



Persons with Disabilities Facing the Mirage of the Right to Education: A Systematic Review of the Literature

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This article collects the educational path derived from the significant changes that have taken place throughout the recent history of education in Spain and, specifically, in relation to people with disabilities. As a starting point, an analysis is carried out of the transformations that have occurred in the discourse on the education of people with lower functional performance, until a historical approach is reached by virtue of which the different stages and binding educational regulations are revealed (with national and international character), highlighting—exclusively—those that have a direct impact on the quality of life of people in a situation of disabilities. As can be imagined, the history of education in Spain has evolved as policies have changed their purposes around the diversity of students and their universality in the classroom. In this sense, the need to make visible this new paradigm of human rights derived from the International Convention on the Rights of Persons in a situation of Disabilities (UN, 2006) and, in contrast, the continuity of a national corpus juris that reveals the ineffectiveness of the State and other institutions to extinguish situations of discrimination on the grounds of low functional performance.

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INTRODUCTION

Evolution of the Educational Process: A Look at the Inclusion of People with Disabilities

"Gone are the days when diseases that affect intellectual capacity were sufficient justification to modify the ability to act" (Molina, 2017, p. 241).

Education, understood as the process through which the creation of learning spaces between students and teachers is encouraged by means of shared knowledge (Torres, 2014), means—in any case—thinking that encouraging the maximum development of students' capacities and skills, to a large extent, coincides with the development of their personal autonomy and their consequent growth towards adulthood. In this way, for example, children who are disabled¹ in schools because of their low functional performance should have the same opportunities as others to develop their skills

¹The concept of disability encloses—in itself—an evolutionary component that will depend both on the conditions of the person, and also on the interaction of these conditions with other multiple variables of their physical, social, economic, etc. environment (Molina, 2017, p. 2).

and abilities in line with their personal needs (educational and professional). But, certainly, throughout history many researchers (Molina, 2017; Dalmeda and Chhabra, 2019; Cobeñas, 2020) reveal that these children have been disabled through a school supported by a medical–rehabilitative model that has not considered the possible development of their abilities and establishes the (educational) view in their functional limitations.

Thus, it is a reality that the education of these children is indissolubly linked to the educational policies of the State, demonstrating a hurtful permeability to the ups and downs and mercantilist interests (Fernández et al., 2017) marked by the turn of the century, condemning to ostracism all those requirements that—directly—do not seem to be crossed by economic logic, becoming—frequently—real obstacles for educational institutions to function with more pedagogical, more cultural and more humanistic assumptions and purposes, than those extolled by the profitability expected from them.

We must not ignore that education is an indispensable pillar in order to create a socio–cultural context built on respect, commitment, solidarity, gratitude, tolerance, freedom and (as Saint Thomas said 1,225–1,274) love. These values are necessary to contribute to the collapse of the inequalities present in today's society, precisely because respect for human rights rests on them. For this reason, people who are in a situation of disability must find themselves recognized in the—so called—social policies, which should strive to stop being assistance–oriented and, in order to safeguard the rights of the whole population, develop from the paradigm of human rights, since all the subjects to which they refer are subjects of law: that is to say, first class citizens who do not require either charity or contemplation from the point of view of begging.

These brief considerations can be maintained—and a link established—with past history, since by talking about disability we would surely be faced with tragic situations (abandonment and cures which, more than medical, seem to be actions typical of an intellectual delirium), which—in turn—have shown us the most prehuman face of human beings. Already in the 16th century, there was a rapprochement towards those considered deficient, since—in spite of continuing to be rejected—they were moved to the outskirts of the cities, pardoning them from what—until then—nobody seemed to be able to get rid of: death; a fate that was practised without any consideration during the Greek and Roman periods, respectively (González, 2003). In short, the past history of these people has been strongly marked by eugenics, hostility (Allport, 1954) and, of course, by the absence of rights in all areas—legal, educational, social, health, etc. (Garay Ordoñez, 2019).

