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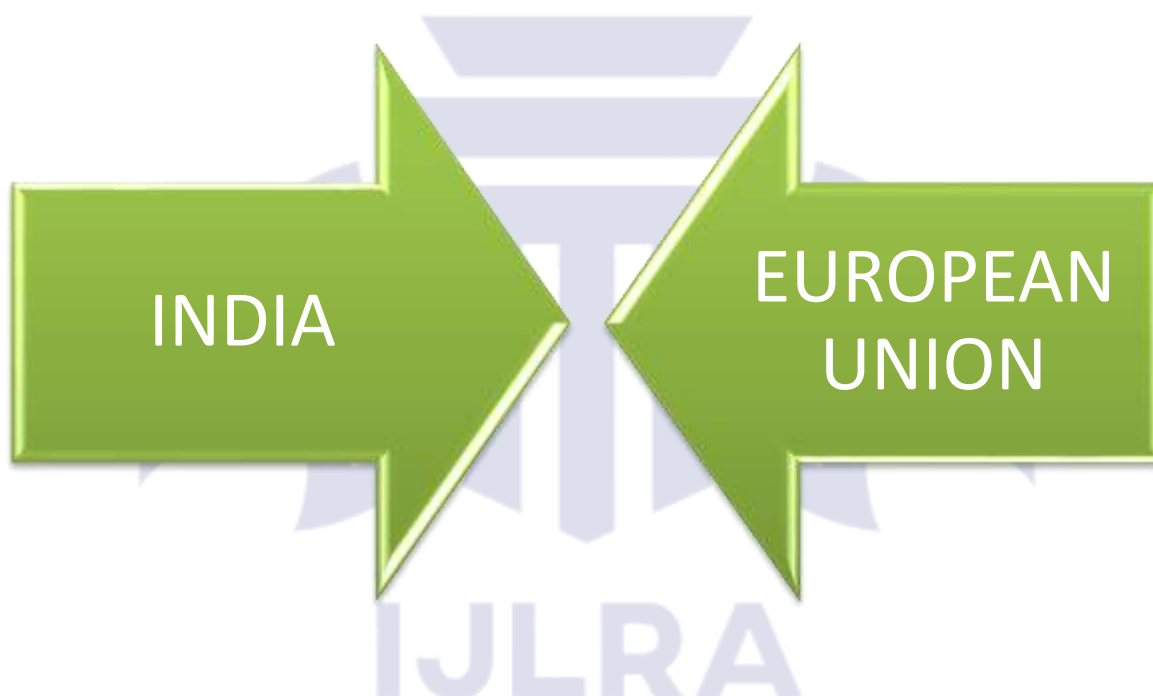
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**UNDERTAKE A COMPARATIVE ANALYSIS,
BETWEEN INDIA AND THE EU, OF THE
JURISPRUDENCE ON DISABILITY VIS A VIS NON-
DISCRIMINATION. E.G. NON- DISCRIMINATION ON
GROUNDS OF MENTAL DISABILITY IN PUBLIC
WORKPLACES.**

AUTHORED BY - USHAAS REDDY



ABSTRACT

This research paper undertakes a comparative analysis between India and the European Union (EU) regarding the jurisprudence on disability and non-discrimination. Specifically, it focuses on non-discrimination on the grounds of mental disability in public workplaces. The study explores the definitions and concepts of disability and discrimination under Indian and EU laws. It examines the legal frameworks, constitutional provisions, legislation, and landmark court decisions that shape disability rights in both regions. The paper highlights the transformative journey towards equality and inclusion for individuals with disabilities, particularly in the context of mental disabilities in public employment. It discusses the Rights of Persons with Disabilities Act, 2016 in India, which provides a comprehensive foundation for protecting the rights and

