



Himachal Pradesh National Law University, Shimla (India)

Journal Articles

HPNLU Journal of Disability Studies

Volume: I (2024)

Water Justice for Persons with Disabilities: A Critique
Manpreet Kaur

This article can be downloaded from:

<https://hpnlu.ac.in/journal-level-2.aspx?ref-id=48>

ISSN: XXXX-XXXX

Recommended Citation:

Manpreet Kaur, Water Justice for Persons with Disabilities: A Critique, I HPNLU JDS. 65 (2024)

Disclaimer

This Article is published and brought to you for free and open access by Himachal Pradesh National Law University, Shimla. For more information, please contact editorjds@hpnlu.ac.in

Contents

S.No.	Title	Pages
1.	Barriers To Accessibility: An Empirical Study of Higher Educational Institutions for Women with Disabilities in Lucknow City of Uttar Pradesh- <i>Priti Saxena & Jaya Chaudhry</i>	1-31
2.	Exploring the Human Rights Perspective on Persons with Disabilities - <i>Kasturi Gakul & Shine Kashyap</i>	32-50
3.	Right to Education, Copyright Law and Employment Benefits for Visually Impaired Persons: Human Rights Perspective- <i>Abhay Kumar</i>	51-64
4.	Water Justice for Persons with Disabilities: A Critique- <i>Manpreet Kaur</i>	65-73
5.	Inaccessible Infrastructure: Ignored Right in the Ableist Society- <i>Rohit Sharma & Nutan Kanwar</i>	74-87
6.	Breaking Barriers: Ensuring Equitable and Non-discriminatory Healthcare Access for Persons with Disabilities- <i>Saheb Chowdhury</i>	88-100
7.	Disability and Criminal Justice System: An In-Depth Analysis of Challenges, Rights, and Reforms- <i>Khushbu Sharma & Mohit Dogra</i>	101-117
8.	From Wealthy to Welfare: Gandhi's Trusteeship Philosophy and Corporate Generosity Towards Disability Causes- <i>Narinder Pal</i>	118-129
9.	Disability Certification: A Necessary Evil? - <i>Chetan</i>	130-142
10.	Inclusive Sustainability: The Role of CSR Towards Accessible and Equitable Environments - <i>Aastha Mahesh Saboo & Ashish Sharma</i>	143-160

WATER JUSTICE FOR PERSONS WITH DISABILITIES: A Critique

Manpreet Kaur¹

Abstract: *This paper examines the issue of water justice for persons with disabilities, highlighting the challenges they face due to physical, social, and economic barriers. The paper is structured into seven sections. The introduction discusses the importance of removing barriers to ensure equal access to water and sanitation facilities. It examines the role of the state in fulfilling its constitutional duty to address socioeconomic disparities. The second section focuses on the international framework, particularly the United Nations Convention on the Rights of Persons with Disabilities, and its emphasis on dignity, autonomy, and non-discrimination. The third section explores the fundamental right to water, connecting it to broader issues of social justice and equality. The paper then delves into the specific challenges faced by persons with disabilities in accessing water and sanitation facilities, discussing the physical, social, and institutional barriers that contribute to their marginalization. The fifth section covers recent guidelines issued by the Ministry of Jal Shakti aimed at improving accessibility for persons with disabilities and other vulnerable groups and offers a critique of these measures. The discussion and recommendations section emphasizes the need for greater inclusivity in infrastructure, decision-making processes, and public awareness. The conclusion reinforces the importance of addressing the needs of persons with disabilities in development goals, advocating for their full participation in society and equal access to water and sanitation facilities.*

I.

Introduction

Persons with disabilities face social discrimination and physical obstacles while accessing their human right to water and sanitation facilities. The United Nations Convention on the Rights of People with Disabilities emphasises the importance of removing all physical and social barriers and advocates for the privacy, dignity, and autonomy of disabled individuals. It is important that people with disabilities be involved in programme design and monitoring activities. Inclusive water justice system for persons with disabilities can be achieved through their active participation in all the decision-making processes. The state has a positive duty under the Constitution to eradicate socio-economic disparities and ensure equal access to water and sanitation facilities for persons with disabilities.

¹ Assistant Professor of Law, Rajiv Gandhi National University of Law, Punjab

II.

United Nations on Persons with Disabilities

On December 12, 2006, the United Nations Convention on Persons with Disabilities was adopted to address the human rights issues of persons with disabilities, which were not addressed in the three central human rights instruments of the United Nations: the Universal Declaration of Human Rights (1948), the International Covenant for Civil and Political Rights (1966), and the International Covenant for Economic, Social, and Cultural Rights (1966). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW) do not enumerate specific disability protections. Disability activists argue that a binding international instrument that sets out a normative framework for the promotion and protection of the human rights of persons with disabilities is essential.²

The United Nations Convention on the Rights of Persons with Disabilities, adopted on December 12, 2006, protects civil and political rights and social, cultural, and economic rights. According to Article 1 of the United Nations Convention on the Rights of Persons with Disabilities, the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The provision further provides that Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.³ Article 2 of the Convention provides that “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. Article 3 of the Convention contains the general principles which call for:⁴

²Jayna Kothari, “The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India,” *Economic and Political Weekly*, 2010,45(18),65-72. Available at: <https://www.jstor.org/stable/25664414>(last visited 9 Sept,2024).

