

## Harnessing the Potential of Disability Law: A Disability Studies Perspective

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### I Introduction

Disability laws are crucial in ensuring a life of dignity for persons with disabilities.<sup>1</sup> However, they remain limited and ineffective in the absence of introspection and awareness of experiences with disability. The limitedness of disability law can also be seen where the full realization of rights and freedoms is subject and open to technological, philosophical, and market dynamics.<sup>2</sup> And in many cases, the law is weakened owing to “*negative cultural beliefs and social perceptions of disability*”.<sup>3</sup> That being said, disability law also offers the content to engage in normative criticism of states and powerful players concerning economic, social, and cultural arrangements and their differential impacts on persons with disabilities.<sup>4</sup>

In terms of what disability law “ought” to be, Grue writes, it should be about disabled people and the meanings provided by them. And works in disability studies go beyond the inquiries of law with the use of research tools necessary for theorizing or re-theorizing concepts and meanings about disabilities. Disability studies deal with the living conditions and quality of life of disabled people, and the questions of how disability and/or impairment should be defined.<sup>5</sup> Disability research, in this perspective, is then concerned with researcher accountability to disabled participants, raising questions about the nature of control and how it is measured.<sup>6</sup> Marked by the feature

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<sup>1</sup> Convention on the Rights of Persons with Disabilities (CRPD), Preamble.

<sup>2</sup> Michaelis Michael and Karen Soldatic, “Rights, Justice and Flourishing: The Uses and Limitations of Human Rights”, in Franziska Felder, Laura Davy, *et.al.* (eds.), *Disability Law and Human Rights Theory and Policy* 77 (Springer, 2022).

<sup>3</sup> Oche Onazi, *An African Path to Disability Justice: Community, Relationships and Obligations* (Springer, Cham, 1<sup>st</sup> edn., 2020).

<sup>4</sup> *Supra* note 2 at 82.

<sup>5</sup> Jan Grue, “Inclusive marginalization? A critical analysis of the concept of disability, its framings and their implications in the United Nations Convention on the Rights of Persons with Disabilities” 37 *Nordic Journal of Human Rights* 3-17 (2019).

<sup>6</sup> Geof Mercer, “Emancipatory Disability Research”, in Colin Barnes, Mike Oliver, *et.al.* (eds.),

of interdisciplinarity, critical engagement, and complex body of knowledge,<sup>7</sup> disability studies have and continue to have an impact on the making and implementation of disability law/s. As observed, “*disability studies developed as a field in response to the perceived universality of the problem, academic interest in explaining the place and meaning of disability in society, and activist expressions of empowerment, inclusion, normality and the politics of difference*”.<sup>8</sup> Morgan defines disability studies as part of a wider political project grounded in seeking “*to resist oppressive forms of knowledge and practice through the creation of new forms of knowledge embedded in lived experience and committed to creating and promoting inclusive and enabling practices.*”<sup>9</sup>

According to Schalk,

*“By designating (dis)ability as a system of social norms which categorizes, ranks, and values body minds and disability as a historically and culturally variable category within this larger system, critical disability studies can better engage in conversations about the ways both ability and disability operate in representations, language, medicine, the law, history, and other cultural arenas.”*<sup>10</sup>

Vijayan writes,

*“...critical disability studies seek both to correct and expand the way in which other fields of study explain disability.*

*The interdisciplinary that characterises disability studies allows for a variety of methodologies and approaches to be applied to the study of disability and this expands the field. Some of these include narratives of disability, analysis of representations of disability in literature, in arts, in law and media, challenging the absence of researches on disability in the academia, and writing or rewriting histories of disability.”*<sup>11</sup>

The interaction of disability law with disabilities has been studied by many. The interface between the two would offer both “*a critical analysis of the conditions of thinking for a particular concept of disability – and the implications of such a*

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*Disability Studies Today* 238 (Polity Press, 2002).

7 Colin Barnes, Mike Oliver and Len Barton, “Introduction”, in Colin Barnes, Mike Oliver, *et.al.* (eds.), *Disability Studies Today* (Polity Press, 2002), at 8.