interests of disabled individuals in the workplace. The Act prohibits discrimination, emphasizes reasonable accommodations, and mandates the reservation of vacancies for persons with disabilities in public workplaces. In the EU, the primary legislation is the United Nations Convention on the Rights of Persons with Disabilities, ratified by the EU and its member states. The EU legislative framework emphasizes non-discrimination and reasonable accommodation, making it illegal to discriminate against individuals with disabilities in any setting, including the workplace. The paper concludes with a comparative analysis of Indian and EU jurisprudence on disability in workplaces, examining the legal developments, challenges, and progress in both regions. By shedding light on these issues, the research aims to contribute to the understanding of disability rights and non-discrimination, promoting a more equitable and inclusive society for individuals with disabilities

INTRODUCTION

Comparative Analysis of Jurisprudence on Disability and Non-Discrimination in India and the European Union

The issue of disability rights and anti-discrimination is one of the key components of modern legal and social systems. Due to the historical exclusion and prejudice faced by persons with disabilities, including those who suffer from mental illnesses, legal systems have an obligation to protect the rights of disabled individuals and to ensure that they have equal opportunities. This study compares the laws on disability and non-discrimination in India with the European Union, with a focus on the particular context of non-discrimination on the basis of mental impairment in public employment.

In both India and the EU, disability rights have been shaped by constitutional provisions, legislation, and landmark court decisions. The struggle for equality and inclusion, particularly with regard to mental disabilities, has been a transformative journey marked by evolving legal interpretations and the development of protective measures. By narrowing the scope to the context of public workplaces and mental disabilities, this analysis aims to provide an in-depth examination of the legal developments, challenges, and progress in both regions.

Law Firm Structure In India, the Persons with Disabilities Act, 1995 has been replaced with the comprehensive Rights of Persons with Disabilities Act, 2016. This act provides the legal foundation for protecting the rights and interests of those with disabilities, especially in the

workplace. Discrimination against individuals with disabilities is prohibited by this Act in the workplace and other settings. Employers must provide reasonable accommodations and fair opportunities to employees with disabilities. The Act places a strong emphasis on the necessity of making reasonable accommodations so that people with disabilities may carry out their jobs well.¹ Employers are expected to make necessary adjustments to the workplace, job requirements, or equipment to accommodate disabled employees. India has also has substantial public sector, and the Act applies to both government and private organizations. In public workplaces, there is an obligation to reserve a certain percentage of vacancies for persons with disabilities. This Act recognizes a broad spectrum of disabilities, including mental disabilities. Discrimination based on mental disabilities is prohibited in public and private workplaces.

The primary piece of law dealing to disability rights and non-discrimination in the European Union is the United Nations Convention on the Rights of Persons with Disabilities, which has been adopted by the EU and its member states. A more comprehensive set of anti-discrimination rules, such as the Employment Equality Directive, are also in place inside the EU. The European Union's legislative framework places a strong focus on the idea of non-discrimination, which includes people with disabilities. It is against the law to discriminate against someone because of their handicap in any setting, including the workplace.² The EU has a concept of reasonable accommodation, requiring employers to make necessary adjustments to the workplace and employment conditions to accommodate persons with disabilities. The United Nations Convention on the Rights of Persons with Disabilities, which has been ratified by the EU and its member states, is the primary piece of legislation pertaining to disability rights and non-discrimination in the EU. Within the EU, there is also a more extensive set of anti-discrimination laws, such as the Employment Equality Directive. The European Union's legislative framework places a strong focus on the idea of non-discrimination, which includes people with disabilities. Discriminating against someone based on their disability is illegal in all contexts, including the workplace.

¹ First Country Report on the Status of Disability in India (Submitted in pursuance of Article 35 of the UN Convention on the Rights of Persons with Disabilities)

[https://disabilityaffairs.gov.in/upload/uploadfiles/files/First%20Country%20Report%20\(1\)_compressed.pdf](https://disabilityaffairs.gov.in/upload/uploadfiles/files/First%20Country%20Report%20(1)_compressed.pdf)

² https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf

United Nations Convention on the Rights of Persons with Disabilities

CHAPTER 1

UNDERSTANDING THE DEFINITION AND CONCEPT OF 'DISABILITY' AND 'DISCRIMINATION' UNDER INDIA AND THE EUROPEAN UNION LAWS.

