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Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

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E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

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## **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DISABILITY RIGHTS AND THE CRIMINAL JUSTICE SYSTEM**

AUTHORED BY - KAVYA SRINIVASAN

In the intricate tapestry of society, the intersectionality of disability rights and the criminal justice system weaves a narrative fraught with challenges, disparities, and a pressing need for reform. As we embark on this exploration, envision the stark realities faced by individuals with disabilities within the corridors of justice—faces often overlooked, voices often unheard. The quest for equity within this context demands our attention, prompting an in-depth examination of the intricate relationship between disability rights and the criminal justice system.

To comprehend the present, we must navigate the historical landscape that has shaped the current dynamic between disability rights and the criminal justice system. From the shadows of institutionalization to the advent of disability rights movements, each milestone has left an indelible mark on the rights and treatment of individuals with disabilities within the realm of justice. These historical imprints serve as the foundation for our examination, prompting a critical evaluation of the progress made and the persistent gaps that remain.

This research endeavours to shed light on the multifaceted challenges faced by individuals with disabilities as they navigate the criminal justice system. From discriminatory practices to inadequate accommodations, our aim is to dissect the issues at hand and advocate for comprehensive reforms that uphold the principles of equality, justice, and inclusion. This paper posits that a society's commitment to justice is only as strong as its dedication to safeguarding the rights of its most vulnerable members.

To achieve a nuanced understanding, we will delineate the parameters of our exploration, encompassing a comprehensive review of existing literature, an analysis of the challenges encountered, and a critical examination of policy and legal frameworks. By delving into the intersections of disability with race, gender, and mental health, we aim to provide a holistic

perspective that acknowledges the diverse experiences within this demographic.

Individuals with learning disabilities, particularly those with autism, are significantly overrepresented in the criminal justice system, facing challenges at every stage. Alarming, people with autism are seven times more likely to encounter the police, and 15% of young individuals in custody are on the autistic spectrum. Meanwhile, young people with learning disabilities are ten times more likely to end up in custody than their non-disabled peers, constituting around 30% of the incarcerated population.<sup>1</sup> The Foundation for People with Learning Disabilities identifies key problems, including limited understanding during arrest, delayed availability of Appropriate Adults, reduced diversion opportunities, and the necessity for 'reasonable adjustments' in trials. Additionally, the general prison regime fails to cater adequately to those with learning difficulties, posing barriers to initiatives aimed at reducing re-offending<sup>2</sup>.

Health inequalities compound the challenges, with people with learning disabilities facing higher risks of both general and mental health issues. This guide sheds light on the pervasive issues within the Criminal Justice System, detailing the roles of entities such as the police, Crown Prosecution Service, magistrates, judges, defense solicitors, probation officers, and prison officers. The guide underscores the urgency of addressing these challenges to ensure fair treatment and support for individuals with learning disabilities in the criminal justice system, emphasizing the need for adjustments and understanding throughout the legal process.<sup>3</sup>

## **INTERNATIONAL CONTEXT**

In the realm of international discourse surrounding Disability Rights and the Criminal Justice System, the Convention on the Rights of Persons with Disabilities (CRPD) emerges as a pivotal instrument. The CRPD, reflecting the social model of disability, defines 'persons with disabilities' as those encountering long-term impairments that, when combined with various barriers, impede their full and effective participation in society on an equal basis with others. The convention, having been ratified

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<sup>1</sup> (No date) PWLD-in-the-CJS-guide-1. Available at: <https://arcuk.org.uk/wp-content/uploads/2016/04/PWLD-in-the-CJS-Guide.pdf> (Accessed: 31 March 2024).

<sup>2</sup> (No date) PWLD-in-the-CJS-guide-1. Available at: <https://arcuk.org.uk/wp-content/uploads/2016/04/PWLD-in-the-CJS-Guide.pdf> (Accessed: 31 March 2024).

<sup>3</sup> *Health inequalities* (2024) Mencap. Available at: <https://www.mencap.org.uk/learning-disability-explained/research-and-statistics/health/health-inequalities> (Accessed: 31 March 2024).



by over 160 countries, underscores the need for positive action and substantial legal reforms by States Parties to implement its principles and safeguard the encompassed rights. Notably, the CRPD recognizes disability as an 'evolving concept,' emphasizing that it results from interaction with attitudinal and environmental barriers. In the context of the criminal justice system, key CRPD rights include accessibility, equal recognition before the law, access to justice, liberty and security, freedom from torture, and protection from exploitation.