8 Gary L. Albrecht, “American Pragmatism, Sociology and the Development of Disability Studies”, in Colin Barnes, Mike Oliver, *et.al.* (eds.), *Disability Studies Today* 19 (Polity Press, 2002).

9 Hannah Morgan, “Mad Studies and Disability Studies”, in Peter Beresford and Jasna Russo (eds.), *The Routledge International Handbook of Mad Studies* 108 (Routledge, 2022).

10 Sami Schalk, “Critical Disability Studies as Methodology” 6.1 *Lateral* (2017), available at: <https://csalateral.org/issue/6-1/forum-alt-humanities-critical-disability-studies-methodology-schalk/> (last visited on October 29, 2022).

11 Geethu Vijayan, “Disability Studies: A Path Breaking Approach in Literature” 5 *The Creative Launcher* 15-19 (2021), available at: <https://core.ac.uk/download/pdf/517403073.pdf> (last visited on October 29, 2022).

concept.”<sup>12</sup> Further, disability studies will inform the process of legal reforms by introducing a multitude of realities of disability experiences. And the two domains have the potential to forge the truth about disability with the use of the right research tools and objectives. Scholars have used case studies,<sup>13</sup> disability narratives,<sup>14</sup> and disability art,<sup>15</sup> that provide a useful research design or basis to understand interactions among different levels or tiers of law and policy design and implementation. This includes approaches to examine the intersection between two regulatory regimes like disability rights and intellectual property rights,<sup>16</sup> disability and criminal law,<sup>17</sup> etc.

This chapter examines this interaction, i.e., disability law and disability studies, through the prism of the Convention on the Rights of Persons with Disabilities (CRPD). While discussing the models of disability (medical, social, human rights, and relational-community models) and agendas for reform under the CRPD, the chapter highlights the importance of new concepts and approaches. Further, the potential of disability law has been discussed keeping in mind the application of its core principles across different sectors (with special focus on the Marrakesh Treaty, copyright law, and disability rights).

## II The Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD is the core international instrument to incorporate the mandates and responsibilities of member states, including the mandate for addressing claims of justice for persons with disabilities. According to Perlin, “*the CRPD is unique because it is the first legally binding instrument devoted to the comprehensive protection of the rights of persons with disabilities*”.<sup>18</sup> In its preamble and provisions, the CRPD integrates multiple approaches, like the right-based approach, the system or governance-based approach, the solidarity approach, the harm-based approach, and the intersectionality approach. In particular, it recognizes the importance for persons with disabilities for their individual autonomy and independence, including the freedom to make their own

<sup>12</sup> *Supra* note 5.

<sup>13</sup> Lisa Waddington and Mark Priestley, “A human rights approach to disability assessment” 37 *Journal of International and Comparative Social Policy* 1-15 (2021).

<sup>14</sup> Sara María Acevedo, “Exploring disability identity and disability rights through narratives: finding a voice of their own” 30 *Disability & Society* 1127-1129 (2015).

<sup>15</sup> Ann Leahy and Delia Ferri, “The right to participate in cultural life of persons with disabilities in Europe: Where is the paradigm shift?” *European Journal of Disability Research* (2022), available at: <https://journals.openedition.org/alterjdr/989#tocto1n1> (last visited on October 29, 2022).

<sup>16</sup> G. Anthony Giannoumi, Molly Land, *et.al.*, “Web accessibility and technology protection measures: Harmonizing the rights of persons with cognitive disabilities and copyright protections on the web” 11 *Cyber Psychology: Journal of Psychosocial Research on Cyberspace* (2017).

<sup>17</sup> Linda Roslyn Steele and Staurt D.M. Thomas, “Disability at the Periphery: Legal Theory, Disability and Criminal Law” 9 *International Journal of Disability Studies* 357-369 (2014).

<sup>18</sup> Michael L. Perlin, *A Prescription for Dignity: Rethinking Criminal Justice and Mental Disability Law* 54 (Routledge, London, 1st edn., 2013).

choices. Further, it emphasizes the importance of mainstreaming disability issues as an integral part of relevant strategies for sustainable development. It flags concerns over the difficult conditions faced by persons with disabilities, who are subjected to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. The CRPD also makes a case for women and girls with disabilities who are often at greater risk to abuse, neglect and violence.<sup>19</sup>

Since its adoption, the CRPD's jurisprudence has shaped the content and nature of laws adopted by member states. In addition, the approach and interpretations of the Committee on Rights of Persons with Disabilities<sup>20</sup> (the CRPD Committee, hereinafter) have been cited as progressive and distinct.<sup>21</sup> The following have been observed to be the key attributes of the CRPD.

