

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

“UNLOCKING RIGHTS: LEGAL PROTECTIONS FOR INDIVIDUALS WITH AUTISM IN INDIA”

AUTHORED BY - DR. ANILA V MENON

Associate Professor, Sultan Ul Uloom College of Law, Hyderabad

Abstract

Autism Spectrum Disorder (ASD) represents a diverse range of conditions affecting cognitive, emotional, and psychological functioning, often manifesting in challenges with social interaction, communication, and repetitive behaviours. In India, the legal frameworks designed to protect individuals with ASD are crucial for ensuring their full participation in society and their access to opportunities. This article provides an in-depth exploration of the legal safeguards in place for individuals with autism within the Indian context, examining how these measures compare with international standards. It highlights the current legal protections, identifies gaps and limitations in the existing system, and discusses areas where progress is needed to align domestic laws with global best practices. By comparing India's approach to autism with international benchmarks, the article aims to offer a comprehensive overview of the effectiveness of current legal provisions and propose recommendations for enhancing support and protection for individuals with ASD.

Keywords: Legal Frameworks, Autism Spectrum Disorder (ASD), Social Interaction Challenges, International Standards, Legal Protections

1. Introduction

Autism Spectrum Disorder (ASD) is a neurodevelopmental condition with a wide range of symptoms and severity levels. Individuals with autism may struggle with social communication, exhibit repetitive behaviors, and have unique sensory processing needs. Understanding these diverse experiences is crucial for developing effective legal and support systems catering to varying needs.

Autism spectrum disorder, a complex neurological condition characterized by persistent difficulties in social communication and interaction as well as restricted, repetitive patterns of

behavior, interests, or activities, has increasingly become a focus of attention in India¹. As awareness of the prevalence and challenges faced by individuals with autism has grown, there is a pressing need to examine the legal protections and support systems available to this vulnerable population in the Indian context. According to recent estimates, the global prevalence of autism spectrum disorder is around 1 in 160 children, though significant variations have been observed across different countries and regions.² In India, while reliable nationwide data is limited, studies suggest a prevalence ranging from 0.14% to 0.17%, indicating that a substantial number of individuals require specialized care and support.³

The rights and needs of individuals with autism in India must be addressed through a multi-pronged approach, drawing upon both domestic legislation and international human rights frameworks. India's ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2007⁴ has been a significant step, as the convention recognizes autism as a disability and calls for measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.

2. International Legal Frameworks

International conventions play a crucial role in shaping global standards for the rights and treatment of individuals with autism. These agreements provide frameworks for protecting and promoting the rights of people on the autism spectrum, guiding national policies and fostering international cooperation.

United Nations Convention on the Rights of Persons with Disabilities (CRPD)⁵

Adopted in 2006, the CRPD is a pivotal treaty that outlines the rights of persons with disabilities, including those with autism. Key aspects relevant to autism include:

¹ Hassan, A. A., Hamid, A. M., & Eltayeb, N. H., Burden on Parenting of Children with Special Needs: Review Article, 3 EAS J. Nursing & Midwifery 63 (2021), <https://doi.org/10.36349/easjnm.2021.v03i02.002>.

² Vos, T., Abajobir, A. A., Abate, K. H., Abbafati, C., Abbas, K. M., Abd-Allah, F., Abdulkader, R. S., Abdulle, A. M., Abebo, T. A., Abera, S. F., Aboyans, V., Abu-Raddad, L. J., Ackerman, I. N., Adamu, A. A., Adetokunboh, O., Afarideh, M., Afshin, A., Agarwal, S. K., Aggarwal, R., et al., Global, Regional, and National Incidence, Prevalence, and Years Lived with Disability for 328 Diseases and Injuries for 195 Countries, 1990–2016: A Systematic Analysis for the Global Burden of Disease Study 2016, 390 Lancet 1211 (2017), [https://doi.org/10.1016/s0140-6736\(17\)32154-2.2](https://doi.org/10.1016/s0140-6736(17)32154-2.2)

³ McIntyre, L. L., & Zemantic, P. K., Examining Services for Young Children with Autism Spectrum Disorder: Parent Satisfaction and Predictors of Service Utilization, 45 Early Child. Educ. J. 727 (2016), <https://doi.org/10.1007/s10643-016-0821-y>.

