

THE LEAFLET

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Criminal Justice

The gaping flaws in India's long march to disability justice

On the ground, the interactions of people with disabilities with courts, policing and prison infrastructures and the fundamental lack of will to effectively implement the RPWD Act, show that reframing access to justice as a disability issue will require serious, concerted efforts



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WHILE IT WOULD NOT BE FAIR to claim that no progress has been made in enabling greater access to people with disabilities ('PWDs') in India, much remains lacking in terms of the access to the criminal justice framework, particularly when compared to other vulnerable groups . Initiatives aimed at supporting PWDs, from laws and policies to justice mechanisms and dedicated welfare institutions, are often undermined by deep-seated prejudices and infrastructural inadequacies. These shortcomings create significant obstacles that complicate the daily lives of PWDs on multiple fronts. Access to services and justice for PWDs can be categorised into physical access, process access, and product access. Physical access refers to the barriers that disabled individuals face when trying to enter government buildings, obtain documents, or communicate effectively with officials. This exacerbates process access, as the various stages of the justice process remain insensitive, poorly equipped, and ill-suited to accommodate the needs of PWDs. As a result, the ultimate product - justice - becomes elusive, further deepening the hardships PWDs have endured for generations. When considering access to justice, the primary institutions involved are the police, the judiciary, prisons, and other organisations tasked with protecting the rights of PWDs.

Police insensitivity: A barrier for disabilities

The police station is typically the first place any citizen turns to when faced with a problem, expecting the police to receive complaints and take immediate action. However, for PWDs, the response from police officials is often indifferent, exacerbating the challenges they already face due to physical and infrastructural deficiencies. Most police stations in India lack basic amenities

for PWDs, such as proper ramps, wheelchairs, or even a "May I help you" desk, despite recommendations and guidelines from the Government.

Disability Rights Activist Swarnalatha has made significant strides in improving accessibility for PWDs at local police stations. Her project, "Sugamya" has made all police stations in Coimbatore disabled-friendly by constructing ramps, wheelchairs, and posters with contact information for sign language interpreters and special educators. This project went an extra mile by converting the FIRs and CSR copies into audio files, thus making police documents accessible to visually challenged persons.

India's confusing legal landscape does not serve persons with intellectual disabilities

While this initiative has been supported by the police, it is not a government initiative and does not have the resources to be implemented nationwide. Swarnalatha, who is wheelchair-bound and quadriplegic, was inspired to start this project after a personal experience in which police cynically refused to take her complaint. This insensitivity from the police sparked her desire to improve the situation, leading her to train police officials using innovative methods, such as making them experience disability through wheelchairs and blindfolds under her project, 'Bridging Barriers'. Attitudinal barriers like these must be addressed through government-mandated training programs, as outlined under Section 47 of the Rights of Persons with Disabilities Act ('RPWD'), 2016.

While it is heartening to know that some initiatives have been made by civil society actors like Swarnalatha, it is saddening that the government has not initiated such efforts on a larger scale, remaining largely indifferent to the needs of PWDs. The tragic death of human rights defender G N Saibaba serves as a stark reminder of the failure of the criminal justice system for PWDs, highlighting the need for reform within India's prisons.

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Gated prisons: A dark cage for disabilities

"I was in the anda cell (akin to solitary confinement) for eight and a half years without a wheelchair. It was a daily struggle to use the toilet, take a bath, or even fetch myself a glass of water. The prison doesn't have a single ramp for people like me," said G N Saibaba, who suffered wrongful incarceration for 10 years.

This not only highlights the severe challenges faced by PWDs in prisons due to harsh physical conditions but also the systemic disregard for the rights and needs of PWDs, which warrants a deeper examination of both the prison system and the injustices perpetuated within.

Police often beat up the accused before taking them to remand in a way that causes their bones to break, creating severe mobility issues. If it is perceived correctly, accused persons are made disabled even before they enter the prison gates also known as the 'wicket gate' which in itself is inaccessible to the PWDs on wheel chair.

Many of the judicial magistrates who pass mechanical remand orders fail to take note of this, and medical officers (doctors) are also accomplices to it. These accused who become disabled in the process further face all the hardships that are common to every inmate in addition to the unique challenges of PWDs, including the lack of facilities like wheelchairs, ramps, and psychiatrists for mentally disabled prisoners despite its mandate under the Model Prison Manual.