Evidently, taking up the present time, it would be worth reflecting on the transformations that, based on the structural and normative procedure, are being followed today several centuries after those atrocities were committed and, closer in time, today after more than a decade in force of the UN International Convention on the Rights of Persons in a Situation of Disability (2006 hereafter CRPD). On this, Foschiani (2017) asserts that—for decades—persons with

disabilities have claimed the need to be reflected in the general learning system, despite already being subjects of rights, as attested by the Spanish Constitución (1978). It is necessary to clarify that, at present, although these people should feel protected by the international corpus juris (through the CRPD), the situation leaves much to be desired; in compliance with these international regulations, it can be inferred that the Spanish government needs to harmonise national legislation in order to put an end to parallel education, designed to transfer students with low functional performance from the general education system to a special education system (segregationist, enabling, etc.). In this international sphere, the Committee on the Rights of Persons with Disabilities (whose mission is to ensure compliance with the CRPD), in its devastating report on the investigation related to Spain under article six of the Optional Protocol—of 2017—denounces that, despite the reforms carried out in education policy, in Spain institutionally a medical model of disability is being legitimised. As could not be otherwise, in the face of this international blow to Spanish government policies (by action, omission or inaction), a high percentage of the 3,840,000 Spanish citizens who are in a situation of disability, officially registered by the National Institute of Statistics (INE, 2020), demand their position as subjects of rights, in accordance with this new model of human rights. Based on this approach, this systematic literature review work highlights the content of the research report produced by the UN in 2017 (under Article six of its Optional Protocol), which denounces the lack of exercise of the right to inclusive education, as well as the non-negotiable need to build learning spaces where no child can be classified, cured, standardised, normalised, compared or, worse still, discriminated against. In accordance with the design, the methodological reference used has been the theoretical–interpretative paradigm of documentary analysis (Rodríguez, 2015), by virtue of which it has been possible to develop a descriptive overview of the social scenario still experienced by those who find themselves in a situation of discrimination due to their lower functional performance. Specifically, this study aims to review the extent to which the use of the language of denial has caused negative effects on students with low functional performance, as well as the possible construction of situations of social exclusion at school. In addition, we have inquired into the educational background experienced—historically—by students with lower functional performance and who, consequently, have found themselves in a situation of disability at school. All this, examining the link that Spanish educational regulations maintain with respect to the creation of the main axes that, throughout history, have been the backbone in the creation of situations of discrimination and exclusion both in social contexts and—specifically—in educational centers.

OBJECT AND METHOD OF INVESTIGATION

The main objective of this research is to know the educational background experienced—historically—by students with disabilities at school. We have also analyzed the link that Spanish educational regulations maintain with respect to the

TABLE 1 | Classification of scientific documents.

Authors	Approaches
Andrés, L. (2014)	Ethnography on the history of disability
Colmenero, M. ^a J. (2015)	Conceptual research on disability
Cobeñas, P. (2018)	School and people with disabilities
Dávila et al. (2017), Naya, L. y Lauzurika, A.	Analysis of international legislation on the rights of persons with disabilities
Díez-Gutiérrez, E. (2018)	Educational neoliberalism
Fernández, A. (2015)	Ethnography on the history of disability in Valencia
Foschiani, G. (2017)	Study on human rights and inclusive education
García, E. C. and Madonar, Ma. J. (2018)	Regulatory framework for people with specific support education needs
Martínez-Otero, V. (2015)	Anthology of camponanes education speech
Márquez, Y., Gutiérrez, J. Y Gómez-Galdona, N. (2017)	Public policy analysis
Martínez-Usaralde, Ma. J. (2021)	Comparative educational inclusion in UNESCO and OECD from social cartography
Molina, J. (2017)	Work on situations of discrimination in the legal, social and educational environment for those who are in a situation of disability
Molina, J. (2020)	The right to inclusive education: a truly clothed deception
Ocampo, A. (2018)	The politics of the gaze and the epistemological construction of inclusive education: ¿in what sense is inclusive education for everyone?
Puig de la Bellacasa, R. (1993)	Anthology on the study of disability made in this regard of the contributions of the humanist Juan Luís Vives
Santofinío, G. A. (2016)	From anomaly to disability, a long history of social exclusion
Stilker, H.J. (2017)	Study of historical sequences of disability
Ocampo, A. (2016)	Prospects for a "Reconstructionist approach" of "inclusive education" in the XXI century

Source: own elaboration from the documents used.