Key points include:

- **Access to Justice Framework:** The access to justice framework covers awareness, rights, dispute resolution, legal representation, and the fairness of solutions. It aligns with the UN's expanded notion, emphasizing just and equitable outcomes.
- **Challenges for Persons with Disabilities:** Challenges to access to justice for persons with disabilities are discussed in the context of the CRPD. The CRPD recognizes access to justice as a fundamental right linked with other rights and freedoms.
- **Interconnected Rights:** The right to access to justice is linked with effective remedy, fair trial, and equality. Non-discrimination provisions are crucial for ensuring equal opportunities for persons with disabilities in legal proceedings.
- **CRPD's Articulation of Access to Justice:** Article 13 of the CRPD emphasizes effective access to justice for persons with disabilities, including age-appropriate accommodations. Training for those in the administration of justice is also highlighted.<sup>4</sup>
- **Pivotal Role of Access to Justice:** Access to justice is considered a precondition and guarantee for the full enjoyment of all other rights and freedoms. It empowers persons with disabilities to assert their legal rights across various domains.
- **Optional Protocol:** The Optional Protocol to the CRPD provides a complaint mechanism for individuals to address alleged violations of their rights after exhausting domestic remedies.

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<sup>4</sup> (No date) *Convention on the rights of persons with disabilities* / OHCHR. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (Accessed: 31 March 2024).

- **Legal Capacity:** Article 12 of the CRPD focuses on legal capacity, affirming that persons with disabilities have full legal capacity. Different approaches to restrictions or denial of legal capacity are discussed, and supported decision-making is highlighted as a model promoting autonomy.<sup>5</sup>
- **Safeguards for Legal Capacity:** The CRPD emphasizes safeguards to prevent abuse in measures related to legal capacity, ensuring respect for the rights, will, and preferences of persons with disabilities.
- **Examples from Countries:** Examples from countries such as the Czech Republic, Moldova, Canada (British Columbia), Croatia, and Sweden illustrate various approaches and practices related to legal capacity and guardianship.

Moreover, the International Covenant on Civil and Political Rights (ICCPR) stands as another crucial framework protecting the rights of individuals with disabilities within the criminal justice domain. Articles 9, 10, 14, 15, and 26 of the ICCPR collectively ensure fair treatment and non-discrimination for people with disabilities engaged with the criminal justice system. This includes the right to equality before the law, liberty, and security of person, protection from arbitrary arrest and detention, humane treatment of those awaiting trial, and adherence to basic principles of justice. While the exact number of countries ratifying these conventions is not specified in the provided text, it is imperative to note that both the CRPD and ICCPR enjoy widespread global ratification, signaling a broad international commitment to upholding the rights of people with disabilities in the multifaceted context of the criminal justice system. These conventions collectively provide a comprehensive and rights-based framework that influences and guides the treatment of individuals with disabilities on a global scale.<sup>6</sup>

## UK RELATED

The Equality and Human Rights Commission initiated a legal inquiry to investigate potential discrimination and risks of miscarriages of justice faced by individuals with mental health conditions, cognitive impairments, and neuro-diverse conditions, including autism and ADHD, within the

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<sup>5</sup> (No date a) *Legal-capacity-intellectual-disabilities-mental-health-* ... Available at: [https://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems-factsheet-en\\_0.pdf](https://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems-factsheet-en_0.pdf) (Accessed: 31 March 2024).

<sup>6</sup> (No date a) Reporting under the International Covenant on Civil and ... Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf> (Accessed: 31 March 2024).

criminal justice system. The inquiry was prompted by concerns raised by charities, lawyers, and families of defendants, indicating that disabled individuals may have been disadvantaged due to insufficient support tailored to their specific needs.

This initiative responded to findings from a recent report on the state of equality in Britain, revealing that disabled individuals exhibited low levels of trust in the criminal justice system. The inquiry specifically focused on the period after defendants were charged and before they reached trial—a critical phase involving decisions on pleas, bail, remand, and special trial measures.

