

The right to education and special education in India and Ireland: A comparative doctrinal and policy analysis

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Abstract

Special education has moved, in both India and Ireland, from a discretionary welfare concern to a claimed legal entitlement. Yet the two common law jurisdictions, though sharing a constitutional inheritance, have translated the promise of inclusion into enforceable law and workable practice along markedly different lines, and both continue to face a gap between statutory promise and classroom delivery. This article undertakes a comparative doctrinal and policy analysis of the right to education, with particular emphasis on special and inclusive education, measured against Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In India, the entitlement is assembled from constitutional foundations (Articles 21A, 14, 15 and 41), the Right of Children to Free and Compulsory Education Act 2009, the Rights of Persons with Disabilities Act 2016, and an expanding body of jurisprudence. In Ireland, the right emerged through landmark litigation and was to be secured by the Education for Persons with Special Educational Needs (EPSEN) Act 2004, key provisions of which remain uncommenced two decades later and are now under formal scrutiny through the 2025 EPSEN Review. Despite differing legal architectures, both systems display a recurring pattern in which statutory aspiration is undermined by weak enforcement machinery and limited accountability. The analysis identifies transferable reform priorities, including enforceable individualised education plans, an independent appellate mechanism, expanded investment in trained special educators, and a robust monitoring system, as necessary conditions for realising acceptability, accessibility, and adaptability in education for every child.

Keywords: Special Education, Disability Rights, Right To Education, Inclusive Education, Comparative Law, Policy Analysis, India, Ireland

JEL Classification: K38, I28, I24

1. Introduction

While few promises offered by modern constitutions receive such universal approval, and yet remain so poorly fulfilled as the promise of education; for both India and Ireland the right to education has traveled a considerable distance. From a "directive principle" of state policy that was aspirational but unenforceable, to one that courts will, in theory, uphold. That journey is essentially complete for most children. It is not complete for children with disabilities. The extension of the right to education to students that require more than ordinary educational services — accessible school buildings, specially trained educators, individualized learning plans based on the specific needs of a student — continues to be a transitional process toward true inclusion for both countries.

In order to study this transitional process from segregation to inclusion across both countries, we will compare these two countries. There exists no better comparison than India and Ireland. Both countries are common-law jurisdictions with traditions of administration and adjudication that arise from a similar historical source. Therefore, when examining the comparative nature of their respective laws, we examine "like-with-like." Further, both countries have ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and thus are obligated under Article 24 of the CRPD, which articulates inclusive education as a right rather than as a charitable placement. Finally, while there exist many differences in terms of available resources and differing constitutional structures for both countries, they share the same systemic flaw. Each country's enacted legislation provides far greater potential for realizing the right to special education than does the actual delivery system on the ground. By comparing both countries, we identify this systemic flaw and suggest ways in which each may benefit from the experience of the other.

Therefore, the problem addressed by this paper is not whether there exists a statutory or judicial basis in either country for recognizing a right to special education. Both countries have enactments and decisions that recognize this right. Rather, the issue examined here is the consistent gap between the language used to articulate this right and its realization in classrooms. We organize our examination around three questions. First, how has the legal right to education for children with disabilities been constructed in each jurisdiction, and from what constitutional and statutory materials? Second, where and why does implementation fall short, and what does each system's failure look like in practice? Third, measured against the common yardstick of CRPD Article 24, what transferable lessons can be drawn for reform? The methodology is doctrinal and comparative, supplemented by policy analysis. The doctrinal component examines the constitutions, statutes, subordinate rules and leading judgments of each jurisdiction to establish what the law is. The policy component looks beyond the text to the mechanisms of delivery — assessment, individualised planning, appeals, teacher supply and resourcing — because in this field the gap between right and reality is located precisely in those mechanisms rather than in the statutory language itself. Comparison across two common law systems is fruitful here for a particular

reason: because they draw on a shared legal grammar, differences in outcome cannot easily be dismissed as artefacts of incommensurable legal traditions, and the points at which they diverge become genuinely diagnostic. A short account of the ethical dimensions of the research, and of the sources relied upon, is provided in the accompanying Materials and Methods file submitted with this manuscript. The study is confined to the school-age education of children with disabilities and does not extend to higher or vocational education, nor does it attempt an empirical measurement of outcomes; its contribution is analytical rather than statistical, and it is offered as a foundation on which empirical and reform-oriented work can build.