Firstly, the CRPD incorporates the values of autonomy and agency in its provisions. The specific rights provided therein incorporate the full range of civil, political, economic, and cultural dimensions of rights. While encompassing the value of inclusive equality, the CRPD "made persons with disabilities subject of rights, as opposed to being objects of charity and pity,"<sup>22</sup> and "excluded".<sup>23</sup> Under the CRPD framework, states are required to adopt legislative frameworks that make provisions for procedural guarantees for persons with disabilities to ensure their access to justice on an equal basis with others.<sup>24</sup> Article 12 of the CRPD, for instance, covers the right to equal recognition before the law.<sup>25</sup> Article 12 guarantees that the law must enable the exercise of the right to legal capacity, including through the provision of supported decision-making. In the area of mental health interventions, the CRPD Committee has found forced interventions to be in contravention of Article 12, with only voluntary support measures being acceptable. Likewise, the Committee's jurisprudence is also reflected in the works of other human rights bodies working for the development of standards to address "the mistreatment in disability and health service settings".<sup>26</sup> The emphasis on legal personhood, as opined, will "enable persons with disabilities to withstand the power of medical interventions and decision making, including dominance and oppression."<sup>27</sup>

19 See the Preamble and provisions of the CRPD.

20 Article 34 of the Convention establishes the CRPD Committee.

21 Deepa Kansra, "Monitoring Peace and Security Mandates for Human Rights" 1 *Artha: The Shri Ram Economics Journal* 188-192 (2022).

22 Laura Davy, Franziska Felder, *et.al.*, "Introduction", in Franziska Felder, Laura Davy, *et.al.* (eds.), *Disability Law and Human Rights Theory and Policy* 2 (Springer 2022).

23 Franziska Felder, "What Does the CRPD Tell Us About Being Human?", in Franziska Felder, Laura Davy, *et.al.* (eds.), *Disability Law and Human Rights Theory and Policy* 47 (Springer 2022).

24 UN High Commissioner for Human Rights, *Article 13: List of illustrative indicators on access to justice* (2020), available at: <https://www.ohchr.org/Documents/Issues/Disability/SDG-CRPD-Resource/IndicatorsPDF/article-13-indicators-en.pdf> (last visited on October 29, 2022).

25 Convention on the Rights of Persons with Disabilities (CRPD), art 12.

26 *Supra* note 9 at 127.

27 Anna Arstein-Kerslake, Erin O'Donnell, *et.al.*, "Relational personhood: a conception of legal personhood with insights from disability rights and environmental law" 30 *Griffith Law Review* 530-555 (2021).

Secondly, the CRPD has universalized disability rights, and continues to be a reference point for making legal and other policy interventions by member states. In other words, “*it has the potential to mainstream disability issues in public policy.*”<sup>28</sup> Several countries have adopted laws in alignment with the CRPD. The reach of disability rights has also been extended to other international situations concerning disasters, war, and conflict, intellectual property rights, international trade, etc.

Thirdly, the CRPD accounts for the vulnerability of different groups under several conditions. Notable is the CRPD’s jurisprudence on humanitarian emergencies and natural disasters,<sup>29</sup> technology law,<sup>30</sup> etc. The CRPD’s jurisprudence has been recognized as progressive and specific to the needs of persons with disabilities in different contexts.<sup>31</sup>

Fourthly, the CRPD promotes international collaboration and solidarity. It contains several obligations for States Parties to ensure the political participation of persons with disabilities. Article 29 obligates States Parties to promote the full and effective participation of persons with disabilities in public affairs, including forming and joining representative organizations of persons with disabilities at the international, national, regional, and local levels. This obligation supports Article 4, which requires States Parties to consult with, and actively involve, persons with disabilities through their representative organizations in the design and implementation of relevant law and policy.