TABLE 2 | Revised regulations.

Character	Legislation
National	Ley de Instrucción Pública de, 1857, (XXXX)
International	UN universal Declaration (1948)
International	Convention on combating Discrimination in the sphere of education (1960)
National	Ley 14/1970, de 4 de agosto, General de Educación y Financiamiento de la Reforma Educativa, (1970)
National	Spanish constitution of 29 December 1978
National	Organic Ley Orgánica 1/1990, de 3 de octubre, de Ordenación General del Sistema Educativo, (1990)
International	Uniform standards on equal opportunities for persons with Disabilities (1993)
National	Organic Ley Orgánica 2/2006, de 3 de mayo, de Educación, (2006)
International	UN international convention on the rights of persons in Disability (2006)
National	Organic Ley 8/2013, de 9 de diciembre, para la Mejora de la Calidad Educativa, (2013)
International	World education Forum (2015)
International	Report of the special Rapporteur on the right to education (2017)

Source: own elaboration from the revised regulations.

creation of the main axes that, historically, have been the backbone in the creation of situations of discrimination and exclusion both in educational contexts. To this end, a systematic bibliographical review has been carried out of both the specialised literature (cf. **Table 1**) and the educational regulations that have been significant in the teaching-learning processes in Spain (cf. **Table 2**). From all of this, we consider the data underlying the transformations that are currently taking place in education (from the ideal model of rights to the competency model), revealing the eternal and indisputable question: is education a right of citizenship that should be experienced on equal terms? In this way, the discursive disguise with which we are led to believe that the 21st century—connaturally—is accompanied by educational inclusion (so it should be the development of this CRPD channel) is dismantled: but—as Molina (2020) points out—are the current educational regulations nothing more than a deception dressed up as truth? (Molina, 2020, p. 166).

In order to offer an epistemological response to the proposed questions, a descriptive-exploratory method has been used, precisely following the words of Dewey (2015) with which he stated that “to construct science it is necessary to employ systematic methods of investigation, which, when applied to a variety of facts, enable us to understand them better and to apply them in a more intelligent, less casual and less routine way” (p. 4). To this end, a process of article selection was carried out through the following secondary sources (bibliographic databases): Web of Science, Scopus, Dialnet, Scielo, and Education Database. Continuing with the procedure, the descriptors were then selected (disability, inclusive education, educational policy, school, functional diversity, and social justice), selection criteria were defined and applied (usefulness of the title, experience of the authors and results applicable to the subject), and as a result 145 documents (articles and books) were found, of which 20 scientific documents were considered for

the development of the research, all of them (and their approaches) being systematised in the following tables (Tables 1, 2).

In this sense, the following table (Table 2: “Revised regulations”) shows the 12 documents of a normative nature (reports, conventions, laws, and declarations) that have also been rigorously analysed for the development of the research.

Once all the documents referred to in the previous tables (Tables 1, 2) had been selected, a systematic literature review process was followed (Sáez, 2017) through which both specialised literature and educational regulations were subjected to discussion by means of a set of categories of analysis (historical evolution of disability, inclusive education policies, inclusive language, human rights, quality education, human rights, and models of disability), as well as a series of variables (universal design for learning, accessibility, reasonable accommodation, language of denial, equal opportunities, and educational models). In this sense, it should be noted that all of these have been considered on the basis of the most stringent international standards for persons with disabilities: the CRPD. In turn, and following Okuda and Gómez 2015, by means of these categories of analysis and previously defined variables, a system of triangulation has been carried out which has allowed the study problem to be observed from different perspectives, providing greater reliability in the preliminary results which were subsequently submitted for discussion (by the authors), thus contributing—in this way—to the channelling of conclusive information.

