



Handbook Concerning **PERSONS WITH DISABILITIES** Supreme Court of India



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***FOREWORD BY
THE CHIEF JUSTICE OF INDIA***

All humans are born equal in dignity and rights, and every life holds intrinsic worth. Yet for the over one billion people globally who live with disabilities, equal respect remains elusive due to the deep-set social prejudices, discrimination, and stigma associated with disability. Intolerance, misconceptions, and neglect obstruct their full participation in society.

The social model of disability which the United Nations Convention on the Rights of Persons with Disabilities and India's Rights of Persons with Disabilities Act, 2016 are based on recognises that while individuals may have impairments, socially constructed barriers prevent them from full participation in civic life. This perspective shifts the focus from the conditions which persons with disabilities have to the systemic and structural failures of society to accommodate them. It creates an imperative for society to introspect and adopt strategies which ensure equal opportunity, accessibility, reasonable accommodation, and inclusive environments for persons with disabilities.

To ensure that our legal system effectively upholds the rights of individuals with disabilities, it is vital to understand the diverse challenges they face. This awareness goes beyond physical accommodation and includes addressing biases and stereotypes about disabilities that can subtly influence legal proceedings. Prejudices, often unconscious, can skew the fairness of judicial outcomes. For instance, stereotypes that unfairly portray individuals with disabilities as incoherent or aloof lead to biased assumptions about their ability to testify accurately. Similarly, misconceptions concerning their autonomy and decision-making capabilities can impact judicial determinations about their legal competency to act in various fields such as making decisions regarding their health or managing their finances. By challenging these biases and equipping the legal system to address the needs of persons with disabilities, we can create a more inclusive justice system.

Language also plays a crucial role in this endeavour. Words and phrases that perpetuate stereotypes and biases reinforce negative perceptions about persons with disabilities and contribute to the exclusion of individuals. It is crucial to use language

that respects and dignifies individuals with disabilities, avoiding terms that dehumanise, stigmatise, or patronise them. By choosing inclusive and neutral terminology, we actively dismantle harmful stereotypes and foster a just society.

The ‘Handbook Concerning Persons with Disabilities’ is a significant resource designed to aid the legal community in addressing these issues. It provides practical guidance for judges and legal professionals in understanding the social model of disability within our constitutional framework, addressing stereotypes concerning persons with disabilities, and employing respectful language. The Handbook includes a glossary of terms which perpetuate stereotypes and provides alternative, respectful language for use in legal documents, orders, and judgments. Additionally, it outlines the legal framework and key issues related to disability rights, serving as a guide to fair adjudication.

This Handbook represents the collective efforts of several dedicated individuals. The Handbook was prepared under the guidance of the Centre for Research and Planning of the Supreme Court of India. Dr. Sukhda Pritam is the Director of the Centre. Justice Prathiba M. Singh (Judge, High Court of Delhi) made valuable contributions to the Handbook. I extend my gratitude to Dr. Sanjay Jain (Professor at the National Law School of India University, Bengaluru), Mr. Rahul Bajaj (Advocate), and Ms. Sarah Sunny (Advocate) for their meticulous review and feedback on the Handbook. Avanti Divan, Priyanka Singh, Shambhavi Gupta, Shivalika, Thejaswi Melarkode, and Vidhi Gupta, Research Associates at the Centre for Research and Planning have ably assisted in the preparation of the Handbook. Mr. Vasudev Devadasan (Research Consultant, Centre for Research and Planning) has ably edited the Handbook. I am also grateful to the various individuals and organisations which responded to the Supreme Court’s public call for suggestions concerning the Handbook.

As we commemorate the 75th anniversary of the Supreme Court of India, our commitment to fostering an inclusive judicial system which honours and respects the dignity of every individual remains steadfast. This Handbook represents a significant step towards achieving this goal. I urge all members of the legal profession to engage with this Handbook to ensure that justice is administered impartially, unfettered from biases, and truly embodies the fundamental values of equality, fairness, and dignity for all.

Dr. Justice Dhananjaya Y. Chandrachud
Chief Justice of India

PART-I

LAW OF EQUALITY AND DISABILITY

1. Introduction: Justice for Persons with Disabilities

The role of the judiciary is crucial in upholding the rights and dignity of all citizens. However, societal attitudes and lack of awareness can sometimes lead to inadvertent discrimination or insensitivity towards marginalised groups such as persons with disabilities. Judges must be sensitised to the unique challenges faced by persons with disabilities, in the language they use, in their overall conduct and demeanour, and in their approach to a case.

The barriers faced by persons with disabilities go beyond just physical accessibility issues, extending to deep-rooted prejudices, stereotypes, and misconceptions that pervade many aspects of society. From education and employment to healthcare and public services, persons with disabilities often face significant obstacles that hinder their full participation and inclusion. Judges must develop an understanding of the societal, attitudinal, communicational, cultural, institutional, structural, political, economic, legal, and environmental barriers that persons with disabilities encounter daily.¹ Judges must recognise these barriers and strive to remove them through their rulings and conduct.

Closely linked to this is the fundamental principle of non-discrimination. Persons with disabilities have the same inherent rights and freedoms as everyone else, and any form of discrimination based on disability is a violation of their constitutional rights. Judges play a pivotal role in upholding and enforcing non-discrimination laws and policies, ensuring that persons with disabilities are treated with equal respect and dignity. This extends not only to their judgments but also to the way they conduct proceedings and interact with individuals with disabilities in their courtrooms.

1 Rights of Persons with Disabilities Act 2016, s 2(c).

Furthermore, judges must understand and prioritise the importance of reasonable accommodations for persons with disabilities within courts. These accommodations can take various forms, such as providing accessible facilities, offering alternative communication methods, or allowing for flexible procedures. By making reasonable accommodations, judges can ensure that individuals with disabilities have equal access to justice and can participate fully in legal proceedings without facing unnecessary barriers or disadvantages.

Sensitising judges to the principles of non-discrimination and reasonable accommodations and the societal barriers faced by people with disabilities is essential for upholding the rights of persons with disabilities and promoting a more inclusive and equitable justice system. Judges who possess a deep understanding of these issues are better equipped to render fair and impartial judgments, foster an environment of respect and dignity in their courtrooms, and contribute to the broader societal goal of empowering and including persons with disabilities in all spheres of life.

2. Disability and Equality Law: Substantive and Transformative

Articles 14 to 18 of the Indian Constitution encapsulate the philosophy of substantive equality.² Substantive equality recognises that treating historically and structurally disadvantaged groups identically to other individuals perpetuates existing disadvantages. Therefore, substantive equality recognises the need to proactively facilitate structural change and uplift individuals through affirmative steps, bridging the gap between historically disadvantaged groups and other sections of society. Substantive equality is concerned with equality of outcomes, as opposed to formal equality which focuses exclusively on treating everyone equally (equality of opportunity) even if this perpetuates unequal outcomes due to the historical disadvantages faced by some individuals. While under formal equality, discrimination primarily occurs through the unfair treatment of certain groups, under substantive equality, even a failure to take certain positive steps to ensure the full participation of marginalised groups can amount to discrimination.

2 *State of Kerala v NM Thomas* 1975 INSC 224.

A recognition that equality concerns not only the treatment of individuals but also systemic and structural changes to society is what imbues substantive equality with its transformative character. As Sandra Fredman notes, “Equality as transformation requires not only the removal of barriers but also positive measures to bring about change.”³ Viewed in this light, affirmative steps to uplift disadvantaged groups are not temporary entitlements conferred by the State, but rather binding rights-enabling conditions which can be legally claimed as constituent elements of the right to equality.

In the context of disability rights, substantive equality means instead of expecting persons with disabilities to conform to existing norms, equality law ought to recognise disability as a relevant characteristic and facilitate a regime of change and accommodation to existing norms.⁴ Substantive equality in the context of the rights of persons with disabilities finds its true exposition in doctrines that ensure the full participation of persons with disabilities in society. Substantive equality aims at ensuring equality of outcomes through different modes of affirmative action and reasonable accommodation.⁵ Reasonable accommodation promotes this idea of substantive equality by ensuring that people with disabilities are treated in a different and sensitive manner and are provided with certain assistance, relaxations, exceptions, or adjustments to enable them to access and utilise available resources on par with all other members of society. The goal behind providing this additional support to persons with disabilities is not to grant them an untoward advantage but to level the playing field for them.

It is incorrect to regard disability merely as an “illness”, “defect”, or “bad difference” that is correlated to a health status.⁶ This ‘medical’ view of disability has been historically dominant, whereby a person with a disability was deemed eligible for certain concessions subject to a medical assessment. However, today the law recognises that persons with disability are primarily prejudiced due to social structures that fail

3 Sandra Fredman, ‘Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights’ in I. Boerefijn, F Coomans & J Goldschmidt (eds), *Temporary Special Measures: Accelerating De Facto Equality of Women under Article 4(1) UN Convention on the Elimination of all Forms of Discrimination Against Women* (2003), p. 115.

4 Sandra Fredman, ‘Disability Equality: A Challenge to the Existing Anti-Discrimination Paradigm?’ in *Disability and Equality law* (Routledge 2016).

5 *Ravinder Kumar Dhariwal v Union of India* 2021 INSC 916.

6 Colin Barnes and Geoff Mercer, ‘Exploring the Divide: Illness and Disability’ (Leeds: The Disability Press 1996).

to reasonably accommodate them rather than any medical illness. For example, the absence of captioning or sign language services during live public announcements by government officials denies individuals with hearing disabilities access to important information. A failure to provide such simple services which would reasonably accommodate people with disabilities unduly excludes such persons from exercising their right to be informed. Courts should be cognisant of this social and structural element of disability when they adjudicate cases.

Ensuring substantive equality necessitates a needs-based approach that recognises differing degrees of impairment caused by various kinds of disabilities. Unlike other marginalised groups identified through markers of sex, gender, religion, or caste, persons with disabilities may not always be an identifiable and insular group. Recognising this, the Rights of Persons with Disability Act, 2016 (“**RPwD Act**”) defines a ‘person with disability’ as an individual with an impairment that hinders their full, effective, and equal participation in society.⁷ This definition recognises that a disability may extend beyond a clinical condition and what matters is whether there exists a limitation on full societal participation for the person with a disability.

Intersectionality and Equality

Intersectionality explains how different aspects of a person’s identity come together to affect their experiences.⁸ It highlights how individuals at the crossroads of multiple marginalised identities face compounded forms of discrimination. A myriad of factors may converge with disability, reshaping an individual’s experience. These may range from class and caste to ethnicity, culture, gender identity, sexual orientation, and religion. For instance, intersecting identities such as caste and gender can compound the challenges faced by individuals with disabilities. Dalit women with disabilities, for example, may face unique and compounded forms of marginalisation due to their caste status, gender, and disability.

7 Rights of Persons with Disabilities Act 2016, s 2(s).

8 Crenshaw Kimberley, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ 1989:1 Article 8 University of Chicago Legal Forum 139.

In the case of *Patan Jamal Vali v. State of Andhra Pradesh*,⁹ a Division Bench of the Supreme Court upheld the conviction of the accused for raping a girl with visual impairment, belonging to the Scheduled Caste community. The Court recognised the overlapping identities at play and highlighted the increased vulnerability of women with disabilities to sexual violence. It emphasised the need for legal responses to acknowledge this dual vulnerability, as women with disabilities are often seen as ‘easy targets’ for sexual violence due to societal perceptions regarding their diminished capacity and their inability to speak out.

The case of *Suchita Shrivastava v. Chandigarh Administration*¹⁰ involved a woman with an intellectual disability and her right to undergo an abortion. The course of this case reflects the damaging stereotype that women with intellectual disabilities do not have the capacity to make correct judgements, particularly about their parenting abilities. In this case, the woman, having a mild intellectual disability, became pregnant due to her alleged rape while in a government-run welfare institution. Despite expressing her willingness to bear the child, the High Court directed the termination of her pregnancy without her consent.

On appeal, the Supreme Court emphasised that the woman’s mental condition did not render her entirely incapable of decision-making. The Court stressed the importance of respecting the personal autonomy of persons with intellectual disabilities in the decision-making processes, including those concerning pregnancy termination. Consequently, it was held that the High Court order directing the termination of her pregnancy without her consent was a violation of her rights.

3. Reasonable Accommodation for Persons with Disabilities

“Reasonable accommodation” as defined in Section 2(y) of the RPwD Act means necessary and appropriate modifications and adjustments to ensure that persons with disabilities enjoy their rights equally with others without imposing a disproportionate or undue burden.