⁴ Convention on the Rights of Persons with Disabilities, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (last visited Sept. 7, 2024).

⁵ *ibid*

- *Equality and Non-Discrimination: Guarantees that individuals with disabilities are not subjected to discrimination in education, employment, or social activities.*
- *Accessibility: Highlights the need to create environments that are accessible, especially for individuals with autism who may need tailored support.*
- *Inclusive Education: Advocates for education systems that cater to all students, ensuring equal access to high-quality education for those with autism.*
- *Right to Engagement: Endorses the full inclusion of individuals with disabilities in public life and decision-making processes.*

World Health Organization (WHO) Guidelines

The WHO provides comprehensive guidelines that include⁶:

- **Inclusive Mental Health Services:** Advocates for the availability of mental health services that include early diagnosis and intervention to address needs effectively.
- **Respect for Human Rights:** Ensures that mental health services uphold the dignity and rights of individuals with disabilities.
- **Holistic Service Integration:** Encourages the integration of mental health services within general healthcare systems to provide comprehensive support.

3. Legal Protections for Individuals with Autism in India

India has made significant progress in establishing legal protections for individuals with mental disabilities, including autism, through several key legislations.

The Rights of Persons with Disabilities Act, 2016 (RPWD)⁷

The RPWD Act, 2016, is a comprehensive law that addresses various disability rights. Ensuring equality and non-discrimination is fundamental for the well-being of individuals with disabilities, including those with autism. This principle mandates that these individuals should not face marginalization or unfair treatment in key areas such as education, employment, or social activities. Creating accessible environments is a crucial aspect of this effort, as it involves designing spaces and services that cater to the diverse needs of people with autism, who may

⁶ World Health Organization, WHO Policy on Disability, <https://www.who.int/about/policies/disability#:~:text=The%20WHO%20Policy%20on%20Disability%20requires%20WHO%20to%20to%203A&text=Recognize%20and%20address%20the%20multiple,accessing%20health%20systems%20and%20services>

⁷ The Ministry of Social Justice and Empowerment, Rights of Persons with Disabilities Act, 2016, <https://depwd.gov.in/acts/>

require specialized support to navigate daily life effectively. Moreover, inclusive education plays a vital role in this framework by advocating for educational systems that accommodate all students, including those with autism. This approach ensures that every learner, regardless of their abilities, has equal access to high-quality education and can participate fully in the learning experience. The goal is to create an educational environment where students with autism are supported and can thrive alongside their peers. Additionally, the right to participation is essential in promoting the full engagement of individuals with disabilities in public life and decision-making processes. This principle underscores the importance of involving people with disabilities in decisions that affect their lives, ensuring that their voices are heard and valued in shaping policies and practices. By fostering an inclusive society that respects and supports the rights of individuals with disabilities, we move closer to a more equitable and just world for everyone.

The National Trust Act, 1999

The National Trust Act⁸ established the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities. It provides various aspects. Support services play a crucial role in enhancing the lives of individuals with disabilities by offering essential financial aid, vocational training, and advocacy. Financial assistance helps alleviate economic barriers, while vocational training equips individuals with the skills needed for meaningful employment. Advocacy services ensure that the needs and rights of individuals with disabilities are represented and addressed effectively. To maintain the quality and effectiveness of these services, it is essential to enforce registration and standards. This process involves setting and monitoring benchmarks that organizations must meet to provide high-quality support. Ensuring that these organizations adhere to established standards helps guarantee that individuals with disabilities receive reliable and competent services.

