





The Centre for Law & Policy Research is a not-for-profit organisation that is dedicated to making the Constitution work for everyone, through law and policy research, social and governance interventions and strategic impact litigation.

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# INTRODUCTION

The development of human rights standards and norms which explicitly apply to persons with disabilities is a welcome and much needed change in India. There was earlier the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("PWD Act") which was then replaced by the Rights of Persons with Disabilities Act 2016 ("RPD Act").

However, there remains a gap between the rights enshrined by law and the ground realities of discrimination against persons with disabilities.

Over the years, courts in India have been instrumental in holding the State and in some cases, private actors, accountable to their constitutional and statutory duties to protect the rights of persons with disabilities. These judgments serve an important function by enabling persons to articulate, advocate for, and ultimately realise the rights of persons with disabilities.

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## WHAT ARE THE AIMS OF THIS RESOURCE BOOK

This Resource Book aims to enable wider access to the seminal Supreme Court and High Court decisions on disability rights by presenting the judgments and explaining them in simple language and explaining the relevance and significance of each case. The book aims to raising awareness on a rights-based approach to disability. It covers judgments that include both the denials and realisations of rights for persons with disability, so that there is a holistic understanding of how courts have implemented disability rights.

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# WHO IS THIS RESOURCE BOOK FOR?

There are a wide range of stakeholders responsible for promoting and protecting the rights of persons with disabilities in India, including lawyers, activists, lawmakers, judges and persons with disabilities themselves. This resource book has therefore been developed for use by a wide range of stake holders including:



## 1 Community Members

Members of the disability community, seeking to understand the scope of their rights and entitlements.



## 2 Disability Rights Groups & NGO's

Disability rights groups and non-governmental organisations, seeking to raise awareness amongst the community and advocate for disability rights.



## 3 Civil Society Activists

Civil society activists, seeking to implement the rights and entitlements of persons with disabilities.



## 4 Students

Students with disabilities, seeking to enforce rights to admission and inclusive education.



## 5 Government Functionaries

Government functionaries responsible for enabling and ensuring rights and entitlements to persons with disabilities.



## 6 Academics & Lawyers

Academics & Lawyers who can use this as a ready-reckoner on important disability judgments.



## 7 Grievance Redressal Bodies

Local Level Committees on Disability, the designated State and Central Commissioners on the Rights of Persons with Disabilities and judges, interpreting and applying the law related to persons with disabilities.



# HOW IS THIS RESOURCE BOOK STRUCTURED?

This Resource Book is structured to enable readers to immediately identify the themes and topics they wish to find information on and engage with and does not need to be read in any specific order.

1

## INTRODUCTION TO DISABILITY LAW

A brief introduction for persons who are being introduced to disability law for the first time.

2

## KEY DEFINITIONS IN DISABILITY LAW

Explains the primary definitions relating to persons with disabilities and is intended to help readers understand the terminology used in the Book which address the substantive issues affecting the rights of persons with disabilities.

3

## CASE BRIEFS ON DISABILITY RIGHTS

This part includes summaries of the important judgments on the substantive rights and entitlements guaranteed to persons with disabilities. The summaries are organised thematically and by order of date. They comprise:

**Case details** – Title, Court, Judges and Citations. Both neutral citations and a legal reporter are provided wherever they are available. For all Supreme Court cases, this Book uses INSC citations from the official Supreme Court Reports which are digitised, free and accurate.

**Case summary** – Including the applicable right, facts, court's decision and the significance of the case in the panoply of disability judgments.

**QR codes** – Links to free and accessible versions of the judgment with critical paragraphs highlighted, for those who wish to read them.



## INTRODUCTION

# LEGAL FRAMEWORK ON DISABILITY RIGHTS IN INDIA

Disability rights discourse in India has evolved significantly since the country's independence. The first legislation covering persons with disabilities was the archaic Indian Lunacy Act, 1912, that viewed people with mental and psychosocial disabilities as problems that needed to be contained in an asylum.

Subsequently, the Mental Health Act, 1987 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("PWD Act") came into force to establish the "medical model" or "charity model" of disability. While the rights of persons with disabilities were recognized for the first time under the landmark PWD Act, there was a heightened focus on the care and treatment of persons with disability.

The global disability rights movement saw the emergence of the social rights model that views disability as a function of the societal barriers which hinder the participation of persons with disabilities on an equal basis as others.

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**The social rights model of disability recognises the autonomy, dignity, and legal capacity of persons with disabilities.**

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The movement culminated in the United Nations Convention on the Rights of Persons with Disabilities, 2006 ("UNCRPD"). India adopted the UNCRPD, and ushered in a rights-based approach to disability in India through the Rights of Persons with Disabilities Act, 2016 ("RPD Act") and the Mental Healthcare Act, 2017 ("MHC Act") which comprise the primary legal instruments on disability rights in India today. Additionally, the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities, 1999 enables the provision of support to individuals with certain specified disabilities and their caregivers.

## 01

### THE CONSTITUTION OF INDIA, 1950

The Constitution of India sets out the founding principles of the nation and lays down the structures for political, economic and social democracy and of justice.

The fundamental rights are provided in Chapter III of the Constitution. Article 14 provides the "right to equality", asserting that all persons are equal before the law. This includes persons with disabilities, ensuring they are not discriminated against and are treated equally, with the provision for special treatment where necessary. Article 15 (1) prohibits discrimination on the grounds of religion, race, caste, sex, place of birth, or any of them. Article 16(1) guarantees equal opportunity in matters of public employment. Read together, Articles 14-16 underpin the guarantees of reservation and equal opportunity in education and public employment for persons with disabilities as detailed in the PWD Act and RPD Act. Article 19 protects the rights of citizens to freedom of speech and expression, to move freely throughout the country and to practice a profession, trade or occupation of their choice. This Article is relevant to the rights of persons with disabilities to access information and means of communication, barrier-free movement and the right to pursue the employment of their choice. Article 21 guarantees the right to life and personal liberty of all persons, and the Supreme Court of India has interpreted it to include the right to live with dignity, the right to livelihood, the right to health and the right to education. Article 21-A specifically guarantees the right to free and compulsory education for all children between the ages of 6-14 years.

The Fundamental Rights together enshrine the doctrines of equality, life, and liberty under the Constitution. They not only ensure that the State not interfere with the enjoyment of rights, but further place a positive obligation on the State to secure the socio-economic rights of its citizens, including persons with disabilities.

The Directive Principles of State Policy (DPSPs) in Chapter IV of the Constitution also include provisions intended to guide the State's actions on persons with disabilities. Article 39A directs the State to provide free legal aid and to ensure access to justice is not denied to any citizen due to economic or other disabilities and Article 41 directs the State to secure the right to work, education and public assistance in cases of unemployment, old age, sickness, and disablement, subject to its economic capacity and development. Additionally, Article 46 directs the State to specially promote the educational and economic interests of the weaker sections of the people.

## 02

### PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("PWD Act") was the first legislation expressly recognizing the rights of persons with disabilities in India. Enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, 1992, the PWD Act recognized and provided for measures to promote and protect education and employment opportunities, provide rehabilitation and social security schemes and institute reservation in employment and educational institutions. The Act further instituted the offices of State Commissioners and Chief Commissioner for Persons with Disabilities to take steps to safeguard the rights of persons with disabilities and inquire into complaints. The PWD Act however only covered seven categories of disability and reinforced the medical model of disability. Although the PWD Act is no longer in force, it has left a powerful legacy which is reflected in the landmark cases included in this Resource Book.

## 03

### THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The Rights of Persons with Disabilities Act, 2016 is a landmark legislation in India that aims to protect and promote the rights and dignity of persons with disabilities. The RPD Act repealed and replaced the PWD Act, 1995. Enacted to comply with the UNCRPD, the RPD Act was a significant step towards ensuring equality, inclusion, and participation of persons with disabilities in all spheres of life. The following significant rights and entitlements are recognised and protected by the RPD Act:

#### Right to Equality

It guarantees the right to equality for persons with disabilities, ensuring they have the same legal rights as other citizens (Section 3). This includes the prohibition of discrimination on the grounds of disability in accessing public services, protection of their personal liberty, and the obligation on the state to provide reasonable accommodations for persons with disabilities and acknowledges the dignity of persons with disability.

#### Legal Capacity

It recognizes the legal capacity of persons with disabilities, respecting their autonomy and right to make decisions about their own lives (Section 13). The Act provides for limited guardianship as a means of support, rather than substitution, aligning with the principles of the UNCRPD (Section 14).

#### Protection from Abuse, Violence and Cruel or Inhuman Treatment

The Act recognises that persons with disabilities are particularly vulnerable to situations of physical or mental abuse and the State is obligated to prevent abuse and protect persons with disabilities and further rescue and rehabilitate victims (Sections 6 & 7). The Act criminalises atrocities committed against persons with disabilities (Section 92) including assault or intimidation of persons with disabilities with the intent to humiliate or dishonour them; forced and intentional deprivation of food or liquids; sexual abuse or exploitation of a woman or child with disability; injury or interference with a limb or sense or any supporting device of a person with disability and medical procedures which violate the reproductive rights of women with disabilities.

#### Inclusive Education

It provides for inclusive education, which includes inclusive classrooms, special educators and assistive technologies, ensuring that children with disabilities can attend mainstream schools alongside their peers is guaranteed (Section 16). It further mandates free education for children with benchmark disabilities (Section 31) and 5% reservation in government higher educational institutions (Section 32).

#### Inclusive Workplaces

It mandates that inclusive workplaces should be achieved through the provision of reasonable accommodations to support persons with disabilities (Section 20). For persons with benchmark disabilities, the Act provides for a 4% reservation in government jobs, an increase from the previous 3% (Section 34) and regulates conditions of employment including transfers and promotions.

#### Accessibility & Inclusion

It ensures that access to justice includes non-discriminatory access of persons with disabilities to all processes by judicial or quasi-judicial authorities and the judicial system must provide accessible facilities and services to persons with disabilities (Section 12). Victims or abuse or violence are entitled to free legal aid (Section 7). The Act also establishes Grievance Redressal mechanisms (Section 23), and authorities appointed by the State to redress complaints of rights violations under the Act (Sections 75 & 80). It also mandates the setup of Special Courts and Special Public Prosecutors to try offences against persons with disabilities (Sections 84 & 85).

#### Accessibility To Justice

The Act mandates both public and private establishments to provide accessible environments, including physical infrastructure, transportation, information and communication technology, and services. It also encourages inclusive design in urban and rural planning to ensure accessible public spaces and services (Sections 40-46).



Right to Health & Rehabilitation	The Government has the duty to provide barrier-free access to persons with disabilities in accessing healthcare, free healthcare for income-poor persons with disabilities and take positive steps to promote healthcare (Section 25) and provide schemes for rehabilitation (Section 27).
Social Security	The Act mandates the provision of social security benefits, pensions, insurance, and unemployment allowances, to support persons with disabilities and their families (Sections 24 & 26) and reservation of 5% and concessions to persons with benchmark disabilities in allotment of agricultural land, housing, poverty alleviation and development schemes with preference to women with disabilities (Section 37).
Right to Vote	It guarantees the right to participate in political and public life to ensure that persons with disabilities can vote independently and secretly, with provisions for accessible voting materials and facilities (Section 11).



04	THE MENTAL HEALTHCARE ACT, 2017
	The Mental Healthcare Act, 2017 (“MHC Act 2017”) repealed the Mental Health Act, 1987 and aligned Indian mental health law with the international human rights standards laid down in the UNCRPD. The previous legislation was custodial in nature, focusing on the institutionalization and detention of persons with mental illness. The MHC Act, 2017 adopts a rights-based approach and the main provisions are as follows:
Right to Health	Right to health of persons with mental illness which includes the right to non-discriminatory access to mental healthcare services, responsibility of the Government to provide mental healthcare and rehabilitation services and facilities (Sections 18 and 21).
Right to Community Living	Right to community living of persons with mental illness and right to be a part of, and not segregated from society (Section 19).
Right to Information & Confidentiality	Right to Information and Confidentiality ensuring that mental health patients have the right to their own medical information and confidentiality concerning their mental health status, treatment, and clinical records (Sections 22-25).
Advance Directives	The right to make Advance Directives specifying the kind of treatment they wish to receive or reject in case they become incapacitated in the future, giving patients control over their own treatment.
Appoint Nominated Representative	Individuals can appoint a nominated representative to make decisions on their behalf regarding their treatment and care if they are unable to make those decisions themselves. This ensures that patients’ preferences and best interests are considered (Sections 5-17).
Decriminalisation of Attempted Suicide	Decriminalisation of attempt to suicide under Section 309 of the Indian Penal Code, 1860, attempt to commit suicide is a punishable offence. The MHC Act states that any persons who attempts to commit suicide shall be presumed to be under severe stress and provides that the Government shall have the duty to provide care, treatment and rehabilitation (Section 115).