⁹ *Patan Jamal Vali v State of Andhra Pradesh* 2021 INSC 27.

¹⁰ *Suchita Shrivastava v Chandigarh Administration* 2009 INSC 1086.

The principle of reasonable accommodation captures the obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The denial of reasonable accommodation to a person with disability amounts to discrimination under the RPwD Act.¹¹ The Supreme Court has held that it is imperative to provide reasonable accommodation so that persons with disabilities are ensured a level playing field, can enjoy life meaningfully, and can contribute to the progress of the nation.¹²

Judges must understand the doctrine of reasonable accommodation as an element of justice and full democratic participation, as opposed to equity. As Elizabeth Anderson noted, “The proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression, which by definition is socially imposed. Its proper positive aim is not to ensure that everyone gets what they morally deserve, but to create a community in which people stand in relations of equality to others.”¹³ Thus, the doctrine of reasonable accommodation does not flow from a need to compensate for perceived deficiencies out of charity, but rather the need for societal structures to reasonably accommodate individuals who are entitled to equal respect and dignity under the law.

Persons with disabilities face unique barriers, which must be addressed through the provision of specific measures.¹⁴ The principle of reasonable accommodation postulates that conditions or barriers that exclude persons with disabilities from full and effective participation as equal members of society must be removed or relaxed. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, steps must be taken to facilitate the progress and inclusion of persons with disability in all aspects of society. In addition to social justice measures that re-distribute resources and opportunities to persons with disabilities to achieve substantive and meaningful equality, it must also be recognised that resources for persons with disabilities must sometimes be justified

11 Rights of Persons with Disabilities Act 2016, s 2(h).

12 *Vikash Kumar v Union Public Service Commission* 2021 INSC 78.

13 Elizabeth Anderson, ‘What is the Point of Equality?’ *Ethics* Vol. 109, No. 2 (January 1999), pp. 288-289, The University of Chicago Press.

14 *Jeeja Ghosh v Union of India* 2016 INSC 412.

on the grounds that some natural endowments pose disadvantages even in societies that do not discriminate.¹⁵

Finally, the expectations that every person with disability has are unique to the nature of their disability, and consequently, the character of the impediments that are encountered are varied. The individualised dimension of reasonable accommodation requires a constructive and interactive dialogue between a person with disability asserting the need for reasonable accommodation and the employer or State authority under the duty to provide the accommodation. Reasonable accommodation determinations must therefore be made on a case-by-case basis, in consultation with the person concerned.

3.1. Examples of Reasonable Accommodations

Workplace accommodations: Providing accessible workspaces, flexible working hours, assistive technologies, modified job duties, or specialised training to accommodate the needs of employees with disabilities, are all forms of reasonable accommodation.

In the case of *Syed Bashir-ud-din Qadri v. Nazir Ahmed Shah*,¹⁶ the Appellant was a B.Sc. graduate with cerebral palsy who had applied for a job as a ‘Teaching Guide’ in the State of Jammu and Kashmir. The state government objected to his appointment on the grounds of his disability stating that he had speech and writing difficulties, which would make it difficult for him to perform his duties as a teacher. The Supreme Court held that a person having cerebral palsy should be given access to an external electronic aid as a reasonable accommodation to offset the impact of his inability to write on the blackboard. The electronic assistance would eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort.

In *Ravinder Kumar Dhariwal v. Union of India*,¹⁷ the appellant was a Central Reserve Police Force personnel who started facing obsessive-compulsive disorder and clinical depression. A complaint was registered against the appellant by his superior

15 Linda Barkley, ‘Disability, Respect and Justice’ *Journal of Applied Philosophy* 27(2), 154-171 (2010).

16 *Syed Bashir-ud-din Qadri v Nazir Ahmed Shah* 2010 INSC 140.

17 *Ravinder Kumar Dhariwal v Union of India* 2021 INSC 916.

Deputy Inspector General of Police stating that his mental state is not sound and he might be a threat to himself and others. Pursuant to the complaint, an enquiry was initiated against the appellant and he was suspended from service. The Supreme Court, after assessing various international conventions and laws in different countries, concluded that persons with mental health disorders have a right against workplace discrimination and are entitled to reasonable accommodation.¹⁸ Examples of reasonable accommodation for persons with a mental disability might include quiet office space, changes in supervisory methods, and permission to work from home.

The Supreme Court held that Section 20(4) of the RPwD Act advances the guarantee of reasonable accommodation to persons with mental disabilities.¹⁹ The Government establishment has a positive obligation to shift an employee who acquired a disability during service to a suitable post with the same pay scale and service benefits. The provision further states that if it is not possible to adjust the employee against any post, they may be kept on a supernumerary post until a suitable post becomes available or when they attain the age of superannuation, whichever is earlier.

Educational accommodations: Offering accessible learning materials, assistive devices, extended time for exams, note-taking assistance, or alternative formats for textbooks to students with disabilities all represent accommodations.

In the case of *Vikash Kumar v. Union Public Service Commission*,²⁰ the Supreme Court laid down what reasonable accommodation looks like for persons with different kinds of disabilities regarding examinations. The case concerned a person with a chronic neurological condition resulting in Writer's Cramp leading to extreme difficulty in writing. He was denied a scribe for the Civil Services Exam by the UPSC because he did not come within the definition of a person with benchmark disability (40% or more of a specified disability). The Supreme Court held that an individual having Writer's Cramp or dysgraphia, which is not certified as a benchmark disability, is entitled to a scribe in India's Civil Services Examination (CSE) as it constituted a "reasonable accommodation". The Court held that the needs of those whose disability may not meet

18 *ibid* [65].

19 *ibid* [100].

20 *Vikash Kumar v Union Public Service Commission* 2021 INSC 78.

the quantitative threshold of 40% (benchmark disability) but are nonetheless disabling enough to merit the grant of the reasonable accommodation of a scribe and extra time, cannot be ignored.

For a person who is visually impaired, the reasonable accommodation might consist of screen magnification software or a screen reader (which can speak out the content on a computer screen in a mechanical voice). It might also consist of content being made available in Braille and a sighted assistant.

For someone with a hearing impairment, reasonable accommodation could consist of speech-to-text converters, access to sign language interpreters, captioning, sound amplification systems, or rooms in which echoes are eliminated and lip-reading is possible.

For a person with dyslexia, reasonable accommodation could consist of access to computer programs suited to meet their needs and compensatory time.

In *National Federation of the Blind v. Union Public Service Commission*,²¹ the Supreme Court ruled that denying compensatory time to candidates who were blind in civil services exams violated their rights and ordered the commission to provide reasonable accommodations, including extra time and the use of scribes to the candidates.

Transportation accommodations: Ensuring accessibility in public transportation systems by providing ramps, lifts, designated seating, and auditory announcements for individuals with mobility or sensory disabilities, all constitute reasonable accommodations.

In the case of *Jeeja Ghosh v. Union of India*,²² an individual who was diagnosed with cerebral palsy was de-boarded from a flight due to her disability. The Supreme Court reaffirmed the rights of persons with disabilities to access air travel. The Court directed airlines to formulate policies and provide necessary assistance to passengers with disabilities. The Court also directed the Directorate General of Civil Aviation to

21 *National Federation of the Blind v Union Public Service Commission* 1993 INSC 110.

22 *Jeeja Ghosh v Union of India* 2016 INSC 412.

consider including in the 'Civil Aviation Requirements' a provision for 'Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility' which covered the following:

All airports should procure all assistive equipment based on the schedule of standardised equipment and this standardisation should be done in consultation with the Department of Disability Affairs

- For persons with disability, the communication of essential information concerning a flight should be in accessible formats. Likewise, in-flight entertainment should also be available in accessible formats.
- The cabin crew should assist the passenger in boarding and de-boarding the flight and access to the toilet if requested using an on-board aisle chair
- A Complaints Resolution Officer (CRO) shall be placed at each airport to address any complaints of PwDs.

Public service accommodations: Government offices, polling stations, healthcare facilities, and other public services should be accessible to persons with disabilities through architectural modifications, sign language interpreters, accessible websites, and other accommodations.

In *Rajive Raturi v. Union of India*,²³ the petitioner, who was a person with a visual disability, filed a public interest litigation on behalf of persons with disabilities for proper and adequate access to public places. The Supreme Court held that the RPwD Act, 2016 enjoins a duty on the State to provide non-discriminatory access to persons with disabilities and the following measures need to be undertaken by the State authorities to remove obstacles that prevent the disabled from accessing public places:

- Making the gates to public places accessible by incorporating necessary accessible standards. More specifically, they must be made wide enough to allow wheelchairs to pass easily and must provide enough space for the wheelchair to turn around after entering inside.

23 *Rajive Raturi v Union of India* 2017 INSC 1243.

- Stairs must be marked with a broad yellow line to allow persons who are visually impaired to understand the difference in gradient.
- At places like airports, railway stations, etc. passengers must be clearly informed about the details of their flight/train such as the gate number for boarding, etc via public announcement systems.
- A minimum of 3-5 parking spaces near the entrance must be reserved for persons with disabilities. This must be clearly indicated.
- All unnecessary obstructions must be removed, and all access ways must be well-lit. Moreover, clear signposts and Braille equivalents should be installed.
- Elevators must have clear Braille signs and auditory feedback. The buttons of elevators must be accessible from a wheelchair. Pictograms must be put up near elevators and other important places such as toilets.
- Employees working in public places must be provided with the necessary training to enable them to understand the unique set of challenges that persons with disabilities face. They should be informed about the best practices for dealing with these challenges.
- Wheelchairs and mobility scooters should be available in every public place.

The Court also directed State Governments to conduct accessibility audits of important government buildings, international airports, railway stations, etc., and to make them fully accessible to persons with disabilities.

3.2. Accessibility versus reasonable accommodations

It is important to recognise the legal distinction between accessibility and reasonable accommodations. The principle of accessibility requires that all offerings be made in line with the principle of universal design. Accessibility must be considered at the time of designing an offering. On the other hand, reasonable accommodation applies to specific situations where either accessibility measures have not been put in place or are insufficient to meet the needs of a particular individual.²⁴ The obligation to

24 UN Committee on the Rights of Persons with Disabilities, General Comment 2 on ‘Article 9: Accessibility’, (CRPD/C/GC/2, 2014) <<https://documents.un.org/doc/undoc/gen/g14/033/13/pdf/g1403313.pdf>> accessed 6 September 2024.

provide accessibility applies on an *ex-ante* basis and the obligation to provide reasonable accommodation applies on an *ex-post* basis.²⁵

For example: Making a question paper available in accessible formats, such as in large print and soft copy form constitutes accessibility. If a particular student desires to access the paper in Braille, given their blindness, then making a provision to allow this would be a reasonable accommodation.

The principle of universal design requires the design and composition of an environment to facilitate it being accessed, understood, and used to the greatest extent possible by all people regardless of their age, size, ability, or disability. An environment and all its components should be designed to meet the needs of all those who wish to use it.²⁶ The RPwD Act requires that offerings across domains be accessible: from electronic media and goods²⁷ to physical infrastructure.²⁸

3.3. The Undue/Disproportionate Burden Defence

Section 2(y) of the RPwD Act states that reasonable accommodations have to be provided without “imposing a disproportionate or undue burden in a particular case.” In ***Vikash Kumar v. Union Public Service Commission***,²⁹ the Supreme Court explained how this defence is to be construed. The Supreme Court held that reasonable accommodations by their very nature depart from the status quo and thus entail some complications.³⁰ Therefore, complications or additional effort on behalf of the employer or State authority are an inevitable consequence of making a reasonable accommodation.³¹ The Court clarified that only if such complications cause a disproportionate or undue burden, would the defence be applicable.³²

25 *ibid.*

26 Centre for Excellence in Universal Design, ‘About Universal Design’ <<https://universaldesign.ie/about-universal-design>> accessed 1 September 2024.

27 Rights of Persons with Disabilities Act, 2016 s 42.

28 Rights of Persons with Disabilities Act, 2016 s 44.

29 *Vikash Kumar v Union Public Service Commission* 2021 INSC 78.

30 *ibid* [54].

