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ENFORCEMENT GAP IN DISABILITY RIGHTS: FROM LAW TO LIVED REALITY

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1. INTRODUCTION: THE LEGAL LANDSCAPE

Disability rights are grounded in the principles of human dignity, equality, and non-discrimination. In India, the Rights of Persons with Disabilities Act, 2016 (RPwD Act)¹ represents a significant legislative step towards harmonising domestic law with the United Nations Convention on the Rights of Persons with Disabilities (CRPD)², to which India is a State Party. Constitutional guarantees under Articles 14, 15, 16, 21, and 41³, together with statutory provisions, create an extensive framework for inclusion, accessibility, and equal opportunity.

The RPwD Act marked a paradigm shift from a charity-based and medical model of disability to a rights-based approach, recognising 21 categories of disabilities and embedding obligations on both public and private sectors to ensure non-discrimination and reasonable accommodation. It incorporates affirmative action measures such as reservations in employment and education, accessibility mandates for infrastructure and digital platforms, and grievance redressal mechanisms through designated authorities.

However, the transformative potential of these guarantees has not fully translated into lived realities. The “enforcement gap”—the disconnect between legal promises and actual outcomes—remains a structural and societal challenge. This gap manifests in inadequate implementation of accessibility guidelines, absence of effective monitoring, insufficient awareness among duty-bearers, and systemic marginalisation of persons with disabilities in

¹ *The Rights of Persons with Disabilities Act*, No. 49 of 2016, Acts of Parliament, 2016 (India).

² Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

³ INDIA CONST. arts. 14, 15, 16, 21, 41.

decision-making processes. The persistence of attitudinal barriers, coupled with bureaucratic inertia and fragmented institutional responsibility, has meant that despite the existence of a robust statutory framework, the rights of millions of persons with disabilities (PwDs) continue to be undermined. These failures perpetuate cycles of exclusion and inequality, raising critical questions about accountability, state capacity, and the practical enforceability of human rights guarantees.

2. PROBLEM STATEMENT: THE ENFORCEMENT GAP

The RPwD Act confers strong rights in employment, education, accessibility, and social security. Yet systemic deficiencies continue to erode its impact:

- Inadequate access to public spaces, transportation, and digital infrastructure.
- Low rates of meaningful employment and bias in recruitment processes.
- Gaps in educational inclusion despite statutory reservations and mandates for reasonable accommodation.
- Unresponsive and underpowered grievance redressal mechanisms.
- Chronic underutilisation of funds earmarked for accessibility and empowerment projects.
- Delays in issuing disability certificates and delivering benefits, especially in rural areas.

These deficiencies are compounded by fragmented jurisdiction, lack of monitoring indicators, and a public approach that too often frames disability as a matter for charity rather than enforceable rights.

3. METHODOLOGY AND SCOPE

This study employs a doctrinal and comparative approach, drawing on:

- Statutory analysis of the RPwD Act, 2016⁴ and CRPD⁵ provisions.
- Case law from the Supreme Court and High Courts (*Jeeja Ghosh v. Union of India*⁶; *Rajive Raturi v. Union of India*⁷; *Vikash Kumar v. Union Public Service Commission*⁸).

⁴ *The Rights of Persons with Disabilities Act*, No. 49 of 2016, Acts of Parliament, 2016 (India).

⁵ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

⁶ *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 (India).

⁷ *Rajive Raturi v. Union of India*, (2016) 8 SCC 509 (India).

⁸ *Vikash Kumar v. Union Pub. Serv. Comm'n*, (2021) 5 SCC 370 (India).

- Reports from NGOs, Parliamentary Standing Committees, and Comptroller & Auditor General audits.
- Comparative frameworks from the Americans with Disabilities Act, 1990 (ADA)⁹ in the United States and Equality Act, 2010¹⁰ in the United Kingdom.
- Select field insights from disability rights organisations, situating enforcement within an intersectional matrix of gender, poverty, and geography.