## 05

### THE NATIONAL TRUST FOR THE WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

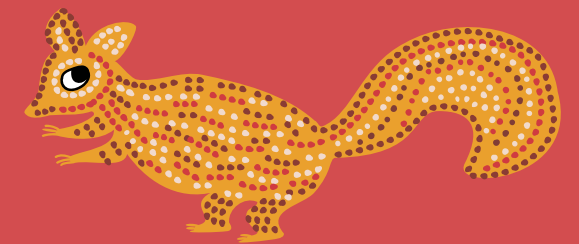
This legislation was enacted to establish the National Trust, an autonomous body under the Ministry of Social Justice and Empowerment, with the mission of enabling and empowering persons with specified developmental disabilities (autism, cerebral palsy, mental retardation and multiple disabilities) to live as independently and as fully as possible within and as close to the community to which they belong. This was to ensure access to care and protection of individuals with disabilities without family support. The Act also provides for the establishment of Local Level Committees at the district level who would determine guardianship that may be required for an individual with disability empowered to appoint guardians. Instances of neglect, abuse, and exploitation of individuals with disabilities by their guardian can also be reported to the Local Level Committee.

## 06

### THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 2006

The UNCPRD was adopted in 2007 by the UN General Assembly and signed and ratified by India in 2007. Its adoption marked a historic milestone in the global movement for disability rights. It responded to the urgent need for a comprehensive, legally binding international framework to protect the rights of persons with disabilities, promote their dignity, and ensure their full participation in society. The UNCPRD enshrined the following key principles of disability rights:

- Respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons.
- Equality & Non-discrimination of all persons on the basis of their disability.
- Full and effective participation and inclusion in society.
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.
- Equality of opportunity.
- Accessibility.
- Recognition of rights of women with disabilities.
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.



# KEY DEFINITIONS

This section introduces key concepts & definitions under the RPD Act and MHC Act, necessary to articulate the rights of persons with disabilities.

## PERSONS WITH DISABILITY

A “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others --- Section 2(s) RPD Act

The definition is made up of two aspects. The first is the nature of the impairment i.e., it is long-term and either physical, mental, intellectual or sensory. The second part recognizes that it is the interaction of the impairment with societal and environmental barriers that hinders their full and effective participation in society equally with others. Section 2(c) of the RPD Act explains that “barriers” may be communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors.

PERSONS WITH  
BENCHMARK  
DISABILITY

A “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority --- S.2(r) RPD Act

Under the RPD Act, certain rights and entitlements prescribed in Chapters VI and VII including free education for children (S.31), reservation in higher educational institutions (S.32), reservation in public employment (S.33 and 34), special employment exchanges (S.36) and schemes and development programmes (S.37) are made only available to persons with benchmark disabilities. The Schedule to the RPD Act currently prescribes 21 categories recognised as specified disabilities eligible for inclusion as a person with benchmark disability.

PERSONS WITH  
DISABILITY HAVING  
HIGH SUPPORT  
NEEDS

A “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support --- S.2(t) RPD Act

“High support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy --- S.2(l) RPD, 2016

Together Sections 2(l) and (t) specify that persons with disability having high support needs include those requiring intensive physical or psychological support to complete daily activities, take informed and independent decisions and to fully participate in or access all areas of life. Persons with high support needs are also eligible for beneficial government schemes.

MENTAL ILLNESS

“Mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, 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 --- S.2(s) Mental Healthcare Act, 2017

The category of “mental illness” is a specified disability in the Schedule to the RPD Act.

Section 3(5) of the MHC Act, 2017 makes it clear that “mental illness” cannot be equated with “a person of unsound mind”, unless there is a declaration by a competent court to that effect.



# JUDGMENT SUMMARIES

01

# REASONABLE ACCOMMODATION

For Persons With Disabilities

## ABOUT

# REASONABLE ACCOMMODATION

“Reasonable accommodation” under Section 2(y) of the RPD Act means the “necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others”.

This concept is pivotal in ensuring that persons with disabilities can live with dignity, equality, and independence. Reasonable accommodation mandates practical adjustments that facilitate the full inclusion and participation of persons with disabilities in all aspects of life. Accommodation can include changes in the environment, equipment or practices to enable a person with disability to fully participate on an equal basis as others. Denial of reasonable accommodations to any individual with disability by the State (Section 3), public educational institution (Section 16) or public employer (Section 20) amounts to discrimination. However, the proviso to Section 20(1) of the RPD Act permits the exemption of a government establishment from the provisions of Section 20.

The Bombay High Court expressly relied on the principle of “reasonable accommodation” in *Ranjit Kumar Rajak v. State Bank of India* for the first time. Another pioneering case was *Syed Bashir-Ud-Din Qadri v. Nazir Ahmed Shah* in 2010, where the Supreme Court first applied the principle while holding that the Petitioner teacher was entitled to remain in his appointment, despite having cerebral palsy and that he could perform his duties with the aid of assistive devices. In 2016, the Supreme Court in a seminal decision in *Jeeja Ghosh v. Union of India*, held that all airlines had to comply with Civil Aviation Regulations which mandated accessibility and provide reasonable accommodations to passengers.

However, it was not until 2021 in *Vikash Kumar v. United Public Service Commission*, where the Court analysed the meaning and scope of the principle and held that reasonable accommodation as covered under the RPD Act, was an expression of the constitutional guarantees of equality, freedom and dignity. The Court held that:

“For a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality ...to enable the disabled to enjoy the constitutional guarantee of equality and non- discrimination.”

The Courts have continued to interpret and expand the scope of reasonable accommodations in the years since.



# 01

## Ranjit Kumar Rajak v. State Bank of India

### RIGHT IN QUESTION

The meaning of 'undue burden' in the context of reasonable accommodation.

### CASE NUMBER

Writ Petition No. 576 of 2008 decided on May 8, 2009

### COURT

Bombay High Court

### JUDGES

Ferdino I. Rebello & R. S. Mohite, JJ.

### CITATION

(2009) 5 Bom CR 227



### FACTS

The Petitioner, who had a renal transplant in 2004, was selected for the position of Probationary Officer at SBI. Despite being declared medically fit by his doctor, SBI denied him employment based on his medical history, citing the potential financial burden due to ongoing medical care and medication costs.

### COURT DECISION AND REASONING

The Bombay High Court ruled in favor of the Petitioner and held that the denial of employment based on his medical history was irrational, unfair, and discriminatory. The Court emphasized that denying employment solely based on a past medical condition violates Articles 14 and 16(1) of the Constitution, which guarantee equality and equal opportunity in public employment. The Court recognized the concept of reasonable accommodation for individuals with medical conditions, under the UNCRPD and the Optional Protocol to which India is a signatory. Recognising that there was no law to determine "reasonable accommodation" and 'undue burden', the Court relied on Articles 14, 16 and Article 21 of the Constitution. The Court found no evidence of undue burden on the Bank in providing the medical expenses which they are likely to incur for the Petitioner in the context of the size of the organisation and the financial implications on the organisation and rejected the defence of undue hardship of bearing the medical costs. The Petitioner was directed to be appointed to the post.

### SIGNIFICANCE

This judgement highlights the importance of non-discrimination in employment. The Court importantly held that in examining the claim for reasonable accommodation, 'undue hardship' would be interpreted based on the burden that would be caused keeping in mind the size of the organisation, the financial implications on the organisation and/or on the morale of other employees and the like. Unless the employer places such materials on record, the defence of undue hardship cannot be taken, and employers must align their policies with these principles to ensure fair and just treatment of all employees.

# 02

## Syed Bashir-Ud-Din Qadri v. Nazir Ahmed Shah

### RIGHT IN QUESTION

Right of persons with cerebral palsy to reasonable accommodation and affirmative action in employment.

### CASE NUMBER

Civil Appeal Nos. 2281-2282 of 2010, decided on March 10, 2010

### COURT

Supreme Court of India

### JUDGES

Altamas Kabir & Cyriac Joseph, JJ.

### CITATION

2010 INSC 140; (2010) 3 SCC 603



### FACTS

The Appellant, an individual with cerebral palsy, worked as a teaching guide. His selection was set aside on the ground that his disability rendered him unfit for teaching as he could not write on the blackboard. This order of setting aside his selection was challenged.

### COURT DECISION AND REASONING

The Supreme Court considered the provisions of the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998. It held that the doctrine of reasonable accommodation ran through the Act, as Sections 21 and 22 dealt with reservation of posts and section 27 provides for schemes for ensuring employment for persons with disabilities. The Court held that where a person with cerebral palsy may not be able to write on a blackboard, an electronic external aid could be provided which could project the picture on a screen. The Court held that if the challenges of his disability did not hinder the Appellant from effectively performing his teaching duties and does not disadvantage the students, there was no reason for why he could not be continued as a teacher and directed the reappointment of the Appellant to the post.

### SIGNIFICANCE

The Supreme Court applied the rule of reasonable accommodation for the first time in this case, holding that the disengagement of the Appellant went against the spirit of J&K Persons with Disabilities Act, 1998.

# 03

## Vikash Kumar v. Union Public Service Commission & Others

### RIGHT IN QUESTION

Right of a person without a benchmark disability to access the facility of a scribe in an examination.

### CASE NUMBER

C. A. No. 273 of 2021, decided on February 11, 2021

### COURT

Supreme Court of India

### JUDGES

Dr Dhananjaya Y Chandrachud, Indira Banerjee, Sanjiv Khanna JJ.

### CITATION

2021 INSC 78; (2021) 5 SCC 370



### FACTS

The Appellant, who had dysgraphia (writer’s cramp) was denied a scribe to write the 2018 Civil Services Examination (CSE 2018) on the ground that he did not have a benchmark disability.

### COURT DECISION AND REASONING

The Court considered Section 3 of the RPD Act, 2016 which guarantees the right to equality and non-discrimination to persons with disabilities and includes the right to reasonable accommodation. It held that the section recognizes that challenges faced by persons with disabilities differ qualitatively from those encountered by other marginalised communities, and observed that: “...for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – and an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination.”

It further observed that the whole concept of a benchmark disability within the meaning of Section 2(r) was in the context of special provisions including reservations that are found in Chapter VI of the RPD Act 2016. However, the rights and entitlements under the Act other than those special provisions are available to all persons with disabilities. The Court therefore concluded that confining the facility of a scribe only to those who have benchmark disabilities would deprive a class of persons of their statutorily recognized entitlements.

### SIGNIFICANCE

This decision is important for holding that the right to reasonable accommodation was essential to the right to equality of persons with disabilities as guaranteed under both the Constitution and RPD Act. It further made it clear that the State was under a duty to not restrict the right of persons with disabilities to reasonable accommodation to only those with benchmark disabilities.

“Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence – whether as students, members of the workplace, participants in governance or, on a personal plane, in realizing the fulfilling privacies of family life. The accommodation which the law mandates is ‘reasonable’ because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.”

### JUSTICE DR. DHANANJAYA Y CHANDRACHUD

*Vikash Kumar v. Union Public Service Commission & Others*

# 04

## Avni Prakash v. National Testing Agency

### RIGHT IN QUESTION

Right of a person with disability to be given additional compensatory time while writing examinations.

### CASE NUMBER

Civil Appeal No.7000 of 2021, decided on November 23, 2021

### COURT

Supreme Court of India

### JUDGES

Dr. Dhananjay Y. Chandrachud & A. S. Bopanna, JJ.

### CITATION

2021 INSC 781; (2023) 2 SCC 286



### FACTS

The Petitioner, a person with dysgraphia (Writer's cramp), was denied one hour of compensatory time while attempting the NEET-UG entrance examination for admission to MBBS programmes, and her paper was forcibly taken away from her.

### COURT DECISION AND REASONING

The Respondents had contended that the denial of compensatory time was due to the Petitioner's failure to provide a Disability Certificate in the specific format prescribed by them. However, the prescribed Certificate could only be issued to candidates at the time of admission, and not prior to the examination. Consequently, the Court held that the Petitioner suffered from a "tragedy of errors" resulting in the violation of her rights to reasonable accommodation, inclusive education and non-discrimination under the RPD Act. The Court denied the Petitioner's plea to conduct a re-examination but recognised that she was wrongfully deprived of compensatory time of one hour while appearing for the NEET despite her entitlements under the Act and directed the first respondent to consider what steps could be taken to rectify the injustice within a period of one week and take necessary measures. Further, they directed them to remove all ambiguities in the NEET-Bulletin as regards requirements and take all measures to ensure that persons in examination centres are sensitised and trained to deal with the requirements of reasonable accommodation raised by persons with disabilities.

