Disability Rights in India and Malaysia: Law, Policy and Practice in Comparative Perspective

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Abstract: Disability rights have increasingly become an integral part of the human rights framework, emphasizing dignity, equality, non-discrimination, accessibility, and meaningful participation. This study comparatively examines the legal frameworks, policy approaches, and practical implementation of disability rights in India and Malaysia. While both countries have undertaken significant legislative and policy initiatives to promote the rights and inclusion of persons with disabilities, they reflect different approaches. India has developed a comparatively strong rights-based framework focusing on equality, reasonable accommodation, accessibility, affirmative action, and equal opportunities. Malaysia, in contrast, has adopted a more policy-driven and welfare-oriented approach emphasizing social support, rehabilitation, and community-based initiatives. The study critically examines the implementation and enforcement of disability-related laws and policies and identifies the socio-economic, institutional, infrastructural, and attitudinal barriers that continue to affect persons with disabilities. The study seeks to identify areas of convergence and divergence between the two jurisdictions and to assess the gap between formal legal recognition and lived realities. It proposes reforms aimed at strengthening enforcement, institutional accountability, accessibility, awareness, and meaningful participation of persons with disabilities in decision-making.

Key Words: Disability Rights, Human Rights, International Instruments, Comparative analysis

1. Introduction

Disability rights have increasingly gained recognition as an essential component of the contemporary human rights framework. The understanding of disability has progressively shifted from a charity-based and welfare-oriented perspective towards a rights-based approach founded on human dignity, equality, autonomy, non-discrimination, accessibility, and meaningful participation. A significant milestone in this transformation was the adoption of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which reaffirmed that persons with disabilities are rights-holders entitled to participate fully and effectively in society on an equal basis with others. The Convention has encouraged States to review and strengthen their domestic laws, policies, institutions, and practices to ensure the effective realization of disability rights.

India and Malaysia provide significant and useful contexts for a comparative examination of disability rights. Both countries have developed legislative and policy frameworks intended to protect and promote the rights of persons with disabilities. However, the nature and institutional orientation of their approaches differ. India has progressively moved towards a comprehensive rights-based legal framework emphasizing equality, non-discrimination, reasonable accommodation, accessibility, affirmative action, and equal opportunities in areas including education and employment. Malaysia, while recognizing disability rights through its legal and policy framework, has traditionally adopted a more policy-driven and welfare-oriented approach, with considerable emphasis on social support, rehabilitation, community-based initiatives, and institutional assistance.

Despite these legislative and policy developments, the existence of legal protection does not necessarily guarantee the effective realization of rights. Persons with disabilities in both jurisdictions continue to encounter significant barriers in accessing education, employment, healthcare, public infrastructure, digital services, and justice. Inadequate accessibility, limited public awareness, social stigma, institutional weaknesses, insufficient coordination, and inconsistent enforcement contribute to the continuing gap between formal legal recognition and practical experience. Thus, the central concern is not merely whether disability rights are recognized in law, but whether such recognition translates into substantive equality and meaningful inclusion in everyday life.

The distinction between law, policy, and practice is therefore central to this study. Law establishes the formal rights and obligations applicable to persons with disabilities; policy seeks to translate these legal commitments into governmental programmes and institutional measures; while practice reflects the actual implementation of these commitments and the lived experiences of persons with disabilities. A comparative examination of these three dimensions can reveal whether progressive legal and policy commitments are supported by effective enforcement and institutional mechanisms.

Existing scholarship provides considerable insight into disability rights in India and Malaysia individually. However, comparative research examining the two jurisdictions holistically across law, policy, and practice remains relatively limited. Much of the existing literature is either doctrinal or focused on particular sectors, such as employment, education, or social welfare. There is comparatively less integration of legal analysis with socio-legal perspectives, stakeholder experiences, implementation challenges, and ground-level realities. This creates a significant research gap that warrants systematic comparative investigation.