Finally, Article 32, obligates States Parties to promote international cooperation between States, regional organizations, and civil society, including organizations for persons with disabilities. Article 32 provides:

*“1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:*

(a) *Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;*

<sup>28</sup> *Supra* note 22 at 2.

<sup>29</sup> Convention on the Rights of Persons with Disabilities (CRPD) art. 11.

<sup>30</sup> Michael Ashley Stein and Jonathan Lazar (eds.), *Accessible Technology and the Developing World* (Oxford University Press, Oxford, 2021).

<sup>31</sup> Alice Priddy, “Disability and Armed Conflict”, *The Geneva Academy of International Humanitarian Law and Human Rights* (April 2019); Deepa Kansra, “Monitoring Peace and Security Mandates for Human Rights” 1 *Artha: The Shri Ram Economics Journal* 188-192 (2022).

- (b) *Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;*
- (c) *Facilitating cooperation in research and access to scientific and technical knowledge;*
- (d) *Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.*

2. *The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention."*

The above features are formative and transformative, to the extent that they are supported by interventions from disability studies. In the following paragraphs, the role of disability models will be discussed. These models provide the philosophical and normative justifications for the application of law in a certain way. The disability models also reflect on the interface between disability studies and disability law.

### III The CRPD and the Models of Disability

International disability law is shaped by models of disability. The models operate both as a measure for determining appropriate standards and as a benchmark for assessing progress. The models also assist in making and monitoring the progress of international disability law.<sup>32</sup> In the paragraphs to follow, four models, i.e., the medical model, the social model, the human rights model, and the relational-community model, have been discussed. The models, "*propelled by activists*",<sup>33</sup> convey the manner in which disability studies interact with and influence disability law and the body of disability knowledge and practice.

The medical model, for instance, stresses the processes of medicalization and institutionalization for disability. According to Skarstad, the medical model views persons with disabilities as patients being predefined by and hence acting according to, their medical conditions.<sup>34</sup> The author also writes about the limits of the medical model, i.e., it fails to perceive of disability as a socio-political concept.<sup>35</sup>

The social model of disability, in contrast, stresses structural barriers as the fundamental cause for the marginalization and oppression of disabled people.<sup>36</sup>

32 Anna Lawson and Angharad E. Beckett, "The social and human rights models of disability: towards a complementarity thesis" 25 *The International Journal of Human Rights* 210-228 (2021), available at: <https://www.tandfonline.com/doi/full/10.1080/13642987.2020.1783533> (last visited on October 29, 2022).

33 Jonas-Sébastien Beaudry, "Beyond (Models of) Disability?" 41 *Journal of Medicine and Philosophy* 210-228 (2016).

34 Kjersti Skarstad, "Disability and the Dilemma of Difference", in Franziska Felder, Laura Davy, et al. (eds.), *Disability Law and Human Rights Theory and Policy* 94 (Springer, 2022).

35 *Id.* at 93.

36 Ravi Malhotra and Morgan Rowe, *Exploring Disability Identity and Disability Rights through*

According to Hughes, under the medical model, “the ontological essence of disability is a physical or mental impairment or a biological ‘deficit’ or ‘flaw’ that limits what disabled people can do”. And under the social model, “disability is not a medical or personal problem but a set of physical and social barriers that constrain, regulate and discriminate against people with impairments.”<sup>37</sup> According to Beaudry, the discipline of disability studies considers that the social model is the “new paradigm” and heavily criticizes the medical model, perceived as outdated and oppressive.<sup>38</sup> The CRPD Committee in General Comment No. 6 states:

*“one of the main remaining challenges regarding the persistence of disability-based discrimination is that despite the adoption of the Convention and its ratification by a large number of countries, approaches to disability in laws, policies, the media and practices based on charity and/or medical paradigms to disability commonly continue to be used to a large extent, despite their incompatibility with the Convention.*

*These approaches range from wanting to “care for and protect” persons with disabilities from their “tragic and helpless situation”, to assess their incapacity to work or to wanting to fix, cure and make persons with disabilities “as normal as possible”. They fail to acknowledge persons with disabilities as full subjects of rights and rights holders.*