In prisons, PWDs are hardly given the special care and attention that they require to fulfil their daily basic needs. There are even cases of prisoners with bodies full of burns, immobile limbs, unable to do their Daily Living Activities ('DLA') suffering inside prisons for decades without any special care. In addition, the poor nutrition, sanitation and unhygienic condition of prisons render many prisoners decrepit and disabled in the due course.

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Among these slew of cases happens to be the case of L Muruganandam, a PWD (Becker's Muscular Dystrophy) who suffered illegal detention and ill-treatment in prison and got compensated with Rs. 15 lakhs for the same. In his case, the prison authorities failed to get his disability certificate from the police (who wilfully concealed it) and ill-treated him inside the prison despite his disability. More than thirty years after the Veena Sethi case came Chetan Mahajan's Bad Boys of Bokaro Jail (2014), highlighting the plight of prisoners with mental disabilities. This situation, compounded by NCRB data highlighting the alarming rise in suicides due to mental distress within Indian prisons, gives a profoundly disheartening picture.

Inaccessible courts tarnishes the justice process for the disabled:

The judiciary, which holds the ultimate responsibility of safeguarding the rights of PWDs, is often not as sensitive as it should be. While passing remand orders mechanically without considering the injuries and immobility of the accused is one thing, equally troubling is the absence of a proactive role in ensuring physical accessibility. Police stations, lower courts, and some high courts also lack proper ramps and accessible toilets, not to mention sign language interpreters and conversion of documents into audio formats.

L Muruganantham, who was falsely charged and incarcerated, finds it very hard to access and convince the trial court to provide him with a virtual hearing owing to his disability. He cites that the Resolutions Adopted In The Chief Justices' Conference, 2016 recommend prioritising and fast-tracking cases related to the differently abled, even though judges in the lower courts and some high court judges never prioritise their cases.

The Madras High Court in Muruganantham's case very clearly opined, "We also take note of the fact that no proper training or sensitisation program has been held as required under Section 39 of the RPWD Act, 2016." Although Muruganantham got five lakhs compensation for his illegal

detention, the High Court failed to consider the human rights violation by the prison authorities for which he is before the Supreme Court now. There are many other cases like Muruganatham where the police mishandled PWDs, and the judiciary was insensitive to their plight.

For instance, Vallinayagam, a wheelchair-bound disability rights activist who frequently participated in protests and demonstrations was implicated in several cases. Police arrested him, ripped him off his clothes, and abused him. He was even intercepted by a gunman in the court who insulted him, citing his disability. Vallinayagam mentioned, “After the judge remanded me until 13.08.2023, I interrupted the Hon’ble Judge, and requested to be heard and then stated that I am a physically disabled person. It was only then that the Judicial Magistrate looked at me for the first time and realized what my disability was. I then pleaded that my disability incapacitated me from knowing when I needed to use the restroom and emphasized the extreme difficulty faced by disabled individuals like me in accessing toilets. After issuing the order, the Judicial Magistrate replied that necessary arrangements would be made in custody.”

The new grounds broken, and the ones unfinished: On the SC striking down judicial service rules exclusionary towards persons with disabilities

The Supreme Court, in a case where disabled women belonging to a Scheduled Caste Community were subject to sexual violence, emphasised the “interlocking of different relationships of power at play.” The Court, in that case, opined, “This threat of violence can translate into a nagging feeling of powerlessness and lack of control, making the realization of the promises held by Parts III and IV of our Constitution a remote possibility for women with disabilities.” The Court also formulated several guidelines to sensitise judges and police officers, noting especially that the national and state judicial academies should sensitise the judicial officers. This also included the maintenance of a record of crimes against PWDs in the National Crime Record Bureau (NCRB).

Many Courts across the country have protected the rights of PWDs in many instances. Recently, the Supreme Court ruled that visually impaired candidates can also appear for judicial services recruitment and no one can be denied opportunity solely on the basis of their disability.