1. INDIA

A. DISABILITY-

The Rights of Persons with Disabilities Act, 2016 defines the meaning and definition of "disability" in Indian law. This law marks an important turning point in the recognition and protection of the rights of people with disabilities in India. Its inclusive and broad definition of "disability" takes into account the wide range of conditions and impairments that persons may encounter³.

The Rights of Persons with Disabilities Act of 2016⁴ states that the term "disability" covers a broad range of illnesses limitations, and health-related difficulties. The following categories are included in the Act's definition, which aims to guarantee that people with different impairments have equal opportunity, assistance, and legal protection:

- Blindness
- Low Vision
- Leprosy-Cured
- Hearing Impairment
- Locomotor Disability
- Dwarfism
- Intellectual Disability
- Mental Illness and many more.⁵

The inclusive nature of this term highlights the commitment of Indian law to provide equal rights, opportunities, and protection to those with disabilities, regardless of the kind or degree of their handicap.

Beyond only identifying disability, the Rights of Persons with Disabilities Act, 2016 creates a

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/>

⁴ Rights of Persons with Disabilities Act, 2016.

⁵ https://www.indiacode.nic.in/bitstream/123456789/15939/1/the_rights_of_persons_with_disabilities_act%2C_2016.pdf

framework for defending the rights and dignity of people with disabilities. The Act's main goals are to advance social integration, inclusive education, accessible settings, and job possibilities. It emphasises how crucial it is to remove obstacles preventing people with disabilities from fully engaging in society, as well as the necessity of making reasonable adjustments and refraining from discrimination⁶.

B. DISCRIMINATION BASED ON DISABILITY-

Discrimination is the unfair or unfavourable treatment of people or groups because of their race, gender, age, handicap, or other traits. It entails depriving certain people of equal rights and opportunities and treating them less favourably than others. Discrimination is against the fairness and equality principle and can take many different forms, such as in public services, housing, work, and education. Legislative actions and community initiatives are frequently implemented to counteract prejudice and advance a fairer and more diverse community⁷.

Discrimination on the basis of disability is forbidden under the RPWD Act in a number of settings, including the workplace, public places, education, and service delivery. The following are some significant facets of how the RPWD Act defines and combats handicap discrimination in India:

- Equal Opportunity
- Special Employment
- Accessible Environment
- Reasonable Accommodation and many more.⁸

The rights of individuals with disabilities have been greatly enhanced by Indian courts interpretation and application of anti-discrimination laws. Collectively, these legislative actions aim to promote a more equitable and inclusive society in India by eliminating discrimination against, promoting inclusion, and granting equal opportunity for those with disabilities in all areas of life.

⁶ <https://www.legalserviceindia.com/legal/article-98-rights-of-disabled-persons.html>

⁷ <https://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>

⁸ <https://www.financialexpress.com/india-news/disability-discrimination-in-indian-workplaces-a-sad-reality/2691295/>

2. EUROPEAN UNION

A. DISABILITY-

The "United Nations Convention on the Rights of Persons with Disabilities" UNCRPD, which the EU has ratified, serves as the primary source of guidance for the term and notion of "disability" under EU legislation.⁹ According to the UNCRPD, the concept of disability is fluid and develops as a result of interactions between individuals with disabilities and the structural and societal barriers that keep them from completely and effectively engaging in society.

The European Union adheres to this comprehensive and wide definition of disability. It highlights that disability is a multifaceted term that includes impairments related to the body, mind, intellect, and senses rather than only being a medical disease. It acknowledges that people with disabilities should not face discrimination due to their impairment and that they have the same fundamental rights as everyone else¹⁰.