³United Nations, *Convention of the Rights of Persons with Disabilities and Optional Protocol*. New York: United Nations, 2006.

⁴*Id.*

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The UN's Disabilities Convention shifted from a medical or welfare model of disability to a social or human rights model that emphasises capability, inclusion, individual dignity, and personal autonomy. This shift is based on the social model, which focuses on making society accessible to all people on an equal basis. The Convention defines persons with disabilities as those with long-term physical, mental, intellectual, or sensory impairments that may hinder their full and effective participation in society. It refocuses the lens of domestic social policy on societal barriers that prevent persons with disabilities from full and effective participation and inclusion in all aspects of community life, including employment, education, housing, health, political participation, access to justice, cultural expression, entertainment, and leisure. Article 9 requires States Parties to ensure access to the physical environment, transportation, information, and communications, and protect the rights of disabled persons through reasonable measures, including reasonable accommodation, procedural safeguards, accessibility, universal design standards, individualised support, and effective public awareness campaigns.⁵

III.

Is there any fundamental Right to Water?

The Indian Constitution recognizes the right to water as a fundamental right for justice, liberty, equality, fraternity, and dignity. The 42nd Constitutional Amendment added Article 48-A, stating the state must preserve and promote the environment, forests, and wildlife. Article 51A and 47 emphasize the responsibility of citizens to preserve and enhance the natural environment, public

⁵See *Supra* note 1 at 67.

health, and nutrition.⁶The Supreme Court *Delhi Water Supply & Sewage Disposal Undertaking v. State of Haryana*⁷ has acknowledged water access as a fundamental right under Article 21 of the Constitution, recognizing it as a natural gift.

Access to water is crucial for basic necessities like food, education, health, shelter, livelihood, and personal growth, ensuring civil and political rights. The Supreme Court in *Chameli Singh v. State of U.P.*⁸ emphasized that basic necessities, including water, food, shelter, health, a safe environment, education, etc., are essential for civil, political, social, and cultural rights in a civilised society. The Supreme Court in *Narmada Bachao Andolan v. Union of India*⁹ upheld the right to water, allowing the construction of 3,000 dams on the Narmada River, and in *Hinch Lal Tiwari v. Kamala Devi*¹⁰ it recognized its connection to hygiene conditions.

Every person is the public trustee of water, which is both a resource and a human right. The ‘public trust theory’ doctrine was employed by the Supreme Court in *M.C. Mehta v. Kamal Nath*¹¹ to safeguard natural resources, including air, forests, flowing waterways, seashores, and ecologically vulnerable habitats. Since these resources are intended for public use and enjoyment, the state is not permitted to give them up for private or commercial use. These resources are beneficial to the general public. The Supreme Court in *Vellore Citizens’ Welfare Forum v. Union of India*¹², held that “the Precautionary Principle” and “the Polluter Pays principle” are essential features of “Sustainable Development”. The Court stated that “the polluter pays principle” puts absolute liability on the polluter to compensate victims of pollution as well as pay to restore the damaged environment. And under the “precautionary principle,” the state must take environmental and scientific measures to anticipate and prevent environmental pollution, and the burden is on the actor, industrialist, or developer to prove that the action is friendly to the environment.

IV.

Major Observations made by the Supreme Court on the Rights of the Persons with Disabilities under the Indian Constitution

⁶*M.C. Mehta v. Union of India* (2004) 12 SCC 118.

⁷ (1996) 2 SCC 572.

⁸ (1996) 2 SCC 549.

⁹ AIR 2000 SC 375.

¹⁰ AIR 2001 SC 3215.

¹¹ (1997) 1 SCC 388.

¹² (1996) 5 SCC 647.

In *Jeeja Ghosh v. Union of India*¹³ the Supreme Court held that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 guarantees rights to differently abled persons based on the principle of human dignity, which is the core value of human rights and a significant aspect of the right to life and liberty. This right, now treated as a human right for persons with disabilities, has its roots in Article 21 of the Indian Constitution. Three types of models for determining the content of the constitutional value of human dignity are recognised: theological models, philosophical models, and constitutional models. Human dignity has found its way through constitutionalism, whether written or unwritten. In India, the written Constitution guarantees human rights, including the right to life and liberty, which is interpreted based on the value of human dignity. The constitutional value of human dignity has a central normative role, serving as the foundation for all constitutional rights, providing meaning to the norms of the legal system, and influencing the development of common law. The underlying message in the legal provisions of the Act is the recognition that human rights are necessary for human development.