*The Committee assumes that, additionally, efforts carried out in States parties to overcome attitudinal barriers to disability have been insufficient to change the way societies view disability, as exemplified by the enduring prejudice, stigma and negative, humiliating stereotypes against persons with disabilities and the lasting misperceptions of disability as a burden for society or an individual problem.”*<sup>39</sup>

The social model has greatly influenced policy interventions and courts of justice. The shift from the medical model to the social model manifests also in the field of mental health law, where the psychosocial and social models have emerged as an evidence-based response to the biomedical model. The psychosocial model, as defined by experts, looks beyond (without excluding) biological factors, understanding psychological and social experiences as risk factors contributing to poor mental health and as positive contributors to well-being.<sup>40</sup> However, the social model is not free from

*Narratives: Finding a Voice of Their Own 1* (Routledge, London, 1st edn., 2013).

<sup>37</sup> Bill Hughes, “Disability and the Body”, in Colin Barnes, Mike Oliver, et.al. (eds.), *Disability Studies Today* 61 (Polity Press, 2002).

<sup>38</sup> *Supra* note 33 at 2.

<sup>39</sup> UN Convention on the Rights of Persons with Disabilities, *General comment No.6 (2018) on equality and non-discrimination*, CRPD/C/GC/6 (April 26, 2018), available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination> (last visited on October 29, 2022).

<sup>40</sup> UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of*

criticism, writes Beaudry. The criticism is that the social model severs the connection between impairment/biology/medicine, on the one hand, and disability, on the other.<sup>41</sup> In other words, the social model excludes the challenges faced by individuals facing chronic illnesses.

In response to the limitedness of the social model, the human rights model assumes importance. Under the human rights-based model, disability is viewed in light of the human rights principles of non-discrimination, empowerment, autonomy, freedom, etc. The CRPD Guidance Manual for Human Rights Monitors provides:

*“A rights-based approach seeks ways to respect, support and celebrate human diversity by creating the conditions that allow meaningful participation by a wide range of persons, including persons with disabilities. Protecting and promoting their rights is not only about providing disability-related services. It is about adopting measures to change attitudes and behaviours that stigmatize and marginalize persons with disabilities. It is also about putting in place the policies, laws and programmes that remove barriers and guarantee the exercise of civil, cultural, economic, political and social rights by persons with disabilities.*

*To achieve a genuine exercise of rights, the policies, laws and programmes that limit rights need to be replaced, such as: immigration laws that prohibit entry to a country based on disability; laws that prohibit persons with disabilities to marry; laws that allow the administration of medical treatment to persons with disabilities without their free and informed consent; laws that allow detention on the basis of mental or intellectual disability; and policies that deny medical care to a person because he or she has a disability.*

*Moreover, programmes, awareness-raising and social support are necessary to change the way society operates and to dismantle the barriers that prevent persons with disabilities from participating fully in society. Furthermore, persons with disabilities need to be provided with the opportunities to participate fully in society and with the adequate means to claim their rights.”*<sup>42</sup>

What is distinct about the human rights model, according to Onazi, is that it avoids making either positive or negative judgments about impairments, especially the pain, decline in quality of life, early death due to impairments, and dependency that people with disabilities experience. Impairments under the human rights model are understood as a natural aspect of human diversity. And by embracing impairments as part of human diversity, the model recognises the inherent dignity of people with

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*the highest attainable standard of physical and mental health, A/HRC/35/21, (March 28, 2017).*

41 *Supra* note 33 at 3.

42 UN Office of the High Commissioner for Human Rights, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*, HR/P/PT/17 (January 1, 2010), available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/monitoring-convention-rights-persons> (last visited on October 29, 2022).



disabilities, who are to be valued because of their self-worth.<sup>43</sup> The CRPD Committee has applied the human rights model,

*“in connection with the need for States to embed it into disability strategies and across legislation and policy, in connection with the definition of disability training, in connection with awareness-raising and for judges and the legal profession and for healthcare professionals, in connection with concerns about systems that deprive disabled people of liberty and subject them to institutional living”*.<sup>44</sup>

According to Lawson and Beckett, while the human rights model is viewed as the model which is applied under the CRPD, the human rights model is complementary to the social rights model. The former, i.e., the human rights model, *“provides a detailed road map for the development of human-rights-consistent law and policy, as well as systems and frameworks for monitoring progress”*. The latter, i.e., the social model, supports *“emancipatory disability politics in contexts which are not framed by reference to human rights.”*<sup>45</sup>