The investigation aimed to determine whether defendants' needs were adequately identified and whether necessary adjustments were implemented to facilitate their understanding of charges and the legal process. This included assessing the effectiveness of measures such as intermediaries, extended time and breaks, and the use of visual aids to enhance defendants' participation in legal proceedings.<sup>7</sup> Furthermore, the inquiry scrutinized the impact of modernization efforts, such as video-link hearings in England and Wales, on defendants' ability to actively engage in legal proceedings. By delving into these aspects, the inquiry sought to address existing gaps, enhance support mechanisms, and advocate for reforms to ensure equitable treatment and participation for individuals with disabilities within the criminal justice system.

On publishing the full findings of its inquiry into whether the criminal justice system treated disabled people fairly, the equality watchdog concluded that the criminal justice system was failing those with learning disabilities, autistic spectrum disorders, and brain injuries, and needed reform to ensure a fair trial for all. The EHRC found that:

- There was an overrepresentation of people with learning disabilities and mental health issues within the system that the government had failed to document.
- Those accused weren't routinely provided with adjustments they needed to participate in the justice process.
- Too many legal professionals did not have adequate training to appropriately deal with impairments.

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<sup>7</sup> Do disabled people experience discrimination in the criminal justice system? inquiry launch (no date) Do disabled people experience discrimination in the criminal justice system? Inquiry launch | EHRC. Available at: <https://www.equalityhumanrights.com/do-disabled-people-experience-discrimination-criminal-justice-system-inquiry-launch> (Accessed: 31 March 2024).

Highlighting that increased digitalization of the system threatened disabled people's access to justice – as it risked them being even less able to understand what was happening and communicate than when they were participating in person – the EHRC stressed the urgency of reform of the system to meet disabled people's needs, in turn improving it for all court users.

The EHRC made five recommendations to the UK and Scottish Governments and relevant agencies:

- Ensure departments and executive agencies address gaps in the collection, monitoring, and analysis of disability data, and ensure there is clear regulatory oversight to monitor their effective participation.
- Develop early and effective screening for all defendants and accused people and give consideration to how screening might work for those involved in criminal proceedings where the route does not involve the police and/or custody.
- Ensure timely access and sharing of information.
- Support the duty to make reasonable adjustments and respect fair trial rights.
- Ensure initial professional qualification training for law students includes disability awareness; all relevant codes of conduct and standards are amended to specifically include disability awareness as a professional requirement, and disability awareness is a mandatory element of continuing professional development for those working in criminal law.<sup>8</sup>

The Crown Prosecution Service (CPS) has compiled a comprehensive guide focusing on the support available for disabled victims and witnesses of crime, offering a nuanced exploration of critical aspects within the criminal justice system. Acknowledging the heightened risk of crime faced by disabled individuals and their often unequal access to justice, the guide delves into the intricate dynamics of disability hate crimes. By defining disability as any physical or mental impairment, the CPS adopts the Social Model of Disability, emphasizing the need to dismantle societal barriers that curtail life choices for disabled individuals. The guide intricately outlines the CPS's approach to crimes against disabled people, incorporating the Social Model of Disability principles, and explains how it prosecutes cases with due consideration to the unique challenges faced by disabled victims and witnesses. It delineates various stages of the criminal justice process, elucidating the support

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<sup>8</sup> (No date a) Inclusive justice: A system designed for all (interim evidence ... Available at: [https://www.equalityhumanrights.com/sites/default/files/inclusive\\_justice\\_a\\_system\\_designed\\_for\\_all\\_interim\\_report\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/inclusive_justice_a_system_designed_for_all_interim_report_0.pdf) (Accessed: 31 March 2024).

mechanisms available, such as reporting a crime, police investigations, post-charging procedures, court proceedings, and post-trial support. Special measures like screens, private evidence sessions, and communication aids are underscored to facilitate disabled individuals' effective participation in court. Real-life examples of support provided in actual cases serve to illustrate the practical application of these measures, offering a tangible understanding of their impact. The guide concludes by defining disability and highlighting collaboration with various agencies, including the Police, HM Courts and Tribunal Service, His Majesty's Prison and Probation Service, National Probation Service, and the Citizens Advice Witness Service, showcasing a holistic approach to victim support within the criminal justice system. This detailed guide from the CPS not only enriches the understanding of the challenges faced by disabled individuals but also illuminates the concerted efforts made to ensure their equitable treatment and access to justice.<sup>9</sup>

