



The Right to Marriage for Persons with Disabilities:

Between Legislative Restrictions and International Obligations

A Legal and Human Rights Analysis of Article (11) of the Draft Law by Decree on Personal Status (2025)

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Introduction

This paper examines **Article (11) of the Draft Law by Decree on Personal Status (2025)**, specifically its regulation of the right to marriage for persons with disabilities. The analysis is situated at the intersection of disability rights, gender equality, and the particular vulnerabilities of women and girls with disabilities.

In approaching this subject, the paper adopts a methodology that includes: presenting the original text of Article (11) as contained in the draft; outlining key overarching observations; conducting an in-depth legal and human rights analysis of the provision; and finally, **proposing an alternative text that reflects sound legislative drafting consistent with international conventions, constitutional obligations, and the principles of modern legislative technique.**

This approach does not merely address one provision in isolation; rather, it aims to establish a comprehensive legislative methodology that upholds inherent human dignity, guarantees equality and non-discrimination, and transforms legal texts into instruments for protecting and enabling rights.

First: The Original Text of Article (11) as Contained in the Draft

“The judge may authorize the marriage of a person with non-persistent insanity, imbecility, or intellectual disability—male or female—if an official medical report issued by a local medical committee establishes that the marriage is in their interest, that their condition is not transmissible to their offspring, that they pose no danger to the other party, and after reviewing their case in detail and verifying consent.”

Second: General Observations on the Draft

1. Explicit Disregard for the State of Palestine’s International Obligations

The Draft Law by Decree on Personal Status (2025) entirely disregards the State of Palestine’s obligations under the **Convention on the Rights of Persons with Disabilities (CRPD)**, which Palestine ratified in April 2014 without reservations, and which was published in the Official Gazette (Palestine Gazette) pursuant to **Decree-Law No. (36) of 2023.**

The Palestinian Supreme Constitutional Court (2017) affirmed that international conventions ratified by the State of Palestine **prevail over ordinary legislation**, including laws by decree, once they undergo the

necessary domestic procedures and are published in the Official Gazette. Accordingly, **any provision that contradicts the CRPD is constitutionally and legally void and prohibited from application.**

Moreover, the principle of **equality and non-discrimination**, including on the basis of gender and disability, is entrenched in Article (9) of the amended Basic Law (the Constitution). It is a **peremptory constitutional norm** that supersedes all legislative texts. This principle also appears in every core human rights convention published in the Official Gazette, rendering any conflicting provision **null and without legal effect.**

2. Use of Discriminatory and Degrading Terminology

The draft reproduces outdated terms such as “insane”, “imbecile”, and “feeble-minded”, which contradict human rights language and reinforce harmful stereotypes against persons with disabilities.

Such terminology directly violates **Article (8) of the CRPD**, which obligates States to combat stereotypes, prejudices, and harmful practices.

3. Stripping Persons with Intellectual Disabilities of Legal Capacity

The draft—like existing outdated legislation—treats persons with intellectual disabilities as lacking legal capacity altogether, in clear contravention of **Article (12) of the CRPD**, which unequivocally recognizes that **all persons with disabilities enjoy legal capacity on an equal basis with others**, without exception.

The drafters also ignored the obligation in **Article (12/3)** of the CRPD requiring States Parties to provide **access to the support necessary** for persons with disabilities to exercise their legal capacity—not to strip them of it.

4. Multiple and Intersectional Discrimination

The draft imposes layered restrictions on women and girls with disabilities, combining discrimination on the basis of gender and disability.

This violates **CEDAW (Articles 3 and 16)**—to which Palestine acceded without reservations—alongside **Articles 3, 4, 5, 6, 7, 8, 9, and 23** of the CRPD.

The non-publication of CEDAW in the Official Gazette does not absolve the State of its obligations; treaty bodies have consistently affirmed this. Moreover, equality and non-discrimination are already entrenched in

published human rights conventions and in Article (9) of the Basic Law, making violations constitutionally impermissible.

5. Absence of Inclusivity and Reasonable Accommodation

The draft fails to integrate disability inclusion across its provisions, constituting a fundamental violation of the CRPD's principles and obligations.

It ignores **reasonable accommodation**—as defined in Article (2) of the CRPD—and omits any reference to **accessibility obligations** under Article (9).

6. Absence of Genuine Participation

The draft was not developed through **genuine and effective participation** of persons with disabilities and their representative organizations.

Under **Article (4/3) of the CRPD**, participation must be real, substantive, and begin from the conceptual design and legislative philosophy—not at the final stage of providing comments on a pre-prepared text.

The methodology used therefore violates a core obligation of the CRPD and constitutes a structural flaw in legislative policy.

Third: Analytical Observations on Article (11) of the Draft

1. Discriminatory and Degrading Terminology

The use of expressions such as “non-persistent insanity”, “imbecility”, and “intellectual disability” reflects an outdated, paternalistic mindset that contradicts the language and philosophy of international human rights law, particularly the CRPD's rights-based and development-oriented approach.

These terms reinforce harmful stereotypes and violate **Article (8) of the CRPD (Awareness-Raising)**, which obligates States to combat prejudices, stereotypes, and harmful practices related to disability.

The continued use of such demeaning and obsolete terminology in a **modern legislative draft** reveals a profound failure in legislative technique and alignment with international obligations. It represents a serious regression and exposes the provision to constitutional invalidity due to lack of harmonization with the CRPD.

2. Stripping Persons with Intellectual Disabilities of Their Legal Capacity

Article (11) implicitly assumes that persons with intellectual disabilities **lack legal capacity** and may only marry with judicial authorization—a clear sign that the drafters are unfamiliar with the CRPD’s core provisions.