Empowerment is a central goal of these initiatives, aiming to strengthen both individuals with disabilities and their families. By providing access to resources, support services, and opportunities for personal growth, these efforts work to build confidence and self-sufficiency. Empowerment initiatives seek to foster an environment where individuals with disabilities can fully participate in and contribute to society, while also ensuring that their families are

⁸ National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, <https://thenationaltrust.gov.in/upload/uploadfiles/files/National%20Trust%20Act%20-%20Englsih.pdf>

supported in their roles.

The Mental Health Care Act, 2017

The Mental Health Care Act, 2017⁹ is a landmark piece of legislation in India aimed at transforming the mental health care landscape by prioritizing the rights and dignity of individuals with mental health conditions. This Act is designed to safeguard the rights of individuals with mental health conditions, ensuring they receive compassionate and equitable treatment. It emphasizes the need for comprehensive mental health care services that are accessible to all, regardless of their socioeconomic status. One of the core objectives of the Act is to provide robust legal protections for individuals with mental health conditions. It establishes a framework for the right to mental health care, emphasizing that such care should be provided in the least restrictive environment possible. This principle aligns with global standards of human rights and aims to prevent unnecessary institutionalization, encouraging community-based care and support. The Act also focuses on improving the quality of mental health services by mandating the registration and regulation of mental health establishments. This ensures that institutions meet prescribed standards of care and operate transparently. By implementing these regulatory measures, the Act seeks to guarantee that individuals receive care that is safe, effective, and respectful of their dignity.

Another key aspect of the Mental Health Care Act is its emphasis on patient rights. It outlines specific rights for individuals undergoing mental health treatment, including the right to informed consent and the right to refuse treatment. These provisions are crucial for respecting patient autonomy and ensuring that individuals are actively involved in their own care decisions. Additionally, the Act addresses the need for mental health promotion and prevention strategies. It advocates for the integration of mental health services into primary health care systems and supports initiatives aimed at raising awareness about mental health issues. By fostering a more holistic approach to mental health, the Act aims to improve early intervention and reduce the stigma associated with mental health conditions.

Overall, the Mental Health Care Act of 2017 marks a progressive step towards improving mental health care in India. It seeks to create a more inclusive, respectful, and effective mental health care system, reflecting a commitment to the rights and well-being of individuals with

⁹ The National Institute of Pharmaceutical Education and Research Act, 2017. Act No. 10 of 2017. <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf>

mental health conditions.

4. Obstacles to Effective Implementation of Existing Laws

Despite the significant legal advancements in supporting individuals with autism, several persistent challenges hinder progress:

- **Insufficient Public Awareness:** A major issue is the widespread lack of awareness about autism among the general public. This gap in understanding contributes to the persistence of stigma and misconceptions, which in turn affects the recognition of individuals' rights and the availability of appropriate services. Greater public education and awareness campaigns are needed to address these issues and promote a more informed and compassionate society.
- **Inadequate Infrastructure:** Many educational institutions and public spaces are not equipped with the necessary accommodations to support individuals with autism effectively. This lack of infrastructure limits access to essential services and opportunities, preventing individuals from fully participating in educational and social activities. Upgrading facilities and ensuring they are accessible and inclusive is crucial for improving overall support.
- **Limited Resources:** There is a significant shortage of trained professionals, funding, and specialized facilities dedicated to autism care. This scarcity impacts the quality and availability of support services, making it difficult for individuals to receive the help they need. Investing in the training of professionals and increasing funding for autism services are essential steps to enhance the quality of care.
- **Bureaucratic Challenges:** Complex and often cumbersome bureaucratic processes can create significant delays in accessing support and services for individuals with autism. Streamlining these procedures and simplifying access to resources can help ensure that individuals receive timely assistance without unnecessary barriers.
- **Persistent Discrimination and Stigma:** Social stigma and discrimination remain significant obstacles for individuals with autism, affecting their ability to access education, employment, and social inclusion. Addressing these issues requires ongoing efforts to challenge and change societal attitudes, promote inclusivity, and ensure equal opportunities for individuals with autism in all aspects of life.