However, a lot of work is still needed and there is still a desperate need for reform. New statistics from October 2022 from the Home Office reveal a disturbing trend in disability hate crimes, with reported incidents more than doubling over the last four years. In the past year alone, disability hate crimes surged by 43%, yet a mere 1% of reports led to prosecutions. Charities Leonard Cheshire and United Response conducted research indicating that out of over 11,000 reports, a staggering 99% saw no further action. Channel 4 and the BBC shared harrowing individual accounts, illustrating the severity of the issue. For instance, a disabled individual named Anne detailed enduring various forms of abuse, while a PhD student named Cassie described an incident where she was physically assaulted, with passers-by callously ignoring her pleas for help. Disability Rights UK expressed deep concern over the significant gap between reports and prosecutions, attributing it to institutionalized bias, insufficient training, awareness, resources, and inconsistencies in hate crime legislation. DR UK is actively collaborating with Disabled People's Organizations and allies to develop a Disability Hate Crime Charter, advocating for urgent government action, criminalization of disability hate crimes, funding for training and support services, and addressing internal prejudices within the police and CPS. These efforts aim to bring attention to the alarming rise in disability hate crimes and the critical need for systemic changes to better protect disabled individuals from victimization.<sup>10</sup>

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<sup>9</sup> (No date) *Support for disabled victims and witnesses of ...* Available at: <https://www.cps.gov.uk/sites/default/files/documents/publications/guide-to-support-for-disabled-victims-and-witnesses-of-crime.pdf> (Accessed: 31 March 2024).

<sup>10</sup> Disability hate crime rises but only 1% see prosecutions (no date) Disability Hate Crime rises but only 1% see prosecutions | Disability Rights UK. Available at: <https://www.disabilityrightsuk.org/news/disability-hate-crime-rises-only-1-see-prosecutions> (Accessed: 31 March 2024).

Discussing other countries in brief, The Australian Human Rights Commission's submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability was made on March 20, 2020. The submission provides a detailed examination of the interaction between people with disabilities and the criminal justice system in Australia. It Acknowledges the intersectional nature of discrimination against people with disabilities, emphasizing that experiences can be influenced by factors such as age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin, and race. it Welcomes the adoption of a human rights-based approach in the Royal Commission's Terms of Reference, emphasizing the need for a framework that recognizes and protects the rights of individuals with disabilities within the criminal justice system. The submission Stresses the necessity of making the Royal Commission accessible to all individuals with disabilities, including Aboriginal and Torres Strait Islander people, culturally and linguistically diverse (CALD) individuals, and those in rural, regional, and remote areas. This includes the development and publication of an Accessibility and Inclusion Strategy. Additionally, it Highlights the importance of ensuring equality before the law for individuals with disabilities. Calls for increased awareness and education across the criminal justice system, from police to judges, prosecutors to prison staff, to better understand and accommodate the needs of people with disabilities. Furthermore, it analyzes the rights of people with disabilities related to equal recognition before the law, access to justice, and liberty and security of person in the context of the criminal justice system.

When it came to the recommendations, It Recommends that the Royal Commission closely considers the Convention on the Rights of Persons with Disabilities (CRPD), International Covenant on Civil and Political Rights (ICCPR), and other relevant international human rights instruments. Calls for alignment with Australia's obligations under these instruments. Recommends the inclusion of disability-related data in the NDDA, encompassing information on disability, age, gender, location, and ethnicity of participants at all stages of the criminal justice system. It Calls for the development and improvement of disability-specific training for criminal justice professionals (police, lawyers, judicial officers, court staff, and prison staff). Advocates for the development of a nationally consistent supported decision-making framework, aiming to eliminate substituted decision-making and provide individualized support, including psychosocial support, for people with disabilities in the criminal justice system. Recommends initiatives to end the indefinite detention of people with disabilities deemed unfit to plead, including setting time limitations on liberty-restricting orders and regular reviews of detained individuals. Urges the development of a national framework to monitor