31 *ibid.*

32 *ibid.*

The Court based its observations on the literature surrounding the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”) to note that the defence should be construed in an objective manner that covers all the pertinent considerations.³³ According to the Committee, the test of undue burden should be done on a case-by-case approach which considers a broad set of factors such as “financial costs, resources available (including public subsidies), the size of the accommodating party (in its entirety), the effect of the modification on the institution or the enterprise, third-party benefits, negative impacts on other persons and reasonable health and safety requirements.”³⁴

To ascertain what accommodations can be provided without constituting a disproportionate/undue burden, employers and State authorities can also enlist the support of disability rights experts who can draw on industry practices, international examples, and the latest thinking within the disability rights movement to provide suitable middle paths.³⁵

4. Inclusive Workplaces for Persons with Disability

Creating an inclusive and accessible workplace is more than just adhering to legal standards, it involves embracing diversity, fostering sensitivity, and ensuring equal opportunities for everyone. Achieving this requires practical strategies, empathetic communication, and a culture that values every individual’s contributions.

Effective Communication and Sensitivity: A truly inclusive workplace starts with respectful and thoughtful communication. Engage directly with individuals with disabilities, addressing them rather than their friends, relatives, or companions. Use clear, straightforward language without being condescending or overly simplistic.

33 *ibid* [61].

34 *ibid* [49]; UN Committee on Rights of Persons with Disabilities, General Comment 6 on ‘Article 5: Equality and Non-discrimination’ (CRPD/C/GC/6, 2018), para 26(e) <<https://documents.un.org/doc/undoc/gen/g18/119/05/pdf/g1811905.pdf>> accessed 30 August 2024.

35 Rahul Bajaj, Ishika Garg, Ahsnat Mokarim, ‘Undue Burden under the Rights of Persons with Disabilities Act, 2016: In Search of a Definitive Legal Standard’ (2024) vol. 16(3) NUJS Law Review.

For example when assisting a person with blindness one might say, *“The website is designed to be compatible with screen readers, so it should be straightforward for you to navigate. If you encounter any issues, please let me know.”*

As opposed to saying,

“I know reading on screens is tricky for you, let me explain how to go about it so you are not overwhelmed. If you follow my instructions, you should be able to manage.”

Incorporating alternative communication methods is also essential. For instance, for employees with hearing or speech impairments, tools like speech-to-text software or visual aids can facilitate their full participation. Adapting communication styles to meet diverse needs fosters an environment where everyone feels included and respected.

Physical Accessibility and Workplace Adaptability: Physical accessibility is fundamental to creating an inclusive environment. Beyond complying with legal requirements such as ramps and accessible restrooms, clear, high-contrast signage, barrier-free pathways, and accessible entrances contribute to a more welcoming environment. Further, workplaces should be adaptable to diverse needs. Providing adjustable desks, ergonomic chairs, flexible workstation setups, or assistive devices like screen readers, can ensure that persons with disabilities can work comfortably and efficiently.

Inclusive Recruitment, Training, and Equal Opportunity: Recruitment practices should be designed to attract a diverse range of talent, including individuals with disabilities. Job postings should reflect a commitment to inclusivity and describe how accommodations will be made. Interviews should be conducted in accessible locations, and accommodations such as sign language interpreters or extended time for assessments should be provided when needed. An effective equal opportunity policy in line with Section 21 of the RPwD Act should actively promote diversity and ensure that all employees, regardless of disability, have equal access to career advancement opportunities.

Inclusive Culture and Continuous Improvement: Building an inclusive culture requires ongoing effort and dedication. Regular sensitisation programs, internal workshops,

and training sessions should be conducted for all employees to help them eliminate unconscious biases and teach respectful interaction with colleagues who have disabilities. Sign language training should also be implemented to promote a more inclusive work environment. Creating support networks such as employee resource groups offers a community for employees with disabilities. A commitment to continuous improvement involves regular feedback, staying updated on best practices, and adopting new assistive technologies. This proactive approach ensures that the workplace evolves to meet the changing needs of all employees, fostering an environment where everyone can succeed.

5. Inclusive Courts for Lawyers and Litigants with Disabilities

In the context of access to justice, it is important to note that UNCRPD highlights the principle of “equal benefit of the law,”³⁶ which mandates that States must remove barriers to justice for persons with disabilities. This includes not only securing legal protections for persons with disabilities but also enabling active engagement with the law and facilitating the capability to assert rights effectively.

As the individuals responsible for courts and courtrooms, judges bear a responsibility to ensure that persons with disability can access justice and participate fully within the legal system. While judges in administrative roles have a unique role in ensuring courts are physically and digitally accessible, every judge has a role to play.

Lawyers and litigants with disabilities encounter significant obstacles that can impede their effective participation in legal proceedings. To uphold the principles of fairness and justice, it is crucial to remove these barriers within the court system. Several key practices for judges to support lawyers and litigants with disabilities should include:³⁷

- **If the person does not raise the issue of disability**

At the outset, a person with a disability in a court may face difficulties but may not raise the issue due to the stigma associated with disability or a

36 UN Convention on the Rights of Persons with Disabilities, Article 5.

37 Rahul Bajaj, Sanjay Jain, ‘For Inclusive Court Proceedings, Ensuring Reasonable Accommodation for Lawyers with Disabilities Is Vital,’ *The Hindustan Times* (14 August, 2023) <<https://www.hindustantimes.com/opinion/for-inclusive-court-proceedings-ensuring-reasonable-accommodation-for-lawyers-with-disabilities-is-vital-101692025296404.html>>

lack of awareness of the rights and accommodations they are entitled to. Before the start of proceedings, judges should look around their courtroom and consider whether everybody present (both physically and virtually) can participate effectively.³⁸ If in doubt, judges should ask anybody who may appear to experience a barrier to full participation whether they are comfortable.³⁹ Many disabilities, particularly mental health conditions, may not be immediately observable, but judges should be alert to any signs that an accommodation needs to be made to fully include an individual in proceedings.⁴⁰

- **Accessible Documents and Communication**

Judges must ensure that all case documents are provided in accessible formats and that court registries are equipped to facilitate this. Non-verbal cues, such as nods or raising of hands, should be verbalised to ensure that lawyers and litigants with visual impairments can understand them. For lawyers and litigants with hearing impairments, live transcription of hearings conducted via video conferencing should be made available. Lawyers with speech impairments should be allowed to effectively argue their cases by submitting additional written notes or submissions and using interpreters. The presence of interpreters for those with hearing or speech impairments must be permitted to ensure that every lawyer and litigant can engage fully and equally in the courtroom. Such active communication and accommodation can create an environment where all participants can engage equally.

- **Breaks and Adjournments**

Judges should be prepared to grant breaks or short adjournments to lawyers and litigants with disabilities to assist them in gathering necessary information. They may face additional challenges in processing information, so breaks are crucial for their effective participation without unduly delaying proceedings.

38 Judiciary of England and Wales, *Equal Treatment Bench Book* (Courts and Tribunals Judiciary, 2024 edition) 74, 91 <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf>> accessed 13 September 2024.

39 *ibid.*

40 *ibid.*

Requests for accommodations should not be interpreted as attempts to avoid responsibilities.

For instance, lawyers with blindness and low vision might rely on screen reading software to navigate through voluminous case files. Given that such assistive technologies may take longer to yield the requisite information (e.g., locating a specific date on a certain page of a large document), these lawyers should not be penalised or criticised for delays caused by their disability. Instead, judges should consider granting very short adjournments, such as a Passover till the post-lunch session or a short date within a few days, to allow these lawyers the time they need to assist the court effectively. This approach ensures that these lawyers are not under undue pressure to match the efficiency of persons without disabilities, while also safeguarding the interests of their clients.

- **Support from Juniors and Interpreters**

Allowing juniors or colleagues to read out portions of documents that are inaccessible to lawyers with disabilities can significantly aid their advocacy efforts. For lawyers with hearing impairments, establishing systems for pre-arranging sign language interpreters helps overcome communication barriers during proceedings.

- **Promoting Inclusion and Professional Growth**

Judges play a crucial role in advancing the careers of lawyers with disabilities. Appointing them as *amicus curiae* in disability-related cases or inviting them to share their experiences in judicial academies can elevate their voices and provide valuable insights to the legal community. Further, persons with disabilities should not be restricted to specific roles (such as doing only desk jobs or solely briefing counsels), or labelled as inefficient. Courts and offices should not deny internships or research assistantships to persons with disabilities based on the stereotypical assumption that such interns will not add any value to the work and will be a burden. The focus should be on fostering a culture where every individual with a disability can succeed in their chosen career path, supported by all stakeholders.

- **Sensitisation of Court Staff**

To foster an inclusive environment in the courts, it is essential that court administrative staff, including Stenographers, Court Assistants, and Court Masters, receive proper training to effectively interact with individuals with disabilities.

- **Accessibility Committees**

All High Courts and District Courts should establish an Accessibility Committee to ensure the effective implementation of these measures in courts. The e-Committee of the Supreme Court of India has outlined the composition of these committees as follows:

- **For High Courts:** The committee should include one High Court judge, one registrar-level officer, two assistant registrar-level officers, one technical expert, one staff member, and one or two advocates. It is desirable that one or two members of the committee be persons with disability.
- **For District Courts:** The committee should comprise one Additional District Judge, one Civil Judge/Judicial Magistrate, one advocate and a District System Administrator. One or two members of the committee should be persons with disability.⁴¹

Throughout the court process, from filing documents to presenting arguments, reasonable accommodations should be provided as a basic right, not as favours or negotiating tools. These accommodations should not be perceived as compromising clients' interests or causing delays. Instead, creating a supportive culture that embraces necessary adjustments, despite their associated costs and complexities, is essential.

The legal framework in India grants every litigant the right to self-representation, a right that applies equally to persons with disabilities. When such litigants opt to represent themselves, it becomes imperative to ensure they have access to the necessary facilities, equipment, and technology to facilitate their full and meaningful participation

⁴¹ e-Committee, Supreme Court of India, 'Standard Operating Procedure for preparing Accessible Court Documents', para 31-32 <<https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2022/11/2022112997.pdf>> accessed 13 September 2024.

in the judicial process. The failure to provide reasonable accommodations restricts their ability to engage fully in the judicial process.

Finally, there is an urgent need to establish a culture of providing high-quality legal aid to persons with disabilities. Given the strong correlation between disability and poverty, many persons with disabilities face significant barriers in accessing the courts and often endure violations of their rights in silence. Legal service authorities should be made accessible to persons with disabilities to ensure they receive the representation they need.

PART-II

LANGUAGE AND DISABILITIES

6. General Language Principles Concerning Disability and Mental Health

The language used by judges in their judgments carries immense weight and has the power to shape societal perceptions and attitudes. When it comes to addressing matters involving persons with disabilities, the use of sensitive language is of paramount importance. Judges must be mindful of avoiding dehumanising or demeaning terminology that perpetuates stigma and reinforces negative stereotypes.

Instead, judges should strive to employ respectful language which empowers and accurately reflects the lived experiences of persons with disabilities. This includes avoiding outdated or offensive terms that may be considered insensitive or derogatory, as well as language that patronises or puts persons with disabilities on a pedestal.

By consciously adopting respectful language in their judgments, judges not only promote inclusivity and dignity for persons with disabilities but also set a powerful precedent for others to follow. Their words can challenge deeply ingrained biases and misconceptions, contributing to a broader societal shift towards greater understanding, acceptance, and inclusion of this often marginalised community.

Some general guidelines when referring to persons with disabilities are:

- **Avoid stereotypical judgments about a person's disability**

Rather than assuming that all persons with disabilities are brave, heroic, inspiring, or suffering, burdened, and victimised, avoid value judgments about the person's experience. Use neutral language to simply state the nature of the disability when relevant to the context. Instead of using weighted terms such as "afflicted by," or "stricken by," say "this person has [condition]" instead.

- **Credible diagnosis concerning medical conditions**

Do not presume the existence of a medical condition. A diagnosis of a medical condition must be made by a licensed medical or mental health professional. If such confirmation is absent or not possible, use quotes around the term— for instance, “bipolar disorder” or qualifying language such as “is stated to have cerebral palsy” to indicate that no conclusive medical diagnosis exists.

- **Mention a person’s disability only if it is relevant to the context**

For example, the fact that an individual has a locomotor disability is not relevant to the credibility of their testimony in a case concerning the authenticity of a will. On the other hand, the fact that a witness to a murder, who is being examined for the sole reason that they have seen the murder happen, has a visual impairment will be relevant to determining the value ascribed to the testimony and thus will be mentioned.

- **Avoid identifying someone solely by their disability**

Rather than defining or making a disability appear as an essential trait of a person’s personality, assume that their disability is one facet of their personality.