Another approach, emerging from a critique of the CRPD framework, is the community-care approach. In the book *An African Path to Disability Justice: Community, Relationships and Obligations*,<sup>46</sup> Onazi emphasizes the need for a new public culture of obligations to people with disabilities. Drawing from concepts like human dependency, relational existence, community membership, love, friendship, compassion, and solidarity, Onazi advocates for an approach based on moral virtues and practices, which can be far greater than a right-based approach to justice and autonomy.<sup>47</sup> Onazi advances an African legal philosophy of disability justice based on values of community, relationships, and asymmetrical obligations, which can operate as an ethical ideal or meta-principle to direct, evaluate, criticise and amend existing laws and institutions. The ideal will also enable sustaining and strengthening ties between people with and without disabilities, based on values of love, charity, care, support, benevolence, and generosity.<sup>48</sup> In the words of Onazi, *“instituting a new public culture of obligations is, therefore, a practical legal project, with the power to transform and deepen individuals as relational human beings.”*<sup>49</sup>

To sum up, in addition to the disability models, disability studies indicate the limits, gaps, and potential of disability law. The following paragraphs include a discussion on the limits and potential of disability law.

<sup>43</sup> *Supra* note 3 at 44.

<sup>44</sup> *Supra* note 32.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Supra* note 3 at 39.

<sup>47</sup> *Id.* at 128-129.

<sup>48</sup> *Id.* at 133-134.

<sup>49</sup> *Id.* at 152-153.

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47 *Id.* at 128-129.

48 *Id.* at 133-134.

49 *Id.* at 152-153.

#### IV The Limits of Disability Law

The law has its limitations. Onazi writes about some of these limits while advancing a model of duties towards persons with disabilities.<sup>50</sup> However, in its interaction with disability studies, disability law comes face to face with numerous possibilities. These possibilities involve inquiries that go beyond or remain undetected in the making and application of the law.<sup>51</sup> As in the case of the CRPD, it is often evaluated in light of conceptual, philosophical, legal, technological, and cross-sectoral developments. Take the example of the concept of “flourishing life”. In the works of Michael and Soldatic, a flourishing life means living a life that is fully realized. Making “flourishing life” a normative concept poses questions on why persons with disabilities are deprived of opportunities to flourish in a manner they themselves fashion as constitutive of their own substantive good. Also, any discussion about *flourishing* has oriented us to how we want to live, and what we can be within the polity.<sup>52</sup> To support a flourishing life, for instance, technological advancements can be directed toward human flourishing.<sup>53</sup> Clearly, the concept demands greater interaction across sectors and stakeholders. Under the category of new concepts, one may also consider Onazi’s contribution to a public law on duties. As mentioned previously, Onazi defends a public law on duties on the ground that human rights treaties are limited because of the “*insufficient internalisation of human rights norms*”.<sup>54</sup>

Another limitation of disability laws has been the prioritization of one set of rights and outcomes over the rights of disabled persons. While looking at cases of suspension and delay of national budgetary allocations for redistributive measures,<sup>55</sup> scholars advance the case of having a “*non-negotiable character*” of disability rights.<sup>56</sup> Few have also shed light on CRPD provisions that remain “*neglected*” or “*unexplored*”. Take the example of Leahy and Ferri’s work on Article 30 of the CRPD.<sup>57</sup> Article 30, according to the authors, does not embody a comprehensive approach to cultural participation.<sup>58</sup> The CRPD Committees’ work and interactions show a rather narrow focus on copyright issues. On the potential of the CRPD framework, they write:

“...the CRPD has potential to effect a cultural transformation in how

50 Lisa Waddington and Mark Priestley, “A human rights approach to disability assessment” 37 *Journal of International and Comparative Social Policy* 1-15 (2021); Fleur Beupert and Liz Brosnan, and Jasna Russo (eds.), *The Routledge International Handbook of Mad Studies* (Routledge, 2022).

51 *Supra* note 2 at 69.

52 *Supra* note 2 at 81.

53 *Supra* note 2 at 80.