RESULTS

Considering the human body as a whole, where the possibility of being born without an arm, without a leg, without an eye, without hearing, without being able to walk or even its possible loss throughout life is not contemplated, would mean—without any kind of doubt—highlighting the ignorance that historically has been suffered by those who are still living situations of discrimination not only because of their low functional performance, but also because the vision towards that whole makes them fall into a vulnerability that has been socially granted to those who are perceived as deficient. To describe this vulnerability, which is accompanied by the creation of disability situations, it is necessary to rework and expose the historical transcript of those who—one day—opened their eyes to the world and woke up with one more chromosome, a brain injury or autism syndrome, among many other circumstances; people who—due to exogenous perceptions—have automatically come to be considered transgressors of what is established as a social norm.

To this end, and echoing the method followed for the analysis, a systematic review of the literature has been carried out, which has considered a series of categories (historical evolution of disability, educational policies of the time, constructs used to denominate people with lower functional performance, stereotypes towards such people, relevant characters, and possible social models in place) which, by elevating them to

reflection, show how the educational system has been permeated by this shameful vision that will hardly allow children to develop in a healthy way, relevant characters and possible social models established) which, by raising them to reflection, show how the educational system has been permeated by this shameful vision that will hardly allow children to develop in a healthy way at school, probably due to the social misunderstanding that every child is unique and should be reflected both in their bodily nature and in their skills, abilities or talents. For all these reasons, the following highlights the transformation in the understanding of disability situations from the point of view of the history of education.

Prehistory, the Ancient Age and the Middle Ages: Stages of Fading

Certainly, to answer the question concerning this section, it is necessary to go into those inherited events that have made people with low functional performance cross that line between not deserving to live to be in the liminal situation (Stilker, 2017) in which they live at present. In this sense, going back to prehistory—from 3 million years ago until the appearance of writing—or to the ancient age—from 3500 BC to the 5th century—would mean referencing a context in which these people could not survive, either because they did not reach birth or because they were sacrificed at an early age. In fact, infanticide, which is typical of the model of dispensing, became a disturbing practice used until the beginning of the Middle Ages, when they began to treat situations of disability as a localised but untreatable condition (Colmenero, 2015).

From this point of view, the Middle Ages—from the 5th to the 15th century—is one of the stages with the greatest metamorphosis on an educational level, since the regulatory processes of education underwent great changes as did the social, cultural and political context that accompanied the society of the time. At the beginning of this period, the idea was born that children with poor functional performance were the result of divine punishment for the family (for practicing witchcraft, having morally reprehensible behavior, for worshipping the Evil One, etc.); this consideration had its origin in the doctrine of the church coinciding with its time of greatest splendor and authority (Illán and AuthorAnonymous, 2004).

On these foundations, education at that time was configured around two clearly differentiated periods: the High Middle Ages (from the 5th to the 12th century), where teaching was arranged in accordance with the decrees of the church, and the Low Middle Ages (from the 12th to the 15th century), in which the decline of the church was beginning to be seen (although this in the field of education continued to be strongly rooted) [16]. In the early Middle Ages, people with poor functional performance continued to be persecuted and despite the church trying to protect them; infanticide or, at best, confinement in walled cities were their only fate. From the late Middle Ages onwards, this atrocious practice of not allowing them to live began to be banned, but their persecution to be exposed as a reason for mockery, very typical of the sub-model of marginalisation, would accompany them until the 14th century (Valencia, 2014; Colmenero, 2015).

The Burst of Reason: Modernity

During the first decades of the modern period—from the 15th to the 18th century—the dance was characterised by the fact that it showed a society that already admitted that all those people they knew as cripples, sick people, crazy people, cripples, etc., could work as cheap labour. On the educational level, during the 16th century, despite continuing to live under this exclusive paradigm, many scholars considered that blind and deaf people could be educated, such as their predecessors Pedro Ponce de León (1,520–1,584) and Juan de Pablo Bonet (1,573–1,633) who, together with many other authors of the time, led to the education of the deaf (then known as the mute) in educational policies (Ciordia, 2002).