- **Ask individuals how they would like to describe their disability**

When possible, ask the individual in question how they would prefer to be described. When this is not possible, seek the advice of a trusted family member, caregiver, medical professional, legal representative, or organisation representing the person with disabilities. Persons with disabilities are often bypassed in conversations and the speaker often speaks with their friends or relatives accompanying them. Avoid this tendency and speak with the person directly as far as possible.

- **Be mindful of the diversity among persons with disabilities**

The experience of every person with a disability is different. Do not assume that people with the same diagnosis feel similarly about their experiences or the world around them. Like people everywhere, persons with disabilities are a product of their unique, socio-economic and cultural contexts.

- **Be sensitive and try your best**

The language around persons with disabilities has evolved considerably over the last century and will continue to do so. In this context, be sensitive to the experience of individuals and be open to learning and unlearning the appropriate language. Certain terms such as “abnormal” and “disorder” which continue to be used in medical contexts should be replaced by alternative terms when describing individuals in non-medical contexts. Make choices about language on a case-by-case basis.

7. Stereotype Perpetuating Terms and Alternative Language

Do not use offensive terms such as “crippled,” “idiot,” “loony,” “mad,” “junkie,” and “retard” in any derogatory contexts. Some terms such as “people of determination,” “special,” and “differently abled” are also considered condescending and offensive because they stigmatise the language around disability by substituting it. Avoid these too.

Some key terms to avoid when referring to persons with disabilities are:

Infirm; Stunted; Unfit; Helpless; Crippled; Defected; Deformed; Invalid; Lame; Maimed; Mutilated; or Subnormal

Some key terms to avoid when referring to persons with intellectual or learning disabilities or mental health conditions are:

Crazy; Freak; Idiot; Insane; Loony; Mad; Maniac; Nut Case; Nuts; Nutter; Psycho; Simpleton; Stupid; or Unhinged.

“Person with disability” or “Disabled person”?

Using the phrasing “person with a disability” is a people-first approach, where the individual is recognised and prioritised before the disability. For example, “person with a hearing disability” as opposed to “hearing disabled person.” A people-first approach is the most widely accepted language when referring to persons with disabilities and aligns with the RPwD Act and the UNCRPD. Therefore, the table below prioritises a people-first approach.

Alternatively, some individuals may prefer or find acceptable an identity-first approach that puts the disability first in the description. For example, “blind person” instead of “person with blindness.” If in doubt, it is best to ask individuals how they wish to identify.

Stereotype perpetuating (Inappropriate)		Alternative language and explanation (Preferred)
General Terms and Phrases in the Context of Persons with Disabilities		
1.	Able-bodied Normal Of sound body and/or mind Typical Whole	Person without disability
2.	Abnormal Atypical	Although using “abnormal” and “abnormality” may be appropriate while referring to scientific or medical phenomena such as “genetic abnormality,” avoid using these terms while describing individuals. The use of such terms communicates that persons with disabilities are deviant and irregular. Preferred language would be: Person with disability or Person with [condition/impairment]
3.	Birth defect Defective from birth	The term “defect” implies that the person is somehow deficient or incomplete. Alternative language would be: Congenital disability Disability since birth Born with a disability

4.	<p>Afflicted by</p> <p>Burdened by</p> <p>Suffering from</p> <p>Stricken by</p> <p>Troubled by</p> <p>Victim of</p>	<p>These terms assume that a person with a disability is suffering. Rather than making assumptions about the disability, use neutral language that simply states the nature of the disability when relevant. For example:</p> <p>Person with [a disability/condition/impairment] The person has [a disability/condition/impairment] Person experiences [a disability/condition/impairment]</p>
5.	<p>Caretaker (of a person with disability)</p>	<p>Caretaker implies the care of property. Alternatively, the caregiver denotes the care of people. Therefore, the preferred term would be:</p> <p>Caregiver (of a person with disability)</p>
6.	<p>Differently-abled</p>	<p>Some consider this term inappropriate and condescending since every person is differently-abled. The term also stigmatizes language around disability by substituting it. Alternative language would be:</p> <p>Person with disability Person with [type of condition/impairment]</p>
7.	<p>Disabled parking</p> <p>Handicapped parking</p>	<p>Parking reserved for persons with disabilities Accessible parking</p>
8.	<p>Disabled washroom</p> <p>Handicapped washroom</p>	<p>Accessible washroom</p>
9.	<p>Disadvantaged</p> <p>Diseased</p> <p>Handicapped</p>	<p>Person with disability Person with [type of condition/impairment]</p>

10.	Gifted Special	This term is understood to be condescending or euphemistically labels persons with disabilities. Preferred language would be: Person with disability Person with [type of condition/impairment]
11.	People of determination	This term is understood to be condescending and labels individuals with disabilities euphemistically. Preferred language would be: Person with disability Person with [type of condition/impairment]
12.	Person living with a disability	Person with disability Person with [type of condition/impairment]
13.	Person with special needs Specially-abled	Some individuals find the term “special needs” offensive because it labels that which is different euphemistically. Alternative language would be Person with disability Person with [type of condition/impairment]
14.	Trauma victim	Trauma survivor/ victim (depending on preference)
Terms Relating to Physical Disabilities		
15.	Amputee	Person who has undergone an amputation or Person with an amputation <i>Note:</i> Even “person with an amputation” would be inappropriate when used to describe a person for whom the absence of a limb is not the result of a surgical procedure.
16.	Blind	As noted at the start of this section, person-first language is more widely accepted than disability-first language. Thus, “ person with blindness ” may be chosen over “blind person.” However, some individuals may prefer or find acceptable “ blind person. ”

		<p>The term “blind” is appropriate to describe a person with a complete or almost complete loss of sight. Other terms that may be relevant to individuals with limited vision are:</p> <p>Person with low vision Person with limited vision Person with a [visual disability/impairment]</p>
17.	<p>Confined to a wheelchair Restricted to a wheelchair Wheelchair-bound</p>	<p>Person who uses a wheelchair</p>
18.	<p>Deaf</p>	<p>As noted at the start of this section, person-first language is more widely accepted than disability-first language. Thus, “person who is deaf” may be chosen over “deaf person.” However, some individuals may prefer or find acceptable “deaf person.”</p> <p>The term “deaf” and “hard of hearing” is appropriate to describe a person with a complete or almost complete loss of hearing. Other terms that may be relevant to individuals with limited hearing are:</p> <p>Person with a [hearing disability/impairment] Person with partial hearing loss</p>
19.	<p>Dumb Mute Tongue-tied</p>	<p>The term “dumb” or “mute” implies that communication is not possible. Use specific terms to describe the type of communication the person in question engages in. For example:</p> <p>Person with a speech impairment Person who uses an alternative method of communication Person who lip-reads Person who uses Sign Language Person who uses an audio device to communicate</p>

20.	Midget Vertically challenged	Person with dwarfism (if describing the genetic condition) Person of short stature Person with achondroplasia (only if the person has this condition)
21.	Paraplegic Quadriplegic	Person with a spinal cord injury (where accurate) Person with paraplegia/quadriplegia (if confirmed by a medical diagnosis) Person who is paralysed
22.	Person with physical limitations Physically challenged Crippled	Person with a physical disability Person with a locomotor disability
Terms Relating to Intellectual Disabilities and Mental Health Conditions		
23.	Addict	Person with a substance abuse addiction or condition
24.	Alcoholic	Person with an alcohol addiction
25.	Crazy Insane Demented Deranged Lunatic Mental Senile Unstable Psychotic	Person with a mental health condition Person experiencing a mental health condition Person who has dementia/Alzheimer’s disease, or any other clinical condition (where supported by a clinical diagnosis)

26.	Druggie Junkie Substance abuser	Person with a substance abuse addiction or condition
27.	Epileptic attack or fit	Epileptic seizure
28.	Feeble-minded Intellectually challenged Slow learner Dim-Wit Half-Wit Retarded ⁴²	Person with an intellectual disability Person with a learning disability
29.	Happy pills	Antidepressants Medication
30.	Hyperactive (about a person with ADHD)	Person with ADHD
31.	Inmates or prisoners (of a psychiatric hospital)	Patients Clients
32.	Mentally ill	Person with a mental health condition Person experiencing a mental health condition
33.	Mentally handicapped Mentally disabled	Person with an intellectual disability Person with a learning disability

42 The latest edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) has replaced the term “mental retardation” with “intellectual disability” and now recognises it as a clinical condition. Similarly, the *International Classification of Diseases* (ICD) has updated the terminology to “disorders of intellectual development.” Both the DSM and ICD are key diagnostic manuals used by mental health professionals. These changes were made to reduce the stigma historically associated with the term “mental retardation,” which was commonly used in the past. For details see World Health Organization, *International Classification of Diseases* (11th ed, May 2019) <<https://www.who.int/standards/classifications/classification-of-diseases>> accessed 06 September 2024, and American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed, 2022) <<https://www.psychiatry.org/psychiatrists/practice/dsm/about-dsm>> accessed 06 September 2024).

34.	Mongoloid Weird (when referring to a person with Down syndrome)	Person with Down syndrome (where supported by a clinical diagnosis)
35.	Schizo	A person with schizophrenia (where supported by a clinical diagnosis)
36.	Spastic Spaz	Person with cerebral palsy (where supported by a clinical diagnosis)

8. Specific Clinical Conditions

Brief descriptions of specific conditions follow. Refer to these conditions only when confirmation of a medical diagnosis exists and when required in a medical or medico-legal context. Rather than essentialising the disabled nature of a person by referring to them as an “albino,” “depressive” or “leper,” instead refer to the disability as one part of the person. For example, by using “person with albinism,” “person with depression,” “person with leprosy” instead.

A key challenge that persons with invisible disabilities face is having their disability duly recognised and certified. In popular imagination, the term persons with disabilities is associated with a man in a wheelchair. Since those with invisible disabilities may look ‘normal’, their disability and challenges are often undermined on the basis that they do not look disabled. It is important to recognise that a disability can manifest in a variety of forms and that not all disabilities have to have a physical manifestation. Outside medical contexts, undue insistence on a medical diagnosis should give way to the actual limitations faced by a person owing to their impairments, visible or invisible.

Attention Deficit Hyperactivity Disorder (ADHD)

Attention-Deficit/Hyperactivity Disorder is a chronic neurodevelopmental condition that affects a person’s ability to pay attention, control impulsive behaviours, and sit still. Persons with ADHD may find it difficult to plan, prioritise and focus on tasks.

Albinism

Albinism is a genetic condition that affects the production of melanin, the natural pigment that determines the colour of a person's hair, skin, and eyes. People with albinism tend to have pale skin, hair, and eyes. They may also have vision problems since melanin affects the development of the retina too.

Alzheimer's disease

Alzheimer's disease is the most common type of dementia. It is characterised by progressive memory loss and cognitive decline, which makes it increasingly difficult to reason, make decisions, and perform everyday tasks.

Anxiety Disorders

People with anxiety disorders face intermittent feelings of worry. They often experience anxiety that may be excessive, persistent, and interfere with their daily life. They may also experience panic attacks and sudden episodes of intense fear accompanied by palpitations, shortness of breath, dizziness, and trembling.

Autism Spectrum Disorder (ASD)

ASD is a neurodevelopmental disability. Usually, people with ASD face difficulty in socialising and interacting with others, and engage in restricted or repetitive behaviours and interests. Autism is understood as a "spectrum" because of the wide variety of its symptoms and their severity. While some persons with autism might live independent lives, others may require lifelong care and support.

Bipolar Disorder

People with bipolar disorder experience alternating episodes of depression (characterised by sadness, lethargy, and a loss of interest) and mania (characterised by feelings of euphoria and bursts of energy). These extreme shifts in a person's mood may make it difficult for them to carry out routine tasks.

Cerebral Palsy

Cerebral palsy refers to a group of neurological conditions that affect a person's ability to move and maintain balance. Symptoms appear in early childhood. Children with severe cerebral palsy might need special assistance to walk and require lifelong care.

Depression

Depression is a common mental health condition characterised by persistent feelings of sadness or indifference and a loss of interest in activities one usually enjoys. A person with depression may find it difficult to carry out everyday activities at home or work. They may experience a loss of energy and concentration, feelings of hopelessness, changes in appetite and sleep, and even thoughts of self-harm and suicide.

Down syndrome

Down syndrome is a genetic condition in which a person has an extra chromosome. This extra chromosome causes developmental changes in the brain and body of people with Down syndrome. These changes manifest as distinct physical features, and intellectual disabilities that affect language and memory.

Dyslexia

Dyslexia is a learning disability that affects how the brain processes written material. Persons with dyslexia have trouble reading and writing. Especially in young children who have not been given adequate support, dyslexia might lead to feelings of low self-esteem.