and regulate the use of restrictive practices on people with disabilities in places of detention. Recommends the inclusion of Fetal Alcohol Spectrum Disorder (FASD) on the List of Recognized Disabilities. Recommends systematic screening of children and young people entering detention for all types of disabilities, including FASD, and encouraging diversion to community-based services. Advocates for mandatory rights-based training for disability support staff under the National Disability Insurance Scheme (NDIS) and continued funding and support for Community Visitor Schemes. Recommends an inquiry into the information, resources, and supports available to people with disabilities, in all settings, to report crimes.

One of the most important suggestions- The Royal Commission closely consider the CRPD, ICCPR and other relevant international human rights instruments and ensure that its recommendations regarding the criminal justice system align with the Australian Government's obligations under those instruments.<sup>11</sup>

The United States, under the Americans with Disabilities Act (ADA) enacted in 1990, has established a comprehensive legal framework to protect the rights of individuals with disabilities within the criminal justice system. The ADA mandates equal access to facilities, services, and programs, ensuring that accommodations are provided to guarantee fair treatment. The U.S. criminal justice system grapples with the overrepresentation of individuals with disabilities, particularly those dealing with mental health conditions. Efforts are underway to address this issue through diversion programs and improved access to mental health services. Challenges in providing appropriate accommodations, such as sign language interpreters or accessible facilities, are recognized, prompting ongoing initiatives to enhance accessibility and inclusivity. There is a growing acknowledgment of the significance of mental health considerations within the criminal justice system. Initiatives like mental health courts aim to divert individuals with mental health disabilities toward treatment and support services, recognizing the need for a more rehabilitative approach.<sup>12</sup>

Japan's Act on the Elimination of Discrimination against Persons with Disabilities ensures equal

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<sup>11</sup> *Submission: People with disability and the Criminal Justice System (2020)* (2020) *The Australian Human Rights Commission*. Available at: <https://humanrights.gov.au/our-work/legal/submission/submission-people-disability-and-criminal-justice-system-2020> (Accessed: 31 March 2024).

<sup>12</sup> *What is the Americans with disabilities act (ADA)?* (2024) *ADA National Network*. Available at: <https://adata.org/learn-about-ada> (Accessed: 31 March 2024).

opportunities and prevents discrimination within the criminal justice system. Japan faces challenges in accommodating individuals with disabilities in legal proceedings, prompting ongoing efforts to enhance accessibility and raise awareness about the importance of inclusivity within the criminal justice system. Initiatives in Japan also concentrate on improving the training for law enforcement and legal professionals, ensuring they are adequately equipped to interact with individuals with various disabilities, promoting a more informed and compassionate approach to justice.<sup>13</sup>

When it comes to Persons with Disabilities in Pre-trial Proceedings, firstly, we must emphasize the recognition of disabilities among various professionals involved in pre-trial proceedings, such as police, lawyers, judges, social workers, and health professionals. Adequate training is essential to identify diverse forms of physical and mental disabilities, particularly hidden disabilities like autism or psychological disorders. International examples, such as Israel's Investigation and Testimony Procedural Act and Singapore's Appropriate Adult Scheme, showcase successful initiatives involving specially trained personnel for handling cases involving cognitive disabilities.

In the context of witnesses with disabilities, practical toolkits, such as those provided by The Advocate's Gateway, play a crucial role. These toolkits offer guidance for accommodating witnesses with autism spectrum disorder, learning disabilities, and "hidden" disabilities. Accommodations may range from creating a friendlier courtroom environment to involving animals, using intermediaries, and providing expert testimony.

Moving forward, it is crucial to address the challenges faced by persons with disabilities as witnesses and victims of crime. We must recognize that testifying may differ for individuals with cognitive or mental disabilities, requiring accommodations for equal and effective participation in trials. Additionally, there is a concerning trend of underreporting victimization incidents among persons with disabilities, with higher rates of violent victimization highlighted in examples from the US and Ireland.