The Supreme Court in *Vikash Kumar v. UPSC*¹⁴ ruled that individuals with dysgraphia or writer's cramp are eligible to scribe in the Civil Services Examination (CSE). The Supreme Court said that the Rights of Persons with Disabilities (RPwD) Act, 2016, promotes respect for dignity and individual autonomy for the persons with disabilities. The law goes beyond non-discrimination and mandates the state to establish safe conditions for the enforcement of the rights of persons with disabilities. This legislation aims to create an environment where the full range of human liberty entitlements can be pursued, providing a legal foundation for equality of opportunity.

In October 2023, the Committee on Accessibility conducted a comprehensive study on accessibility issues in the Supreme Court of India, focusing on physical infrastructure and functional services. The committee reported that persons with disabilities face difficulties while accessing courtrooms, pathways, washrooms, drinking water facilities, waiting zones, parking facilities, administrative offices, IT services, mediation centres, mentioning branches, canteens, and dedicated assistance. It was also noted by the committee that inclusive language is crucial in combating ableism and discrimination against individuals with disabilities. The United Nations has Disability Inclusive Language Guidelines, which the Supreme Court could adopt. Sensitization and awareness efforts based on these guidelines can significantly enhance inclusivity.¹⁵

¹³(2016) 7 SCC 761.

¹⁴(2021) 5 SCC 370.

¹⁵ See Committee on Accessibility, "A Court for All: Paving the Way for Greater Accessibility in the Supreme Court for Persons with Disabilities, Women & Senior Citizens," Supreme Court of India, October 2023. Available at: https://main.sci.gov.in/pdf/LU/06112023_140650.pdf (last visited 9 Sept, 2024).

V.

Guidelines on accessible and inclusive piped water supply for persons with disabilities and for other population groups with access challenges (notified on August 02, 2023)

The Ministry of Jal Shakti has issued guidelines with the aims to design accessible piped water supplies for individuals with disabilities, temporary access challenges, pregnant women, young children, and short-term physical ailments who face similar barriers. Following are the guidelines in brief:¹⁶

- According to the guidelines, a Person with disability (PwD) is a person with long-term physical, mental, intellectual or sensory impairment which in interaction with barriers, hinders full and effective participation in society equally with others' and lists 21 types of disabilities', as defined by The Rights of Persons with Disabilities Act, 2016.
- The references offer various options to make drinking water points in public spaces and households more accessible for disabled, elderly, and temporary needs. However, these recommendations need refinement for ground-level designs and for areas affected by natural disasters, considering geographical location, financial constraints, community demands, and specific disaster requirements.
- A piped drinking water facility is considered accessible if it addresses barriers to accessing safe water, ensures user safety and ease of access, especially for disabled and elderly individuals, and maintains dignity at all times, especially in areas where water usage is essential.
- Assistive devices and technologies improve an individual's functioning, independence, and overall well-being, including wheelchairs, prostheses, and visual aids for individuals with disabilities and the elderly.
- Physical barriers in the natural environment or infrastructure can significantly impact the access of disabled individuals to safe water, such as slippery pathways, uneven pavement, steep steps, narrow entrances, slippery floors, and inaccessible water collection points.
- Policy or institutional exclusion or neglect in institutions and organisations, including capacity gaps, a lack of clear guidelines, a lack of awareness of design features, and IEC and technical capacity building materials, are causing issues for Persons with Disabilities.
- Social/attitudinal issues in society, such as neglect of certain groups of people with social disabilities, lack of adequate support from family members, and societal stigma, can lead to teasing, bullying, and abuse.

¹⁶Ministry Of Jal Shakti (Department Of Drinking Water And Sanitation) Notification New Delhi, the 2nd August, 2023. Available at: <https://jalshakti-ddws.gov.in/> (last visited 9 Sept,2024).

VI.

Discussion and Recommendations

Persons with disabilities face difficulties in accessing water and sanitary facilities, particularly in developing countries, because of a lack of resources and infrastructure. Further inequalities in terms of social, economic, and political considerations exacerbate their problems. They have to deal with prejudices and stereotypical remarks, which have also been imbibed in state and non-state welfare models or infrastructure, on a daily basis that violate their self-respect and dignity. The way water is often delivered in developing nations makes it very challenging for persons with disabilities to access water facilities. Physical obstacles and financial constraints make water access impossible for persons with disabilities.¹⁷

Economic and political factors hinder water accessibility for disabled individuals, leading to unemployment and poor working conditions, perpetuating economic disparities and marginalisation. Denial of access to clean water and basic sanitation to persons with disabilities also subjects them to various physical and psychological diseases.