The UNCRPD aligned EU law accords the concept of non-discrimination and equitable treatment for individuals with disabilities significant weight. This involves steps to guarantee accessibility, appropriate accommodations, and the full participation of people with disabilities in all facets of society, including public services, work, and education.¹¹ By recognising the diversity and individuality of their experiences, the EU framework lays forth recommendations to support the social inclusion, active involvement, and empowerment of people with disabilities.

In accordance with the UNCRPD's guiding principles, disability is defined in EU legislation as a wide and dynamic notion that encompasses many forms of impairments. Protecting the equal rights, opportunities, and full participation of those with disabilities in society is the main focus.

B. DISCRIMINATION BASED ON DISABILITY-

According to EU legislation, discrimination on the basis of disability is any unfair or unequal treatment of people with disabilities because of their impairment. Equal treatment and non-discrimination are promoted by EU law, which expressly forbids this kind of discrimination.

EU law defines discrimination as follows. Indirect discrimination is when an apparently neutral

⁹ https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_Persons_with_Disabilities

¹⁰ <http://fra.europa.eu/en/eu-charter/article/26-integration-persons-disabilities>

¹¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

law, regulation, or practise disproportionately damages individuals with disabilities unless it can be objectively justified. Direct discrimination is when someone is treated less favourably because of their handicap.¹²

The idea of reasonable accommodation, which calls for making the required modifications and offering assistance to guarantee that people with disabilities may fully participate in all facets of life, including work, education, and access to public services, is another idea that is emphasised by EU legislation. By establishing guidelines for accessibility, including those related to information and communication technology, buildings, and transportation, the EU hopes to break down barriers in society¹³.

Furthermore, the EU framework promotes disability inclusion by encouraging the active engagement and participation of those with disabilities in society. It mandates that member nations take steps to put a stop to discrimination and ensure that individuals with disabilities have equal access to opportunities and rights.

¹² Discrimination on the Grounds of Disability Prof. Delia Ferri Maynooth University Department of Law, http://www.era-comm.eu/oldoku/Adiskri/07_Disability/121DV97_Ferri_EN.pdf

¹³ <https://www.edf-feph.org/non-discrimination/>

CHAPTER 2

Understanding Workplace Discrimination Based on Disability in Indian Law

The Rights of Persons with Disabilities Act, 2016¹⁴, plays a pivotal role in addressing workplace discrimination based on disability in India. This introduction provides an overview of this significant piece of legislation and the broader issue of disability-based workplace discrimination in the country.

Workplace discrimination against individuals with disabilities is a global problem that hinders their economic opportunities and perpetuates inequality. In India, this issue has not been ignored. The Rights of Persons with Disabilities Act, 2016¹⁵, represents a critical step in the nation's commitment to ensuring equal rights and opportunities for individuals with disabilities within the workforce.

Discrimination based on disability takes various forms, from bias in hiring and unequal compensation to harassment and a lack of reasonable accommodations. Such discrimination not only restricts personal and professional development but also challenges the principles of inclusivity and equality in the workplace.

The Rights of Persons with Disabilities Act, 2016, stands as a robust legal framework designed to address these injustices comprehensively. This legislation is a testament to India's dedication to creating a more equitable and accessible work environment for all.

Key provisions of the Act include a comprehensive definition of disability, a prohibition on discrimination, the requirement for reasonable accommodations, the promotion of equal opportunities, the assurance of accessibility, the establishment of complaint mechanisms, and descriptions of penalties and remedies. These provisions offer a detailed roadmap for India to empower individuals with disabilities to overcome workplace discrimination, ultimately contributing to a more equitable and inclusive society.

Reasonable accommodation is a central concept within the Act. It requires employers to make necessary modifications or adjustments to the workplace, employment policies, practices, and

¹⁴ The Rights of Persons with Disabilities Act, 2016.