Against this background, the present study undertakes a qualitative, comparative, and socio-legal examination of disability rights in India and Malaysia. It analyses relevant legislation, judicial decisions, government policies, international instruments, institutional mechanisms, and available stakeholder perspectives to identify areas of convergence and divergence between the two jurisdictions. Particular attention is given to the implementation and enforcement of disability-related laws, the barriers experienced by persons with disabilities, and the effectiveness of institutional responses. Judicial developments relating to equality, reasonable accommodation, accessibility, employment, education, and digital inclusion are also examined to understand the evolving legal recognition of disability rights.

The study ultimately seeks to move beyond a comparison of statutory provisions and examine the effectiveness of disability rights protection in practice. By bringing together legal, policy, and lived-experience perspectives, it aims to identify structural and institutional gaps and develop practical recommendations for strengthening enforcement, accessibility, accountability, awareness, and participation. The comparative insights generated through the study may contribute to the broader objective of advancing substantive equality, social inclusion, and social justice for persons with disabilities in India and Malaysia.

2. Review of Literature

The existing literature and judicial developments on disability rights demonstrate a significant movement from a welfare-oriented understanding of disability towards a rights-based approach founded on equality, dignity, reasonable accommodation, accessibility and substantive participation. In the Indian context, judicial intervention has played a particularly important role in expanding the understanding of disability rights beyond the mere existence of statutory protection. In *Vikash Kumar v. Union Public Service Commission*, SLP (C) No. 1882 of 2021, the Supreme Court recognized the entitlement of a person with dysgraphia or writer's cramp to the facility of a scribe in the Civil Services Examination and other government selection processes, thereby reinforcing the principle that reasonable accommodation is an essential component of equality rather than a discretionary benefit [1]. The decision is significant because it positions persons with disabilities as autonomous rights-bearers and recognizes that treating every individual identically may itself produce substantive inequality where appropriate accommodation is not

provided. The question of accessibility has similarly received considerable judicial attention in *Rajive Raturi v. Union of India*, W.P. (C) No. 228 of 2006, where the Supreme Court addressed the implementation of accessibility obligations and emphasized the need to make public infrastructure, transportation and information and communication systems accessible to persons with disabilities [2]. The decision demonstrates that accessibility must be understood as a prerequisite for meaningful participation in society rather than merely as an infrastructural or administrative concern. The literature further reveals the importance of employment and affirmative action in realizing substantive equality. In *Ajay Kumar Pandey & Ors. v. State of U.P. & Ors.*, Civil Appeal No. 4811 of 2022, decided on 1 August 2022, the Supreme Court examined the statutory responsibility of the appropriate Government concerning identification of posts suitable for persons with disabilities and reservation under the disability-rights framework [3]. This decision highlights the significance of affirmative measures in correcting structural disadvantages and ensuring that formal equality is translated into actual opportunities. The judicial discourse has subsequently developed towards a broader understanding of substantive equality in professional and higher education. In *Kabir Paharia v. National Medical Commission*, SLP (Civil) Nos. 29275 of 2024, the Supreme Court emphasized that equality for persons with disabilities cannot remain merely formal and that affirmative measures and reasonable accommodation are necessary to enable meaningful participation in professional education [4]. The decision reinforces the proposition that reasonable accommodation is connected with constitutional guarantees under Articles 14, 16 and 21 and should not be viewed as an act of charity. The emerging jurisprudence has also extended disability rights into the digital sphere. In *Pragya Prasun & Ors. v. Union of India*, W.P. (C) No. 289 of 2024, the Supreme Court addressed accessibility of e-governance platforms, digital payment systems and government websites, reflecting the growing recognition that digital accessibility is an essential component of contemporary social and economic inclusion [5]. Collectively, these Indian decisions demonstrate an expanding judicial understanding of disability rights encompassing reasonable accommodation, physical and digital accessibility, employment, education and substantive equality. In Malaysia, the legal and judicial discourse presents a somewhat different institutional context, with disability protection historically reflecting a combination of legislative recognition, welfare measures and policy-based interventions. The 2025 Penang High Court decision concerning the Public Service Commission (SPA) and government disability discrimination provides an important development in this regard, particularly in the context of employment equality. The Court reportedly quashed the rejection of a psychologist's application for permanent civil service employment on the basis of disability and emphasized the relevance of Article 8(1) of the Federal Constitution and Section 29 of the Persons with Disabilities Act 2008, thereby demonstrating an emerging judicial willingness to connect constitutional equality with disability-specific employment rights [6]. This development is particularly relevant to the comparative dimension of the present research because it illustrates the potential of Malaysian courts to strengthen the enforceability of disability rights within an existing policy and welfare-oriented framework. Malaysian jurisprudence concerning family relationships and financial support also provides another dimension to the understanding of disability, particularly where disability affects an individual's economic independence and care requirements. Under the Law Reform (Marriage and Divorce) Act 1976, civil courts consider factors such as continuing care requirements, medical expenditure and diminished earning capacity when determining financial maintenance in cases involving a spouse with a disability. Although this area differs from the direct rights-based questions considered in the Indian cases, it demonstrates how disability can intersect with family law, economic dependency and social protection.