The Chairperson of the e-Committee wrote a letter to all High Courts to make their digital infrastructure accessible to PWDs in conformity with their constitutional and statutory entitlements. Further, the Law Ministry released a press report saying all High Court websites now have captchas accessible to PWDs with audio captchas for the visually challenged. The e-Committee is also in the process of creating a Standard Operating Procedure (SOP) for generating accessible court documents, which will serve as a user guide to its stakeholders.

There is even no data from State Bar Councils regarding the number of legal practitioners with disabilities. This gap in information makes it difficult to implement accessible justice measures effectively, as understanding the representation of disabled individuals within the legal profession is essential for creating an inclusive legal system.

While such initiatives by the judiciary are commendable, they often remain confined to paper or token efforts. The lower judiciary, where the majority of the population engages with, remains inaccessible and indifferent to the needs of PWDs. Implementing features like audio-format CAPTCHAs alone will not transform court documents into fully accessible resources for PWDs, thus underscoring the urgent need for fundamental and systemic reforms across all levels to ensure true inclusivity and accessibility.

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Bridging the barriers:

The Disability Commissions, which are mandated to protect the rights of PWDs, remains ineffective in many states, creating a massive gap in the justice mechanism. On the efforts of Seema Girja Lal, a mental health consultant from Kerala, among several other advocates who were disturbed by the absence of effective state disability commissioners under the RPWD Act, the Supreme Court in 2023 noted that many of the states in India had not implemented the provisions of the RPWD Act, the worst of which was the absence of a Disability Commission in many states.

The orders passed by the Commission under the RPWD Act is not binding and thus, it remains unimplemented in most cases. Although the law looks appealing on paper, there is a significant gap in implementation in areas of appointment of the Commissioner, Special courts, and special public prosecutors. Even the power of the Chief Commissioner at the central level is limited to recommending corrective measures under sections 75 and 77 of the RPWD Act. There are many other problematic provisions in the act that give discretion to the authorities. The representation of PWDs inside the existing commissions is so poor that there are instances where able-bodied candidates with less qualification than PWDs are positioned in higher ranks in their employment. There is a growing call for a new legislation specifically tailored to the rights of PWDs, similar to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In 2020, the Supreme Court took a similar view and noted, “people suffering from disabilities are also socially backward, and are therefore, at the very least, entitled to the same benefits as given to the Scheduled Castes/ Scheduled Tribes candidates.” A new law could bring much-needed attention to the vulnerabilities faced by PWDs, much like the SC/STs and women. This proposed legislation could mandate accessible infrastructure training for police officers, judges, and other officials, ensuring that the legal system is fully inclusive. It could also promote the publication and distribution of handbooks like the one prepared by Iprobono in collaboration with the Chief Commissioner for PWDs.

In Mizoram, effective implementation of the RPwD Act remains a pipe dream

The new law should also incorporate stronger provisions for addressing atrocities and misconduct by officials against PWDs, expanding on the limited section currently found in the 2016 Act. One of the significant barriers to progress is the lack of political will. Unlike SC/ST communities, PWDs have not become a focal point in electoral politics, which means their issues are often overlooked. Professor Deepak Nathan from the December 3 Movement and advisor to the Tamil Nadu Commission for PWDs, advocates that more than just social support, PWDs require equal representation and inclusion in electoral politics to ensure their rights are protected

The Supreme Court guidelines to improve accessibility and inclusivity for PWDs within the judicial system must be effectively implemented across all levels, especially in lower courts. The Disability Commission must ensure that complaints are pursued vigorously, and that their orders are strictly enforced. In addition to police stations, which should also be accessible (as seen in Coimbatore), the prison department must ensure that proper infrastructure is in place for PWDs. This includes the provision of psychiatric care for prisoners with mental health disabilities, along with mandatory disability audits in prisons. Judges should also refrain from issuing mechanical remand orders and should carefully consider the accused's disabilities and injuries before making decisions.

While these initiatives represent meaningful steps forward, a comprehensive government study to assess the conditions of PWDs is essential. Only through the introduction of holistic reforms at the grassroots level can we address the systemic barriers that continue to impact the lives of PWDs.

<https://theleaflet.in/criminal-justice/the-gaping-flaws-in-indias-long-march-to-disability-justice>