Turning our attention to legal responsibility for criminal acts, it's essential to understand that the Convention on the Rights of Persons with Disabilities (CRPD) does not permit discriminatory denial

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<sup>13</sup> (No date) Act for eliminating discrimination against persons with disabilities - English - Japanese law translation. Available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/3052/en> (Accessed: 31 March 2024).



of legal capacity. The UN OHCHR advocates for disability-neutral doctrines, emphasizing equal legal responsibility for persons with disabilities and rejecting automatic exculpation based on disability.

In the realm of 'Unfitness to Stand Trial' declarations, we must be cognizant of their potential impact on the deprivation of liberty. Declarations based on disability may lead to custodial orders, potentially violating the right to due process and safeguards under the CRPD. The CRPD urges a shift from specialized design models to universal equality, emphasizing equal recognition before the law and the rights to access justice, liberty, security, and freedom from cruel treatment.

Reforming 'Unfitness to Plead' rules presents challenges in adversarial common law systems, but civil law systems and non-adversarial approaches offer alternative avenues for law reform. Moreover, indefinite detention of persons with disabilities is contested under the CRPD, which calls for its abolition, even if custodial orders have fixed terms.

As we navigate these complexities, standards of detention facilities must align with human rights laws, ensuring reasonable accommodations and universal design principles. Diversion initiatives and comprehensive training for law enforcement and prison staff are pivotal to recognizing and supporting persons with disabilities effectively.

Diving into the context of civil proceedings and the challenges surrounding decisions about persons with disabilities, particularly focusing on institutionalization, deprivation of liberty, and involuntary medical treatment, Institutionalization, characterized by segregating individuals with disabilities into healthcare or residential institutions, raises critical human rights concerns. CRPD Article 14 strongly emphasizes the right to liberty and security, unequivocally prohibiting any unlawful or arbitrary deprivation of liberty based on disability. Despite this, ambiguity persists, particularly concerning psychiatric detention and forced institutionalization. There is a need for disability-neutral legal grounds to address the lawful detention for care and treatment, ensuring a balance between the rights of persons with disabilities and societal interests.

Navigating legal standards and recommendations in this context is complex. Various human rights standards, such as the UN Human Rights Committee's General Comment no 35, are discussed, revealing potential inconsistencies with the CRPD. Emphasizing the importance of judicial review

and procedural safeguards, the European Agency for Fundamental Rights summarizes Council of Europe standards on deprivation of liberty for persons with disabilities. Legal precedents, such as *Stanev v Bulgaria* and *Haddad v Arnold*, underscore instances of abuse in psychiatric institutions and the subsequent legal challenges.<sup>14</sup>

The intertwined issue of involuntary medical treatment further complicates matters. Linked to institutionalization, individuals in medical institutions are more susceptible to receiving treatment without their consent. The UN Special Rapporteur on Torture identifies the administration of psychiatric medication without free and informed consent as a form of coercion or punishment. CRPD Articles 17 and 25 stress the right to physical and mental integrity and healthcare based on free and informed consent, respectively. Advocates for disability rights stress the need for an absolute prohibition on involuntary medical treatment based on disability, aligning with the CRPD's emphasis on safeguarding legal capacity.<sup>15</sup>

In the face of these challenges, legal gaps and lack of clarity in protecting persons with disabilities from involuntary treatment without consent are raised. Recommendations include incorporating into the law the abolition of surgery and treatment without the full and informed consent of the patient. Notably, mental health laws in some European Union Member States permit involuntary placement and treatment based on the risk of harm and the necessity for treatment, signaling a pressing need for legal reforms to ensure the rights and dignity of persons with disabilities are upheld consistently.<sup>16</sup>

The findings of the Committee on the Rights of Persons with Disabilities (CmtRPD) shed light on several instances where the rights of persons with disabilities were compromised within the criminal justice systems of different countries. In Australia, the CmtRPD examined a case involving an Aboriginal individual declared unfit to plead, detained without conviction, solely due to an intellectual disability. The Committee unequivocally concluded that this detention violated Article

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<sup>14</sup> (No date) *Access to justice for persons with disabilities*. Available at: [https://www.biicl.org/documents/1771\\_access\\_to\\_justice\\_persons\\_with\\_disabilities\\_report\\_october\\_2017.pdf](https://www.biicl.org/documents/1771_access_to_justice_persons_with_disabilities_report_october_2017.pdf) (Accessed: 31 March 2024).