5. Judicial Precedents

The judiciary has shown a robust commitment to the effective implementation of laws concerning individuals with both mental and physical disabilities. This dedication is reflected in its proactive role in interpreting and expanding disability-related legislation, such as the Rights of Persons with Disabilities Act, 2016. Courts have actively enforced compliance with these laws by holding government bodies and organizations accountable, addressing gaps and injustices, and mandating necessary accommodations. The judiciary's rulings promote inclusive practices across various sectors, reinforce constitutional rights, and encourage policy reforms to enhance support for individuals with disabilities. Additionally, judicial decisions contribute to raising public awareness and fostering greater respect for disability rights, driving significant progress toward a more inclusive society. The judiciary has shown a strong commitment to ensuring the effective implementation of laws applicable to individuals with both mental and physical disabilities. The Supreme Court has issued several rulings to address this issue. Collectively, these rulings reflect the Supreme Court's ongoing effort to improve educational opportunities for children with disabilities, emphasizing legal compliance and the creation of supportive, inclusive learning environments.

Rajneesh Kumar Pandey and Ors. v. Union of India¹⁰

The Supreme Court addressed the critical issue of pupil-teacher ratios in schools that enroll children with special needs. The Court stressed the necessity for a reduced pupil-teacher ratio to ensure that students with disabilities receive quality education and individualized attention. The ruling underscored the importance of creating a supportive learning environment, providing adequate staff training, and adhering to the provisions of the Rights of Persons with Disabilities Act, 2016.

Anuradha Bhasin v. Union of India¹¹

Although primarily focusing on freedom of speech and access to information, this case also highlighted broader issues of accessibility and inclusion. The Supreme Court emphasized the need for equal access to information and services, including educational resources, for all citizens, particularly those with disabilities.

¹⁰, 2021 SCC OnLine SC 1005:

¹¹ AIR 2020 SC 1308

Suman Rani v. State of Haryana (2023)¹²

The case dealt with the accessibility of educational facilities for children with disabilities. The Supreme Court's decision highlighted the importance of eliminating physical barriers and providing the necessary support to ensure that children with disabilities can access education on an equal basis.

Vikash Kumar vs Union Public Service Commission¹³

A citizen with Writer's Cramp challenged the denial of a scribe during the civil services examination. The case, while an individual grievance, highlights broader issues of access and dignity for people with disabilities, exposing gaps between legal provisions and practical implementation. The case underscores the importance of aligning policies with the RPwD Act to ensure fair and equitable treatment for persons with disabilities.

In **Shobha Gopalakrishnan vs State Of Kerala¹⁴** Dr. Smitha Nizar (Amicus Curiae) has highlighted that, historically, individuals with disabilities were isolated and denied the right to participate socially. This situation began to improve towards the end of the 20th century, although significant efforts to formally recognize their legal status and affirm their rights were still lacking. The U.N. Convention on the Rights of Persons with Disabilities, 2006, introduced a "rights-based approach," elevating the status of persons with disabilities to be considered as valuable as any other human being. This Convention marked a paradigm shift, moving from viewing persons with disabilities as "objects of medical treatment, charity, and social protection" to recognizing them as individuals with equal rights and a right to participate fully in society. The apex court observed that to identify a person as having multiple disabilities, it is essential that they have two or more disabilities as defined under Section 2(i) of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995). The scheme of the statute reveals that while the benchmark disability under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 (RPWD Act, 2016) is set at 40%, a person with a 'severe disability' of 80%, as per Section 2(o) of The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999, must also meet the criteria of having two or more disabilities as defined in Section 2(i) of the PWD Act, 1995, to be classified as having 'multiple disabilities' under

¹² <https://www.casemine.com/judgement/in/5df40b93714d584db1d081d5>

¹³ AIR 2021 SC 2447

¹⁴ [W.P. (C). 37278 of 2018, decided on 20th February, 2019]

Section 2(h) of the National Trust Act, 1999.