### SIGNIFICANCE

The decision highlights the importance of training and sensitization of authorities on the rights of persons with disabilities, in particular the principle of reasonable accommodation, and their corresponding duties.

# 05

## Mohamed Ibrahim v. Chairman & Managing Director and Others

### RIGHT IN QUESTION

Right of a person with colour-blindness to seek reasonable accommodation in employment.

### CASE NUMBER

Civil Appeal No. 6785 of 2023, decided on October 16, 2023

### COURT

Supreme Court of India

### JUDGES

S. Ravindra Bhat & Aravind Kumar, JJ.

### CITATION

2023 INSC 914



### FACTS

The Appellant was selected for appointment as the Assistant Engineer (Electrical) by the Respondent TANGEDCO corporation, but it was cancelled on the ground of the Appellant's colour blindness, which was challenged by him.

### COURT DECISION AND REASONING

The Supreme Court observed that the condition of colour vision deficiency is not specified as a disability under the Rights of Persons with Disabilities Act, 2016, and benefits under the Act are restricted to persons with benchmark disabilities. It relied on the decisions in Ravinder Kumar Dhariwal v. Union of India, 2021 (13) SCR 823 and Vikash Kumar v. Union Public Service Commission, 2021 (12) SCR 311, which held that that the principle of reasonable accommodation should be provided to all persons with disabilities, for ensuring substantive equality and not just for persons with benchmark disabilities. The Court held that the Appellant was denied a post due to his colour-blindness, yet he does not fit the category of a person with disability, and this "challenges traditional understandings of what constitute "disabilities". The Court therefore travelled beyond the provisions of the RPD Act and formulated principles which can be rationally applied and directed the reinstatement of the Appellant to the post.

### SIGNIFICANCE

The Court builds on the decision in Ashutosh Kumar v. Film and Television Institute of India (2022) 13 SCC 40, in which the principle of reasonable accommodation was applied to individuals with colour vision deficiency, on the ground that their physical limitations did not prevent them from learning and contributing to the study of art, and any barriers could be overcome with some assistance. Here, the decision expands the scope of disability and reasonable accommodation by holding that even conditions that are not specified under the RPD Act, 2016 may be treated as a disability and consequently persons with those conditions would be entitled to reasonable accommodations to ensure their inclusion in society. In doing so, it grounds the rights of persons with limitations within the framework of the Rights of Persons with Disabilities Act, 2016.

02

# EMPLOYMENT

For Persons With Disabilities

## ABOUT

# RESERVATION IN PUBLIC EMPLOYMENT

The right to equal treatment of all persons as guaranteed under Article 14 of the Constitution along with the right to life (Article 21) and the right to carry out a profession or occupation of one's choice (Article 19) applies to all persons with disabilities. Despite these constitutional guarantees, persons with disabilities have been historically excluded from workplaces due to discriminatory practices and lack of reasonable accommodation. In India, only 36% of persons with disabilities are working, of which 58% are engaged in agriculture or household industries. The figure of working women with disabilities stands at only 23% [India Census Report, 2011].

Courts have been integral in realizing the rights of persons with disabilities in relation to employment and the jurisprudence thus far may be broadly categorized into cases on

1. Reservations for persons with disabilities in public employment.
2. Non-discriminatory treatment at workplaces, which includes the rights against arbitrary dismissal, denial of promotions, equal opportunity in appointment and denial of reasonable accommodation.

Reservation for persons with disabilities in public employment serves as a crucial tool to provide equal opportunity for persons with disabilities.

In *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 21, the Supreme Court observed that Article 16(1) of the Constitution would cover persons with disabilities as well. Reservations in the case of persons with disability are horizontal in nature and as such do not restrict the reservations provided to persons belonging to Schedule Castes and Scheduled Tribes, and Other Backward Classes, which are vertical categories of reservation.

**Section 33 of the PWD Act provided that 3% of posts in public employment would be reserved for persons with disabilities, to be distributed equally among persons with:**

1. Blindness or low vision
2. Hearing impairment and
3. Loco motor disability or cerebral palsy.

**The RPD Act, 2016 under Section 34 states that reservation for persons with benchmark disabilities must be not less than 4% of all vacancies, and shall be distributed in the following manner:**

1. Blindness and low vision – 1%
2. Deaf and hard of hearing – 1%
3. Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy – 1%
4. Autism, intellectual disabilities, specific learning disabilities, mental illness and multiple disabilities together – 1%

In *Government of India v. Ravi Prakash Gupta*, the Supreme Court considered whether the benefit of reservation under Section 33 of the PWD Act was contingent on the identification of posts under Section 32 before they can be reserved and held that such a reading would run contrary to the object of the law itself. It observed that bureaucratic inaction was no justification for denying the rights of persons with benchmark disabilities to reservations in appointment.

The view on the correct quantum of reservation that ought to be followed by the state was settled in *Union of India v. National Federation for the Blind*, (2013) 10 SCC 772, where the Supreme Court clarified that the reservation of 3% of posts ought to be calculated against the total number of vacancies in the cadre-strength and not the total number of posts identified for persons with disabilities.

06

## National Federation of the Blind v. Union Public Service Commission

### RIGHT IN QUESTION

The right of visually impaired individuals to write the civil service examinations with the help of scribes.

### CASE NUMBER

W.P.(C) No.655 of 1991,  
decided on March 23, 1993

### COURT

Supreme Court of India

### JUDGES

Kuldip Singh, Kasliwal N.M., JJ.

### CITATION

1993 INSC 110; (1993)  
2 SCC 411



### FACTS

The National Federation of the Blind challenged the practice of the Union Public Service Commission (UPSC) that disallowed visually impaired persons from appearing for the Civil Services Examination. It further claimed appropriate accommodations including writing in Braille or with the help of scribes. The petition also claimed that preference should be given to recruiting persons with disabilities for posts identified as suitable.

### COURT DECISION AND REASONING

The Court recognized that although the Government had provided reservations to the extent of 3% in Group C and D posts for persons with disabilities, several posts in Group A and B were also identified as suitable for visually impaired persons. The Supreme Court partially allowed the petition, holding that the list of Category 'A' and 'B' posts are suitable for persons with visual impairments and there is no ground to deprive them of their right to compete for those posts along with other candidates belonging to the general category. The Court also permitted the use of a scribe or to write in Braille for the examinations.

### SIGNIFICANCE

This was a landmark judgement because it held that persons with visual impairments were eligible to compete for higher service posts in the civil services in Group A and B categories. It recognised the right to accommodations such as a scribe or writing in Braille to enable them to compete on an equal footing, even before there was any law for persons with disabilities.

07

## Government of India v. Ravi Prakash Gupta

### RIGHT IN QUESTION

Right to reservation when identification of jobs was not done by the government.

### CASE NUMBER

Special Leave Petition (Civil)  
No. 14889 of 2009 decided  
on July 7, 2010

### COURT

Supreme Court of India

### JUDGES

Altamas Kabir & Cyriac  
Joseph, JJ.

### CITATION

2010 INSC 368; (2010) 7 SCC  
626



### FACTS

The Respondent appeared in the UPSC Civil Service Examinations in 2006 and was fifth in the merit list for visually impaired persons. He was not selected due to there being only one vacancy identified for visually impaired persons. The Respondent however contended that he was entitled to be appointed due to the backlog vacancies as the State had failed to identify posts for reservation from 1996 up to 2006.

### COURT DECISION AND REASONING

The Court noted that the intention of the legislature was to provide for the integration of persons with disabilities into the mainstream. It considered whether the reservation provided for under Section 33 of the PWD Act was dependant on the identification of posts suitable for appointment. Having regard to the object of the Act, the Court held that interpreting Section 33 as contingent on completion of the exercise of identification of posts was untenable. Such an interpretation would permit the State to delay reservation by not identifying posts for persons with disabilities. It further noted that reservations must be provided with each Group of posts, and not altogether for posts in Group A, B, C and D services. The Court accordingly directed the appointment of the Respondent against backlog vacancies accumulated from 1996.

### SIGNIFICANCE

The Court right declared that the statutory benefits of reservation to persons with benchmark disabilities could not be denied due to a government's failure to identify suitable posts. The statutory right to reservation came into force in 1995 and ought to have been given effect to from then.



08

## Union of India and Others v. National Federation of the Blind & Others

### RIGHT IN QUESTION

Right of persons with disabilities to avail statutory reservation of 3% in public employment.

### CASE NUMBER

Civil Appeal. No.9096 of 2013 decided on October 8, 2013

### COURT

Supreme Court of India

### JUDGES

P Sathasivam C.J.,  
Ranjana Prakash Desai,  
Ranjan Gogoi, JJ.

### CITATION

2013 INSC 688; (2013) 10 SCC 772



### FACTS

The National Federation of the Blind and other disability rights groups, had filed a petition challenging the Department of Personnel & Training's Office Memorandum (O.M.) which, provided for reservation of 3% of the total identified vacancies in Group A and B posts, as against 3% of the total vacancies across the cadre strength, significantly limiting the available posts for persons with disabilities. The Delhi High Court allowed the petition and directed a modification of the O.M, and this decision was challenged by the Union Government before the Supreme Court.

### COURT DECISION AND REASONING

Since Section 33 of the PWD Act states that the appropriate government shall appoint "... such percent of vacancies not less than 3 per cent for persons or class of persons with disability". On this basis, the Court held that a plain reading of the section made it clear that the computation of reservation for persons with disabilities must be done identically for Group A, B, C and D posts by computing 3% of the total number of vacancies in the cadre strength and not based on the number of identified posts. It also held that the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence the judgement in Indra Sawhney would not be applicable with respect to the disabled persons. The Court directed that the O.M. dated 29.12.2005 be modified and be made consistent with the Court's Order.

### SIGNIFICANCE

This case reaffirmed the mandate of the PWD Act of granting 3% reservation in all vacancies for persons with disabilities which must be computed on the basis of the cadre strength, and that the manner of reservations in all posts A, B, C and D has to be identical. This judgement is significant because it held for the first time that the 50% reservation ceiling would not be applicable to persons with disabilities, as this was horizontal reservation and not vertical reservation.

09

## Dharam Pal Yadav v. The University of Rajasthan & Another

### RIGHT IN QUESTION

The right of persons with disability, who form a part of a horizontal reservation category, but who also belong to a vertical reservation category, to be adjusted within their respective vertical reservation categories (SC/ST/OBC).

### CASE NUMBER

D.B. Civil Special Appeal (Writ) No.104 of 2014, decided on April 15, 2015

### COURT

High Court of Rajasthan

### JUDGES

Sunil Ambwani, C.J. &  
Ajit Singh, J.

### CITATION

(201) 2 RLW 1143 (Raj)



### FACTS

The Petitioner, a person with disability belonging to the Other Backward Class (OBC) category applied for a teaching post which was reserved for an OBC (physically handicapped) person. The Petitioner was found eligible for the post but a person with disability from the General category was selected instead. The Petitioner challenged this, and the Single Judge dismissed the petition holding that persons with disability formed a separate category and thus the appointment was given to the most meritorious physically handicapped candidate, irrespective of their social category.

### COURT DECISION AND REASONING

On appeal, the Division Bench of the High Court overturned the Single Judge's decision, reasoning that horizontal reservations for persons with disabilities should intersect with vertical reservations. This means that reservations for persons with disabilities should be adjusted horizontally within their respective vertical categories (SC/ST/OBC). The advertisement clearly reserved one post for a physically handicapped candidate within the OBC category, which should have been filled by an OBC candidate with a disability i.e. the Petitioner. The Court held that the selection of a general category candidate for the OBC reserved post violated the reservation policy and deprived the Petitioner of his rightful opportunity.

### SIGNIFICANCE

The case is significant as it clarifies the application of horizontal reservations in conjunction with vertical reservations in public employment. It reaffirms the inter-se rights of persons with disabilities belonging to SC, ST and OBC categories as against the persons with disability from the general or unreserved category.

# RESERVATION IN PROMOTIONS

Reservations in appointments necessarily includes the question of reservation in promotions.

For decades, the Central Government had contended that there was no right to reservation in promotion for persons with disabilities, effectively halting the opportunities of career advancement for persons with disabilities. In its landmark judgment in *Rajeev Kumar Gupta v. Union of India and Ors*, (2016) 13 SCC 153, the Supreme Court ruled against the Union Government, holding that persons with disabilities were entitled to reservations in promotions. The issue however remained contested. The law was finally settled in *Siddharaju v. State of Karnataka*, (2020) 19 SCC 572, in which a 3-judge bench upheld the ruling in *Rajeev Kumar Gupta* that persons with disabilities were entitled to reservation in promotions as well.

10

## RIGHT IN QUESTION

Right of persons with disabilities to reservation of 3% in promotions.