The 18th century—known as the Age of Enlightenment—was characterised by its unique growth in the number of thinkers who brought about the flowering of the Enlightenment movement with intellectuals as renowned in the field of education as Descartes (1,588–1,610), Locke (1,632–1704) or Rousseau (1,712–1,778). These free thinkers contributed powerfully to the demystification of this inherited tendency towards the conception that people with disabilities were a punishment from God. Thanks to the scientific contribution of these authors, the principle that these people were valid for society was accommodated, at the same time as a series of changes in the socio-cultural foundation were reaffirmed (political, ideological, social, economic, educational changes, etc.), a *sine qua non* condition for being able to understand—in its totality—the new social conception, a condition that dignified these people (Illán and AuthorAnonymous, 2004). Moreover, in this century—with the arrival of the enlightened thinkers—the model of education that was being developed is being questioned; an educational model that was moving away from religious impositions and that was opting for a secular education. On the other hand, the aim was to transform education, but to maintain the Christian principles that ensured the status quo at the time.

The Independence of People with Low Functional Performance During the Contemporary Stage

The first years of the contemporary stage –18th century to the present day—followed one another according to everything that was forged in the Modern Age. It should be noted that the end of that stage and the beginning of the contemporary one are closely linked to the appearance of the medical-rehabilitative model. This model was based on the idea that people in a situation of disability could improve themselves through medicine and thus develop their performance abilities. Furthermore, the first years of the 20th century were known for their warlike nature, with a considerable increase in the number of people known as cripples, which caused a change in mentality for those who still considered that people with low functional performance could not manage to form a family or work, as many soldiers came from war with mutilated members.

During the first half of the 20th century, it was believed that the best option for people with disabilities was to lock them up in centres, opting for an educational model for these people that was based on institutionalisation. As a result of this change in conception, society began to understand the need to carry out educational practices from specialized centres which, from the beginning of the 19th century, ended up being institutions where they only received welfare attention without any consideration for the fact that they might have educational needs or that their abilities could be developed like those of the rest of the population. This is why these facilities were blended in with the surroundings of the outskirts of the cities, seeking maximum invisibility (Molina, 2017).

This segregationist perspective began to change during the last decades of the 20th century when it became clear that the union between medicine and education filled these people with possibilities. In this sense, scientists, doctors, pedagogues and other intellectuals continued to be unaware of what diversity means because they did not realise that although we all need support in our daily lives, they do not feel the same way when such support is directed towards a group considered to be a minority. Reinforcing this idea, Molina (2017) points out that it was—and still is—about patching up what in the minds continues to be out of tune with the socio-cultural evolution of the time.

On a national level, there were a series of stages in which our country had remained behind in relation to the educational practices of its neighbouring countries. Therefore, it was not until approximately 1980 that we can speak of special education; on the one hand, we can see the existence of the ordinary education system and, on the other, the special education system to which those students who were unable to adapt to the general education system (due to their low functional performance) were incorporated.

The International Convention on the Rights of Persons with Disabilities (ONU, 2006): The Mark of a Before and After for Contemporaneity

The arrival of the International Convention on the Rights of Persons in a Situation of Disability (hereinafter CRPD), represents the maximum known recognition of the rights of these people at an international and also national level since its ratification by Spain in 2008. The truth is that if we stick to the literal wording of the Convention from its preamble to its last article, people who are in a situation of disability have the same rights as other citizens, although the exercise of such rights—still today—is not recognized. At a social level, more and more people are fighting for the recognition of these rights, as is stated in the specialized literature belonging to the field of social sciences (and, particularly, sociology), where many scholars (Davila et al., 2017; Foschiani, 2017) recognize the importance of valuing diversity as a differential fact of human beings, since treating those who are naturally different equally could be considered an injustice (Molina, 2017).

DISCUSSION

There is no doubt that schools are currently undergoing a transformation that requires prompt reflection (on the part of society), as well as an adequate response on the part of the educational administration, which must ensure the creation of educational environments that facilitate quality teaching in full compliance with the principle of equity in education. Taking into account these considerations, an analysis has been carried out by means of a systematic observation protocol, through which different educational legislations (national and international) have been analyzed. To this end, this protocol has taken into consideration the five sections that structure Article 24 (the right to education) of the CRPD, highlighting the recognition of equal opportunities, the inclusion of students in regular and free education, the facilitation of reasonable accommodations, the learning of life skills and social development, the promotion of teacher training and the consolidation of higher education for students with lower functional performance. In this sense, the reflections presented below are confirmed according to the presence (or absence) in the reviewed legislations of indicators referring to full compliance with Article 24 of the CRPD.