3. Comparative Chart: Disability Rights in India and Malaysia

Dimension	India	Malaysia	Comparative Observation
1. Overall Approach	Predominantly rights-based, focusing on equality, dignity, non-discrimination, accessibility and affirmative measures.	More policy-driven and welfare-oriented, with emphasis on rehabilitation, social support and community-based initiatives.	India provides a stronger statutory rights orientation, while Malaysia places greater emphasis on welfare and policy implementation.
2. Principal Disability Legislation	Rights of Persons with Disabilities Act, 2016 (RPwD Act), enacted to give effect to the UNCRPD.	Persons with Disabilities Act, 2008 (PWD Act) provides the principal legislative framework for persons with disabilities.	India has a newer and more comprehensive rights-oriented statutory framework.
3. Equality & Non-Discrimination	Express statutory protection against discrimination and recognition of equality, dignity and reasonable accommodation.	Equality is recognized through the Federal Constitution and disability legislation, but enforcement mechanisms are comparatively less developed.	Both recognize equality, but India provides more detailed statutory entitlements.
4. Reasonable Accommodation	Recognized as an important component of substantive equality and non-discrimination.	Accommodation is recognized within the broader disability framework, but implementation and enforceability remain concerns.	India demonstrates a stronger rights-based understanding of accommodation.
5. Education	Provides for inclusive education, duties of educational institutions, free education for children with benchmark disabilities and reservation in	Focuses on access to education and support for persons with disabilities through governmental and institutional programmes.	India has more explicit statutory provisions concerning inclusive education and affirmative measures.

	higher educational institutions.		
6. Employment	Provides non-discrimination in employment, equal opportunity policies, identification of posts and reservation for persons with benchmark disabilities.	Promotes employment opportunities and public-sector participation, but implementation of affirmative employment policies has faced challenges.	India has a more detailed statutory employment framework. Malaysia faces greater implementation concerns.
7. Accessibility	Comprehensive statutory provisions cover physical infrastructure, transport, information and communication technology and accessibility standards.	Accessibility is recognized within the disability framework and building regulations, but enforcement remains a significant concern.	India has broader statutory coverage, although implementation remains uneven in both countries.
8. Healthcare	RPwD Act expressly addresses healthcare, insurance, rehabilitation and related services.	Healthcare and rehabilitation are supported through government welfare and rehabilitation programmes.	Both recognize healthcare needs, but their institutional approaches differ.
9. Social Security	Statutory recognition of social security measures and development programmes for persons with disabilities.	Greater emphasis on welfare schemes, social assistance and community-based support.	Malaysia's approach is comparatively more welfare-oriented.
10. Rehabilitation	Rehabilitation is incorporated within the statutory rights framework.	Rehabilitation and community-based rehabilitation constitute important	Malaysia places relatively greater emphasis on rehabilitation as a welfare mechanism.