## CASE NUMBER

Writ Petition (Civil) No.521 of 2008 and Civil Appeal No.5389 of 2016 decided on June 30, 2016

## COURT

Supreme Court of India

## JUDGES

Chelameswar & Abhay Manohar Sapre, JJ.

## CITATION

2016 INSC 482; (2016) 13 SCC 153



## Rajeev Kumar Gupta & Others v. Union of India & Others

## FACTS

The Petitioners were employees of Prasar Bharati Corporation of India, aggrieved by the Office Memoranda issued by the Department of Personnel and Training dated 18.02.1997 and 29.12.2005, depriving them of the benefit of reservation for appointment via promotions to Group A and B posts.

## COURT DECISION AND REASONING

The Court observed that the Respondent was extending reservations to persons with disabilities in some Group A and B posts identified for direct recruitment, however it was excluding them in the posts filled through promotions. Sections 32 of the PWD Act, 1995 provides for the identification of posts, which means that persons with disabilities are fully capable of discharging the functions attached to those posts. The Court held that for some of the identified posts in Group A and Group B, the mode of recruitment is only through promotions, and that the purpose underlying identification under S.32, PWD Act would be negated if reservation is denied to those posts. It follows that once posts are identified under S.32, reservation cannot be frustrated because the post is filled up by promotion, and that would amount to a denial of a statutory benefit under S.33, PWD Act. The Court also considered the decision in *Indra Sawhney & Ors. v. Union of India & Ors*, 1992 Supp (3) SCC 21, which prohibits reservations granted pursuant to Article 16(4) of the Constitution, in matters of promotion. It held that Article 16 (4) does not disable the State from providing reservations to other classes of citizens under Article 16 (1) and since the basis for providing reservation for persons with disabilities was not any of the criteria forbidden under Article 16(1), the rule of no reservation in promotions would not be applicable to persons with disabilities. The Office Memoranda challenged were therefore struck down as illegal.

## SIGNIFICANCE

This decision was a landmark victory for persons with disabilities as it was one of the first judgments which held that they would be entitled to reservation in promotions.

11

Siddaraju v. State of Karnataka & Others

RIGHT IN QUESTION

Right of persons with disabilities to reservation in promotions.

CASE NUMBER

Civil Appeal No.1567 of 2017 and connected matters decided on January 14, 2020

COURT

Supreme Court of India

JUDGES

Rohinton Fali Nariman, Aniruddha Bose & V. Ramasubramanian, JJ.

CITATION

2020 INSC 36; (2020) 19 SCC 572



FACTS

These were a batch of several petitions filed by different persons, who had been denied reservations in promotions. The lead petitioner was denied reservations in promotion from a Non-State Civil Services post to the IAS post. These cases were referred to a 3-judge bench, as the issue of reservation in promotions as laid down in Rajeev Kumar Gupta v. Union of India, (2016) 13 SCC 153, was questioned once again by the government.

COURT DECISION AND REASONING

The Court considered and upheld the validity of the law laid down in three seminal cases. First, the decision in Union of India v. National Federation of the Blind & Ors, (2013) 10 SCC 772, in which it was held that the reservation for persons with disabilities would be done in the same manner for all posts being A, B, C and D posts; Second, the decision in National Federation of the Blind v. Sanjay Kothari, Secy. Deptt. of Personnel and Training, 2015 (9) SCALE 611, which held that the manner of identification of reserved posts must be uniform across Group A, B, C and D posts; Third, the holding in Rajeev Kumar Gupta v. Union of India, (2016) 13 SCC 153 which recognized that reservations must be extended under the PWD Act, irrespective of the mode of recruitment and struck down O.M. dated 29.12.2005 as illegal. The Court noted its agreement with the decision in the Rajeev Kumar Gupta that Indra Sawhney could not be applied to reservations in favour of persons with disability, since it was not a separate category from reservation instituted pursuant to Article 16(4) of the Constitution and held that all these 3 judgments should be complied with.

SIGNIFICANCE

As a 3-judge Bench decision, this judgment is key to crystallizing the rights of persons with disabilities to reservation in promotion matters.

12

The State of Kerala v. Leesamma Joseph

RIGHT IN QUESTION

The right of a person with a disability to reservation in promotion under Article 16(4) of the Constitution.

CASE NUMBER

Civil Appeal No. 59 of 2021, decided on July 28, 2021.

COURT

Supreme Court of India

JUDGES

Sanjay Kishan Kaul & R. Subhash Reddy, JJ.

CITATION

2021 INSC 309; (2021) 9 SCC 208



FACTS

The Respondent, Leesamma Joseph, who had a 55% disability due to Post Polio Residual Paralysis worked as a typist/ clerk in the Police Department of Kerala in 1996 and had been promoted to various positions over the years, including Senior Clerk and Cashier. She claimed that the date of actual entitlement to her promotions was much earlier, since she was entitled to reservation based on her disability under the PWD Act 1995

COURT DECISION AND REASONING

At the outset, the Court reviewed the provisions of the PWD Act to determine whether it provided for reservations in promotions. It observed that Sections 32 and 33, concerning reservations needed to be read in consonance with Section 47, which states that no person shall be denied a promotion on the ground of their disability. On this basis, the Court held that the Act aims to ensure equal opportunity for career progression, including in promotions. It was determined that denying a promotion would negate the legislative mandate and result in stagnation and frustration for disabled employees. It relied on Union of India v. National Federation of the Blind, (2013) 10 SCC 772, to reiterate that posts suitable for persons with disabilities must be identified at all levels, including promotional posts. Additionally, the Court rejected the argument that the Respondent's appointment on compassionate grounds precluded her from claiming promotion benefits stating that she should be entitled to the same promotional benefits as others in the disability category and held that the Respondent was entitled to the claimed promotions and all consequential benefits.

SIGNIFICANCE

This decision spells out the importance of reservation in promotions for persons with disabilities. It is particularly important for those who enter the workforce on compassionate grounds, as it clarifies that no person may be discriminated against based on how they entered the job.

“Source of recruitment ought not to make any difference but what is material is that the employee is a PwD at the time for consideration for promotion. The 1995 Act does not make a distinction between a person who may have entered service on account of disability and a person who may have acquired disability after having entered the service. Similarly, the same position would be with the person who may have entered service on a claim of a compassionate appointment. The mode of entry in service cannot be a ground to make out a case of discriminatory promotion.”

**JUSTICE SANJAY KISHAN KAUL**

*The State of Kerala v. Leesamma Joseph*

# 13

## Reserve Bank of India & Others v. A.K. Nair & Others

### RIGHT IN QUESTION

Right of persons with disabilities to avail reservation in promotions under the PWD Act with retrospective effect.

### CASE NUMBER

C.A No. 529 and 530 of 2023, decided on July 4, 2023

### COURT

Supreme Court of India

### JUDGES

S. Ravindra Bhat & Dipankar Datta, JJ.

### CITATION

2023 INSC 613



### FACTS

The case concerned the claim of the Respondent, a person with post-polio limb paralysis, to secure the benefit of reservation in promotion to the post of Assistant Manager in the Appellant-Bank under the PWD Act 1995. In 2014, the Bombay High Court held that the RBI was required to provide reservations in promotion for candidates with disabilities on a horizontal basis with effect from 2006, however did not grant relief to the Respondent-employee, which led to the present appeal before the Supreme Court.

### COURT DECISION AND REASONING

The Court had to consider whether the modification of the DOPT's Office Memoranda dated 29.12.2005, following the judgment in UOI v. National Federation of the Blind and Others (1), to ensure that the manner of reservation was uniform across Group A, B, C and D posts, could be applied retrospectively from 2005 itself. The Court relied on its previous decisions (2) and observed that was no doubt that the PWD Act contemplated reservation in promotion, not to mention the O.M. dated 29.12.2005 was struck down in *Rajeev Kumar Gupta*. Accordingly, the benefit of reservation in promotions could be applied retrospectively.

### SIGNIFICANCE

The decision provided an important clarification that reservation in promotions applied retrospectively under the PWD Act, 1995. Importantly, Justice Ravindra Bhat, in a concurring opinion, cautioned against the extension of horizontal reservations in matters of promotion, observing that while the intent was to further equality, it was unfair to earmark a portion of seats for one class of citizens, and not others who had also taken the benefit of horizontal reservations during the initial appointment (such as women and ex-servicemen).

1. *Union of India v. National Federation of the Blind and Ors.*, (2013) 10 SCC 772.

2. *Rajeev Kumar Gupta v. Union of India and Ors.*, (2016) 13 SCC 153, *Siddharaju v. State of Karnataka and Others*, (2020) 19 SCC 572 and *The State of Kerala v. Leesamma Joseph*, (2021) 9 SCC 208

## ABOUT

# NON-DISCRIMINATION IN EMPLOYMENT

The RPD Act, 2016 provides the statutory basis for protecting persons with disabilities from non-discriminatory treatment. Section 3 prohibits all forms of discrimination against persons with disabilities and places a duty on the State to take measures to ensure reasonable accommodation for persons with disabilities.

Section 20 of the Act outlines the obligations of employers to ensure persons with disabilities are not discriminated against in any matter relating to public employment, including recruitment, promotion, and employment conditions.

This includes providing reasonable accommodation to persons with disabilities, entitling them to be considered for promotions on the same basis as others and protecting them from dismissal and reduction in rank, solely on account of disability. Further, the Government is tasked with framing policies for their transfer and posting to ensure an environment conducive to their work and health.

## 14

### RIGHT IN QUESTION

Right of person who acquired a disability during service to not be terminated.

### CASE NUMBER

Civil Appeal No. 1789 of 2000  
decided on February 13, 2003

### COURT

Supreme Court of India

### JUDGES

Shivaraj V Patil, H. K. Seema,  
JJ.

### CITATION

2003 INSC 81; (2003) 4 SCC  
524



## Kunal Singh v. Union of India

### FACTS

The Appellant was a constable in the Special Service Bureau (SSB) for 17 years and suffered an injury which resulted in his left leg being amputated. The Appellant was invalidated from service on report of Medical Board instead of being assigned an alternative duty keeping in mind his disability.

### COURT DECISION AND REASONING

The Court, in considering the meaning of Section 47 of the PWD Act on non-discrimination in employment, noted that the provision specifically seeks to protect those who acquire disability during their service. It held that in construing any socially beneficial legislation, the view that advances the object of the Act and serves its purpose must be preferred over one which seeks to obstruct that purpose. Section 47 therefore casts a mandatory duty on employers to protect persons with disabilities who acquire disability during service, and if the person is not found suitable for the post they were holding, they could be shifted to some other post with same pay scale and service benefits or appointed to a supernumerary post. The Court also observed that granting the Appellant invalidity pension under Rule 38 of the Central Civil Service (Pension) Rules, 1972 is no ground to not grant relief under the PWD Act which is a special legislation.

### SIGNIFICANCE

The decision recognizes the precedence of special legislations like the PWD Act, 1995 over general service rules, affirming the right of employees who acquire disabilities during employment to be accommodated in any other post, and not to be terminated.



## 15

## Union of India v. Sanjay Kumar Jain

## RIGHT IN QUESTION

Persons with disability cannot be denied promotions solely on the ground of disability.

## CASE NUMBER

Civil Appeal No.5178 of 2004 decided on August 11, 2004.

## COURT

Supreme Court of India

## JUDGES

Dr. Arijit Pasayat & C. K. Thakker, JJ.

## CITATION

2004 INSC 438; (2004) 6 SCC 708



## FACTS

The Respondent, a Railways employee, was seeking a promotion and had qualified in the written test. At the stage of the medical test, he was declared unfit due to a medical condition of his eyes which, in the future, would lead to a visual impairment. The Respondent challenged the decision as violative of the PWD Act, 1995.

## COURT DECISION AND REASONING

The Court held that the Section 47(2) of the PWD Act, 1995 was crystal clear in its provision that no promotion shall be denied to a person merely on the ground of his disability. Further, since the State has not made any notification to exempt the relevant establishment from this Section, it is evident that the denial of promotion falls foul of the rights of the Respondent under the PWD Act.

## SIGNIFICANCE

This ruling set a significant precedent in the protection of the right of promotion for persons with disabilities in India and served as a guiding principle for employers to ensure compliance with the PWD Act, 1995.

## 16

## Amita v. Union of India

## RIGHT IN QUESTION

Right of a visually impaired person to appear for the qualifying examination and be considered for the post in a bank on an equal basis with other candidates.

## CASE NUMBER

Writ Petition (Civil) No. 31 of 2000, decided on August 11, 2005

## COURT

Supreme Court of India

## JUDGES

Y. K. Sabharwal, D. M. Dharmadhikari & Tarun Chatterjee, JJ.

## CITATION

2005 INSC 353 ; (2005) 13 SCC 721



## FACTS

The Petitioner, a visually impaired woman, applied for the qualifying examination for the post of Probationary Officer at Indian Overseas Bank after meeting all the necessary requirements. In reply to her request for a scribe to write the examination, her application was rejected on the ground that the Bank does not recruit blind persons for the post of Probationary Officers. This was challenged by her.

