



## Bridging the implementation gap: Disability-inclusive access to justice under the BNSS 2023 and the RPWD Act 2016

Shivani<sup>1</sup>, Dr. Rishi Kulshreshth<sup>2</sup>

<sup>1</sup> Research Scholar, Mewar University Gangrar, Chittorgarh, Rajasthan, India

<sup>2</sup> Professor, Mewar University Gangrar, Chittorgarh, Rajasthan, India

### Abstract

Access to justice for women with disabilities remains a pressing concern within India's evolving criminal justice framework. While the Rights of Persons with Disabilities Act 2016 guarantees equality, non-discrimination, and reasonable accommodation, practical enforcement within justice institutions has remained uneven. The enactment of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) introduces victim-sensitive and technology-enabled procedural reforms, including video-recorded statements and enhanced safeguards for vulnerable witnesses. This paper critically examines whether these reforms substantively strengthen disability-inclusive access to justice and whether institutional mechanisms effectively operationalize the mandates of the RPwD Act. Based on doctrinal and policy analysis of statutes, judicial precedents, and institutional reports, the study finds that although the BNSS provides a stronger normative framework, significant implementation gaps persist in infrastructure compliance, training, and accountability. The paper argues that harmonized Standard Operating Procedures and measurable institutional oversight are essential to bridge the gap between legislative intent and practical accessibility.

**Keywords:** Disability-Inclusive Justice, BNSS 2023, RPwD Act 2016, Access to Justice, Criminal Procedure Reform

### Introduction

Access to justice constitutes a foundational element of constitutional democracy and the rule of law. In the Indian context, it is deeply rooted in Articles 14, 21, and 39A of the Constitution, which collectively guarantee equality before law, protection of life and personal liberty, and the provision of free legal aid. However, for women with disabilities, access to justice often remains aspirational rather than operational. Structural barriers, socio-cultural stigma, and institutional inadequacies have historically limited their effective participation within criminal justice processes. The intersection of gender and disability creates compounded vulnerabilities, particularly in cases involving violence, discrimination, and procedural marginalization.

The enactment of the Rights of Persons with Disabilities Act 2016 (RPwD Act) marked a significant shift towards a rights-based approach, recognizing reasonable accommodation and equal access to justice as statutory obligations. Section 12 of the Act explicitly mandates that appropriate measures be taken to ensure effective participation of persons with disabilities in judicial proceedings. Despite this legislative progress, implementation has been uneven, with reports highlighting persistent infrastructural non-compliance, limited disability-sensitive training, and inadequate procedural accommodations within courts and police stations.

In 2023, India introduced comprehensive reforms to its criminal justice framework through the Bharatiya Nagarik Suraksha Sanhita (BNSS), replacing the Code of Criminal Procedure 1973. The BNSS incorporates victim-sensitive measures, including provisions for video-recorded statements, electronic documentation, and procedural mechanisms aimed at protecting vulnerable witnesses. These reforms present an opportunity to strengthen disability-inclusive access to justice by embedding

technological and procedural safeguards within the criminal process.

Yet, the extent to which the BNSS substantively bridges the implementation gap identified under the RPwD Act remains uncertain. Legislative reform alone does not guarantee institutional transformation. Effective realization of disability-inclusive justice requires harmonized procedural guidelines, administrative accountability, and enforceable accessibility standards.

This paper critically examines the interface between the BNSS 2023 and the RPwD Act 2016 to assess whether recent procedural reforms meaningfully advance access to justice for women with disabilities. Through doctrinal and policy analysis based on secondary sources, the study evaluates statutory alignment, identifies implementation gaps, and proposes structural reforms necessary to translate normative guarantees into practical accessibility.

### Review of Literature

#### International Studies

Lawson, A. (2025) Anna Lawson (2025) examines the evolving standards of disability-inclusive justice under contemporary criminal procedure reforms in comparative jurisdictions. The study argues that legislative reform alone is insufficient unless accompanied by enforceable procedural accommodations, structured accountability mechanisms, and mandatory institutional training. Lawson highlights that technology-enabled testimony and protected witness provisions can reduce secondary trauma for women with disabilities, provided they are systematically implemented. Her analysis underscores the persistent gap between statutory guarantees and operational compliance, reinforcing the importance of implementation-focused legal scrutiny.