		elements of the policy approach.	
11. Legal Capacity & Access to Justice	RPwD Act specifically addresses legal capacity, guardianship and access to justice.	Legal protection exists within the broader legal framework, but disability-specific enforcement mechanisms are comparatively less comprehensive.	India provides more explicit statutory recognition of these rights.
12. Political Participation	Accessibility in voting is expressly recognized under the RPwD Act.	Political participation and accessibility are addressed through broader legal and administrative mechanisms.	India has more explicit disability-specific statutory provisions.
13. Institutional Mechanisms	Central and State Advisory Boards, Chief Commissioner and State Commissioners, District-level mechanisms and Special Courts are provided under the RPwD Act.	Implementation relies significantly on governmental departments, welfare institutions and administrative mechanisms.	India's institutional framework is more formally structured through disability-specific statutory bodies.
14. Judicial Protection	Indian courts have increasingly interpreted disability rights through substantive equality, reasonable accommodation and accessibility.	Malaysian courts have also increasingly addressed equality and disability discrimination, including employment-related issues.	Judicial intervention is important in both jurisdictions, but India has developed a particularly visible disability-rights jurisprudence.
15. Enforcement Mechanism	Includes grievance redressal mechanisms, Commissioners, Special Courts and	Enforcement has historically been comparatively weaker, creating a gap between statutory recognition and implementation.	Enforcement represents one of the major comparative differences.

	offences and penalties.		

The comparison indicates that India and Malaysia have both moved beyond a purely charitable understanding of disability, but they have followed somewhat different pathways. India has developed a comparatively comprehensive rights-based statutory framework, with express provisions concerning equality, reasonable accommodation, inclusive education, employment, reservation, accessibility, healthcare, legal capacity, access to justice and institutional accountability.

Malaysia, by contrast, has developed a framework that places comparatively greater emphasis on policy implementation, welfare, rehabilitation and community-based support. The study material identifies weaker enforcement and institutional constraints as continuing concerns.

The most important commonality is therefore the gap between law, policy and actual practice. In both countries, infrastructural barriers, inadequate awareness, social stigma, institutional limitations and inconsistent enforcement continue to affect the meaningful realization of disability rights.

4. Research Methodology

The present study adopts a qualitative, comparative, and socio-legal research methodology to critically examine disability rights in India and Malaysia. The methodology is designed to move beyond a purely textual analysis of legislation and to assess how legal and policy commitments relating to persons with disabilities are translated into practice. The research therefore examines the interrelationship between law, policy, institutions, and the lived experiences of persons with disabilities in the two jurisdictions.

5. Sources of Data

The research will rely on both primary and secondary sources.

The Primary sources will include legislation, constitutional provisions, judicial decisions, government policies, statutory rules, official reports, and relevant international instruments.

The Secondary sources will include peer-reviewed journal articles, books, research papers, academic commentaries, comparative studies, reports of international organizations, and relevant NGO publications. These sources will be used to contextualize the legal analysis and identify existing scholarly debates and research gaps.

5.1 Data Analysis

The qualitative data obtained from documentary research, case studies, and stakeholder interviews will be analyzed through thematic and comparative analysis. The recurring themes such as discrimination, accessibility, institutional accountability, enforcement, social stigma, reasonable accommodation, and participation will be identified and compared across the two jurisdictions.

6. Key contribution

The present study makes a significant contribution to disability rights scholarship by undertaking a comprehensive comparative examination of the legal frameworks, policy approaches, institutional mechanisms, and practical implementation of disability rights in India and Malaysia. Its principal contribution lies in moving beyond a conventional comparison of statutory provisions to investigate the extent to which legal recognition translates into substantive equality, accessibility, dignity, autonomy, and meaningful participation of persons with disabilities in consonance with SDG 4 and 16.

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