## COURT DECISION AND REASONING

The Court relied on its earlier decision in National Federation of Blind v. Union Public Service Commission, which held that the restrictions on visually impaired candidates may be imposed only if the post is totally unsuitable, having regard to the nature of duties attached to the post. The Court held that the Petitioner's right to equality under Article 14 and right to equal opportunity in employment was infringed when she was denied permission to sit and write the examination for the post, even though there was no bar on visually impaired candidates in the advertisement notice. The Respondent-Bank discriminated against the Petitioner solely on the basis of her disability. Additionally, the Court found that the nature of the duties of the post was not such as to reasonably exclude persons with visual impairment. It noted the Petitioner's skills in computer applications and access technology and the development of her other senses, enabling her to perform her duties on the same level as any other person. The Court directed that the Petitioner be allowed to appear for the examination.

## SIGNIFICANCE

In this decision, the Supreme Court upheld the right of persons with disability to not be denied an opportunity to sit for an examination for a post solely on the grounds of disability. No one may be denied the right to compete on an equal basis with others under Article 16(1).



## 17

## Bhagwan Dass & Another v. Punjab State Electricity Board

### RIGHT IN QUESTION

Right against dismissal from employment upon acquiring a disability during service.

### CASE NUMBER

Writ Appeal (Civil) No. 8 of 2008, decided on January 4, 2008

### COURT

Supreme Court of India

### JUDGES

G. P. Mathur & Aftab Alam, JJ.

### CITATION

2008 INSC 8; (2008) 1 SCC 579



### FACTS

The Appellant, Bhagwan Dass, acquired blindness while working as an Assistant Lineman for the Respondent electricity board. Assuming that he would not be allowed to continue in his post, he requested for voluntary retirement. The Respondent, despite being aware that under Section 47 of the PWD Act, 1995, the Appellant could not be relieved from service, did not inform him of his entitlements and thereafter refused to reinstate him.

### COURT DECISION AND REASONING

The Court observed that the Appellant was a Class IV Lineman who lost his vision and, unaware of legal protections, feared losing his job and livelihood. Under immense mental pressure, he believed blindness would end his employment. The Court condemned the actions of the Board and stated that the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. It held that "What the law permits to them is no charity or largess but their right as equal citizens of the country." Accordingly, the order relieving the Appellant from service was held to be illegal and he was reinstated with all benefits.

### SIGNIFICANCE

The decision reaffirmed the right of persons who acquired a disability during service to not be illegally terminated or relieved from service. Further, the Court placed a duty upon employers to make their employees aware of their legal rights as persons with disabilities.

## 18

## Dalco Engineering Private Ltd. v. Satish Prabhakar Padhye & Others

### RIGHT IN QUESTION

Right of a person with disability to not be discriminated against by a private employer.

### CASE NUMBER

Civil Appeal No.1886 of 2007, decided on March 31, 2010

### COURT

Supreme Court of India

### JUDGES

R. V. Raveendran, R. M. Lodha & C. K. Prasad, JJ.

### CITATION

2010 INSC 183; (2010) 4 SCC 378



### FACTS

The Appellant, a private limited company terminated the Respondent, a telephone operator who had worked in the company for over two decades on the ground that he had become deaf. The Respondent challenged his termination and submitted that he was fit and able when he joined service and acquired a hearing impairment during the period of service.

### COURT DECISION AND REASONING

The Supreme Court was tasked with deciding two issues: (i) whether the appellant-company incorporated under the provisions of the Companies Act, 1956 is an "establishment" under the PWD Act and (ii) whether the Respondent is entitled to relief under Section 47 of the Act. The Court held that the legislative intent behind Section 47 of the 1995 Act was to apply it solely to establishments defined under Section 2(k) of the 1995 Act. This definition includes corporations established by or under a central, provincial, or state act, authorities or bodies owned, controlled, or aided by the government, local authorities, or government companies. Hence, the Appellant, a company incorporated under the Companies Act, 1956 is not an establishment under the 1995 Act. Consequently, it held that the Respondent was not entitled to reinstatement in service. The Court stated that while socio-economic legislations should be interpreted liberally, they must not extend their application beyond the legislative intent or violate statutory or constitutional limitations.

### SIGNIFICANCE

This judgment proved to be a setback for persons with disabilities, as it failed to extend the umbrella of protections under the PWD Act to persons with disabilities whose rights have been violated by private establishments. Similarly, the RPD Act, 2016 has also been interpreted narrowly in the case of private establishments.

## 19

## Anil Kumar Mahajan v. Union of India through Secretary, Ministry of Personnel & Others

### RIGHT IN QUESTION

Right of person with a mental disability to not be compulsorily retired from service.

### CASE NUMBER

Civil Appeal No.4944 of 2013 decided on July 2, 2013

### COURT

Supreme Court of India

### JUDGES

G. S. Singhvi & Sudhansu Jyoti Mukhopadhyaya, JJ.

### CITATION

2013 INSC 415 ; (2013) 7 SCC 243



### FACTS

The Appellant was an IAS officer, and after a decade of clean service, he faced allegations that he was mentally sick, and charges of indiscipline were levelled against him. He was proceeded against by the Department in an Inquiry which was kept pending for eleven years and finally compulsorily retired from service on the ground that he was "insane". This was challenged by him.

### COURT DECISION AND REASONING

The Court noted that under the PWD Act, 1995 it was clear that a person who acquires a disability during service could not be dismissed. Section 47 of the Act mandated that such person, if not suitable to the post they were holding, could be shifted to another post or a supernumerary post with the same pay and benefits until superannuation. Since the Respondents have presumed the Appellant to be insane, but do not contend that the Appellant was insane when he was appointed in service, he ought to have been treated as a person with disability under the PWD Act. Accordingly, he could not have been compulsorily retired from service. The Court directed that since the Appellant was now past the age of superannuation, he would be entitled to arrears in pay and benefits, and full retiral benefits.

### SIGNIFICANCE

This case reaffirmed the rights of persons with mental illness to be treated as persons with disability. Even though the mental disability of the Appellant was not proved in this case, the Department had acted on its own report that the Appellant had a mental illness, which then should qualify him for the rights and entitlements of a person with disability under the PWD Act.

## 20

## Deaf Employees Welfare Association v. Union of India

### RIGHT IN QUESTION

Right of persons with hearing impairment to equal transport allowance provided to other categories of persons with disabilities.

### CASE NUMBER

Writ Petition (Civil) No. 107 of 2011, decided on December 12, 2013

### COURT

Supreme Court of India

### JUDGES

K. S. Radhakrishnan & A. K. Sikri, JJ.

### CITATION

2013 INSC 828 ; (2014) 3 SCC 173



### FACTS

The Petitioner association filed a petition seeking transport allowance for deaf government employees at par with what is being given to government employees with vision and orthopaedic disabilities.

### COURT DECISION AND REASONING

The Court relied on India's ratification of the UNCRPD which recognizes the principle of reasonable accommodation. It also held that the PWD Act provides for schemes to provide aids and appliances and entitles persons with disabilities to non-discrimination in transport. Governments providing transport allowance cannot discriminate between a person with a disability having "blindness" and someone with "hearing impairment". Once a person is held to be a person with disability and is so certified, they are entitled to the benefits of all the schemes and benefits provided by the Government and there can be no further discrimination among persons with different types of disabilities.

### SIGNIFICANCE

The Court here recognises that there can be no variation in the rights and entitlements afforded to persons in different categories of disability.

## 21

## State of Uttar Pradesh & Others v. Ravindra Kumar Sharma & Others

### RIGHT IN QUESTION

Non-entitlement of persons to remain in reserved posts obtained through fake or fraudulent disability certificates.

### CASE NUMBER

Civil Appeal No. 758 of 2016 decided on February 3, 2016

### COURT

Supreme Court of India

### JUDGES

Arun Mishra & M. Y. Eqbal, JJ.

### CITATION

2016 INSC 129; AIR 2016 SC 690



### FACTS

The Respondents applied under the persons with disability category to the BTC training course and on completion of the course, were appointed to government primary schools. The certificates of 21% of the selected candidates later were found to be fraudulent following a re-examination by a fresh Medical Board initiated in response to an accusation of fraud. The Respondent candidates challenged the communication directing them to appear before the Medical Board for re-examination whereupon the Division Bench of the Allahabad High Court held that a medical certificate could not be reopened and a roving enquiry cannot be made into a certificate issued under the PWD Rules, 1996 until and unless fraud has been detected upon physical verification.

### COURT DECISION AND REASONING

The Court overruled the Division Bench order, holding that it had overlooked the fact that verification had already been conducted by the Medical Board and fraud was established. The Court disagreed with the High Court's decision that mere physical verification would be sufficient to determine the disability of a person and noted that various disabilities such as a visual or hearing impairment would only be determinable by medical examination. It held that suppression of a material document or fact which affects the condition of service would amount to fraud, and there was no scope for the Division Bench to pass an order which would permit the fraud. The petition was dismissed, and the State was directed to take the necessary action against the Respondents in accordance with law.

### SIGNIFICANCE

This case reinforced the principle that the crime of fraud cannot be overlooked to provide equity. It also emphasised the use of expert medical opinions in the determination of disability and overruled the High Court's opinion that physical verification was sufficient to infer disability.

## 22

## Union of India & Others. v. M. Selvakumar & Another

### RIGHT IN QUESTION

Whether candidates with disabilities from Other Backward Classes (OBC) were entitled to three additional attempts at the Civil Services Examination compared to candidates with disabilities from the General Category.

### CASE NUMBER

Civil Appeal No. 858 of 2017, decided on January 24, 2017

### COURT

Supreme Court of India

### JUDGES

Ranjan Gogoi & Ashok Bhushan, JJ.

### CITATION

2017 INSC 72; (2017) 3 SCC 504



### FACTS

An OBC candidate who is also a person with disability petitioned for the right to avail 10 attempts in the Civil Services Examination (CSE) instead of 7 on the ground that General Category persons with disabilities were entitled to 7 attempts, which was an increase from 4 attempts.

### COURT DECISION AND REASONING

The rules governing the CSE entitled persons with disabilities from the OBC category to the ten-year age relaxation provided to all persons with disabilities, in addition to the three-year relaxation provided to OBC candidates. The Court therefore held that there the provision of the same number of examination attempts to persons with disabilities across OBC and general categories would not amount to discrimination between them. The Court held that the CSE rules were not arbitrary, since it was not a case of treating unequals as equals and that the Physically Handicapped Category was a category in itself.

### SIGNIFICANCE

The Court did not find any categorical discrimination suffered by persons with disabilities from the OBC category as compared to those from the General Category in the CSE rules. Instead, it held that all persons with disabilities, no matter the vertical category they belonged to, ought to be treated as a single category. However, it did not consider that candidates belonging to the SC/ST Category, including persons with disabilities, were permitted an unlimited number of examination attempts.

# Ravinder Kumar Dhariwal & Another v. Union of India & Others

RIGHT IN QUESTION

Right of serviceman to not be subject to disciplinary proceedings arising out of a mental disability acquired over the course of his service.

CASE NUMBER

Civil Appeal No. 6924 of 2021, decided on December 17, 2021

COURT

Supreme Court of India

JUDGES

Dr. Dhananjaya Y. Chandrachud, Surya Kant & Vikram Nath, JJ.

CITATION

2021 INSC 916; (2023) 2 SCC 209



FACTS

The Appellant served in the Central Reserve Police Force (CRPF) and developed a mental illness during service. This resulted in three disciplinary inquiries initiated against him for his behaviour. A government hospital certified the Appellant as permanently disabled and a medical report declaring him unfit for duty was subsequently issued. The Appellant challenged the proceedings in the departmental inquiry against him.

COURT DECISION AND REASONING

The Court held that under the UNCRPD and the RPD Act, the State was obligated to take steps for reasonable accommodation. It observed that under the RPD Act, disability is defined as “a social construct, and not solely a medical construct” and a one-size-fits-all approach could not be used to identify mental disability. In the case of mental health, it was paramount to not discriminate against persons with mental health disorders as they also have a right against workplace discrimination and were entitled to reasonable accommodation. It held that if it can be shown that the ground of disability played a role in the disciplinary proceedings against him, the action will be discriminatory. The Court concluded that the Appellant was more vulnerable to engage in behaviour that can be classified as misconduct because of his mental disability and was at a disproportionate disadvantage of being subjected to such proceedings in comparison to his able-bodied counterparts. As a result, the disciplinary proceedings are considered discriminatory and in violation of the provisions of the RPD Act, 2016. The Appellant was entitled to be reassigned to a suitable post having the same pay scale and benefits.