Stein, M. A., & Lord, J. (2024) Michael Ashley Stein and Janet Lord (2024) analyse the operationalization of Article 13 of the UN Convention on the Rights of Persons with Disabilities (CRPD), emphasizing that access to justice requires not merely formal equality but substantive procedural accommodation. Their work demonstrates that states often adopt progressive legal frameworks but fail in ensuring disability-sensitive enforcement within police, prosecutorial, and judicial systems. The authors advocate harmonized procedural codes and institutional monitoring as essential tools for bridging implementation gaps in justice delivery.

### **United Nations Development Programme (2023)**

The UNDP (2023) report on disability-inclusive justice reform evaluates justice accessibility across developing democracies and identifies structural deficiencies in criminal justice institutions. The report emphasizes digital accessibility, victim-sensitive procedures, and data disaggregation as key reform priorities. It concludes that procedural modernization must integrate disability-specific safeguards to ensure effective participation of women with disabilities in justice processes. The findings are particularly relevant to evaluating recent criminal procedure reforms in India.

### **Indian Studies**

Singh, N. (2025) Neha Singh (2025) critically examines the intersection of gender and disability within Indian criminal justice institutions, particularly in light of the newly enacted criminal codes. The study argues that while procedural reforms reflect progressive legislative intent, implementation remains constrained by infrastructural non-compliance and limited disability-sensitive training. Singh emphasizes the necessity of aligning criminal procedure reforms with the mandates of the RPwD Act 2016 to ensure substantive equality for women with disabilities.

Ghosh, R., & Bharti, T. (2024) Ritu Ghosh and Tarun Bharti (2024) analyse institutional accessibility in Indian courts and police stations through a policy evaluation lens. Their study highlights the absence of structured monitoring mechanisms and disaggregated data concerning women with disabilities within justice institutions. The authors argue that despite statutory guarantees under the RPwD Act 2016, the absence of harmonized Standard Operating Procedures undermines effective justice delivery. Their findings support the argument that legislative reform must be accompanied by administrative accountability.

### **National Legal Services Authority (NALSA) (2023)**

The NALSA Annual Report (2023) provides institutional data on legal aid outreach and victim assistance programs. While the report documents increased digitalization and victim-centric initiatives, it reveals limited disaggregated tracking of disability-specific cases. The absence of separate statistical categorization for women with disabilities suggests institutional invisibility within legal aid frameworks. This gap reinforces concerns regarding the implementation of disability-inclusive mandates under Indian law.

### **Research Gap**

Recent scholarship (2025–2023) has significantly advanced discussions on disability-inclusive justice, particularly in

relation to procedural accommodation, gender-disability intersectionality, and institutional accessibility. International studies emphasize the importance of harmonizing criminal procedure reforms with Article 13 of the CRPD, while Indian scholarship highlights persistent infrastructural and administrative barriers within justice institutions. However, a focused doctrinal examination of the interaction between the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and the Rights of Persons with Disabilities Act 2016 (RPwD Act) remains underexplored.

Existing literature largely analyzes disability justice either through broad human rights frameworks or through empirical institutional studies, without systematically evaluating how India's newly enacted criminal procedural regime operationalizes disability-specific safeguards. Moreover, while policy reports acknowledge implementation challenges, there is limited analytical assessment of whether the BNSS framework substantively bridges the normative-implementation gap identified under the RPwD Act.

Thus, a clear gap exists in assessing the alignment, coherence, and enforceability of disability-inclusive safeguards within the restructured criminal justice system. The present study addresses this gap by critically examining the doctrinal and policy interface between BNSS 2023 and the RPwD Act 2016, with particular emphasis on women with disabilities.

### **Objectives of the Study**

#### **Objective 1**

To critically examine whether the procedural safeguards introduced under the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) strengthen disability-inclusive access to justice in alignment with the mandates of the Rights of Persons with Disabilities Act 2016.

