp.gov.in/nhpfiles/national_health_policy_2017.pdf)
5. Ministry of Social Justice and Empowerment, Government of India. (n.d.). Accessible India Campaign (Sugamya Bharat Abhiyan) guidelines.
6. Ministry of Social Justice and Empowerment, Government of India. (n.d.). Disability Affairs reports.
7. Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 SCC 37.
8. Rights of Persons with Disabilities Act. (2016). Government of India.
9. State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83.
10. United Nations. (2006). Convention on the Rights of Persons with Disabilities. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>
11. United Nations. (n.d.). Sustainable Development Goals report. <https://sdgs.un.org/goals>
12. United Nations General Assembly. (1966). International Covenant on Economic, Social and Cultural Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
13. World Health Organization. (n.d.). Constitution of the World Health Organization. <https://www.who.int/about/governance/constitution>
14. National Human Rights Commission, India. (n.d.). Disability rights reports. <https://nhrc.nic.in/>

## CONCLUSION

Health is one of the key elements that determine human dignity, equality, and social justice. When it comes to persons with disabilities, the provision of healthcare services is more than just welfare—it is a basic human right. The Indian state has achieved considerable success by way of constitutional guarantees, judicial activism, international obligations, and legislation, namely Rights of Persons with Disabilities Act, 2016. Yet, the distance from formal acknowledgment to its substantive realization is still far too long.

Existing challenges include inaccessible infrastructure, lack of funds, stigma within communities, and other barriers preventing realization of health rights by persons with disabilities. An inclusive approach based on the principles of accessibility, affordability, participation, and accountability should become the key to the realization of health rights.

It is important that persons with disabilities can enjoy their health rights in full and be able to participate actively in social life. This is a necessary condition of building an inclusive society.