Epilepsy

Epilepsy is a chronic disease that causes recurrent seizures— sudden bursts of uncontrolled electrical brain activity that may cause a loss of consciousness, cognitive and emotional changes, and involuntary movements of the arms and legs.

Leprosy

Leprosy is a chronic infectious airborne disease caused by the bacteria *Mycobacterium leprae*. Leprosy can affect the skin, eyes, nose, and nerves. Although curable, if left untreated it may lead to physical disabilities including paralysis and blindness.

Panic Attack

A panic attack is an unexpected episode of an abrupt surge of intense fear or discomfort which is accompanied by physical symptoms such as chest pain, racing heart, difficulty breathing, trembling, chills, nausea, sweating, etc. Panic attacks usually occur without warning or often a specific trigger, leading to a perceived lack of control by the individual experiencing them.

Parkinson's Disease

Parkinson's disease is a progressive neurodegenerative disorder, which primarily affects movement. This condition occurs when nerve cells in the brain that produce dopamine become damaged or die leading to symptoms like tremors, slowness of movement, stiffness, and balance problems.

Restricted growth (dwarfism)

Restricted growth, at times known as dwarfism, is a medical or genetic condition that leads to unusually short height. The most common form of dwarfism is Achondroplasia, a condition in which people have a regular-sized trunk but disproportionately short arms and legs.

Schizophrenia

Schizophrenia is a mental health condition that causes psychosis, which alters how a person perceives reality. Symptoms of schizophrenia may include persistent hallucinations, delusions, disorganised thoughts, and a withdrawal from social life.

PART III

LEGAL FRAMEWORK

9. Key Rights and Obligations under the RPwD Act, 2016

The foundations of the RPwD Act can be traced to the UNCRPD. India has ratified the UNCRPD without any reservations and the Convention represents part of the international obligations that the Indian State must fulfil. Indeed, the long title of the RPwD Act reads as follows: “An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.”

Therefore, the RPwD Act must be interpreted to give effect to and further the principles set out in the UNCRPD. Article 3 of the UNCRPD sets out the “General Principles” that guide the operation of the Convention. The contents of Article 3 have been enacted into Indian law as part of the Preamble to the RPwD Act and thus must inform the interpretation and application of the Act itself.

Article 3 of the UNCRPD and the Preamble to the RPwD Act identify eight principles of paramount importance. These are:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women; and
- (h) Respect for the evolving capacity of children with disabilities and respect for the right of children with disabilities to preserve their identities.

It is through the lens of these principles that the rights and obligations set out in the RPwD Act, must be interpreted.

Important Definitions and Concepts

Under the RPwD Act, various categories of persons with disability are recognised with specific terminology. These include:

1. **Person with Disability:** A person with long-term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders their full and effective participation in society equally with others (Section 2(s)).
2. **Person with Benchmark Disability:** A person with at least 40% of a specified disability, as certified by a competent authority. Specified disabilities are those enumerated in the Schedule of the RPwD Act or notified by the Union Government. Persons with benchmark disabilities enjoy certain additional accommodations under the law (Section 2(r) and Chapter VI).
3. **Person with Multiple Disabilities:** A person who has more than one type of specified disability, such as a combination of blindness and hearing impairment (Section 2(zc) read with Schedule Item No.5).
4. **Person with Disability having High Support Needs:** A person with a benchmark disability who requires intensive support—physical, psychological, or both—to carry out activities of daily living or to participate in community life. Like persons with benchmark disabilities, those with high support needs also receive additional accommodations under the law (Section 2(t)).

Under the Schedule of RPwD Act various mental health conditions are categorised as specified disabilities. These are defined as follows:

1. **Intellectual Disability:** Conditions characterised by significant limitations in intellectual functioning and adaptive behaviour, affecting conceptual, social, and practical skills.
2. **Mental Illness:** A substantial disorder of thinking, mood, perception, orientation, or memory that severely impairs judgment, behaviour, or the ability to recognise reality, resulting in the inability to meet the ordinary demands of life.

3. **Disability caused due to Chronic Neurological Conditions:** Disabilities arising from long-term neurological conditions such as multiple sclerosis, Parkinson's disease, or other similar conditions that significantly impact cognitive and physical abilities.

While the RPwD Act identifies specified disabilities in its Schedule (and empowers the Union Government to notify additional specified disabilities), it is important to note that all persons with disability, not just specified disabilities, enjoy the rights and protections enshrined in Sections 3-15 of the Act and every other provision applicable to persons with disability simpliciter.

Ensuring Equality and Accessibility

- The Appropriate Government should ensure equality, dignity, and non-discrimination for persons with disabilities, ensuring their full participation and reasonable accommodation (**Section 3**).
- Persons with disabilities are guaranteed the right to live in the community. The Appropriate Government is obligated to ensure that they are not forced to live in any particular living arrangement and are given access to a range of in-home, residential, and other community support services, including personal assistance, with due regard to their age and gender (**Section 5**).
- No child with a disability should be separated from their parents on the grounds of disability except on an order of a competent court when parents are unable to take care of the child with disability (**Section 9**).
- The Appropriate Government should ensure access to appropriate information regarding reproductive rights and family planning for persons with disabilities. They should not be subjected to any medical procedure leading to infertility without their free and informed consent (**Section 10**).
- The Election Commission of India and the State Election Commissions should ensure that all polling stations are accessible to persons with disabilities and that all materials related to the electoral process are easily understandable and accessible to them (**Section 11**).

- The Appropriate Government should ensure equal access to justice for persons with disabilities by: (**Section 12**)
 - Guaranteeing their right to access courts, tribunals, and other judicial or quasi-judicial bodies without discrimination.
 - Implementing support measures for those with high support needs or living outside family structures to exercise their legal rights.
 - Taking steps towards ensuring all public documents are available in accessible formats; equipping filing departments, registries, and offices of records to handle documents and evidence in accessible formats; and providing necessary facilities for recording testimonies and arguments in the preferred language and communication means of persons with disabilities.
 - Directing National and State Legal Service Authorities to ensure that schemes and services are equally accessible to persons with disabilities.
- The Appropriate Government to ensure that: (i) persons with disabilities have equal rights as others to own or inherit property (movable or immovable) and control their financial affairs by having access to bank loans, mortgages, and other forms of financial credit; and (ii) have equal legal capacity and recognition on an equal basis with others in all aspects of life and everywhere as any other person before the law (**Section 13**).

Provision for Guardianship

Notwithstanding any other law, from the commencement of the RPwD Act, when a district court or designated authority finds that a person with a disability, despite adequate support, cannot make legally binding decisions, the authority may appoint a limited guardian to assist in decision-making. In exceptional cases or where repeated limited guardianship is required, the court or authority may provide total support, with periodic review of the support provided (**Section 14**).⁴³

43 See also sections 14-17 of National Trust Act 1999 pertaining to appointment, powers and functions of Guardianship.

Inclusive Education, Healthcare, and Equal Employment

- Educational institutions funded or recognised by the government must ensure that children with disabilities receive inclusive education. They should be admitted without discrimination and given equal opportunities in education, sports, and recreational activities. Schools need to make their buildings and facilities accessible and provide accommodations based on individual needs (**Section 16**).
- The Appropriate Government shall create schemes and programs to safeguard and promote an adequate standard of living for persons with disabilities by ensuring free healthcare, barrier-free access, and priority treatment for them (**Sections 24 & 25**).
- Every child with benchmark disabilities between the ages of six to eighteen years shall have the right to free education in a neighbourhood school or special school of their choice. All Government institutions of higher education shall reserve at least five per cent of seats for persons with benchmark disabilities. Persons with benchmark disabilities shall be provided with an upper-age limit relaxation of five years for admissions to higher education institutions (**Sections 31 & 32**).
- No government establishment shall discriminate against persons with disability in matters of employment, reasonable accommodation, promotion, or reduction in rank and shall provide a barrier-free and conducive environment to employees with disability (**Section 20**).
- Every establishment shall notify an equal opportunity policy detailing measures proposed to be taken to ensure non-discrimination in employment and register a copy of the policy with the State Commissioner or Chief Commissioner (**Section 21**).
- The Appropriate Government must identify suitable posts to be reserved for persons with benchmark disabilities, constitute an expert committee for this purpose, and review the identified posts every three years. Every appropriate Government must reserve at least four per cent of vacancies in Government establishments for persons with benchmark disabilities, categorised by specified disability types (**Sections 33 & 34**).

High Support Needs

- Any person with a benchmark disability considering himself to need high support may apply to an authority (to be notified by the Appropriate Government) requesting to provide high support. Any person or organisation may apply on their behalf (**Section 38**).

Duties and Responsibilities of Appropriate Government

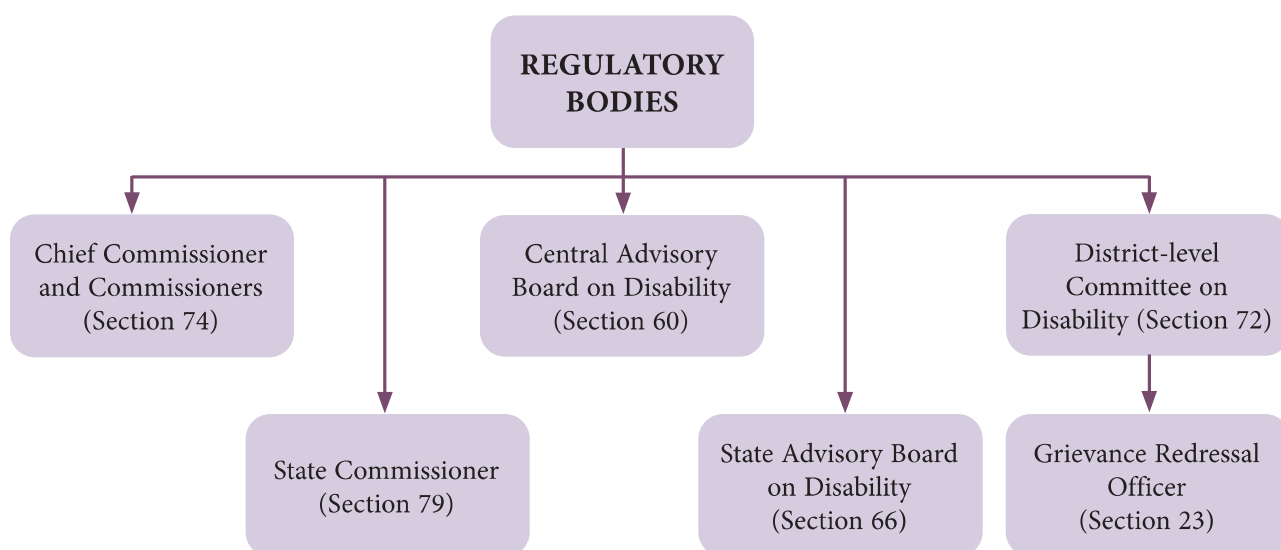
- Every government establishment shall appoint a Grievance Redressal Officer. This officer is responsible for receiving and investigating complaints regarding violations of the non-discrimination requirements outlined in Section 20 of the Act. Registered complaints must be inquired into within two weeks. If the aggrieved person is not satisfied with the action taken by the Grievance Redressal Officer, they have the right to escalate the matter to the District-Level Committee on Disability (**Section 23**).
- The Union Government, in consultation with the Chief Commissioner, shall establish accessibility rules for persons with disabilities covering various aspects including physical environment, transportation, information and communication technologies, and public facilities in urban and rural areas. Public buildings should be made accessible within a period not exceeding five years according to Union Government rules and action plans should be developed prioritising accessibility in essential service spaces (**Sections 40 & 45**).
- The Appropriate Government should provide facilities for persons with disabilities at bus stops, railway stations, and airports conforming to the accessibility and design standards. The Appropriate Government should also develop schemes and programmes promoting personal mobility of persons with disabilities at affordable costs (**Section 41**).
- The Appropriate Government should ensure accessibility of persons with disabilities to electronic goods and equipment (**Section 42**).
- The Union Government shall notify guidelines for assessing the extent of specified disability in a person (**Section 56**). The latest iteration of these

Guidelines, notified in March 2024, can be found at: <https://depwd.gov.in/latest-notified-guidelines-for-assessing-the-extent-of-specified-disabilities-dated-14-03-2024/>

Enforcement, Offences and Penalties

One of the biggest challenges in realising disability rights in India is that accessibility and reasonable accommodations are often seen as a “nice to have” by businesses and public sector institutions rather than a “must-have.” To address this issue, the RPwD Act puts in place an enforcement mechanism.⁴⁴ Section 89 of the Act contemplates the imposition of a fine of Rs. 10,0000 in the case of first contravention, and a fine of between Rs. 50,000 and Rs. 5,00,000 for subsequent contraventions. These penalties can be imposed by the Chief and State Commissioners for Persons with Disabilities.