#### **Objective 2**

To evaluate the extent to which existing institutional mechanisms and Standard Operating Procedures (SOPs) operationalize the legal obligations imposed under the RPwD Act 2016 and the BNSS 2023 for ensuring effective participation of women with disabilities in criminal justice processes.

### **Hypotheses of the Study**

#### **Hypothesis 1 (H1)**

The procedural reforms introduced under the BNSS 2023 provide stronger statutory safeguards for women with disabilities compared to the earlier CrPC framework, but their effectiveness depends on harmonized implementation with the RPwD Act 2016.

#### **Hypothesis 2 (H2)**

Despite progressive legislative provisions under the RPwD Act 2016 and BNSS 2023, significant implementation gaps persist within institutional practice due to inadequate accessibility standards, limited disability-sensitive training, and absence of structured accountability mechanisms.

### **Research Methodology**

The present study adopts a doctrinal and policy-analytical research design to examine disability-inclusive access to justice under the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and the Rights of Persons with Disabilities Act

2016 (RPwD Act). The research relies exclusively on secondary data sources and does not involve primary empirical fieldwork.

### Nature of the Study

This study is normative, analytical, and comparative in character. It seeks to evaluate the adequacy of legislative safeguards and institutional mechanisms governing access to justice for women with disabilities. The research examines the extent to which procedural innovations under the BNSS 2023 align with the substantive rights guaranteed under the RPwD Act 2016 and international disability rights standards.

The study is primarily:

- Doctrinal (statutory interpretation and case law analysis)
- Comparative (CrPC 1973 vs BNSS 2023)
- Policy-evaluative (implementation gap assessment)

### Sources of Data

The research is based entirely on secondary sources, including:

- Statutory texts: BNSS 2023, RPwD Act 2016, Legal Services Authorities Act 1987
- Constitutional provisions relating to equality and access to justice
- Judicial precedents from the Supreme Court and High Courts
- International instruments, particularly Article 13 of the UN Convention on the Rights of Persons with Disabilities (CRPD)
- Government reports (NALSA, UNDP, Accessible India Campaign, NHRC)
- Academic literature and policy studies

No primary interviews or field observations have been used in this paper.

### Variables of the Study

Although the research is doctrinal in nature, the study is structured around clearly defined conceptual variables to facilitate analytical clarity.

### Independent Variable

#### Procedural and statutory reforms under the BNSS 2023

This includes:

- Video-recording provisions
- Victim-sensitive procedural safeguards
- Technology-enabled processes
- Protection mechanisms for vulnerable witnesses

### Dependent Variable

#### Disability-inclusive access to justice for women with disabilities

This is assessed in terms of:

- Procedural accommodation
- Institutional accessibility
- Effective participation in criminal proceedings
- Protection against secondary victimization

### Intervening / Moderating Variables

The relationship between the independent and dependent variables is influenced by:

### 1. Institutional Implementation Mechanisms

- Standard Operating Procedures (SOPs)
- Judicial and police training modules
- Legal aid frameworks

### 2. Infrastructure Accessibility

- Court and police station compliance with accessibility norms
- Availability of assistive services

### 3. Administrative Accountability

- Monitoring mechanisms
- Data disaggregation
- Reporting compliance

These moderating variables determine whether statutory reforms translate into practical access to justice.

### Method of Analysis

The study employs:

1. Doctrinal Analysis Interpretation of statutory provisions under BNSS 2023 and RPwD Act 2016.
2. Comparative Legal Analysis Comparison between the CrPC 1973 and BNSS 2023 to assess procedural evolution.
3. Policy Gap Assessment Examination of institutional reports to identify discrepancies between legislative intent and implementation.
4. International Standards Alignment Evaluation of Indian procedural reforms against obligations under Article 13 of the CRPD.

### 5 Scope and Limitations

The study is limited to secondary data analysis and focuses primarily on criminal procedural aspects of access to justice. It does not include quantitative statistical evaluation or primary field investigation. However, reliance on authoritative statutory texts and institutional reports ensures doctrinal rigor and policy relevance.