54 *Supra* note 3 at 40.

55 *Supra* note 2 at 71.

56 Michelle M. Mello, Govind Persad, et al., “Respecting Disability Rights - Toward Improved Crisis Standards of Care”, 383 *The New England Journal of Medicine* (2020).

57 UN Convention on the Rights of Persons with Disabilities, art 30.

58 *Supra* note 15.

*disability is understood and is consistent with the emphasis within critical or cultural disability studies on the need to analyse and transform what is perceived as mainstream culture from the perspective of disability.*

*The adoption of a comprehensive approach to cultural participation of persons with disabilities would be vital to challenge negative views of people with disabilities, assumptions that disability art is merely a hobby or form of therapy rather than a professional endeavour, and could ultimately transform how society understands and relates to disability.*"<sup>59</sup>

## V The Potential of Disability Law

Of the many developments under the CRPD, notable is the growing cross-sectoral applications of its rights and principles. As a result of interventions from disability studies, the CRPD framework responds to the challenge of economic marginalization of persons with disability.<sup>60</sup> The CRPD's response to this can be witnessed in the context of intellectual property laws, specifically, copyright laws. Under the rubric of national and international IPR laws, the application of technology protection measures (TMPs) for the rights of web content publishers has been found in conflict with the rights of persons with disabilities to access web content and the ability of "*libraries and persons with disabilities to convert digital media to accessible formats*".<sup>61</sup> And both international and domestic laws have evolved to resolve the conflict with the adoption of a human rights approach. Take the example of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty). The Marrakesh Treaty is an example of a multilateral framework that has "*a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired, and otherwise print disabled (VIPs)*".<sup>62</sup> The Treaty is conceived in line with the human rights principles outlined in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It is the first copyright treaty to include a clear human rights perspective. The Treaty demonstrates that copyright systems are an important part of the solution to the challenge of improving access to books and other printed works for persons with print disabilities.<sup>63</sup>

<sup>59</sup> *Ibid.*

<sup>60</sup> *Supra* note 30 at 4.

<sup>61</sup> *Supra* note 16.

<sup>62</sup> World Intellectual Property Organization, *Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (2013), available at: [https://www.wipo.int/treaties/en/ip/marrakesh/summary\\_marrakesh.html](https://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html) (last visited October 29, 2022).

<sup>63</sup> World Intellectual Property Organization, *Main Provisions and Benefits of the Marrakesh Treaty* (2013) (2016), available at: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_marrakesh\\_flyer.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_flyer.pdf) (last visited October 29, 2022).

Copyright laws, in order to justify the viable balance between societal good and individual rights, have brought due focus on the exceptions under the legislation. Looking at Indian copyright law, the fair dealing clause under Section 52 of the Copyright Act, 1957 is one such provision which was the first such provision to facilitate visually challenged persons in India. As a guide to reform domestic copyright laws, adherence to the Marrakesh Treaty has been anticipated to “*improve awareness of the challenges faced by the print disabled community and persons with disabilities; greater access to education; enhanced social integration and cultural participation; Poverty alleviation and increased contributions to the national economy.*”<sup>64</sup> Like in the case of copyright laws, the potential of disability is considered in the context of several other prevailing challenges.

## VI Conclusion

Disability law is an ever-evolving landscape. Taking the CRPD as a centralizing force, its principles have been applied across legal systems. At the same time, these principles have been applied across different domains of law, including technology, peace and security, natural disasters, intellectual property law, etc. This expansion, by application, to a large extent has been facilitated by disability studies. Further, the gaps in disability law have been placed for discussion before the CRPD Committee, for example, not taking into full consideration “*country and region-specific challenges*”,<sup>65</sup> or lack of “*comprehensive approaches*”<sup>66</sup> to rights provided under the CRPD.

In the chapter, disability law and its related developments have been viewed as an outcome of its interface with disability studies. This interface brings into focus the dynamic and transformative nature of disability law and its potential for becoming an authentic law suited to the times.

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64 *Ibid.*

65 Paul Harpur and Michael Ashley Stein, “The U.N. Convention on the Rights of Persons with Disabilities and the Global South” 47 *The Yale Journal of International Law* 75-117 (2022).

66 *Supra* note 15.