Regulatory Bodies under the RPwD Act



The regulatory bodies established under the RPwD Act include the Chief Commissioner and Commissioners, and various State Commissioners. There also exists a Central Advisory Board, State District Advisory Boards and the District Level Committees operate. As noted above, appeals from the decisions of the Grievance Redressal Officer are heard by the District-Level Committee.

⁴⁴ Rights of Persons with Disabilities Act 2016, ss 84, 85 and 91-93.

Additionally, other bodies and authorities under the RPwD Act include:

- A Committee for Research on Disability (Section 6(2))
- A Committee for Research on Disability in the District Court or a designated authority (Section 14(1))
- Designated Authorities to provide support (Section 15)
- The Competent Authority for the Registration of Institutions for Persons with Disabilities (Section 49)
- Certifying authorities responsible for issuing certificates of disability (Section 57)
- An Appellate Authority to address appeals against decisions made by the Certifying Authority (Section 59)
- Designation of Special Courts and the appointment of a Special Public Prosecutor (Sections 84 and 85).



National Trust Act, 1999: The statute established the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities (Section 3). The Trust is a body responsible for safeguarding the rights of these individuals and providing necessary assistance. Additionally, the Act provides for the appointment of legal guardians for persons with disabilities who are unable to make decisions on their own. This guardian is responsible for taking care of the person and managing their property and affairs. There are provisions for “plenary” (full) or “limited” guardianship, depending on the needs and capabilities of the individual. Furthermore, the Act mandates the formation of Local Level Committees (LLCs) across districts (Section 13), which oversee the implementation of the Act, particularly in protecting disabled individuals from exploitation and abuse, and ensuring their rights are upheld.



10. Witnesses who have Disabilities

A key issue concerning persons with disabilities is the negation of their credibility as a witness or victim/survivor. For example, in *Mange v. State of Haryana*,⁴⁵ the survivor was a young child who had been raped by a convict. The Supreme Court in *Mange* noted that the non-examination of the prosecutrix was not a major infirmity in the prosecution's case since apart from being a child witness, the prosecutrix was also deaf and dumb, and “no useful purpose would have been served by examining her.”⁴⁶

The stereotype that persons with disabilities, such as hearing impairment or blindness, cannot provide important testimony is incorrect because it undermines their capacity to provide valuable evidence based on their experiences and perceptions. This was expressly recognised by the Supreme Court of India in *Patan Jamal Vali v. State of Andhra Pradesh*,⁴⁷ where the Court stated that such presumptions, which construed disability as an incapacity to participate in the legal process, not only reflected an unfounded understanding of how disability operates but also resulted in a miscarriage of justice through a devaluation of testimonies given by persons with disabilities. The supposed inferiority or irrelevance of witnesses who have disabilities was held by the Supreme Court to be an affront to their dignity and a violation of the principle of equality.⁴⁸ Disregarding the testimony of rape victims with disabilities was highlighted by the Supreme Court as a perpetuation of the stereotypes against persons with disabilities.⁴⁹

In the case of *Smruti Tukaram Badade v. The State of Maharashtra*,⁵⁰ the Supreme Court underscored the imperative of establishing a secure and barrier-free environment for recording the testimony of vulnerable witnesses in criminal proceedings. Previously, the ‘*Guidelines for Recording Evidence of Vulnerable Witnesses in Criminal Matters*’ issued by the High Court of Delhi confined the definition of vulnerable witnesses to

45 *Mange v State of Haryana* (1979) 4 SCC 349.

46 *ibid* [2].

47 *Patan Jamal Vali v State of Andhra Pradesh* 2021 INSC 272.

48 *ibid* [43].

49 *ibid* [45].

50 *Smruti Tukaram Badade v The State of Maharashtra* 2022 INSC 39.

individuals under 18 years of age. However, in *Smruti Tukaram*, the Supreme Court expanded the definition of vulnerable witnesses to include persons who have a ‘mental illness’ as defined under the Mental Healthcare Act, 2017 (“**Mental Healthcare Act**”) and individuals with speech or hearing impairments, as well as persons who have any other disabilities. This ensures that all such witnesses receive appropriate protections and accommodations during the legal process.

Witnesses with physical disabilities are often mistakenly seen by courts as helpless and liable to be easily manipulated. This could result in judicial outcomes that cast doubt on the credibility of such a witness and undermine their testimony. However, there is no legal basis for this and the testimony of a person with a physical disability should be treated on par with any other testimony except where the disability itself may be materially relevant to assessing the testimony (e.g., a witness who uses a wheelchair claimed to be somewhere that was entirely inaccessible by wheelchair and cannot explain this fact).

In the case of a witness with a mental health condition, their reliability is usually assessed through the lens of ‘(un)soundness of mind.’⁵¹ Courts may mistakenly presume that every individual with a mental health condition is an unreliable witness and disregard their testimony. Combating this prejudiced approach and considering their testimonies necessitates that judges attempt to balance the fair application of the law with a humane and socially sensitive approach that is accommodative of persons with mental health conditions.

Witnesses with mental health conditions may find it challenging to recall events sequentially. Memory difficulties, often linked to conditions such as depression or side effects of certain medications, may impact the accuracy of specific details. However, it is essential to provide reasonable accommodations to aid in gathering evidence from those experiencing memory loss. These memory difficulties generally affect the precision of details rather than the overall truthfulness or reliability of their testimony.⁵²

51 Michael L Perlin, ‘Simplify You, Classify You: Stigma, Stereotypes and Civil Rights in Disability Classification Systems’ (2009) 25 Georgia State University Law Review 607.

52 Judiciary of England and Wales, *Equal Treatment Bench Book* (Courts and Tribunals Judiciary, 2024 edition) 90 <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf>> accessed 13 September 2024.

Individuals with mental health conditions may face challenges in the court process, including difficulties with communication, concentration, sensory overload, and coping with stress, which can affect their ability to understand proceedings and participate effectively.⁵³ Potential adjustments can help address these challenges. For instance, witnesses with disabilities may not necessarily need to attend hearings if their presence is not essential for a fair trial. Travel difficulties can be addressed by conducting hearings in alternative venues or utilising video or telephone links. Communication adjustments play a pivotal role in facilitating understanding and participation. These adjustments may involve simplifying language, ensuring documents are accessible, and allowing extra breaks to aid comprehension. Similarly, during cross-examinations, adjustments such as providing screens or time limits for vulnerable witnesses, encouraging slower pacing, and allowing written responses can help ensure effective participation while safeguarding the rights of the individual.⁵⁴

11. Mental Capacity and “Unsoundness of Mind”

In addressing the legal rights of individuals with disabilities, it’s crucial to acknowledge the variability of mental capacity. While the legal system presumes individuals can make decisions and be held responsible, some individuals with intellectual disabilities or mental health conditions may have difficulties in decision-making.

However, it is crucial to assert that a mental health condition does not make an individual of unsound mind. Section 3(5) of the Mental Healthcare Act states that ‘Determination of a person’s mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been so declared as such by a competent court.’ A conclusion regarding reduced decision-making capacity should only be reached after a credible diagnosis from a trained professional in accordance with the law. It should not be based on stereotypes associated with certain mental health conditions or disabilities.

Identifying instances where a person lacks mental capacity is essential, requiring a nuanced approach tailored to their circumstances. There isn’t a single standardised

53 *ibid* 82-83.

54 *ibid* 88-90.

test for assessing mental capacity across all situations. In these assessments, the key question should not be whether the individual is generally capable, but rather whether they lack the capacity for the particular act or decision under consideration.⁵⁵ Two common purposes for assessing mental capacity are (1) competency to stand trial; and (2) criminal responsibility.

11.1. Incompetency to Stand Trial

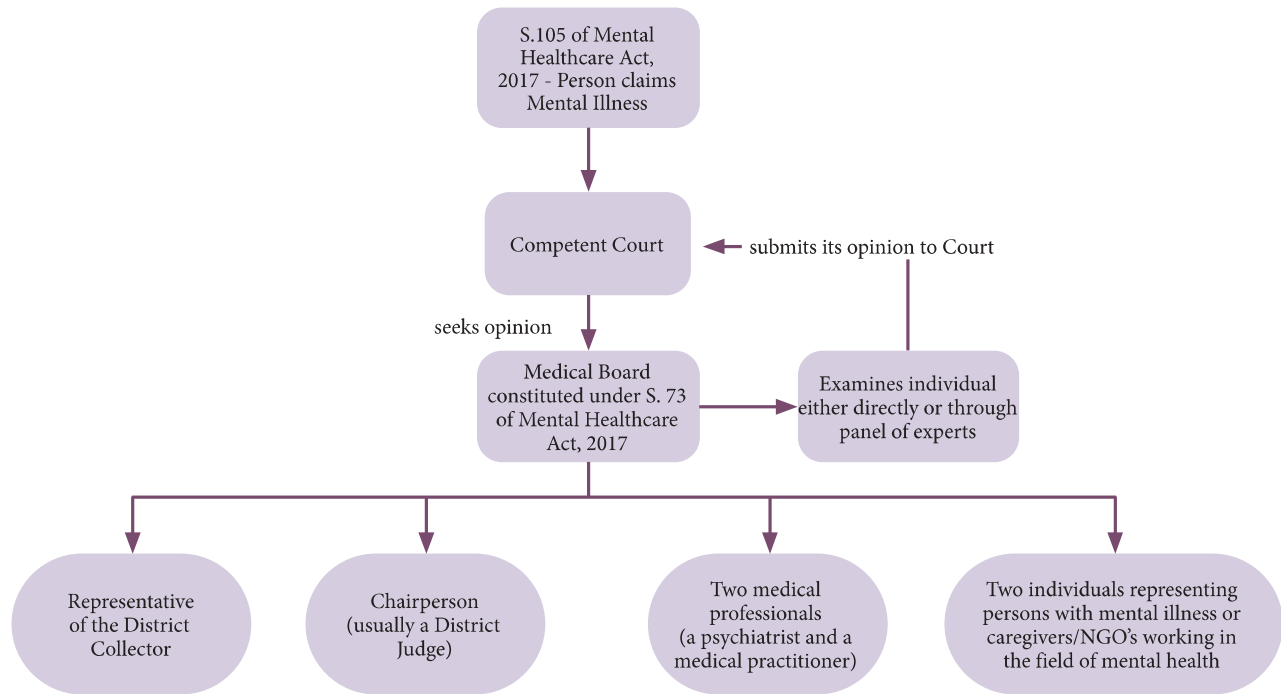
Under Section 328 of the Code of Criminal Procedure, 1973 (now Section 367 of Bharatiya Nagarik Suraksha Sanhita, 2023), if the Magistrate has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the magistrate should investigate the same. The accused undergoes examination by a designated medical officer, and if deemed incapable of standing trial, proceedings are postponed, with resumption contingent on their mental state improving.

Section 105 of the Mental Healthcare Act creates a statutory right for a person who claims to have a mental illness, as defined under Section 2(1)(s)⁵⁶ of the Act, to refer their case to the relevant Board for its opinion during any judicial process and casts a consequential obligation on the Competent Court to make a reference and seek an opinion from the Board.

The Board here refers to the Mental Health Review Board constituted by the State Authority under sub-section (1) of Section 73 of the Mental Healthcare Act. It comprises a chairperson (usually a District Judge), a representative of the District Collector, two medical professionals (a psychiatrist and a medical practitioner), and two individuals representing persons with mental illness or caregivers/NGOs working in the field of mental health (Section 74). This Board, either directly or through a panel of experts, will examine the individual in question and submit its opinion to the court (Section 105).

55 *ibid* 104.

56 Mental Healthcare Act 2017, s 2(1)(s) - “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgement, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.



The National Institute of Mental Health and Neurosciences (NIMHANS) provides five key assessment areas along with a detailed workup proforma to assess whether the person has the capacity to stand trial.⁵⁷ Assessment is usually done by a forensic psychiatrist. The assessment includes (i) Assessments of cognitive functions; (ii) understanding of charges against the individual; (iii) knowledge about court proceedings; (iv) understanding about their lawyer; and (v) understanding of behaviour in the court. The psychiatrist undertaking the examination can also be called as an expert witness to testify in court.