Non-discrimination in Education for People with Disabilities: An Approach to Spanish Legislation

The school legislation is something that has mutated so significantly that it exposes the shortcomings of the system itself, which is both unregulated and permeable to the occurrences carried by the northern winds, and by virtue of which in just a few years citizens can witness numerous ups and downs in national education legislation, as if that which should structure the purpose and object of the education system (understood as a good and not as a service) could be at the mercy of political circumstances, social circumstances, international changes, political conflicts or fluctuations in the financial markets. In addition to this coming and going of curricular changes, and this administrative delirium which perhaps considers teachers as simple technicians or camp monitors (with a low profile and little capacity to participate in the design of specific legislation for professional performance for which they have had to train for years at university), there are many voices of experts in the field denouncing—alarmingly—the impersonal treatment given especially to those children who show low functional performance.

The truth is that education should be like a virus, capable of expanding at will as much as the student wishes; in fact, it is as wide as the horizon the student wants to draw, but—in turn—it can be as intimate as the teacher particularizes or (as the legislation of the last decade pretends) individualizes. Such powerful terms as individualization and inclusion try to border on the education of the 21st century, producing (or reproducing from the past) a writing of articles in the Spanish educational legislation that already then tried to make us see that functional diversity would be present in the classrooms and with it regulate the possible needs of students with low functional performance

(Daros, 2017). This would be included, for example, in the approach of Chapter VII of the General Education Law (1970) in reference to special educational needs and the importance of being treated by specialist teachers, always under a medical view (González, 2012).

Obviously, as has already been denounced by international bodies, the legislation enacted by the Spanish government at present contravenes all regulations which have urged the right to quality education for all children, as they are:

- The Universal Declaration of the UN of 1948 (in its article no^o26 of the right to education) –ONU, 1948–
- The 1960 Convention against Discrimination in Education (ONU, 1960)
- The 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities (ONU, 1993)

Similarly, in order to protect the right to education of all children, the most recent international corpus juris should be noted, which, due to its high importance in the field of free, quality education for all, should be emphasised:

- The UN International Convention on the Rights of Persons with Disabilities (2006), This Convention was approved by the UN General Assembly and ratified by Spain in 2008.
- The World Education Forum (ONU, 2015), in which the UN General Assembly presented the seventeen sustainable development objectives for Agenda 2030. Its objective number four is dedicated to the need for inclusive and equitable education as a basis for solving all the problems present in society.
- The Report of the Special Rapporteur on the Right to Education (2017), states that equity and inclusion play a fundamental role in educational processes, particularly in young students with disabilities, since an education based on the principle of diversity favours—in any case—the possibilities of being productive in their community (ONU, 2017).

At the national level, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (2013), recognises in its Article 16 that persons with low functional performance will be attended to in a comprehensive manner on the basis of the necessary support and adjustments. In addition, the International Convention on the Rights of Persons with Disabilities (CRPD) is the normative reference framework for inclusive education and equal opportunities, regardless of the functional performance of the student. This is cited in article 24 of the Convention, which shows signs of incoherence with the Spanish corpus juris. By way of example, it should be noted that in 2013 (only five years after the ratification of the CDPD by Spain) the Organic Law for the Improvement of Educational Quality (OLIEQ, 2013) was approved. This law curtails some of the rights recognised by the ratification of the CDPD, since it maintains the possibility of banishing students with disabilities from the general education system. Thus, when students become a hindrance to an unholy general education system or to an administration that is hermetic and impervious to the

peculiarities, their only way out is to be ostracised by a parallel (to the general) education system known as special education. A system that has little in the way of special, but rather the opposite; precisely because society teaches us that special is always a good thing: do you want the normal menu or the special menu at home, do you want the standard package or do you prefer the car with the special package? Will any parent jump when some (bad) professional tells them “you have a special child”, or “you have a child with special needs”? Or are we as cynical as hypocrites to believe that those children who know they are considered (by others) as special are happy about it? No further questions, Your Honor...