4. KEY THEMES AND ARGUMENTS

A) LEGISLATIVE AMBIGUITIES AND GAPS

The RPwD Act adopts CRPD principles but leaves key terms like “reasonable accommodation” and “barrier-free access” under-defined. This allows for inconsistent interpretation and weakens enforceability. Implementation rules vary across states, creating unequal protection depending on location.

B) ADMINISTRATIVE AND REGULATORY WEAKNESSES

Enforcement bodies—the Chief and State Commissioners for Persons with Disabilities—are limited to recommendatory powers. Many District Disability Rehabilitation Centres are under-resourced, and grievance mechanisms lack accessibility and follow-up systems. The absence of time-bound duties and clear sanctions permits chronic non-compliance.

C) JUDICIAL INTERVENTION AND ITS LIMITS

Judicial directions have advanced rights—such as in *Jeeja Ghosh*, where dignity was affirmed, and *Rajive Raturi*, which mandated building accessibility—but compliance with judgments is inconsistent. Litigation remains inaccessible for many due to cost, delays, and procedural complexity.

D) SOCIAL AND ATTITUDINAL BARRIERS

Discrimination often arises from entrenched social prejudices, compounded by lack of awareness among employers, officials, and the public. Sporadic sensitisation campaigns fail to create sustained attitudinal change.

E) INTERSECTIONALITY: GENDER, POVERTY, AND LOCATION

⁹ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213 (2018).

¹⁰ Equality Act 2010, c. 15 (U.K.).

Women with disabilities, rural residents, and persons from marginalised castes face compounded discrimination, with unique challenges in accessing education, healthcare, protection from violence, and economic opportunities. Current policy frameworks inadequately address these intersecting vulnerabilities.

F) COMPARATIVE PERSPECTIVES

Internationally, bodies such as the UK's Equality and Human Rights Commission (EHRC) and the US Equal Employment Opportunity Commission (EEOC) possess binding enforcement powers, conduct audits, and initiate litigation. These models illustrate the effectiveness of granting regulators quasi-judicial authority and clear compliance mandates—lessons directly applicable to India.

5. RECOMMENDATIONS FOR BRIDGING THE GAP

The paper proposes:

1. **Empowering Enforcement Bodies** – Amend the RPwD Act to grant binding order-making and penalty-imposition powers to the CCPD and SCPDs.
2. **Mandatory Accessibility Audits** – Require annual third-party audits of public and private establishments, with results publicly disclosed.
3. **Time-bound Compliance Duties** – Impose statutory deadlines for implementing accessibility measures and reasonable accommodation, with financial penalties for non-compliance.
4. **Integration with Human Rights Commissions** – Coordinate disability rights enforcement with broader human rights mechanisms to streamline jurisdiction.
5. **Intersectional Policy Design** – Create targeted schemes for women, rural residents, and socio-economically disadvantaged PwDs.
6. **Capacity Building and Awareness** – Institutionalise disability rights training for government officials, employers, and judicial officers.

6. CONCLUSION

The enforcement gap in disability rights is not a mere technical flaw—it is a structural failure that sustains exclusion. Bridging this gap requires more than legislative drafting; it demands robust enforcement powers, administrative accountability, and a transformation in societal attitudes towards disability.

While progressive legal reforms are essential, they must be accompanied by systemic changes that ensure rights are both accessible and enforceable in practice. This includes strengthening monitoring institutions, ensuring adequate funding for disability-related programmes, and embedding accountability mechanisms that measure compliance at both central and state levels. Public awareness campaigns, capacity-building initiatives for government officials and employers, and the integration of disability rights education into professional training are equally vital for creating an inclusive ecosystem.

By integrating lessons from comparative jurisdictions and amplifying the voices of Disabled Persons' Organisations, India can move from a framework of paper rights to one of lived equality. Only when the RPwD Act's guarantees are matched by effective enforcement will the vision of the CRPD—a society of full participation, dignity, and non-discrimination—be realised. Achieving this vision is not just a matter of policy reform; it is a moral imperative that reflects the nation's commitment to the principles of justice, equality, and human dignity.