These rulings demonstrate the Supreme Court's ongoing dedication to enhancing inclusive education for children with disabilities and ensuring that educational institutions comply with legal standards and best practices for creating supportive learning environment

6. Strategic Recommendations for Advancing Improvement

To reinforce legal protections and enhance support for individuals with autism, several key actions are recommended. First, increasing public awareness through targeted campaigns and educational programs is essential to reduce stigma and promote a better understanding of autism. Such initiatives should also include training for educators and employers to foster a more informed and supportive environment. Secondly, it is crucial to strengthen the implementation of existing laws by addressing infrastructural shortcomings, expanding resources, and tackling bureaucratic inefficiencies. Ensuring that laws are effectively applied requires improving the physical and systemic infrastructure that supports individuals with autism.

Expanding support services is another vital step. Investing in specialized healthcare, vocational training, and respite care will significantly improve the quality and availability of support, helping individuals with autism access the services they need for better overall well-being.

Promoting inclusive practices across educational institutions and workplaces is also necessary. Encouraging these environments to adopt inclusive practices and make appropriate accommodations will facilitate greater participation and integration for individuals with autism. Fostering collaboration among government bodies, non-governmental organizations (NGOs), and community groups is essential for enhancing support programs and optimizing resource utilization. By working together, these entities can develop more comprehensive and effective support strategies. Finally, regular monitoring and evaluation of the implementation of disability laws and policies are crucial. This process should involve gathering feedback from individuals with autism and their families to identify gaps and areas for improvement. Continuous review and adaptation will help ensure that laws and policies remain responsive to the evolving needs of individuals with autism.

8. Conclusion

India has made notable strides in recognizing and protecting the rights of individuals with autism, yet the journey towards full inclusivity is ongoing. However, challenges in implementation and enforcement continue to impact the quality of life for those affected. By addressing these challenges through increased awareness, improved support services, and inclusive practices, India can create a more equitable and supportive environment for individuals with autism, ensuring that their rights are fully realized. The journey towards inclusivity and support is ongoing, requiring sustained effort from all sectors of society to foster a more inclusive and supportive environment for individuals with mental disabilities. Key legislative frameworks, such as the Rights of Persons with Disabilities Act, 2016, and the Right to Education provided under the Indian Constitution, afford critical support by ensuring access to education and employment opportunities. These laws lay a foundational framework for integrating individuals with autism into society, but effective implementation and enforcement are crucial to their success.

The Rights of Persons with Disabilities Act highlights the importance of respect and understanding, aiming to eliminate barriers and promote equal opportunities. The Right to Education Act, meanwhile, ensures that children with autism have the right to a free and compulsory education, which is pivotal for their development and future prospects. However, challenges remain in translating these legal provisions into tangible outcomes. Community support plays a vital role in complementing these legal protections. NGOs and advocacy groups are instrumental in providing resources, raising awareness, and offering support to individuals and families navigating the complexities of autism. Their efforts act as a safety net, addressing gaps in the legal framework and fostering a supportive environment. Advocacy is a powerful tool for driving change, helping to shift societal attitudes and push for more robust legal protections. The collective voice of families, individuals with autism, and activists is crucial for highlighting needs and ensuring that policies evolve in response to the lived experiences of those affected. Looking ahead, the vision is for a future where individuals with autism are fully empowered and protected by the law. This involves not only enhancing existing legislation but also ensuring that policies are effectively implemented and supported by a culture of inclusivity. As each right is unlocked, it paves the way for greater opportunities, inclusion, and understanding. By continuing to build on these foundations, society can move towards a future where everyone, regardless of ability, has the opportunity to thrive and shine brightly.