2. Methodology

This is a qualitative, comparative doctrinal and policy study. It does not involve human participants, and no primary empirical data were generated; accordingly, questions of informed consent and participant confidentiality do not arise. The analysis proceeds by close reading and systematic comparison of authoritative legal materials from the two jurisdictions, interpreted against the relevant international framework. The primary materials comprise the constitutional provisions, statutes and subordinate instruments governing education and disability in India and Ireland, together with the leading judgments of their superior courts. The international layer comprises the CRPD (especially Article 24), the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Secondary materials — official reviews, monitoring reports and peer-reviewed scholarship — are used to establish how the law operates in practice, particularly the 2025 review of the EPSEN Act in Ireland and successive policy instruments in India.

For each jurisdiction the study first reconstructs the doctrinal architecture of the right, then identifies the delivery mechanisms through which that right is (or is not) realised. The two reconstructions are then compared across a fixed set of dimensions — the source and hierarchy of the right, the definition of inclusion, individualised planning and assessment, enforcement and appeal, resource contingency, and CRPD compliance — so that like is compared with like. The comparison is presented in narrative form and consolidated in a comparative table. From that comparison the study derives its policy conclusions. Because the research relies wholly on publicly available legal and policy documents, it raises no issues of participant welfare, data protection or research governance in the conventional empirical sense. The authors have nonetheless observed the ethical standards expected of legal scholarship: accurate representation of primary sources, faithful attribution, avoidance of selective quotation, and transparency about the limits of doctrinal method. These matters are elaborated in the separate Materials and Methods file accompanying this submission.

3. Results and Analysis

3.1 The Conceptual and International Framework

Any comparison of special education law needs a shared vocabulary, and that vocabulary is now largely supplied by international human rights law. It was not until Article 24 of the CRPD that there was a disability-specific "turn" regarding education. Unlike previous agreements such as the Salamanca Statement, or prior international instruments such as the Convention on the Rights of the Child, Article 24 of the CRPD did not position inclusive education as simply an additional option among other options -- instead, it positioned inclusion as the default entitlement and imposed upon States a duty to ensure that children with disabilities were not excluded from the general education system based on their disability (Article 24(1)(a)), ensured that children with disabilities received appropriate support within that system (Article 24(2)(c)) and obligated States to provide "reasonable accommodations" to enable participation (Article 24(5)). It was through this idea of "reasonable accommodation", located in the educational institution itself, that the obligation to make adjustments was moved from the individual (the student) and placed upon the institution. This also shifted how a lack of adjustment would be viewed, from a short fall in services/welfare, to an act of discrimination. This is where the transition away from a medical model of disability occurred, and toward a social model of disability. In the medical model, the child's impairments were seen as the problem to be addressed, whereas in the social model, the child's impairment was not the problem -- the problem lay in an environment that had not been developed with difference in mind.

Finally, the normative image of what inclusive education entails is complete when we look at two final references cited by both jurisdictions. First, the Salamanca statement, issued in 1994, was a first and important expression of the principle that ordinary schools could accommodate all children, despite their conditions. The language of inclusion, generated by this statement eventually evolved into an obligation to include children with disabilities in ordinary schools. Second, the Convention on the Rights of the Child places the education of the child with a disability within a broader framework of the child's best interest and evolving capacity. Together these instruments establish that inclusion is not a discretionary policy preference but a legal standard against which national systems can be measured — which is what makes a doctrinal comparison of the kind attempted here meaningful rather than merely descriptive.