SIGNIFICANCE

This judgement highlighted the need for an individualised assessment of mental disability, moving away from the biomedical approach. It held that persons with mental health disorders could not be discriminated against in the workplace. It held that the instituting disciplinary proceedings for misconduct against a person with a mental health disorder, where their disability was a factor in alleged misconduct, amounted to discrimination under the RPD Act, 2016.

“...in the present case, the appellant is only required to prove that disability was one of the factors that led to the institution of disciplinary proceedings against him on the charge of misconduct...An interpretation that the conduct should solely be a result of an employee’s mental disability would place many persons with mental disabilities outside the scope of human rights protection. It is possible that the appellant was able to exercise some agency over his actions. But the appellant was still a person who was experiencing disabling effects of his condition.”

DR. DHANANJAYA Y CHANDRACHUD

Ravinder Kumar Dhariwal and Another v. Union of India and Others

24

# Jayanti Lal Devasi s/o Chelaram Devasi v. Divisional Railway Manager

RIGHT IN QUESTION

The right of a person with benchmark disability to be considered for promotion through a Limited Departmental Competitive Examination (LDCE) in railway service.

CASE NUMBER

Special Civil Application No.9561 of 2021, decided on April 21, 2022.

COURT

High Court of Gujarat

JUDGES

N. V. Anjaria &  
Samir J. Dave, JJ.

CITATION

MANU/GJ/1123/2022



FACTS

The Petitioner, a railway employee with over 40% physical disability, was denied the opportunity to appear for Limited Department Competitive Examination (LDCE) for promotion to Junior Clerk. The railway authorities claimed an alternative promotion channel was available through a trade test, which involved physical tasks unsuitable for Devasi's condition.

COURT DECISION AND REASONING

The High Court ruled in favour of the Petitioner, setting aside the earlier dismissal of his application. The Court held that denying him the opportunity to appear in the exam violated his rights under the S.20 of RPD Act to not be discriminated in matters of employment, including promotion. It ruled that the alternative promotion channel was unsuitable for Devasi's disability, since it required tasks like climbing and field activities, and denying an opportunity to be considered through the LDCE violated the principle of reasonable accommodation.

SIGNIFICANCE

This decision reinforces the importance of providing reasonable accommodation and equal opportunities for persons with disabilities in employment, including promotions.

25

# Dr. Arun Sarkar v. The State of West Bengal & Others

RIGHT IN QUESTION

The right of a person with a locomotor disability, whose disability was caused by an accident, to be recognized as a person with disability under the PWD Act.

CASE NUMBER

W.P.A. No. 6043 of 2022  
decided on August 8, 2022

COURT

The Calcutta High Court

JUDGE

Moushumi Bhattacharya, J.

CITATION

(2023) 1CALLT 412 (HC)



FACTS

The Petitioner is a person with an 80% disability due to bilateral upper limb amputation. He had served as an Assistant Professor in Bengali in Murshidabad for seven years when he applied for a position at the Respondent college, where he was recommended by the West Bengal College Service Commission under the Physically Handicapped (PH) category. However, the Governing Body of the college refused to confirm his appointment against the identified post, questioning his ability to perform teaching duties due to his disability.

COURT DECISION AND REASONING

The Petitioner submitted that his non-appointment to a substantive post was arbitrary and in violation of the 2016 Act. The Respondent-college argued that the case was governed by the PWD Act under which the definition of "disability" and "locomotor disability" should be construed to mean persons born with such disabilities; it does not include those with disabilities because of an accident/event. The Court observed that the definition under the 2016 Act was more inclusive, with no indications that disability was a condition from birth. The PWD Act, which includes "substantial restriction of the movement of limbs" within its definition, does not exclude those who developed the condition at any later stage of life. On this basis, the Court found the Governing Body's decision discriminatory and in violation of the RPD Act, and without any factual basis or evidence of his inability to perform his duties. The Petitioner had effectively performed his duties at his previous college, and there was no evidence his disability hindered his ability to teach. The Governing Body's decision was quashed, and it was directed to reconsider the Petitioner's appointment considering the statutory mandate and principles of the RPD Act.

SIGNIFICANCE

This case highlights the discrimination and exclusion of persons with disabilities in the workplace including those who acquired a disability through an accident, which is contrary to intent and purpose of the legislation.



## 26

## Net Ram Yadav v. State of Rajasthan &amp; Others

## RIGHT IN QUESTION

Right of person with disability to retain their rank in the seniority list in their new place of posting, where such transfer was a result of a beneficial policy for persons with disability.

## CASE NUMBER

Civil Appeal No. 5237 of 2022 decided on August 11, 2022

## COURT

Supreme Court of India

## JUDGES

Indira Banerjee & J. K. Maheshwari, JJ.

## CITATION

2022 INSC 822 ; (2022) 15 SCC 81



## FACTS

The Appellant was a person with disability who was appointed as a Senior Teacher in the state. The Respondent State issued a direction to authorities to consider posting employees with disabilities at or near the place they opt for at the time of posting, following which the Appellant got himself transferred to his home district. Years later, the Appellant discovered his name was deleted from the State and Divisional level seniority list, which impacted the Appellant's promotion and eligibility for the post of Headmaster. The High Court of Rajasthan held that since the Appellant was transferred at his own request, his years of service in the previous district could not be counted towards his seniority.

## COURT DECISION AND REASONING

The Court held that the reduction of the Appellant's State seniority was totally arbitrary and discriminatory. The Appellant and other persons with disabilities were conferred a special benefit and cannot be deprived of the opportunity to avail the benefit by making such transfer conditional upon loss of seniority. It noted that the marginalisation of persons with disabilities is a human rights issue, and the object of the special benefit was to post persons with disabilities in a place where assistance might be readily available. By overlooking these circumstances, the High Court's decisions violate Article 14 of the Constitution.

## SIGNIFICANCE

The various schemes and benefits that may be made available to persons with disabilities to enable the realisation of their rights on an equal basis with others cannot be made or interpreted to be conditional on conceding any other duly acquired right or benefit.

## 27

## Pradeep Kumar Gupta v. State Of Uttar Pradesh Through Secretary (Higher Education)

## RIGHT IN QUESTION

Right of a person with disability to dignity and non-discrimination in employment under the PWD Act, 1995.

## CASE NUMBER

Writ Appeal No. 18302 of 2021, decided on August 31, 2022

## COURT

Allahabad High Court

## JUDGES

Indira Banerjee & J. K. Maheshwari, JJ.

## CITATION

Not available



## FACTS

The Petitioner, a person suffering from 50% locomotor disability, applied for the position of Library Peon for which riding a cycle was deemed an essential qualification. The Petitioner could not ride a bicycle due to his disability and in his interview assured that he could ride a tricycle instead. The Principal of the College forced him to mount and ride a bicycle causing the Petitioner extreme humiliation, and he was then summarily dismissed. The recruitment criteria was then modified to include a higher educational qualification placing the Petitioner out of the zone of consideration.

## COURT DECISION AND REASONING

The Petitioner, having withdrawn his challenge to his non-selection, could not be given any positive relief at this stage. However, the Court considered the humiliation suffered by the Petitioner at the hands of State functionaries and held that it was a violation of his dignity. There was no cause for the Respondents to commit an overt act to make the Petitioner feel inadequate on account of his disability. They have "not only failed a special citizen but also violated his fundamental right to life and liberty - for what worth is human existence if it is denuded of dignity and respect deserving its cherished existence. Deprived of dignity, liberty is a sea-shell washed to the shore, dead and of ornate value for others but worthless to the being that used to live within it." The Court accordingly ordered Rs.5,00,000/- to be paid to the Petitioner as compensation.

## SIGNIFICANCE

This case highlights the overt discrimination continued to be faced by persons with disabilities today and reaffirms their constitutional right to be treated with dignity and respect.



28

# Shyamkumar S/o Pandurang Wankhede v. The Union of India & Others

## RIGHT IN QUESTION

The right of a service member with a mental disability to not be denied a promotion on the basis of his condition.

## CASE NUMBER

W.P.No.6345 of 2018 decided on May 2, 2023

## COURT

Bombay High Court (Nagpur bench)

## JUDGES

Rohit B. Deo, Mrs. Vrushali V. Joshi, JJ.

## CITATION

Not available



## FACTS

The Petitioner was a Sub-Inspector (Ministerial) in the CRPF and diagnosed with Schizoaffective Psychosis after completing 11 years’ service. He was excluded from promotion to Assistant Commandant (Ministerial) despite his seniority, on the ground he does not meet the medical eligibility of SHAPE-I for combatant personnel. The Petitioner challenged this as arbitrary and violative of the protections afforded by the RPD Act, 2016.

## COURT DECISION AND REASONING

The Court considered the CRPF’s Recruitment Rules 2021 for combative posts, which prescribes the medical eligibility for the post of Assistant Commandant (Ministerial) as SHAPE-I category, even though it is an administrative and not a combatant post. The Court analysed both Section 20 of the RPD Act, 2016 and the corresponding provision of Section 47 of the PWD Act, 1995 and observed that not every denial of promotion would attract the statutes. It held that promotion must be placed on a different pedestal from removal from service or reduction in rank, observing that it was not a vested right. Relying on the decision of the Supreme Court in Union of India v. Devendra Kumar Pant, AIR 2010 SC 1253, the High Court held that employers could set minimum standards for eligibility to

promotion to ensure safety, security and efficiency and that denial of promotion to the Petitioner who has 80% mental disability, cannot be considered as denial solely on the ground of disability. The Court did not investigate whether the government notifications exempting the application of Section 20 of the RPD Act to the CRPF applied to combative posts

## SIGNIFICANCE

This decision is a major setback for persons with disabilities, especially persons with mental disabilities within the military and paramilitary forces. The Court’s conclusion that the denial of his promotion was not only because of his disability but due to his SHAPE fitness completely ignores that the Petitioner’s SHAPE categorisation was solely due to his mental condition.

29

# Shanta Digambar Sonawane v. Union of India, hrough Secretary, Ministry of Railways & Another

## RIGHT IN QUESTION

Right to procedural relaxation in the appointment of a visually disabled person.

## CASE NUMBER

Writ Petition No. 10813 of 2023, decided on February 27, 2024

## COURT

Bombay High Court

## JUDGES

Nitin Jamdar & M.M. Sathaye, JJ.

## CITATION

2024 SCC OnLine Bom 662



## FACTS

The Respondent Railway Recruitment Cell invited applications for the post of Assistant in Level-1 in ‘D’ grade. The Petitioner, a 100% visually impaired candidate, applied for the position under the Persons with Benchmark Disabilities category. The candidate while filling her online application, took the help of a person and inadvertently, her birth date was entered incorrectly. Despite passing the examination and undergoing initial document verification, her updated Aadhar card with the correct birthdate was refused by the Recruitment Cell during the supplementary verification. Subsequently, her candidature was rejected, and no reason was provided to her, hence she filed the present writ.

## COURT DECISION AND REASONING

The Court observed that individuals like the Petitioner, who are 100% visually impaired, cannot be held to the same standard as other candidates in the conduct of usual activities.

“The legislation for the disabled should not merely remain in the statute book; rather, the spirit behind the legislation must be applied by all authorities in its practical application showing appropriate sensitivity and flexibility...Visually impaired individuals may make mistakes, such as typing errors, due to their impairment or may need to rely on others. These errors, stemming from their disability, should not result in discrimination or unfair treatment by employers. Rejecting the applications and then refusing to remedy the mistakes even within a reasonable time solely because of these errors, would contravene the principle of equality. Employers should ensure that minor mistakes due to disabilities do not lead to serious consequences such as loss of job opportunity itself.”

The Court therefore overturned the rejection of the Petitioner’s candidature and directed the Recruitment Cell to process her application for the Assistant’s post.

## SIGNIFICANCE

This judgment is crucial to establishing that State authorities ought not adopt pedantic or unnecessarily narrow approaches which would result in discriminating against a person with disability.

03

# EDUCATION

For Persons With Disabilities

## ABOUT

# RESERVATIONS & ADMISSIONS IN HIGHER EDUCATION

Ensuring inclusive and equitable education for persons with disabilities is a critical aspect of fostering a just and equal society, and it is a core guarantee under the constitutional and statutory framework on the rights of persons with disabilities.

In this context, there is extensive jurisprudence on the right to reservation in admissions for persons with benchmark disabilities, the eligibility of persons with disabilities to admission and the right to inclusive education.

Section 32 of the RPD Act, 2016 mandates all Government and Government-aided higher educational institutions to reserve not less than 5% of seats for persons with benchmark disabilities. A further relaxation of five years on the upper age limit is provided. This is an increase from the 3% reservation provided under the PWD Act, 1995.