11.2. Criminal Responsibility

Unsoundness of mind is a defence to a criminal charge on the basis that a person with a mental health condition cannot have the necessary guilty intent to commit a crime.⁵⁸ Historically, there have been various tests used to declare a person “legally insane”

57 Shalini Naik, Dinakaran Damodharan, C Naveen Kumar and Suresh Bada Math, *Forensic Psychiatry in India - Interface of Indian Laws and Mental Health* (NIMHANS Publication 2021).

58 KD Gaur, *Indian Penal Code* (6th edn, Universal Law Publishing) 206.

such as the “Wild Beast” test,⁵⁹ the “Insane Delusion” test,⁶⁰ and the “test of capacity to distinguish between right and wrong.”⁶¹ These tests laid the foundation for what was known as the M'Naughten rule, which states that “To establish a defence on the ground of insanity, it must be proved that at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or he did not know that what he was doing was wrong.”⁶² In India, Section 84 of the Indian Penal Code, 1860 (now Section 22 of The Bharatiya Nyaya Sanhita, 2023) is based on the M'Naughten rule.⁶³

For these provisions to apply, an accused must prove that at the time of the commission of the offence, they were of unsound mind to such a degree that: (i) they were incapable of knowing the nature of the act; or (ii) they were precluded because of unsoundness of mind from understanding that what he was doing was either wrong or contrary to law.

A criminal court has the authority to order assessments to determine the issue of criminal responsibility. Medical experts are integral in this evaluation process, providing crucial insights into the mental state of the individuals involved. The court may ask specific questions to the medical expert.⁶⁴ Examples of such questions include inquiries about the nature and severity of the accused's mental health and whether the mental health condition led to the commission of a crime. Their duties entail reviewing accompanying legal documents, conducting comprehensive history assessments, evaluating the defendant's mental state at the time of the offence, and performing mental

59 Thomas Bayly Howell, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1820*, vol 6 (Longman, 1816) 695. The “wild beast test”, established in the case of *R v Arnold* (1724), states that a person is considered insane at the time of committing an offence if they act as if they were a wild beast, devoid of understanding and control over their actions.

60 *ibid* vol 27, 128. The ‘Insane Delusion Test’, established in the case of *R v Hadfield* (1800), particularly focused on the ability to distinguish between right and wrong to determine the insanity of a person.

61 SB Math, CN Kumar and S Moirangthem, ‘Insanity Defense: Past, Present, and Future’ (2015) *Indian Journal Psychology Medicine* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676201/#:~:text=Section%2084%20of%20IPC%20deals,wrong%20or%20contrary%20to%20law.%E2%80%9D>> accessed 06 September 2024. It was established in Bowler's case (1812) 1 Collinson Lunacy 673.

62 *R v Daniel Mc Naghten* (1843) 8 Eng. Rep. 718; [1843] UKHL J16.

63 *Prakash Nayi @ Sen v State of Goa* 2023 INSC 24 [13].

64 RK Chadda, ‘Forensic evaluations in psychiatry’ (2013) *Indian J Psychiatry*, 55(4): 393-9.

status and cognitive functioning assessments.⁶⁵ It is important to mention here that the expert evidence does not relieve the court from forming an independent opinion. The question of unsoundness of mind is to be primarily decided by the court, based on the available evidence. All the suggestions and qualifiers concerning evaluating the testimony of individuals set out in Section 10 of this Handbook above are applicable when examining testimony.

12. Voting Rights and Persons with Disabilities

The right to vote is a constitutional right. However, Section 16(b) of the Representation of the People Act, 1950 states that a person may be disqualified as a voter if the person, ‘is of unsound mind and stands so declared by a competent court.’ Persons with disabilities, particularly intellectual or learning disabilities, and individuals with mental health conditions, are often subjected to prejudicial treatment by such laws concerning ‘unsoundness of mind’ due to stereotypes associated with disabilities. However, as noted above, a disability or mental health condition cannot be equated with unsoundness of mind.

Section 3(5) of the Mental Health Care Act states that a “Determination of a person’s mental illness shall alone not imply or be taken to mean that the person is of unsound mind, unless he has been so declared as such by a competent court”.⁶⁶ Therefore, an electoral officer cannot refuse to enter a person’s name in the electoral register solely because they have a mental health condition. The electoral officer could only do so where there existed a declaration by a competent court that the individual was of an unsound mind.

A person with a mental health condition does not have to go to court and prove that he or she is of sound mind. Similarly, a booth officer cannot stop a person with a mental health condition from exercising their franchise once the person’s name is on the electoral register.

65 *Insanity Defense: Past, Present, and Future* (n 56).

66 Mental Health Care Act, 2017.

12.1. Defining voters with disabilities

Section 11 of the RPwD Act states that The Election Commission of India (“ECI”) and the State Election Commissions will ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

The ECI has several initiatives to facilitate equal access and full participation for persons with disabilities.⁶⁷ Voters having one among the twenty-one disabilities as identified by the RPwD Act are termed as voters with disabilities by the ECI.⁶⁸ When enrolling individuals, the ECI classifies voters with disabilities under four categories (1) visually impaired individuals; (2) persons with speech or hearing disabilities; (3) persons with locomotor disabilities; and (4) others.

A person with a disability can get enrolled on the electoral roll by filling out Form 6 inclusive of information about their disability online at www.nvsp.in and uploading the necessary documents. This allows the ECI to make appropriate provisions for voters with disabilities and render any additional assistance necessary.⁶⁹

12.2. Recent initiatives by ECI

The ECI has issued instructions to take proactive steps to identify persons with disabilities in advance with the help of census data, the Social Justice & Empowerment Department, the Child Welfare Department, and Samagra Yojana. As per the ECI’s directions, persons with disabilities in each voting precinct should be identified by booth level officers and such information would be kept in a database. However, this additional information should not be part of the electoral roll.⁷⁰ The data allows the ECI to provide targeted assistance and accommodation to voters with disabilities.⁷¹

67 ‘PWD’ (Election Commission of India) <<https://eci.gov.in/persons-with-disabilities/>> accessed 05 September 2024.

68 *ibid.*

69 ‘Breaking The Barriers: Making Elections Accessible’ (Election Commission of India) <https://ceobihar.nic.in/pwd/Breaking%20Barriers_WEB.pdf> accessed 05 September 2024.

70 ‘Breaking The Barriers: Making Elections Accessible’ (Election Commission of India) <https://ceobihar.nic.in/pwd/Breaking%20Barriers_WEB.pdf> accessed 05 September 2024.

71 *ibid* 17.

Further, directions were issued by the ECI codifying the Assured Minimum Facilities (such as a ramp, drinking water, toilet, lighting, furniture, help desk, and proper signage at each polling station) to be given to persons with disabilities and to set up special polling stations exclusively for them in areas where persons with disabilities reside in large numbers and leprosy sanatoriums.⁷²

“

U.S. District Court case about voting rights of PwDs: In *Eason v. New York State Board of Elections*, a case was filed before the U.S. District Court for the Southern District of New York by the National Federation of the Blind, the Center for the Independence of the Disabled, and individual plaintiffs who are blind, for the states to meet accessibility and confidentiality standards when providing services such as online voter registration. On 25 February 2019, the parties in this case announced a settlement agreement in which the State Board of Elections and the Department of Motor Vehicles have agreed to ensure fully accessible voter registration by the end of 2019. Their websites will be made accessible to screen-access software within two years, and they will work with an accessibility consultant to enact practices and procedures to ensure long-term website accessibility.⁷³

”

13. Property Ownership for Persons with Disabilities

Article 12 of the UNCRPD affirms that persons with disabilities, including disability due to mental health conditions, have the right to recognition everywhere as persons before the law and also confers on them the right to inherit property.

⁷² *ibid.*

⁷³ *Eason v New York State Board of Elections 16-cv-4292 (KBF) (S.D.N.Y. Dec 20, 2017)*

As per section 13(1) of the RPwD Act, the Appropriate Government shall ensure that persons with disabilities have the right, equally with others, to own or inherit property, movable or immovable, control their financial affairs, and have access to bank loans, mortgages and other forms of financial credit. This erases any doubts as to the legal capacity of persons with disabilities to own and inherit property. This is significant since it abandons the archaic stereotype of incompetence associated with persons with disability.

The only disqualification from entering into a contract for inheriting or buying and selling of property would be of “unsoundness of mind” and not “mental illness” as has been stated by the provisions of Contract Act, 1872 (Section 11) and Indian Succession Act, 1925 (Section 59). As noted above, an intellectual disability or mental health condition cannot be automatically equated to unsoundness of mind.

14. Termination of Pregnancy and Disability

There exist two distinct issues concerning the termination of pregnancy and persons with disabilities. First, there are scenarios where a person with disabilities has a pregnancy. Second, there are situations where the foetus, and subsequently the child, may have an impairment or disability. In India, the termination of pregnancies is regulated by the Medical Termination of Pregnancy Act, 1971 (“MTP Act”). The MTP Act was amended in 2021 to allow for the termination of pregnancy for up to twenty weeks on the grounds that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health or that there is a substantial risk that if the child were born, it would have a serious physical or mental abnormality.⁷⁴ The MTP Act and Rule 3B of Medical Termination of Pregnancy (Amendment) Rules 2021 (“MTP Rules”) allow for the termination of pregnancy for up to twenty-four weeks in case the mother has a physical or mental disability.

14.1. Termination of Pregnancy Involving Persons with Disabilities

The Supreme Court in *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*⁷⁵ noted that persons with disabilities may face

⁷⁴ Rights of Persons with Disabilities Act 2016, s 3(2).

⁷⁵ *X v The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi* 2022 INSC 740.

additional complications arising from their disabilities and be unable to carry the pregnancy to term. They may also decide against carrying their pregnancy to term due to any personal difficulties (mental or physical) which may directly or indirectly arise from their disability. Similarly, the Court also noted that persons with disabilities or mental health conditions may realise the fact of their pregnancy or determine that they do not want to carry it to term, later than persons without disabilities. These factors must be taken into consideration by courts when deciding applications under the MTP Act.

Further, persons with disabilities, particularly those with mental health conditions, visual or speech impairments, or those who reside in psychiatric care facilities, face an elevated risk of sexual assault. Barriers in communication may lead to a delay in the discovery of the pregnancy and its termination. They therefore require additional support and protection. For example, in *X v. Union of India*,⁷⁶ a woman with Down Syndrome had been raped by an unknown person. Her guardian discovered the pregnancy after the passage of twenty weeks. Due to these circumstances, the Bombay High Court allowed her to terminate her pregnancy after twenty weeks.

14.2. Termination of Pregnancy Involving Foetal Disabilities

The United Nations Committee on the Rights of the Child, in 1997, while discussing the rights of children with disabilities stated: “It was of course vitally important to work towards the creation of a safer world for children in which the risks of impairment and harm were minimised, but the solution was not through the denial of life itself as a preventive strategy. Rather, we must celebrate diversity and learn to celebrate the birth of every child, with or without disability.”⁷⁷

The Supreme Court of India affirmed this approach in a case wherein the Court rejected a plea of a woman to abort her twenty-six-week-old foetus which the medical reports showed had Down Syndrome.⁷⁸ The Court observed that while individuals with Down Syndrome often face mental and physical challenges, their intelligence levels can

76 *X v Union of India* 2017 SCC OnLine Bom 9334.

77 Committee on Rights of Child Recommendations, 1997, para 329, <<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/Recommendations/Recommendations1997.pdf>> accessed 05 September 2024

78 *Savita Sachin Patil v Union of India*, Writ Petition (Civil) No. 121/2017, Order dt. 28.02.2017

vary, and a large proportion may not have severe intellectual disability.⁷⁹ In this case, the foetus was “likely” to have certain challenges, but the report did not definitively state that these challenges would be severe.⁸⁰ This case shines a spotlight on the mistaken belief that a foetus with disabilities should be aborted to prevent “suffering”. It is vital to sensitise individuals and future parents that denial of life as a preventive strategy against disability should not be resorted to, and that there are a host of measures and support structures which can allow children with disabilities to fully participate in society.

15. Rights of Prisoners with Disabilities

Prisoners with disabilities represent a particularly marginalised demographic, necessitating special consideration and support which cater to their unique circumstances and requirements. The fundamental rights enshrined in Part III of the Constitution extend to prisoners, a recognition that even individuals behind bars must have their right to life and dignity protected.⁸¹

The administration and management of prisons fall under the jurisdiction of the respective State Governments, as outlined in Entry 4 of List II of the Seventh Schedule of the Constitution. Consequently, it is the responsibility of individual State Governments to enact appropriate legislative frameworks governing prisons and inmates, guided by documents such as the Model Prisons Act of 2023 and the Model Prisons Manual of 2016.