That conceptual progression — from segregation, through integration, to inclusion — supplies the analytical spine of this article. Segregation educates children with disabilities separately; integration admits them to mainstream settings but expects them to adapt to an unchanged environment; inclusion requires the environment itself to change so that difference is anticipated rather than merely tolerated. The distinction between integration and inclusion is not pedantic: a child may be physically integrated into a mainstream classroom and yet, for want of accommodation and support, be more excluded there than in a specialist setting. Both India and

Ireland have formally committed themselves to inclusion in this strong, CRPD-aligned sense. The question the following sections pursue is how far each has translated that commitment into enforceable law and delivered practice, and where, in the machinery of delivery, the commitment falters.

3.2 The Right to Education and Special Education in India

India's right to education was built by the judiciary before it was written into the Constitution. In *Mohini Jain v. State of Karnataka* the Supreme Court read a right to education into the right to life, and although the following year a larger bench in *Unni Krishnan, J.P. v. State of Andhra Pradesh* qualified that holding, it firmly established that the right to free education up to the age of fourteen flowed from Article 21 read with the directive principles in Articles 41 and 45. The legislature responded, nearly a decade later, with the Constitution (Eighty-sixth Amendment) Act 2002, which inserted Article 21A and made free and compulsory education for children between six and fourteen an express fundamental right. The Right of Children to Free and Compulsory Education Act 2009 gave that guarantee its statutory machinery.

The right to education has been widely recognized as a fundamental human right since 1960. However, the rights of children with disabilities have historically had to be supplemented by additional rights. Prior to the enactment of the Rights of Persons with Disabilities (RPwD) Act 2016, there were no justifiable obligations placed upon governments to ensure that children with disabilities received education. Although the Persons with Disabilities Act 1995 did mention education for children with disabilities, such language was used primarily programmatically and not in a way that could be enforceable by the courts. It was not until the RPwD Act 2016 was enacted to give domestic effect to the Convention on the Rights of Persons with Disabilities (CRPD), that governments began to have legally binding obligations related to ensuring inclusive education. These include an obligation to ensure inclusive education, to allow children with disabilities into schools without discrimination based on disability, to ensure that school facilities and materials are accessible to students with disabilities, to provide individualized assistance and reasonable accommodations to students with disabilities, and to hire and train teachers who specialize in working with children with disabilities. Together with the Right to Free and Compulsory Education (RTE) Act 2009, which recognizes children with disabilities as a protected group under the law and also includes them among those entitled to free and compulsory elementary education, and the Rehabilitation Council of India (RCI) Act 1992, which establishes the qualifications necessary for special educators, the RPwD Act 2016 appears to establish a comprehensive entitlement for inclusive education.

It may seem inconsequential to pause here and reflect on how the RPwD Act 2016 articulates this duty. However, how the duty is articulated will likely determine whether or not it can be enforced. The RPwD Act 2016 does not simply encourage inclusive education. Rather, it requires each government responsible for providing inclusive education to do so. Moreover, it creates

corresponding duties requiring such governments to identify children with disabilities, take steps to ensure they are not excluded from education, and provide the accommodations necessary for students with disabilities to benefit from educational opportunities. In this regard, the RPwD Act 2016 represents a significant change in perspective regarding the failure to accommodate persons with disabilities. Specifically, it conceptualizes such failures as forms of discrimination rather than simply acts of benign neglect. A duty articulated in this manner will be as effective as the mechanisms available to compel compliance. Unfortunately, these mechanisms – including assessments, plans, appeals, and most importantly trained staff – represent some of the most glaring weaknesses of the current Indian education system.

3.3 The Right to Education and Special Education in Ireland

Ireland's trajectory is, at first sight, the mirror image of India's, and on closer inspection strikingly similar in its outcome. As in India, the decisive early advance came from the courts. In *O'Donoghue v. Minister for Health* the High Court held that the constitutional guarantee of free primary education extended to children with severe and profound disabilities, and that a merely token provision would not discharge the State's obligation; education, O'Hanlon J. reasoned, had to be understood in a manner capacious enough to include every child's development according to that child's own capacities. The principle was endorsed at the highest level in *Sinnott v. Minister for Education*, even as the Supreme Court in that case drew a firm line around the constitutional right by confining it to primary education and by cautioning against judicial direction of the executive's allocation of resources.