In this sense, the OLIEQ does not comply with the mandate established after the ratification of the CRPD; Firstly, because it uses language that is incompatible with the concept of inclusion, insofar as the semantics used are aligned with the most sordid postulates of discrimination, since it uses concepts that enclose a reality that is disguised as sewer poetry: for example, the incorporation of the special educational needs construct. As can be seen, a combination of terms in which this “special” that we have just criticised appears. This can lead teachers to terminological confusion, since it is not possible to understand what needs are special within an education that advocates—from its preamble—an education system that overcomes all social barriers; therefore, are not all needs special?

At the same time, the OLIEQ legitimizes the presence of special education centres for those students with special educational needs that cannot be met within the measures of attention to diversity proposed by ordinary education centres. It is no novelty that in educational centres people with low functional performance must be displaced, leaving them to the luck of some teacher to display the children’s talent, which is a priority objective in Spanish education, as this has been included in the OLIEQ from its preamble. As an example, in the case of people with a high functional performance, not only are they not displaced to a special school, but the educational centres carry out action plans that promote curricular enrichment programmes.

And, in the same way, another issue is that—in the history of education—it has been (and is) frequent that the Administration imposes new conceptualizations that lead to budgetary reorganizations and a decrease in the funds destined to the diversity present in Spanish classrooms, for example, the differences that have arisen with the OLIEQ between special and specific educational needs (Molina, 2017). In this way, it can be concluded that Spanish education legislation continues to be nourished by the medical–rehabilitative paradigm based on discrimination and exclusion of those whose functional performance is far from the established social norm.

Given this set of premises, it is significant to ask how it is possible that inclusive education is a right at an international level and in force in the country and that, on the contrary, the national regulatory framework which should be in harmony with the international one contravenes full compliance in the effective participation of all children in their learning, without any child being excluded from the general education system, through the implementation by both the Administration and the educational centres of the necessary reasonable adjustments.

In total harmony with the clarification made by the UN Committee on Rights, in its initial report of 2011, it can be deduced that—years later—the concern for the lack of coordination between the Public Administration and the Educational Services continues to reign in our country.

In general, there is a lack of understanding between what inclusive education means and the completely segregated educational regulations in Spain. There is an overwhelming inequality between the observance of the educational rights of those with low functional performance and the position of an Administration which keeps its eyes on a model based on the rehabilitation of these people, aware that this will continue to lead to their social exclusion.

From the Incapacity of the Person to the Incapacity of the System: A Change of Model

When introducing explanatory models on the conceptualization of disability, it becomes essential to question the multi–theoretical approaches emerging from the social sciences. This means that by talking about a paradigm, the object of study is revealed through multiple questions or problems—ontological, epistemological and methodological—that must be resolved by social research (González, 2013). Furthermore, among the functions of models or paradigms is that of representing the reality under study, as well as creating a conceptual framework in accordance with criteria and standards that help citizens to forge innovative currents of thought. The latter is what has happened, for example, with the arrival of the new model of human rights which, despite being in the pens of theorists for almost a decade, has been articulated in controversy with pre–existing models and paradigms.

Furthermore, as a consequence of historical evolution, the model approach from which the environment of people in a situation of disability has been interpreted has been modified, moving from an approach based on rehabilitation (as it was considered that low functional performance came from an intrinsic situation revealed by an illness or disorder), to another approach which takes the inclusion of the person as a reference point, as it is considered that the disability is given by a context which does not adapt to the person, generating situations of discrimination or exclusion. In this line, reflection is made on an educational paradigm aimed at the autonomy of the person who is in a situation of disability and, at the same time, a social model is interpreted which considers that the reasons for situations of disability derive from the limitations dictated by society. Also, with the arrival of the CRPD the rights of people in a situation of disability are strengthened and a very pleasant metamorphosis begins which disposes society towards a change of understanding in the definition of these people: moving from the concept of the social paradigm to the paradigm of human rights.

In light of the social changes, the paradigmatic transformations which have occurred in the field of education, in which people with disabilities are mentioned with numerous

TABLE 3 | Evolution in the treatment of people with disabilities through Spanish educational legislation.