¹⁵ The Rights of Persons with Disabilities Act, 2016.

equipment to ensure that individuals with disabilities can perform their job effectively. These accommodations must be provided unless they impose an undue hardship on the employer.

Reasonable accommodation encompasses physical workplace modifications, such as installing ramps and accessible restrooms, to ensure that employees with mobility impairments can navigate the workplace. Policy and procedural adjustments may be necessary to accommodate medical appointments or treatments for employees with disabilities. In order to help people do their work activities efficiently and on their own, employers also need to provide assistive technology and adaptable equipment. Accessible communication is crucial, including providing information in alternative formats and sign language interpreters for employees with visual or hearing impairments.

The Act also recognizes that while reasonable accommodation is a legal obligation, there may be situations where such accommodations could impose an undue hardship on the employer. Determining undue hardship involves assessing factors such as the employer's financial resources, the nature of the accommodation, the size and operational structure of the organization, and the overall impact on the business.

Ensuring that individuals with disabilities have an equal opportunity to participate in the workforce requires the implementation of appropriate accommodations. Companies that implement these changes not only comply with regulatory standards but also foster a creative and inclusive work environment. The objective of the Rights of Persons with Disabilities Act, 2016 is to close the job opportunity gap for those with disabilities, hence promoting equity and inclusivity in India's society.

CHAPTER 3

Understanding Workplace Discrimination Based on Disability in European Law

A mix of national laws in each of the European Union's member states and EU directives handle the serious problem of workplace discrimination against people with disabilities in Europe. The EU has created a legal framework aimed at promoting equal treatment and non-discrimination for those with disabilities in the workplace, therefore ensuring that they have the same chances and rights as their non-disabled counterparts.

According to this framework, the EU's definition of disability encompasses a wide range of persistent physical, mental, intellectual, or sensory impairments that may limit a person's ability to completely and effectively engage in society. The EU Charter of Fundamental Rights upholds the concept of non-discrimination, and the Employment Equality Directive explicitly tackles discrimination in the workplace on the basis of disability.¹⁶

The fundamental tenet of the EU's policy is the outlawing of discrimination based on disability in all facets of employment, including hiring practises, working conditions, training opportunities, promotions, and other employment-associated issues. It is illegal for employers to treat handicapped workers differently from their non-disabled counterparts.

The EU framework mandates firms to provide reasonable adjustments for individuals with disabilities in order to promote workplace inclusion and equal opportunity¹⁷.

Reasonable accommodations encompass modifications to the work environment, work schedules, or equipment to guarantee that persons with disabilities can accomplish their jobs efficiently. Employers are not required to make modifications, though, if doing so would put an undue hardship on them.

Under EU legislation, employers are also permitted to use positive action measures, which allow them to avoid or compensate for disadvantages associated with disability. Programmes for employees with impairments that offer specialised training or mentorship are examples of such

¹⁶ <http://fra.europa.eu/en/eu-charter/article/21-non-discrimination>

¹⁷ Vanhala, Lisa. "The Diffusion of Disability Rights in Europe." *Human Rights Quarterly* 37, no. 4 (2015): 831–53. <http://www.jstor.org/stable/24519118>.

efforts. Another essential component of the EU's strategy for workplace inclusion is accessibility. Employers are urged to provide employees with disabilities with accessible workplaces, information, and communication. This includes making information physically accessible as well as offering it in accessible versions like audio or Braille.

To efficiently handle allegations of discrimination, complaint procedures are in place. Anyone who feels they have been the victim of discrimination may register a complaint with the appropriate authorities, who will provide victims of prejudice with remedies and restitution. The European framework also includes remedies and penalties, with punishment for firms found to have discriminated against workers with impairments. These might include penalties, victim compensation, and directives to stop discriminatory behaviour¹⁸.