### Hypothesis Testing and Doctrinal Evaluation

The present study adopts a doctrinal and policy-analytical approach based exclusively on secondary data sources including statutory provisions, judicial precedents, government reports, and international standards under the Convention on the Rights of Persons with Disabilities (CRPD). The hypotheses are evaluated through comparative statutory interpretation and institutional analysis.

**Hypothesis 1 H<sub>0</sub> (Null Hypothesis):** The procedural reforms introduced under the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) do not significantly strengthen disability-inclusive safeguards in comparison to the earlier Code of Criminal Procedure 1973 (CrPC).

**H<sub>1</sub> (Alternative Hypothesis):** The procedural reforms introduced under the BNSS 2023 provide stronger statutory safeguards for women with disabilities compared to the earlier CrPC framework.

### Doctrinal Analysis for H<sub>1</sub>

A comparative reading of the CrPC 1973 and the BNSS 2023 reveals notable structural changes aimed at enhancing victim-sensitive procedures. Under the CrPC, safeguards for

vulnerable witnesses were largely implicit and scattered, relying heavily on judicial discretion rather than statutory mandate. Provisions for recording statements of victims with disabilities were not comprehensively codified, and the use of technology was limited.

In contrast, the BNSS 2023 introduces explicit procedural innovations, including:

- Provision for video-recorded statements during investigation and trial.
- Greater emphasis on electronic documentation and digitized processes.
- Victim-centric procedural language.
- Enhanced timelines for investigation and filing of chargesheets.
- Expanded scope for examination of vulnerable witnesses in protected environments.

These reforms align more closely with the mandates of the RPwD Act 2016, particularly Sections 12 and 13, which emphasize access to justice and procedural accommodations. Additionally, Article 13 of the CRPD obligates State Parties to ensure effective access to justice through procedural accommodations and age-appropriate measures.

Secondary sources including UNDP policy reports (2018), NALSA Annual Reports (2022–23), and academic analyses of criminal procedure reforms indicate that the BNSS framework provides broader institutional scope for disability-inclusive procedures than the earlier regime.

Although implementation challenges remain, the statutory architecture under BNSS is normatively stronger and structurally more aligned with disability rights standards than the CrPC 1973.

#### Decision on H1

Since statutory comparison and policy analysis demonstrate strengthened procedural safeguards under BNSS 2023,

**Null Hypothesis (H0<sub>1</sub>) is rejected. Alternative Hypothesis (H1<sub>1</sub>) is accepted.**

#### Hypothesis 2 (H2)

**H0<sub>2</sub> (Null Hypothesis):** There are no significant implementation gaps in institutional practice under the RPwD Act 2016 and BNSS 2023 in ensuring disability-inclusive access to justice.

**H1<sub>2</sub> (Alternative Hypothesis):** Despite progressive legislative provisions under the RPwD Act 2016 and BNSS 2023, significant implementation gaps persist in institutional practice.

#### Doctrinal and Policy Evaluation for H2

While the RPwD Act 2016 guarantees equality, non-discrimination, and reasonable accommodation, secondary data consistently reveal systemic implementation deficiencies.

#### Government and institutional reports indicate:

**1. Infrastructure Deficits:** Accessible India Campaign progress reports (2021) show that a substantial proportion of public buildings, including courts and police stations, remain non-compliant with accessibility standards.

**2. Lack of Disaggregated Data:** NALSA reports do not consistently maintain separate statistical records for women with disabilities within legal aid databases, indicating institutional invisibility.

**3. Training Deficiencies:** National Judicial Academy modules and disability sensitization reports suggest that disability-specific training remains sporadic rather than mandatory across justice institutions.

**4. Communication Barriers:** WHO (2011) and UNDP (2018) highlight persistent absence of sign language interpreters, accessible documentation formats, and support persons within justice systems.

**5. Judicial Observations:** Indian courts have repeatedly emphasized substantive equality and reasonable accommodation, yet enforcement remains uneven at the institutional level.

The existence of statutory guarantees under the RPwD Act and procedural reforms under BNSS does not automatically translate into operational compliance. The gap between normative law and institutional practice reflects structural, administrative, and attitudinal barriers.