Legislation	Qualifying	Paradigm/model
Law on Public Instruction (Moyano Act of 1857) [34]	Abnormal	Rehabilitator paradigm/Medical model
Law 14/1970, of August 4, general on education and financing of educational reform [24]	Deficient and misfit	Rehabilitator paradigm/Medical model
Spanish constitution of 29 December 1978 [35]	Physical, sensory and psychic declines	Rehabilitator paradigm/Medical model
Organic Law 1/1990, of October 3, on general Management of the education system [36]	People with special educational needs	Rehabilitator paradigm/Integrator model
Organic Law 2/2006, of May 3, on education [37]	People with specific educational needs arising from disability or serious behavioral disorders	Paradigm of autonomy/Social model
Organic Law 8/2013, of December 9, for the Improvement of educational quality [32]	People with disabilities or people with special educational needs	Paradigm of autonomy/Social model
International convention on the rights of persons with Disabilities of 13 December 2006 [21]	People with disabilities	Human rights paradigm

Source: own elaboration from data extracted from the Ministry of Education and Vocational Training (Spain).

qualifiers, are clarified and are represented in the following **Table 3**.

If we analyse the table presented (**Table 3**), it could be stated that—really—the nomenclatures used in educational legislation reflect that language of negation, typical of the disablist models (Romañach and y Palacios, 2008; Molina, 2020). Furthermore, it is very relevant that a national body of law does not work in favour of the rights of its citizens and, under this premise, it would be confirmed that persons with disabilities have been (and are) in constant conflict when accessing and remaining in the education system, as their abilities are undervalued from a legislative and, therefore, paradigmatic perspective. This tendency encloses a punitive vision, as students are punished with an education based on the limitations of their functional performance (forgetting that we all have limitations in our functional performance, and disregarding that we do not have and cannot try to be equal) —Molina, 2020—, while their aptitudes are exhibited as far from that normality we have been talking about and they are excluded from common daily activities because of the assumption that they will not know how or will not be able to carry them out. But nothing will happen because in order to balance their decompensation they will be made to work on different activities that are a priori simpler so that they can do them alone and the teacher can attend to the rest of their classmates or, also, they can wait for their turn to leave the classroom and go with the specialist teacher (García Ma, 2018; López, 2019; Álvarez et al., 2021).

CONCLUSION

As a conclusion of this review A limiting factor is the lack of quantitative data that could provide greater significance to the reflections presented. However—and in total harmony with the Report of the investigation related to Spain under article six of the Optional Protocol (2017)— it is deduced that, despite the fact that article 24 of the Convention legitimizes that people in a situation of disability have the right to education, our

country is not complying with the obligation to respect, protect and guarantee the right to an inclusive education. This is confirmed by the visit to Spain of the Committee on the Rights of Persons with Disabilities, which, after more than 165 interviews (conducted confidentially), denounced that more than 20% of people with disabilities continue to suffer discrimination because they cannot decide about their education, which will ultimately be provided by the Administration. It should be noted that the State continues to infringe the right to education of people with disabilities, since there is nothing more punitive for a minor than being separated from his or her peers as a result of social barriers that can make teachers, families and, of course, people with disabilities feel incapable. This is stated through the UN Committee's report which warns that denying equal rights to such people may be occurring deliberately and systematically by the State as a result of policies that perpetuate discrimination. In short, it is confirmed that the prevalence of discrimination against people with disabilities in the educational field has its origin, although not exclusively, in educational legislation, which maintains the existence of a paradigm focused on the incapacity of the person with low functional performance. At the same time, the legislation does not formalise the inclusion advocated in 21st century education and—moreover—there is a rigidity in the pejorative contribution towards these people, as it remains impervious to the legislation that must be complied with (such as the CRPD).

AUTHOR CONTRIBUTIONS

For research articles with several authors, a short paragraph specifying their individual contributions must be provided. The following statements should be used “Conceptualization, YD and JM; methodology, YD; formal analysis, YD investigation, YD, JM; resources, JM; data curation, YD, and JM; writing—original draft preparation, YD; writing—review and editing, YD; visualization, YD and JM; supervision, JM; project administration, JM; funding acquisition, JM.

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Conflict of Interest: The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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