Section 5 of the Model Prisons Act of 2023⁸² underscores the importance of prison architecture and institutional pattern, and provides that prisons may be designed in such a manner to facilitate segregation and separate lodging of various categories of prisoners, and for attending to special needs of prisoners such as persons with disabilities.⁸³

While many state-level prison manuals lack specific provisions addressing the needs of prisoners with disabilities, there are notable exceptions. For example,

79 *ibid* 3.

80 *ibid* 3.

81 *Sunil Batra (II) v Delhi Administration* 1979 INSC 27.

82 Model Prisons and Correctional Services Act 2023, available at <https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf>.

83 Model Prisons and Correctional Services Act 2023, s 5(3).

Uttarakhand revised its Jail Manual in 2023 to include a dedicated chapter on “differently-abled prisoners”. The Uttarakhand Jail Manual (Rules) 2023⁸⁴ defines disability to encompass blindness, low vision, hearing impairment, locomotor disability, and other specified disabilities prescribed by the government.⁸⁵ It mandates that prison authorities ensure adequate facilities for prisoners with disabilities, protect them from abuse and cruel treatment and provide equal opportunities for education, training, and skill development.⁸⁶ Further, it stipulates that education and training for prisoners with visual or hearing impairments be provided in appropriate languages and modes of communication.⁸⁷ Qualified professionals proficient in sign language and Braille are to be employed to facilitate communication and skill development.⁸⁸ Additionally, vocational training programs tailored to the needs of prisoners with disabilities are mandated for those with developmental, intellectual, multiple disabilities, and autism.⁸⁹

Additionally, States and Union Territories can rely on international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, commonly known as the Nelson Mandela Rules,⁹⁰ while enacting their respective Prison Manuals. These rules advocate for reasonable accommodations to ensure equitable access to prison life for prisoners with disabilities. They also prohibit the solitary confinement of prisoners with disabilities when such measures would exacerbate their conditions.

In *Accused ‘X’ v. State of Maharashtra*,⁹¹ the Supreme Court held that post-conviction severe mental illness will be a mitigating factor in certain cases and needs to be considered while sentencing an accused to the death penalty. The Court also noted that Section 103 of the Mental Healthcare Act requires State Governments to set up a mental health establishment in the medical wing of at least one prison in each

84 The Uttarakhand Jail Manual (Rules) 2023, available at <https://prison.uk.gov.in/files/english_jail_manual_2023.pdf>.

85 *ibid* Rule 689.

86 *ibid* Rule 691.

87 *ibid* Rule 692(ii).

88 *ibid* Rule 692(iii).

89 *ibid* Rule 692(vii).

90 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), available at <https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf> accessed 19 August 2024.

91 *Accused ‘X’ v State of Maharashtra* 2019 INSC 518.

State and Union Territory, and prisoners with mental illness may be referred to and cared for in those establishments.

16. Educational Accommodations under the RPwD Act

Section 16 of the RPwD Act casts a duty on all educational institutions to provide any student with disabilities with ‘reasonable accommodation’ according to the individual student’s requirements.⁹² While the term “reasonable accommodation” in this context is not exhaustively defined, a contextual reading of Section 16 would show that it covers all measures necessary to ensure the full participation of students with disabilities. Section 17 of the RPwD Act details certain specific measures to promote and facilitate inclusive education to fulfil the duty under Section 16 of the Act.⁹³ These measures involve, *inter alia*, training and employing teachers who are qualified in teaching children with intellectual disabilities, using appropriate and alternative means of communication such as Braille or sign language, and providing free books and assistive devices as well as scholarships for students with benchmark disabilities.⁹⁴ Schools and other educational institutions are also required to employ innovative pedagogical methods to engage with children with disabilities and also monitor participation and attainment levels in respect of all students with disabilities.⁹⁵

Granting permission to use a scribe and allowing compensatory time for blind candidates during an examination are recognised forms of reasonable accommodation in India.⁹⁶ Similarly, in certain European jurisdictions, training and sensitising school staff to not sanction or punish children who have behaviour-linked conditions (like Asperger’s syndrome) is considered a form of reasonable accommodation.⁹⁷ Providing sign language interpretation for pupils who have a hearing impairment,⁹⁸ allowing students with dyslexia access to digital reading tools during tests,⁹⁹ and ensuring

92 Rights of Persons with Disabilities Act 2016, s 16(iii).

93 Rights of Persons with Disabilities Act 2016, s 17.

94 *ibid.*

95 *ibid.*, s 16(vi) and (vii).

96 *National Federation for the Blind v Union Public Service Commission* 1993 INSC 110.

97 Great Britain, First Tier Tribunal for Scotland Health and Education Chamber in *McGibbon v Glasgow City Council* (2018). See <<https://equineteurope.org/wp-content/uploads/2021/03/Reasonable-Accommodation-Disability-Discussion-Paper.pdf>>

98 Belgium, Tribunal of First Instance Ghent, case AR 09/1122/A (15 July 2009).

99 Sweden, Scania and Blekinge Court of Appeal, Malmö Municipality, FT 3697-19 (2020) and Svea Court of Appeal, Huddinge

counselling or mediation support and assistance to students with disabilities¹⁰⁰ are all forms of reasonable accommodation that have been recognised as promoting inclusive access to education in jurisdictions across the world.

Sections 31 and 32 of the RPwD Act also impose a duty on the Appropriate Government and other local authorities to ensure that every child with a benchmark disability has access to free education in a neighbourhood school, or a special school. The Act also sets out reservation mandates for admission into higher education institutions. These have been set out in Section 9 above.

17. Infrastructure and Environmental Obligations

Section 41 of the RPwD Act provides for measures to be taken by the Government to provide transport facilities, access to all modes of transport conforming to design standards, and accessible roads along with the development of scheme programmes to promote personal mobility at affordable costs.

Section 42 requires the Appropriate Government to ensure that audio, print, and electronic media are made accessible to persons with disabilities; electronic media is accompanied by audio descriptions, sign language interpretation, and close captioning; and everyday electronic equipment is compliant with universal design.

Section 45 requires public buildings to be made accessible in accordance with Union Government rules, within five years from the date of notification of the rules.

Section 40 of the RPwD Act provides that the Union Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information, and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas. These standards are enumerated in Rule 15 of the Rights of Persons with Disabilities Rules, 2017 and consist of the following:

Municipality, FT 8377-19 (2020); Göta Court of Appeal, Örebro Municipality, FT 3960-19 (2020).

100 Rules about teaching assistants and professional communication intermediaries, Croatia: Official gazette No 102/18, 59/19 and 22/20).

- Rule 15(1)(a): Harmonised Guidelines and Space Standard for Universal Accessibility in India, 2021
- Rule 15(1)(b): Standard for Bus Body Code for Transportation System, 2016
- Rule 15(1)(c)(iii): Accessibility for the ICT products and services (Part I and II)
- Rule 15(1)(d): Culture sector specific harmonised accessibility standards
- Rule 15(1)(e): Guidelines on accessible sports complex and residential facilities for sports persons with disabilities
- Rule 15(1)(f): The accessibility standards and guidelines for Civil Aviation 2022
- Rule 15(1)(g): Accessibility standards for Health Care.
- Rule 15(1)(h): Rural Sector-specific Harmonised standards/guidelines.
- Rule 15(1)(i): Accessibility Guidelines by Department of Drinking Water and Sanitation.

Key Guidelines and Standards for an Inclusive Environment:

Infrastructural Accommodations

Person-specific impairments	Accessibility needs
Persons with visual impairment	<ul style="list-style-type: none"> ▪ Adequate lighting for people with low vision. ▪ Tactile markings for identification. ▪ Wall handrails. ▪ Signage in braille, embossed, and/or large letters. ▪ Unobstructed pathways. ▪ Use of guiding blocks for persons with impaired vision to guide them within the buildings and facilities and facilities and outside the building. ▪ Building maps to be made available in accessible formats. ▪ Non-slip surfaces for safe movement

<p>Persons with hearing and/or speech impairments</p>	<ul style="list-style-type: none"> ▪ Conspicuous signage, and layout diagrams to help the persons easily reach the desired place. ▪ Alternate methods of communication in public places, such as paper and pen. ▪ Provision of information board in an easily understandable manner. ▪ Where possible, a sign language interpreter.
<p>Persons with intellectual impairments and/or learning disabilities</p>	<ul style="list-style-type: none"> ▪ Clear communications on events or activities to take place. ▪ Easy to read written material: Pictorial and lucid illustrations.
<p>Persons with physical impairment (Difficulty in walking)</p>	<ul style="list-style-type: none"> ▪ Wide pathways, ramps, and doorways to facilitate wheelchair movements. ▪ Accessible toilets and washing facilities. ▪ Wall handrails. ▪ Width of passage for crutch users (min. 900 mm) ▪ Accessible fire safety measures and security checkpoints equipped to screen wheelchairs. ▪ Step-free entry towards elevators.
<p>Persons with physical impairment (Difficulty using arms and hands)</p>	<ul style="list-style-type: none"> ▪ Frequently placed handrails to be easily grasped or leaned on. ▪ Doors permitting easy access e.g. automatic, revolving or sliding doors. ▪ Accessible toilets and washing facilities. ▪ Water filters, tea/coffee machines, and other equipment are placed at wheelchair-accessible heights.
<p>General Accessibility Needs</p>	<ul style="list-style-type: none"> ▪ Adequate space for persons using mobility devices, such as wheelchairs, crutches, or walkers. ▪ Accessible canteens with dedicated seating for persons with disabilities. ▪ Parking spaces that are accessible and convenient for persons with disabilities. ▪ ATMs in court premises are equipped with accessibility features.

For the complete guidelines and standards on creating inclusive, barrier-free infrastructure as of September 2024, refer to the *Harmonised Guidelines & Standards for Universal Accessibility in India (2021)* by the Ministry of Housing and Urban Affairs, available at <https://niua.in/intranet/sites/default/files/2262.pdf>.

Digital Accessibility

Some of the key guidelines to ensure greater digital accessibility are as follows:

- Web pages and application screens have titles that describe the topic or purpose of the page or screen. Web pages and applications have clear headings and labels that describe the topic or purpose.
- All buttons on websites and applications are clearly labelled.
- All documents are accessible and machine-readable.
- Non-text content that is presented to users has a text alternative that serves the equivalent purpose. CAPTCHAs are available in audio form.
- Labels or instructions are provided when content requires user input. If an input error is automatically detected, the item that is in error is identified and the error is described to the user in text.
- Pre-recorded audio-only content and pre-recorded video content are accompanied by alternative media that serves the equivalent purpose. Captions are provided for all pre-recorded and live audio content. Audio descriptions are provided for all pre-recorded video content.
- Information, structure, and relationships conveyed visually are conveyed through a presentation that can be programmatically determined or available in text.
- Colour is not used as the only visual means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.
- When the sequence in which content is presented affects its meaning, a correct reading sequence can be programmatically determined.

- Instructions for understanding and operating content do not rely solely on sensory characteristics of components such as shape, colour, size, visual location, orientation or sound.
- The purpose of each link can be determined from the link text alone or from the link text together with its programmatically determined link context.
- Calendars and forms to have accessible combo boxes or edit fields and avoid read-only edit fields.

For the complete guidelines and standards on ensuring quality and accessibility of government websites and applications as of September 2024, refer to the *Guidelines for Indian Government Websites and Apps 3.0* by the National Informatics Centre, Ministry of Electronics and Information Technology, available at <https://cdnbbsr.s3waas.gov.in/s3c92a10324374fac681719d63979d00fe/uploads/2024/02/2024022987.pdf>.

Courts can also take the following steps:

- Make available assistive technologies to aid persons with disabilities such as screen readers and magnifiers in computers and web pages.
- Create a process to be put in place for persons with disabilities to request all relevant documents in accessible formats.
- The e-Committee of the Supreme Court has laid down a Standard Operating Procedure for preparing accessible court documents, available at <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2022/11/2022112997.pdf>.

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10. National Informatics Centre, Ministry of Electronics and Information Technology, *Guidelines for Indian Government Websites and Apps 3.0* (2023) <<https://cdnbbsr.s3waas.gov.in/s3c92a10324374fac681719d63979d00fe/uploads/2024/02/2024022987.pdf>> accessed 13 September 2024.



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