Thus, secondary evidence strongly supports the existence of implementation gaps.

#### Decision on H2

In light of consistent documentary and policy evidence demonstrating structural deficiencies,

**Null Hypothesis (H0<sub>2</sub>) is rejected. Alternative Hypothesis (H1<sub>2</sub>) is accepted.**

#### Overall Findings from Hypothesis Testing

The doctrinal evaluation establishes that while the BNSS 2023 introduces stronger procedural safeguards aligned with disability rights principles, the effectiveness of these reforms depends upon institutional harmonization, structured training mechanisms, infrastructure compliance, and measurable accountability frameworks.

The analysis demonstrates a dual reality:

- Legislative framework: Progressive and rights-oriented.
- Institutional implementation: Inconsistent and structurally constrained.

This reinforces the central argument of the study that bridging the implementation gap requires coordinated policy reform rather than mere statutory amendment.

#### Findings of the Study

##### Findings with Respect to Objective 1

**Objective 1:** To critically examine whether the procedural safeguards introduced under the BNSS 2023 strengthen disability-inclusive access to justice in alignment with the RPwD Act 2016.

#### Key Findings

**1. Strengthened Procedural Architecture:** The BNSS 2023 introduces victim-sensitive mechanisms such as video-recorded statements, digital documentation, and protected examination environments. These provisions create a stronger statutory framework compared to the earlier CrPC 1973.

2. **Normative Alignment with RPwD Act 2016:** The procedural safeguards under BNSS demonstrate conceptual alignment with Sections 12 and 13 of the RPwD Act 2016, which mandate access to justice and reasonable accommodation.
3. **Recognition of Vulnerable Witnesses:** The BNSS reflects increased sensitivity towards vulnerable categories, potentially benefiting women with disabilities through protected recording mechanisms and technology-enabled processes.
4. **Structural Opportunity for Reform:** The new procedural code provides an enabling legal framework for institutional transformation, but does not automatically guarantee operational compliance.

Thus, the study finds that the BNSS 2023 strengthens the statutory framework for disability-inclusive justice at the normative level.

### Findings with Respect to Objective 2

**Objective 2:** To evaluate the extent to which institutional mechanisms operationalize obligations under the RPwD Act 2016 and BNSS 2023.

#### Key Findings

1. **Implementation Gap:** Secondary data reveal persistent discrepancies between legislative mandates and institutional practice.
2. **Infrastructure Non-Compliance:** Reports under the Accessible India Campaign indicate continued lack of accessibility in courts and police stations.
3. **Training Deficiencies:** Disability-specific training remains sporadic rather than mandatory across justice institutions.
4. **Data Invisibility:** Institutional reports do not consistently maintain disaggregated statistics for women with disabilities, limiting accountability.
5. **Absence of Harmonized SOPs:** There is limited evidence of integrated Standard Operating Procedures aligning BNSS safeguards with RPwD obligations.

The findings confirm that despite progressive statutory reform, operational implementation remains inconsistent.

#### Suggestions to Stakeholders

Based on the above findings, the following recommendations are proposed:

##### Legislature and Policy Makers

- Issue harmonized implementation guidelines linking BNSS 2023 with RPwD Act 2016.
- Mandate disability-inclusive Standard Operating Procedures for police and courts.
- Introduce statutory obligation for disability-disaggregated justice data.

#### Judiciary

- Institutionalize mandatory disability sensitization training for judges.
- Ensure video-recorded testimony mechanisms are accessible and trauma-sensitive.
- Conduct periodic accessibility audits of court infrastructure.

#### Police Authorities

- Establish dedicated disability assistance desks in police stations.
- Ensure availability of interpreters and assistive services.
- Integrate disability-specific protocols in investigation procedures.

#### Legal Services Authorities (NALSA/DLSA)

- Maintain separate data on women with disabilities.
- Develop outreach programs focused on legal literacy.
- Create mobile or digital complaint platforms accessible to persons with disabilities.

#### Monitoring and Accountability Bodies

- Introduce measurable compliance indicators.
- Conduct independent audits of institutional accessibility.
- Publish annual disability-justice compliance reports.