Such an assumption directly contradicts **Article (12) of the CRPD**, which affirms that all persons with disabilities enjoy **full legal capacity on an equal basis with others**.

The provision also ignores the obligation under **Article (12/3)** of the CRPD requiring States to provide **appropriate support** to persons with intellectual disabilities in exercising their legal capacity—meaning:

Intellectual disability + support = full legal capacity.

Stripping individuals of legal capacity constitutes a structural violation of the CRPD and undermines its very foundation.

3. The Eugenic Character of the Provision

Article (11) reproduces a dangerous **eugenic** logic rooted in early 20th-century discriminatory practices that sought to control reproduction and prevent certain groups, deemed “less worthy,” from marrying or having children.

The requirement that a condition be “*not transmissible to offspring*” is a classic eugenic standard, subjecting the right to marry and found a family to **external judgments about biological suitability**, rather than recognizing inherent and equal rights under the CRPD.

This approach violates **Article (23) of the CRPD**, which guarantees the right of persons with disabilities to marry and found a family on an equal basis with others, and to freely determine the number and spacing of their children.

It also undermines the principle of **inherent human dignity** (Article 3(a) CRPD) and exacerbates discrimination against women and girls with disabilities in particular.

4. Impermissible Restrictions on Free Choice of Spouse

The right to marry is made contingent on the **absolute discretionary power** of a judge and a local medical committee. This undermines the principle of **full and free consent**, even where support or accommodations are theoretically available.

Subjecting marriage to external approval transforms “support” into **guardianship**, erasing autonomy and violating the essence of the CRPD.

This violation extends beyond the CRPD; it breaches:

- **CEDAW**, which requires full, free, and equal consent in marriage;
- **The ICCPR**, which prohibits any form of coercion or imposed conditions on marriage.

Replacing the person’s will with medical or judicial judgment contradicts the principle of **inherent dignity** and the right to personal autonomy under **Article 3(a) CRPD**.

5. Multiple and Intersectional Discrimination Against Women and Girls with Disabilities

Women and girls with disabilities are disproportionately harmed by Article (11), as it combines discrimination based on **gender** and **disability**, resulting in compounded exclusion from the right to marry and form a family.

This violates:

- **Article (6) of the CRPD** concerning women with disabilities, and
- **Article (16) of CEDAW** regarding equality in marriage and family relations.

The resulting double discrimination exposes the State of Palestine to **dual international accountability** before both treaty bodies.

Rather than enabling rights, the provision entrenches social exclusion and institutionalized guardianship.

6. Absence of Reasonable Accommodation and Necessary Support

The provision omits any reference to **support mechanisms**, communication assistance, decision-making support, or services that enable persons with intellectual disabilities to make informed choices.

This omission violates:

- **Article (2) CRPD** (reasonable accommodation)
- **Article (9) CRPD** (accessibility)
- The general principles of **Article (3)**, including autonomy, equality, and respect for dignity.

By ignoring these obligations, the provision reflects structural weakness in legislative policy and a failure to adopt a disability-inclusive approach.

The draft should emphasize **support, not guardianship; inclusion, not exclusion**.

Fourth: Proposed Alternative Text of Article (11) of the Draft

Article (11)

Marriage for Persons with Disabilities

1. Persons with disabilities shall enjoy, on an equal basis with others, the full right to marry, to found a family, to choose their spouse, and to exercise their legal capacity, without any discrimination on the basis of disability, gender, or any other prohibited ground of discrimination.
2. No restrictions or conditions may be imposed on this right on the basis of disability, including requirements for judicial or medical approval or any external assessment concerning a person's right to marry or have children. Preventive medical examinations shall apply to all persons equally and without discrimination.
3. The State of Palestine shall ensure the provision of appropriate support and reasonable accommodation that persons with disabilities may require to exercise this right, including legal and social support services, communication support, and decision-making assistance, in line with the principles of full legal capacity, personal autonomy, free choice, and respect for inherent human dignity.
4. Any legislative provision, practice, or administrative measure that infringes upon or restricts this right, whether directly or indirectly, shall be deemed null and without legal effect, as it constitutes a violation of dignity and of the fundamental rights and freedoms guaranteed under the international conventions to which

the State of Palestine is a party. The State shall take the necessary measures to eliminate such violations, ensure redress, and prevent their recurrence.

New Article

Supremacy of International Human Rights Conventions

1. International human rights conventions and standards—including the Convention on the Rights of Persons with Disabilities—to which the State of Palestine has acceded and which have been published in the Official Gazette (Palestine Gazette), shall form an integral part of this Law by Decree and shall be read as one unit with it, in a manner that ensures the full realization of equality and non-discrimination in all rights.
2. No provision of this Law by Decree may be interpreted or applied in a manner that contradicts these conventions or international human rights standards.
3. Any provision, rule, or practice that contravenes the obligations arising from the international human rights conventions to which the State of Palestine has acceded and which have been published in the Official Gazette shall be deemed null and without legal effect.

Conclusion

This proposed alternative text is presented as a comprehensive legislative model that reflects sound drafting techniques and ensures full harmonization with the State of Palestine's international obligations. It goes beyond addressing Article (11) in isolation; rather, it provides an entry point for restructuring the broader provisions of the Draft Law by Decree, many of which suffer from structural deficiencies in legislative philosophy, substance, and technique.

This approach lays the foundation for a holistic legislative methodology that elevates inherent human dignity, guarantees equality and non-discrimination, and transforms legal provisions into instruments for protecting and enabling rights—rather than tools for exclusion or guardianship.

Ultimately, legislative texts must be measured by their ability to safeguard inherent human dignity and ensure the protection of fundamental, inalienable rights—not by their capacity to restrict or diminish them.