The intended legislative culmination of this judicial groundwork was the Education for Persons with Special Educational Needs Act 2004. On its face the EPSEN Act is a model inclusive-education statute: it commits the system to educating children with special educational needs in an inclusive environment wherever possible, and it promises the very mechanisms that make such a commitment real — a statutory assessment of need, an individual education plan prepared with parental involvement, a structured appeals procedure, and the resourcing to give effect to those plans. It also created statutory status for the National Council for Special Education.

However, many of the most critical of these legislative provisions have still not been implemented. Some sections of the EPSEN Act were commenced in 2005 – including those creating the National Council for Special Education and setting out the inclusive education provision – but some of the sections that would have provided parents with legally enforceable rights to have their child's needs assessed, to prepare an Individual Education Plan (IEP), and to appeal against such assessments and IEPs, remain uncommenced. Consequently, the practical effect of the failure to implement is severe: support will be given on a discretionary basis under administrative control as opposed to being provided as a legal right, therefore when a parent feels that the assessment and/or education plan prepared for their child does not meet their needs they can argue that there is no commenced

statutory entitlement and thus seek vindication of that entitlement. Thus what the legislature "gave" with one hand it did not "give" with the other by refusing to bring sections into operation.

Many Official and Civil Society Reviews have criticised this situation, describing the failure to commence as a failure to fulfill the central promise of the Act and as casting doubt over whether Ireland complies with CRPD Article 24. Litigation concerning the relationship between the EPSSEN Act and the Disability Act 2005 – which provides an assessment of need process for younger children – has occurred and continues, precisely because of the fact that the EPSSEN mechanism intended to provide parents with enforceable rights from childhood through adolescence never came into effect. In June 2025 the Department of Education & Youth published its much-awaited Review of the EPSSEN Act, opening up again issues regarding full commencement, amendment to the wording of Statute and possible repeal/replacement of the 2004 framework with new inclusive education statute. Therefore the Irish deficit is not one based on design or funding in the Indian model --the state now allocates large sums of money to special education --but represents a unique case of a failure to activate the enforcement mechanisms put into place by the legislature itself. In a certain sense it represents the clearest example possible of the difference between a right in theory and a right in practice.

3.4 Doctrinal and Policy Comparison

When viewed together, the two systems arrive at the same degree of disappointment via different paths. While the right to inclusive education is stronger in terms of constitutional text and statute in India, an explicit fundamental right in Article 21A of the Constitution; a detailed inclusive education directive within the 2016 Act --its realization is impeded by size, unevenness and poor administrative capability. Conversely, while the constitutional and statutory design in Ireland is at least as developed, and significantly greater resources are available, many of the key entitlements provided for by statute have simply not come into operation, so that an otherwise well drafted entitlement remains dormant on statute books. The Indian entitlement exists, but its realization varies greatly; conversely, in many key ways, the entitlement promised by law in Ireland exists but has been withheld.

There are several areas that highlight the differences in this comparative context. Firstly, relative to the source and hierarchical level of the entitlement --India places the core entitlement at Constitutional Apex (Article 21A) supplemented by statute; Ireland locates the operational detail in ordinary legislation supported by a relatively narrow judicially defined Constitutional Base concerned primarily with Primary Education. Secondly, with respect to definitions of inclusion --both formally accept the strong conceptualization of inclusion as described in CRPD; however neither country has completely displaced residual integrationist practices. Thirdly, with regard to individualized planning and assessment --which is at the heart of any effective special education system --while both countries fail to deliver adequately to students, they do so in different ways: Ireland has enacted a mechanism for individualized planning and assessment, but has not