The European Union offers a framework for tackling disability discrimination in the workplace; nevertheless, different European nations have their own domestic laws and regulations that supplement and implement these EU directives. European Union workplace discrimination against disabled workers is effectively addressed by a strong system of national law that frequently expands upon the EU framework by providing more safeguards or specialised criteria.

¹⁸Why is a European Law on Disability Discrimination important WHITTLE, R.
<https://shura.shu.ac.uk/671/1/fulltext.pdf> .

CHAPTER 4

COMPRATIVE ANALYSIS BETWEEN INDIAN JURISPRUDENCE AND EU JURISPRUDENCE ON DISABILITY IN WORK PLACES.

INDIA

An unwavering dedication to inclusion and anti-discrimination serves as the foundation for Indian jurisprudence on disabilities in the workplace. The Rights of Persons with Disabilities Act, 2016¹⁹, which forbids discrimination on the basis of disability and requires the provision of reasonable accommodations, principally governs it. This legislative framework promotes a more inclusive and accessible work environment in India by guaranteeing equal opportunities and defending the rights of people with disabilities.

The analysis will further dwell in by explaining the jurisprudence by backing it with landmark judgement at the supreme court of India.

The Supreme Court of India rendered a historic decision in the well-known case of *Rajive Raturi vs. Union of India* 2018²⁰ that is crucial to defending the rights of people with disabilities at work. Mr. Rajive Raturi is blind and works for the Ministry of Information and Broadcasting's Central Secretariat Services. He was denied a transfer to a place where he could use Braille and other necessary assistive technologies. This prevented him from carrying out his job duties efficiently, even after making a request for a reasonable accommodation²¹.

The Supreme Court's decision highlighted the need of making reasonable accommodations to guarantee that people with disabilities have equal chances in the workplace. It restated the core principles included in the Rights of Persons with Disabilities Act, 2016, with a focus on non-discrimination, equality of opportunity, and reasonable accommodations in particular. This ruling made it clear that workers with disabilities are entitled to the accommodations they need to do their jobs well²². In order to enable employees with disabilities to fully participate in their responsibilities, employers are required to make the necessary modifications to the workplace,

¹⁹ The Rights of Persons with Disabilities Act, 2016.

²⁰ *Rajive Raturi vs. Union of India* 2018.

²¹ Paving the Way to an Inclusive India, One Judgment at a Time. The Supreme Court of India is shifting the paradigm on disability rights. <https://thewire.in/government/ro-postpones-scrutiny-of-nomination-after-congress-complains-aap-candidate-for-rs-polls-holds-office-of-profit>

²² <https://www.ijlmh.com/paper/case-comment-on-rajiv-raturi-v-union-of-india-the-dawn-of-disability-rights-in-india/>

rules, or practises. It further underlined that the employer bears primary obligation for making reasonable accommodations.

Moreover, the ruling assigned the employer the responsibility to prove that offering a reasonable accommodation would cause an unreasonable hardship. The rights of handicapped employees are protected by this legal decision, which guarantees that employers cannot reject reasonable accommodations without providing a strong rationale. An important legal precedent in India is the Rajive Raturi case, which emphasises the need of providing reasonable accommodations for those with disabilities in the workplace. By guaranteeing that handicapped people have equal access to rights, opportunities, and safeguards in the workplace, it strengthens India's legal system. In the end, this ruling upholds the values of diversity and non-discrimination, fostering a more accessible and equal workplace where everyone, regardless of ability, may engage fully in the workforce.

EUROPEAN UNION

Disability in the workplace is addressed by a thorough legal system intended to support equal treatment and non-discrimination, according to European Union legislation. The Employment Equality Directive, which forbids discrimination in the workplace on the basis of handicap, is the cornerstone of this system. It ensures equitable employment opportunities for people with disabilities by requiring affirmative action measures and appropriate accommodations. In terms of promoting inclusion, accessibility, and the defence of handicapped people's rights in the workplace among member states, EU legislation establishes a solid precedent²³.