#### Conclusion

The study establishes that the Bharatiya Nagarik Suraksha Sanhita 2023 marks a progressive shift in India's criminal procedural framework by incorporating victim-sensitive and technology-enabled safeguards. At the normative level, the BNSS demonstrates greater alignment with the Rights of Persons with Disabilities Act 2016 and international obligations under Article 13 of the CRPD.

However, the analysis reveals a persistent implementation gap between statutory guarantees and institutional practice. Structural deficiencies in infrastructure, limited disability-sensitive training, absence of disaggregated data, and lack of harmonized Standard Operating Procedures continue to hinder effective access to justice for women with disabilities.

Bridging this gap requires coordinated policy reform, institutional accountability, and enforceable accessibility standards rather than reliance solely on legislative amendment. Meaningful disability-inclusive justice demands a transition from formal equality to substantive and operational accessibility.

The study concludes that while India's procedural reforms provide a strong legal foundation, transformative implementation remains the decisive factor in realizing justice for women with disabilities.

#### References

1. Justice KS Puttaswamy v Union of India, 2017:10:1. <https://doi.org/10.1017/S002191181800063X>
2. State of Kerala v NM Thomas, 1976:AIR:490.
3. Kesavananda Bharati v State of Kerala, 1973: AIR:1461.
4. Vikash Kumar v Union Public Service Commission, 2021:5:370.
5. Bharatiya Nagarik Suraksha Sanhita, 2023.
6. Rights of Persons with Disabilities Act, 2016.
7. Legal Services Authorities Act, 1987.

8. Constitution of India.
9. Convention on the Rights of Persons with Disabilities, 2006.
10. Committee on the Rights of Persons with Disabilities. General Comment No 7: Participation of Persons with Disabilities in Decision-Making. United Nations, 2022.
11. Universal Declaration of Human Rights, 1948.
12. Fredman S. Discrimination Law. OUP, 2011.
13. Ghai A. Disability in the Indian Context: Post-Colonial Narratives and Policy. Sage, 2015.
14. Goodley D. Disability Studies: An Interdisciplinary Introduction. Sage, 2017.
15. Lawson A, Stein MA. The UN Convention on the Rights of Persons with Disabilities: A Commentary. OUP, 2018.
16. Nussbaum M. Frontiers of Justice: Disability, Nationality, Species Membership. Harvard University Press, 2006.
17. Shakespeare T. Disability Rights and Wrongs Revisited. Routledge, 2013.
18. Bhate-Deosthali P, Ravindran TS. Women with Disabilities and Access to Justice in India: Barriers and Pathways. Indian Journal of Gender Studies, 2019;26:60.
19. Das A, Addlakha R. Reforming Legal Aid Systems in India to be Disability-Inclusive. Economic & Political Weekly, 2020;55:36.
20. Dutta A. Gendered Barriers in Legal Recourse: Lessons from Field Interventions. Indian Journal of Law and Society, 2018;9:14.
21. Lord J, Brown R. The Role of Reasonable Accommodation in Securing Substantive Equality. Law and Ethics of Human Rights, 2009:3.
22. Rioux M, Pinto P. A Time for the Universal Right to Access Justice. Disability Studies Quarterly, 2013:33.
23. Singh N. Intersectionality in Indian Courts: Gender and Disability. NALSAR Law Review, 2022:14.
24. Government of India. Accessible India Campaign (Sugamya Bharat Abhiyan): Progress Report. Ministry of Social Justice and Empowerment, 2021.
25. National Legal Services Authority. Annual Report 2022–23. NALSA, 2023.
26. National Commission for Women. Situational Analysis of Women with Disabilities in India. NCW, 2020.
27. United Nations Development Programme. Access to Justice for Persons with Disabilities in India: Policy and Practice. UNDP, 2018.
28. World Health Organization. World Report on Disability. WHO Press, 2011.
29. Human Rights Watch. Invisible Victims: Women with Disabilities and Gender-Based Violence in India. HRW, 2018.
30. National Judicial Academy. Disability and Judicial Sensitization: Training Module for Judges and Legal Personnel. NJA Publications, 2019.