commenced it; India has mandated support for students with disabilities but has not established a scalable assessment/plan development infrastructure. Fourthly, both countries rely heavily upon parents to initiate appeals/enforcement mechanisms and thereby create opportunities for litigation which favor informed/resourced families. Fifthly, both countries utilize "progressive realization" language either explicitly or implicitly to limit the immediate obligations attendant upon each respective right. Sixthly, both countries represent themselves as being partially compliant with CRPD Article 24 --compliant in principle; deficient in delivery mechanisms. Seventhly, another aspect of comparative concern relates to roles of courts. In both jurisdictions --Indian Constitutional Jurisprudence interpreted education as part of Right to Life prior to legislative action; Irish High Court recognized entitlement of children with profound disabilities prior to enactment of enabling legislation --courts served as engines of rights creation. However in both jurisdictions courts have subsequently indicated limits upon judicial enforcement where resource allocation is involved --the Indian right to education post age fourteen was subject to qualification rather than absolute; Sinnott *supra* limited scope of Constitutional Guarantee to Primary Education and cautioned against judicial oversight/control over Executive Spending.

The effect in each system is to throw the decisive work back onto the political branches: onto commencement and resourcing in Ireland, and onto implementation and capacity-building in India. Litigation can establish and defend the right, but it cannot, on its own, deliver the trained teacher or the individualised plan. That is the shared structural limit within which any reform must operate.

The comparison in Table 1 consolidates these dimensions.

Table 1. Comparative Overview of the Right to Special Education in India and Ireland

Dimension	India	Ireland
Source of the right	Constitution, Art. 21A (86th Amendment 2002); RTE Act 2009; RPwD Act 2016	Constitution, Art. 42 (via case law); EPSEN Act 2004 (key parts uncommenced)
Foundational jurisprudence	Mohini Jain (1992); Unni Krishnan (1993)	O'Donoghue (1996); Sinnott (2001)
Conception of inclusion	CRPD-aligned inclusive mandate in RPwD Act 2016	CRPD-aligned inclusive aim in EPSEN Act 2004
Individual planning / assessment	Support mandated; assessment-and- planning infrastructure thin at scale	Statutory IEP and assessment legislated but not commenced

Dimension	India	Ireland
Enforcement / appeals	Depends heavily on parental litigation	Depends heavily on parental litigation; statutory appeal uncommenced
Principal deficit	Uneven delivery across a large, unequal system	Non-commencement of core statutory entitlements
CRPD Art. 24 status	Partial compliance; strong text, weak delivery	Partial compliance; strong text, withheld enforcement

4. Discussion

The principal outcome of this comparison is that there exists a clear need for a legally recognised entitlement to special education, however, a formally established entitlement to special education alone cannot ensure that all students have access to a suitable educational environment. Although both India and Ireland contain the basic elements of a formal entitlement to inclusive education (in their respective statute law and jurisprudence) as per the CRPD Article 24 definition of inclusive education, in neither case does the establishment of this entitlement result in an adequate education for the individual student. The primary distinction between a meaningful entitlement and what appears to be an entitlement in name only lies within the machinery behind it. Specifically, the machinery includes an assessment process that parents may insist upon, an individually tailored plan that is binding, an appeals process that is independent and accessible, a sufficiently large number of trained special educators to meet demand, and an ongoing monitoring process that identifies failures. It is specifically this machinery that is lacking in both countries albeit in different manners.

In addition to the lessons learned from both countries' experiences regarding the necessity of developing a formal entitlement to inclusive education, there is also a reciprocal lesson that can be drawn from the experiences of both countries. In contrast to India's more general problem of building assessment and planning capacity, expanding the pipeline of trained teachers, and delivering consistently throughout all states, Ireland's challenge is very specific and could theoretically be resolved through a singular exercise of political will: the commencement of the legislation passed by parliament. The Irish government has scheduled an EPSSEN Review for 2025 and the Irish experience serves as a warning to all jurisdictions that legislative enactments without commencement or resourcing create the illusion of a right while providing no actual substantive rights. Conversely, India's difficulties stem from more generalized issues including establishing assessment and planning capacity, increasing the number of trained teachers entering the profession, and ensuring consistent delivery of services across states; however, due to the

constitutionally recognized entitlement contained within Article 21A of India's Constitution, it provides a more stable platform to advocate for the realization of this right. Thus, each country has something the other does not. Ireland possesses a completely developed framework for realizing the entitlement awaiting activation, while India possesses a strongly anchored constitutional entitlement waiting to be realized.