<sup>15</sup> (No date) *A/HRC/22/53 General Assembly*. Available at: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf) (Accessed: 31 March 2024).

<sup>16</sup> (No date) *Involuntary placement and involuntary treatment of persons ...* Available at: [https://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems\\_en.pdf](https://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf) (Accessed: 31 March 2024).

14(1)(b) of the CRPD, emphasizing that disability should never justify deprivation of liberty. This finding challenges us to reevaluate our systems and affirm the inherent rights of every individual.<sup>17</sup>

Moving to Ecuador, concerns were raised about the pretextual use of declaring persons with disabilities unfit to stand trial, leading to indefinite deprivation of liberty without equal guarantees. The Committee recommended refraining from such declarations, advocating for due process on an equal basis for all.

Denmark faced scrutiny for the distinction between punishment and treatment for those deemed 'unfit to stand trial.' The Committee urged a structural review, emphasizing the need for procedures aligning with general safeguards, such as the presumption of innocence and the right to a fair trial.

In the Republic of Korea, the Committee expressed concern over the lack of information on safeguards for those declared unfit to stand trial. Recommendations included establishing procedural accommodations for fair trials and the removal of the declaration of unfitness from the criminal justice system.

Mexico faced scrutiny for declarations of non-liability for persons with intellectual or psychosocial disabilities without adequate safeguards. The persistence of non-liability by reason of disability within the legal system raised further concerns about the protection of rights.

In Argentina, prison conditions for a person with physical disabilities were assessed, revealing inadequate accommodations and substandard conditions. The Committee concluded that such conditions constituted an affront to dignity and inhuman treatment, urging us to reassess the treatment of all individuals within our justice systems.

These findings underscore the global imperative to protect the rights of persons with disabilities. As we reflect on these cases, let us collectively commit to reforming our systems, ensuring procedural fairness, and creating inclusive environments that respect the inherent dignity of every individual.

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<sup>17</sup> (No date) *Access to justice for persons with disabilities*. Available at: [https://www.biicl.org/documents/1771\\_access\\_to\\_justice\\_persons\\_with\\_disabilities\\_report\\_october\\_2017.pdf](https://www.biicl.org/documents/1771_access_to_justice_persons_with_disabilities_report_october_2017.pdf) (Accessed: 31 March 2024).

The Committee's recommendations provide a roadmap for change, calling on nations to embrace reforms, eliminate discriminatory practices, and guarantee equal access to justice for all, regardless of ability.<sup>18</sup>

### **Way Forward:**

The intertwined relationship between disability and poverty, where disability serves as both cause and consequence, underscores the critical need for effective access to justice as an essential element in sustainable development and poverty eradication. Recognizing the inherent and societal barriers that impede the full realization of human rights for persons with disabilities, the international legal framework, particularly the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by almost 90% of UN Member States, sets the stage for guiding national legislation. The 2015 Sustainable Development Agenda represents a pivotal shift, explicitly acknowledging persons with disabilities and prioritizing data disaggregation by disability. Goal 16, with its commitment to "leave no one behind," opens avenues for visibility and tailored measures through accurate statistics. The legal community emerges as a crucial actor in the fight against poverty by empowering vulnerable groups. Lawyers, engaged in advocacy, law reform, and legal representation, can contribute substantially. Addressing the disjuncture between victimization and crime reporting rates, incorporating disability rights into policies, strategic litigation, research on deprivation of liberty standards, integrating psychological analysis into legal practice, evaluating good practices, and embracing technology, notably Online Dispute Resolution (ODR), are recommended measures. In conclusion, let us stand united in our pursuit of justice and equality, recognizing that the strength of our societies lies in our ability to protect and uplift the rights of every individual, especially those who may be more vulnerable within our criminal justice systems

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<sup>18</sup> (No date) *Access to justice for persons with disabilities*. Available at: [https://www.biicl.org/documents/1771\\_access\\_to\\_justice\\_persons\\_with\\_disabilities\\_report\\_october\\_2017.pdf](https://www.biicl.org/documents/1771_access_to_justice_persons_with_disabilities_report_october_2017.pdf) (Accessed: 31 March 2024).