The analysis will further dwell in by explaining the jurisprudence by backing it with landmark judgement at the European court of justice.

The landmark ruling in the 2006 case of *Chacón Navas v Eures Colectividades S.A.*²⁴ by the European Court of Justice is one important piece of case law that emphasises the protection of disability in the workplace. This case highlights how important EU anti-discrimination rules are

²³ Disability Law and Policy in the European Union Authors
Andrea Broderick, Universiteit Maastricht, Netherlands, Delia Ferri, National University of Ireland, Maynooth
<https://www.cambridge.org/highereducation/books/international-and-european-disability-law-and-policy/E3F948E6A3EED22A2D03155493123E15/disability-law-and-policy-in-the-european-union/6EA4850D6FA9CCA2A3486EA167BF1759>

²⁴ *Chacón Navas v Eures Colectividades S.A.*

in defending the rights of people with disabilities in the workplace, especially the Equal Treatment Framework Directive²⁵.

The Spanish cafeteria worker María Luisa Chacón Navas, who worked for Eurest Colectividades, had her employment contract terminated because of her handicap in the Chacón Navas case. Ms. Chacón Navas was fired because of a disability that made it difficult for her to perform her duties at work correctly. The employer's decision to fire her stemmed from their perception that her impairment prevented her from meeting the necessary performance criteria.

The European Court of Justice underlined in its ruling that Directive prohibits both direct and indirect job discrimination. As per the directive, employers are required to provide workers with disabilities with reasonable accommodations so they may perform their jobs effectively. The notion that employers have to do all in their power to accommodate workers with disabilities such as modifying work schedules, providing assistive technology, or making the required adaptations to the workplace was reaffirmed by the European Court of Justice's ruling in Chacón Navas v. Eurest Colectividades S.A.²⁶. In light of disability in the workplace, this case emphasises how crucial it is to provide reasonable accommodations so that people with disabilities can engage fully in society.

The decision also established that the employer bears the burden of evidence in proving that the sought accommodation will place an undue burden or hardship on the company. As a result, the employer is required to defend any decision to refuse making a reasonable accommodation, protecting the rights of workers with disabilities.

An important example of how EU anti-discrimination laws and European court of justice case law work together to protect the rights of those with disabilities in the workplace is the Chacón Navas case. It guarantees that individuals with disabilities may engage fully in the workforce without worrying about facing discrimination or being fired because of their disability. It also sets a norm for preventing disability-based discrimination at the EU level and restates employers'

²⁵ The United Nations Convention on the Right of Persons wit Disabilities", Springer Science and Business Media LLC, 2017.
https://www.researchgate.net/publication/317758111_The_United_Nations_convention_on_the_rights_of_persons_with_disabilities_A_commentary

²⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0013>

duties to make reasonable accommodations for workers with impairments.

CONCLUSION

The promotion of workplace inclusion and non-discrimination for individuals with disabilities is a shared objective between the European Union and India. However, there are notable differences between their legal systems and methodologies. The cornerstone for safeguarding the rights of disabled people in the workplace in India is the Rights of Persons with Disabilities Act, 2016, which places a strong emphasis on equality and reasonable accommodations. Employers are required to make the modifications that handicapped employees need in order to carry out their jobs well. India's legal system is still developing and very fresh.

The European Union, on the other hand, has a more extensive legislative framework, most notably the Employment Equality Directive, which establishes a common norm among EU members. It emphasises accessibility, affirmative action plans, and reasonable accommodations and forbids discrimination in both direct and indirect ways. The European Union's approach is based on international principles, such as the United Nations Convention on the Rights of Persons with Disabilities, and legal precedents, such as those established by the European Court of Justice.

Equal opportunity, non-discrimination, and reasonable accommodations for disabled people in the workplace are important concepts shared by the EU and India, but the legal systems of the two countries are still developing. The EU's legal framework is more developed and standardised than India's, drawing from international influences and established precedents.