With some degree of modification to suit local contexts several potential reforms emerge based on this analysis applicable to both India and Ireland. First, enforceable Individualized Plans. An individually tailored education plan should be a parental right (statutory entitlement), not merely an administrative courtesy. Second, Independent and Accessible Appeal Mechanism. The ability of families to realize the right depends not upon their capacity to initiate judicial proceedings under Article 21A but rather whether an independent and accessible appellate procedure exists to vindicate the right. Third, Investment in Special Educators. No inclusive mandate can be fulfilled absent a sufficient number of qualified professionals available to fulfill that mandate. Here again the regulatory frameworks governing teacher qualifications in both countries provide ready-made tools for addressing this issue. Fourth, CRPD Compliant Data and Monitoring. Absent CRPD compliant data and monitoring mechanisms neither state can determine if they are meeting their obligations or identifying areas where they are failing to meet their obligation. For Ireland the most immediate and specific action would be to commence those EPSEN provisions currently dormant, whereas for India it would entail systematically developing the requisite capacities in terms of assessment, planning, and teacher supplies below a previously existing strong constitutional entitlement.

Finally, there is a more universal lesson presented by comparing these two countries. Despite being vastly different along many dimensions (size, wealth, maturation of their administrative systems, etc.), both reach the same conclusion: A legitimate right to inclusive education is present in the laws of both countries but does not functionally exist for the individual child. While differing in virtually every conceivable way, this coincidence suggests that barriers to inclusion are not unique to any particular stage of development. Rather they reside in common sets of institutional functions (assessment, planning, appeal, workforce, monitoring) that require construction and maintenance regardless of the context of a given country. These functions are less glamorous politically precisely because they represent the machinery required to implement inclusion rather than the promise itself. The value of comparative research is that it makes these underlying machinery visible; thereby directing empirical and reform efforts toward making these machinery functional instead of simply drafting increasingly elaborate statements of rights. It bears stating explicitly that this analysis has certain limitations. It is comparative/analytical/descriptive rather than empirical; therefore it does not examine learning outcomes or the lived experience of children and families nor does it generalize across two systems of great internal variability -- particularly India's which varies significantly from state-to-state. The purpose of this analysis was to chart the legal/policy

landscape and identify (with some specificity) where the promise of inclusion fails; thus enabling empirical/reform efforts to focus on relevant areas.

5. Conclusion

Both India and Ireland have agreed - legally and philosophically - that a child with a disability has a right to education, just like every other child. They also agree that the "right" to education for children with disabilities means inclusive education (education where everyone learns together) as opposed to separate education. Achieving this agreement was very difficult and took years of court cases and laws. However, while both countries have made significant progress in their transition away from segregated schooling and toward inclusive schooling, both countries are stuck at the same place: how to deliver inclusion. In Ireland, there is a plan (machinery) to create an inclusive system but they have yet to turn it on. In India, they require the outcome (inclusive education), but they lack the machinery needed to make it happen at scale. The lesson we learn from comparing these two is clear. For those who want a right to special education that will be meaningful, they need to back up that right with enforceable individualized plans for each student, an appealing process if students' rights are violated, a sufficient number of teachers qualified to teach students with disabilities, and honest monitoring to ensure compliance. If the right to special education is not supported by such things then it will be nothing more than a title. Bringing the promise (the idea of equal access to quality public education) closer to what happens in classrooms in schools - either through beginning to implement the plan in Ireland or through implementing the law in India - is what all of these similar jurisdictions have left to accomplish.

Acknowledgements

The authors received no specific funding for this research. They gratefully acknowledge the institutional support of the School of Law, Manav Rachna University, Faridabad.

Author Declaration

The authors confirm that this manuscript is original, has not been published elsewhere and is not under consideration by any other journal. The authors declare that they have no conflicts of interest. Both authors contributed to the conception, research and writing of this article and have approved the final version

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