As in the case of reservations in employment, the Supreme Court was required to intervene to ensure educational institutions complied with the mandate of reservation. In *Disabled Rights Group and Another v. Union of India* the Court condemned and threatened to take penal action against educational institutions that failed to implement the statutory reservation for persons with disabilities.

More recently, High Courts have expanded the scope of Section 32 of the RPD Act. The Delhi High Court, in *Anmol Kumar Mishra v. Union of India and Ors.*, ruled that candidates with temporary disabilities ought to be given the benefit of reservation in educational institutions, noting that the Act makes no distinction between temporary and permanent disability.

Of note is the slew of cases from students with disabilities challenging their exclusion from eligibility to pursue undergraduate and postgraduate medical degrees. In *Vidhi Himmat Katariya v. State of Gujarat and Ors.*, the Supreme Court restricted the eligibility of candidates having impairments in both hands to reservation and admission to the MBBS programme. In other cases, courts have permitted candidates with locomotor disabilities, visual impairments, mental disabilities and hearing impairments to pursue medical programmes.

However, the Courts have largely relied on the decisions of medical expert committees formulated by the National Medical Commission, which do not reflect the lived experiences of practicing doctors with disabilities or global best practices. In countries such as the United States and United Kingdom, there is no bar on persons with disabilities from pursuing and practicing any type of medical profession. Instead, the focus is on ensuring that appropriate reasonable accommodations are available to allow persons with disabilities to participate to the fullest extent possible.

30

## Manjunatha v. Government of Karnataka & Others

### RIGHT IN QUESTION

The right of persons with disabilities to access education and pursue degree courses without discrimination.

### CASE NUMBER

W.P. No. 35969 of 2010 decided on September 29, 2011

### COURT

The High Court of Karnataka

### JUDGE

Mohan Shantanagoudar, J

### CITATION

Not available



### FACTS

The Petitioner, a person with 100% visual impairment, sought admission to the B.Ed course in Karnataka. However, he was denied permission to sit for the written examinations during the admission process as the Department of Public Instructions had issued an announcement permitting applications from persons with disabilities but restricted eligibility to those with disabilities exceeding 40% but below 75%. The Petitioner challenged this restriction.

### COURT DECISION AND REASONING

The State contended that the provision in the announcement which restricted eligibility to persons with disabilities between 40% and 75% and was based on the Karnataka Selection of Candidates for Admission to Teachers Certificate Higher Course (TCH) and Bachelor of Education Course (B.Ed) Rules 1999. The Court rejected this argument, holding that these rules were contrary to the PWD Act as the Act does not impose an upper limit on the extent of disability for eligibility to higher educational institutions. It noted that persons with 100% visual impairment were capable of pursuing degree courses and completing their education and the State could not exclude them from accessing education. It however noted that the ability to pursue education is distinct from the ability to perform duties under employment.

### SIGNIFICANCE

The judgment reaffirms the rights of persons with disabilities to equal educational opportunities. It underscores the principle that educational access should not be restricted based on arbitrary disability thresholds.

31

## Disabled Rights Group and Another v. Union of India and Others

### RIGHT IN QUESTION

Right of persons with disability to accessible and inclusive education.

### CASE NUMBER

Writ Petition (Civil) No. 292 of 2006, decided on December 15, 2017

### COURT

Supreme Court of India

### JUDGES

A. K. Sikri & Ashok Bhushan, JJ.

### CITATION

2017 INSC 1244; (2018) 2 SCC 397



### FACTS

This is a public interest petition filed to give effect to provisions of the PWD Act mandating reservation of seats, ensuring accessibility for persons with orthopaedic disability and making available special pedagogical facilities depending upon the nature of the disability. Although the petition confined itself to law colleges only, considering the importance of these issues, the Court extended its application to all educational institutions.

### COURT DECISION AND REASONING

The Court held that all educational institutions including government and government-aided higher educational institutions were obligated under the new RPD Act to reserve 5% of seats for persons with benchmark disabilities. On the issue of accessibility, the Court observed that the Act was premised on the notion of removing the social barriers that impeded the capabilities of persons with disability. It stated that ensuring accessibility in education, including accessibility to buildings and facilities within, was crucial to ensuring equality of opportunity for persons with disability, and not doing so amounted to discrimination. Further, if adequate provisions are made to facilitate the education of students with disability, it would ensure that after a proper education, they will be able to lead an "independent, economically self-sufficient, productive and fully participatory life."

The Court directed the University Grants Commission (UGC) to appoint an Expert Committee for examining the feasibility of the measures suggested by the Petitioner including facilities for visual, hearing and orthopaedic-impaired students, modifications in examination pattern, help with communication and sensitivity training programmes, specially designed sports and recreation facilities and directed the Expert Committee to set up in-house bodies for taking care of daily needs of persons with disability.

### SIGNIFICANCE

This decision resulted in the top court directing that all higher educational institutions, should strictly comply with the mandate of reservation for persons with disabilities and ensure the provision of inclusive education. On this basis, the UGC also notified the UGC Accessibility Guidelines and Standards for Higher Education Institutions and Universities.

32

## Sruchi Rathore v. Union of India

### RIGHT IN QUESTION

Right of persons with thalassemia to be recognized as eligible under the disability quota for admission to MBBS and to be considered in the category reserved under the 2016 Act.

### CASE NUMBER

W.P. (C) 620 of 2017, decided on January 25, 2018

### COURT

Supreme Court of India

### JUDGES

Arun Mishra & Abdul Nazeer, JJ.

### CITATION

Not Available



### FACTS

The Petitioner, who had thalassemia major, sought admission to any medical stream under the category of reservation for persons with benchmark disability under the 2016 Act.

### COURT DECISION AND REASONING

The Court directed the Petitioner to undergo a medical examination to determine whether she falls within the benchmark disability category, and if she does, she may be considered for admission. Further, upon the government's submission that the Regulations on Graduate Medical Education, 1997 would be amended to include thalassemia as a reservation category in line with the 2016 Act, the petition was disposed.

### SIGNIFICANCE

The inclusion of thalassemia in the category reserved under the RPD Act assumes significance in the law now recognizing and affirming the rights of persons with thalassemia in higher education. The Regulation has consequently included thalassemia under Schedule 4(b)(ii), Appendix G, Schedule under Section 2(zc) on Specified Disability.

33

## Tina Sharma (Minor) Through Her Father v. Union of India & Others

### RIGHT IN QUESTION

Right of Persons with Benchmark Disability to pursue Graduate Medical Education.

### CASE NUMBER

W.P. (C) No. 7820 of 2018, decided on July 31, 2018

### COURT

Delhi High Court

### JUDGE

Sidharth Mridul, J.

### CITATION

2018: DHC:4669-DB



### FACTS

The Petitioner, a person with a hearing disability, sought admission to a medical college under the persons with disability category. Based on her academic excellence, she was provisionally allotted to join the course, however, on being found to have a hearing disability of 70%, her admission got denied. The State based its decision on the recommendations of the Expert Committee set up by the Medical Council of India which opined that those candidates with auditory disability greater than the set benchmark of 40% were not entitled to pursue Graduate Medical Education.

### COURT DECISION AND REASONING

The Respondents cited several cases arguing that people with hearing disability will not be eligible to pursue medical courses. However, the Court held that the RPD Act prescribed 5% reservation for people with benchmark disabilities, and that in instances when a statute provides for an act to be carried out in a specific manner, then it must be carried out in that particular manner and no other. Since the Petitioner falls within the scope of reservations for persons with benchmark disability, expert opinion cannot outweigh the statutory provisions. The Court further held that the recommendations made by the Committee disentitling persons with specified benchmark disability from pursuing medical education violate the principles embodied by the Indian Constitution and the provisions of the RPD Act

### SIGNIFICANCE

The Supreme Court upheld the objective of the 2016 Act in asserting the rights of persons with disability to equal opportunities in all walks of life. It rejected the idea that medical bodies could exclude persons with benchmark disability from pursuing a course, when the statute specifically provides reservation for those with benchmark disability. The State was bound to give full effect to the legislation.

34

## Purswani Ashutosh (minor) through Virumal Purswani v. Union of India & Others

### RIGHT IN QUESTION

Right of a person with low vision to admission to the MBBS course.

### CASE NUMBER

Writ Petition (Civil) 669 of 2018, decided on August 24, 2018.

### COURT

Supreme Court of India

### JUDGES

Arun Mishra & Indira Banerjee, JJ.

### CITATION

(2019) 14 SCC 422



### FACTS

The Petitioner was denied the benefit of reservation in the Persons with Disability category while appearing for the NEET UG entrance examination to pursue an MBBS degree on the ground that he had low vision impairment.

### COURT DECISION AND REASONING

The Supreme Court ruled that individuals with specified benchmark disabilities, including low vision, are eligible for admission to reserved MBBS seats. It refuted the Respondent's contention that Section 32 of the Rights of Persons with Disabilities (RPD) Act, 2016, which mandates reservation in higher educational institutions did not cover medical colleges since it was a technical education institution. The Court held that "higher education" is a broad term including various types of institutions, while "technical education" specifically refers to institutions imparting technical knowledge. It further rejected the report of the Expert Committee, asserting that it cannot supersede statutory provisions including the RPD Act and the Medical Council of India (MCI) Regulations, which require 5% reservation for persons with disabilities in medical institutions. Consequently, the Court held that the petitioner could not be denied admission if they qualified based on merit within the persons with disabilities category.

### SIGNIFICANCE

It highlights the challenges faced by individuals with disabilities in accessing reserved quotas under the Rights of Persons with Disabilities Act, 2016. The case underscores the importance of precise definitions and eligibility criteria within the statutory framework, emphasizing that any ambiguity or restrictive interpretation can significantly impact the rights of individuals seeking accommodation under the persons with disability category.

35

## National Federation of the Blind v. Union of India & Others

### RIGHT IN QUESTION

Right of persons with disability to benefit from reservation not less than 5% of the allotted seats.

### CASE NUMBER

W.P. (C) 3817 of 2018, decided on November 12, 2018

### COURT

Delhi High Court

### JUDGES

Rajendra Menon, C.J. & V. Kameswar Rao, J.

### CITATION

MANU/DE/4182/2018



### FACTS

The Petitioner organisation filed a writ on behalf of candidates who were denied admission to the Ph.D/M.Phil programmes of their choice at Jawaharlal Nehru University (JNU), on the ground that only one seat was reserved for persons with disability in each of the courses. The reserved seats for persons with disabilities were distributed unequally across all the various courses offering Ph.D and M.Phil degrees and fell short of the statutory mandate of 5% as against the total number of seats available

### COURT DECISION AND REASONING

The Court noted that the candidate in this case, despite qualifying for selection, was unable to obtain admission in their chosen course as there was only one seat reserved for persons with disability instead of two. Further, it was noted that at least fifteen reserved seats were left vacant in other programmes. The Court accordingly directed JNU to increase its intake in the specific course that the candidate has sought admission, which shall be supernumerary and will also utilize one of the vacant seats reserved for persons with disability. The Court held that the Respondents cannot dilute the mandate of Section 32 of the RPD Act by reducing the reservation to less than 5%. The University is responsible for working out the specificities and ensure that every person with disability who qualifies is to be allotted admission within the mandate of the Act.

### SIGNIFICANCE

The Court clarified that the RPD Act does not govern the manner of computation of seats to be reserved for persons with disabilities, and only established that not less than 5% of the totally allotted seats will be reserved for persons with disability. However, it failed to consider that in cases of SC, ST and OBC Reservations, the Government has created policies to address the issue of sub-division of seats across various streams/disciplines and the same ought to be considered for persons with disabilities as well.



## 36

# Vidhi Himmat Katariya & Others v. State of Gujarat & Others

## RIGHT IN QUESTION

Right of persons with locomotor disabilities to be eligible for reservation and admission to medical courses.

## CASE NUMBER

Writ Petition (Civil) No. 885 of 2019, decided on October 4, 2019

## COURT

Supreme Court of India

## JUDGES

M. R. Shah, B. R. Gavai & Arun Mishra, JJ.

## CITATION

2019 INSC 1137; (2019) 10 SCC 20



## FACTS

The Petitioners, having locomotor disabilities sought challenged the eligibility criteria for persons with disabilities notified under the Medical Council of India Regulations for admission to MBBS courses. The Regulations provided that applicants with physical or locomotor disabilities were to have “both hands intact, with intact sensation, sufficient strength, and range of motion” to be eligible for the medical course. The Petitioners submitted that the criterion was decided in an arbitrary manner without taking into consideration the abilities of persons with physical disabilities despite not meeting the parameters in full.