Horizontal inequalities, or horizontal discrimination, are prevalent in all societies, often driven by societal ideas of racial superiority or the perfect body, leading to discrimination against disabled individuals. Louise Arbour argued that people with disabilities have the right to be treated equally in both the public and private spheres. They are entitled to enjoy their rights with full equality in the privacy of their own homes and personal relationships as well.¹⁸

Persons with disabilities, particularly in developing countries, face challenges in accessing water, sanitation, and hygiene due to physical, institutional, social, and attitudinal barriers. They often lack improved housing and hygiene facilities, causing mobility issues and waiting in lines. Over one in seven disabled individuals find home toilets hindering or inaccessible and only 69% of public toilets are wheelchair-accessible. Primary schools often lack sanitation facilities for disabled individuals. The United Nations has also recommended focusing on water and sanitation access programmes for persons with disabilities, involving stakeholders, investing in accessible facilities, raising awareness, collecting data,

¹⁷See “Equitable access to water for people with disabilities”, CRIDF Water For All, March 2018. Available at https://cridf.net/RC/wp-content/uploads/2018/05/P2625_W4A_Disabilities_v2.pdf (last visited 9 Sept,2024).

¹⁸Statement by Louise Arbour, UN High Commissioner for Human Rights General Assembly Ad Hoc Committee, 7th session New York, 27 January 2006. Available at: <https://www.ohchr.org/sites/default/files/speakingnoteshcjan.doc> (last visited 9 Sept,2024).

and mainstream disability in international forums and global mechanisms working on water, sanitation, and hygiene.¹⁹

Persons with disabilities have to face social discrimination when using household and public facilities, fearing contamination or dirty latrines. Certain disabilities may require longer use times, and the stigma associated with open defecation can lead to accidents and sexual abuse. Disabled individuals feel low self-esteem and dignity when they have to be dependent on family members for accessing water and sanitation facilities. This often creates negative attitudes among family members towards the disabled member. Accessible washrooms can improve self-esteem and attitudes and increase time for productive activities, reducing time spent on mundane tasks.²⁰

In the absence of inclusiveness in the social, economic, and political models of society, people with disabilities have been made dependent on other family members for water access. Such dependency on others violates the right of the person with a disability to access equal opportunities and to give meaning and reasoning to their own lives, as suggested under the “capability approach” developed by Amartya Sen and Martha Nussbaum. Denying someone their fundamental right to access water is equivalent to denying them other needs, such as clothing, food, housing, education, etc. Not surprisingly, it also violates people’s rights to privacy, dignity, personal autonomy, freedom of expression, freedom of association, freedom of religion, and other freedoms if they are not afforded equal opportunity to access water resources and sanitary facilities.

Therefore, it is recommended that foremost persons with disabilities be made aware of their rights and should be provided with opportunities in a manner that they do not need to be dependent on others and can enjoy their privacy, dignity, and autonomy in enjoying the water and sanitation facilities. Persons with disabilities should be involved in all the decision-making processes, whether at the local, state, or central level, and should be provided with the relevant information. It is urgent under Article 17 of the Constitution to abolish the discriminatory practices against persons with disabilities, and the state should conduct programmes or seminars to sensitise the general public, policymakers, legislators, bureaucrats, etc. about the rights of persons with disabilities. Inclusive infrastructure for water supplies should be easily accessible to people with disabilities, protecting their right to equal treatment in both the public and private

¹⁹ Disability and Development Report, “Realizing the Sustainable Development Goals by, for and with persons with disabilities,” United Nations 2018. Available at: <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/UN-flagship-report-on-disability-and-development.pdf> (last visited 9 Sept, 2024).

²⁰Nora Groce et. al. “Water and sanitation issues for persons with disabilities in low- and middle-income countries: A literature review and discussion of implications for global health and international development,” December 2011 *Journal of Water and Health* 9(4):617-27, at 619.

spheres. Human dignity of the persons with disabilities must be protected and every affirmative action should protect and respect their privacy and personal autonomy.

VII.

Conclusion

Persons with disabilities worldwide, due to physical and social barriers and economic inequalities, do not have safe access to water resources and sanitation facilities. The development goals must address disabled people's needs. Denial of access to water and sanitation facilities has a negative impact on the lives of people with disabilities. The United Nations recommends focusing on water and sanitation access programmes for disabled individuals, involving stakeholders, investing in accessible facilities, raising awareness, collecting data, and mainstreaming disability in international forums and global mechanisms working on water, sanitation, and hygiene. The disadvantages of relying on family members for water access violate the right of persons with disabilities to access equal opportunities and personal autonomy. It is crucial to make disabled individuals aware of their rights, involve them in decision-making processes, and abolish discriminatory practices. Inclusive infrastructure for water supplies should be easily accessible, protecting their right to equal treatment in both the public and private spheres.