## COURT DECISION AND REASONING

The Court dismissed the Petition, rejecting the claim that the Respondent authorities failed to consider relevant parameters and their ability to perform well. It stated that all expert bodies, including the Medical Board, Medical Appellate Board, and the Medical Board of AIIMS, New Delhi, had opined against the Petitioners, considering the relevant eligibility criteria. The Court found it unjustified to act as an appellate authority against the experts’ opinions, especially in the absence of any allegations of malice.

## SIGNIFICANCE

This was a negative decision, where the Court failed to account for the many cases in which persons with disabilities have been able to pursue a medical profession, despite expert opinions to the contrary. The decision underscores the reliance of the Court on medical boards in the matter of eligibility of persons with disabilities, without considering the reasonable accommodations that could be provided to candidates with disabilities.

## 37

# Anmol Kumar Mishra v. Union of India & Others

## RIGHT IN QUESTION

Right of candidate with a temporary disability to avail the benefit of reservation in admission.

## CASE NUMBER

Writ Petition (Civil) No. 13146 of 2021 decided on November 29, 2021

## COURT

Delhi High Court

## JUDGE

Prateek Jalan, J.

## CITATION

(2021) 4 HCC (Del) 38



## FACTS

The Petitioner had keratoconus, which was verified to be a temporary disability of 40% in both eyes, and is seeking admission to an IIT. He was informed by the Respondents that he was eligible to apply under the persons with disability category provided he secure a disability certificate. Despite being allotted a seat and submitting the necessary documentation, the Petitioner’s candidature was rejected.

## COURT DECISION AND REASONING

The Court noted that the definitions of “person with disability”, “person with benchmark disability” and “specified disability” do not on the face of it distinguish between temporary and permanent disabilities. It is only stated that for persons with disabilities, a “long-term impairment” is necessary. In the Schedule to the Act, there is a requirement of a permanent disability with respect to “speech and language disability”, however, no such condition is placed on any other category of disability, including the Petitioners. The Court noted that the RPD Act is a beneficial legislation, and a restrictive interpretation would be inconsistent with its purpose, hence the petition was allowed.

## SIGNIFICANCE

In recognizing that the RPD Act must be construed liberally and that it makes no distinction between permanent and temporary disability, this decision extends the protection of the Act to countless other persons who live with temporary disabilities. It reaffirms that even persons with a temporary disability face similar societal barriers to achieving full participation like those with permanent disability.

38

## Iyer Seetharaman Venugopal v. Union of India & Others

### RIGHT IN QUESTION

Right of person with blindness and locomotor disabilities to pursue post-graduate medical education.

### CASE NUMBER

WP (L) No. 24214/2021 with IA No. 369/2022, decided on February 2, 2022

### COURT

Bombay High Court

### JUDGE

Nitin Jamdar & Amit Borkar, JJ.

### CITATION

2022 SCC OnLine Bom 5797



### FACTS

The case was in respect of three Petitions clubbed together, where the Petitioners, who are persons with benchmark disabilities, were denied admission to PG medical courses under the Postgraduate Medical Education Regulations (Amendment) 2019. The 2019 Regulations made substantial changes regarding guidelines for admission to students with specified disabilities. The Petitioners challenged the Regulations as contrary to the RPD Act.

### COURT DECISION AND REASONING

While considering the Petitioners' applications for interim relief, the High Court issued a detailed order considering the validity of the 2019 Regulations and denied interim relief of admission to the course. One of the Petitioners had a locomotor disability who contended that the Regulations do not consider a candidate's "functional ability" i.e., the actual capacity to perform the specific tasks/activities required for the course. The High Court held that since the Regulations are subordinate legislation in the field of higher education they cannot be interfered with by the Court. The Court held that it could not read in the requirement of functional ability or distinctions between requirements for surgical and non-surgical branches, into the Regulations as the Court was not equipped to do so. One of the Petitioners who had 100% visual disability, wished to pursue psychiatry which was a non-surgical specialization and even produced evidence of existing psychiatrists with visual disabilities. The High Court however rejected the Petitioners' claim for interim relief. On approaching the Supreme Court, the Petitioners were granted provisional admissions to the MD course.

### SIGNIFICANCE

The Court adopted an extremely exclusionary stance concerning the equal opportunity for persons with visual disability in pursuing medical courses. The larger question of whether functional ability must be invoked as a concept to determine eligibility remains to be considered.

39

## Ankur Manna v. State of West Bengal

### RIGHT IN QUESTION

Right of persons with disability to avail of reservation of seats in education as per their specific preferences.

### CASE NUMBER

W.P.A No.23056 of 2022 decided on November 28, 2022

### COURT

Calcutta High Court

### JUDGE

Aniruddha Roy, J.

### CITATION

2022 SCC OnLine Cal 4075



### FACTS

The Petitioner, who had a locomotor disability, challenged the non-provision of reservation for persons with disabilities in his preferred stream of Dermatology in respect of Postgraduate medical seats under the National Eligibility cum Entrance Test-PG.

### COURT DECISION AND REASONING

The Court observed that rules and policies of the government such as the specific allocation of reserved seats in educational institutions were not amenable to judicial review unless such rules and policies were manifestly "arbitrary, unfair, illegal, unreasonable, or attached with malice." It noted that the State Government had complied with the 2016 Act by reserving at least 5% seats for Persons with benchmark disabilities as provided under Section 32, however, the specific details as to mode and manner in which such reservation was to be carried out lay beyond the statutory mandate. Finding no illegal or arbitrary exercise of power in the State's decision in not providing for separate reservations in the Petitioner's preferred stream, the petition was dismissed.

### SIGNIFICANCE

This decision highlights the gaps which continue to exist in availing the benefit of reservations to higher education institutions, interfering in the right of persons with disabilities to pursue the career of their choice, despite being otherwise eligible. The State in this case did not reserve seats in the Dermatology stream due to exhausting the 5% reservation while allotting seats in other streams. Under the RPD Act, 2016, the State is not restricted to providing only reservation up to 5%, and in fact it is empowered to go beyond this quantum. To make access to education and employment opportunities truly inclusive for persons with disabilities, it would not be beyond the scope of the State's powers to allot seats for persons with disabilities in all streams. Since reservation in favour of persons with disabilities is horizontal in nature, such an increase would not violate the mandate of the Supreme Court in Indra Sawhney v. Union of India.

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## Zill Suresh Jain v. The State CET Cell & Others

### RIGHT IN QUESTION

Right of person with a benchmark visual disability to be admitted into a physiotherapy course.

### CASE NUMBER

WP (L) 33102 of 2022, decided June 20, 2023

### COURT

Bombay High Court

### JUDGES

G. S. Patel & Neela Gokhale, JJ.

### CITATION

2023: BHC-OS:5589-DB



### FACTS

The Petitioner was a person with low vision to the extent of 40% and sought admission into the physiotherapy course. She was rejected under the Maharashtra State Council for Occupational Therapy & Physiotherapy Act, 2002 (OTPT Act) which does not permit persons with any degree of visual disability to be admitted to physiotherapy courses.

### COURT DECISION AND REASONING

The Petitioner contended that the threshold limits set under by the Respondents are manifestly arbitrary and violative of Articles 14, 19 and 21 of the Constitution, in addition to the RPD Act. The Court further considered the evidence on individuals with visual impairment practicing in the field of physiotherapy and the existence of programmes specifically providing physiotherapy training to persons with blindness and low vision. It noted that the Respondents have failed to explain with any clarity as why the study and practice of physiotherapy should be completely denied to all persons on the blindness spectrum, and they have presumed on the footing that there is no such case of a physiotherapist with low vision. The Court held that the Respondents have failed to comply with the RPD Act by excluding certain fields of human endeavour altogether from persons with disabilities. The RPD Act gives the Respondent no choice but to adapt their education curricula and policies in line with the statute. It further clarifies that while benchmark disability tells us when the reservation operates, it must be understood that a person with less than benchmark disabilities also cannot be deprived of an opportunity to study Physiotherapy. Accordingly, the Petitioner's admission to the course was allowed.

### SIGNIFICANCE

The Court took a strong stand against the authorities for failing to provide a rationale for their exclusion of persons with disability and the failure to consider or evaluate the possible accommodations that could assist persons with disability required under the RPD Act. This is significant as a counter-argument in cases where Courts have been overly reliant on medical expert opinions, and have failed to consider questions of functional ability, best practices in other countries and evidence of persons with disability practicing in the field

“...in a society such as ours that is polarised at every level in every conceivable way, what is required is a progression towards greater inclusiveness, not endeavouring to discover newer and newer methods of exclusion... And yet we have here a statutory council that believes it is perfectly all right to tell persons who are, for no fault of their own, disabled, (in this case suffering from a blindness or a vision impairment) that certain fields of human endeavour must be forever shut to them. We are having none of it. To accept this position would be contrary to statute and a travesty of every concept of justice.”

### JUSTICE G.S. PATEL

*Zill Suresh Jain v. The State CET Cell & Others*

41

## Bambhaniya Sagar Vasharambhai v. Union of India and Others

### RIGHT IN QUESTION

Right of persons with cerebral palsy or locomotor disabilities to be pursue the MBBS course.

### CASE NUMBER

W.P.(C) No. 856 of 2023,  
decided on September 22,  
2023

### COURT

Supreme Court of India

### CITATION

S. Ravindra Bhat &  
Aravind Kumar, JJ.

### CITATION

Not available



### FACTS

The Court clubbed two petitions in which the Petitioners were rejected for admission to the MBBS programme, despite clearing the NEET examination, on the grounds that their disability made them ineligible for the course. One Petitioner was a person with locomotor disabilities involving his upper arm and spine, assessed at 80% disability and the next Petitioner was a person with cerebral palsy assessed at 50% disability.

### COURT DECISION AND REASONING

The Court had directed a medical evaluation of the Petitioners by experts, however found them insufficient. The reports only made a quantitative assessment of the candidates' disabilities and were bereft of any reasoning as to why the candidates were not capable of pursuing the course, or how their disability would impede them. The Court directed the experts to provide further clarification with elaborate reasoning while also considering the medical and scientific advances, and the aids and assistive devices that may benefit them in effectively participating in the course. It stated that the current benchmark disability standard of 40% will inevitably result in a "one size fits all" approach that will exclude eligible candidates. Consequently, it directed the Union Government and National Commission to consider this issue and create a solution to enable effective participation.

### SIGNIFICANCE

This order is important in addressing the fallout of quantitative assessments of persons with disabilities. These assessments in many cases exclude persons who have the functional capacity to perform the activities, particularly in the case of medical education. The Court's direction to the Union to address the problem is a significant step towards a more holistic framework for assessing disability and functional ability. The Court here also specified the requirements for a medical expert report, which considers scientific developments and reasonable accommodations, to properly assist the Court in its deliberations in such cases. It is notable though that in this case, the Petitioner with locomotor disability of the spine was ultimately held ineligible by the Medical Board, on the basis that a range of motion in his arm was essential to pursue the MBBS.

### ABOUT

## INCLUSIVITY IN EDUCATION

Sections 16 and 17 of the RPD Act are crucial for ensuring that students with disabilities have equal access to quality education in an inclusive setting.

Section 16 mandates that educational institutions, including private educational institutions funded or recognized by the government, ensure that children with disabilities are not excluded from mainstream education.

Section 17 calls upon the government to take proactive steps in accommodating the needs of students with disabilities, providing necessary support and resources, and fostering an inclusive environment.

Despite these legislative measures, the implementation of inclusive education has faced numerous challenges, necessitating judicial intervention. Courts have played a pivotal role in enforcing the statutory mandates and ensuring the full participation and inclusion of students with disabilities in educational institutions.

42

## Sambhavana v. University of Delhi

### RIGHT IN QUESTION

Rights of persons with disability to special educational facilities including trained teachers, augmented examination system and restructured curricula.

### CASE NUMBER

Civil Appeal No. 4722-4723 of 2013, decided on May 29, 2013

### COURT

Supreme Court of India

### JUDGES

Dr. B.S. Chauhan & Dipak Misra, JJ.

### CITATION

2013 INSC 364; AIR 2013 SC 3825



### FACTS

The Appellant organisation moved the Court to direct the University of Delhi to introduce certain measures for the benefit of visually impaired students in the four-year undergraduate programme such as special foundational courses, reading materials, specially trained teachers and greater representation in the various councils of the University.

### COURT DECISION AND REASONING

The Court, at the outset, noted that though the University had constituted an Empowered Committee to investigate these issues, the grievances of the Appellants required “more focus and a sensitive approach.” Citing Sections 30 and 31 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Court observed that the government was obliged to provide a comprehensive education scheme with special measures for persons with disabilities such as facilities tailored to their needs, scholarships, restructuring of curricula, grievance redressal fora and suitable modifications in examination patterns. These were necessary to ensure equality of opportunity for persons with disability and for them to enter the mainstream. The bench further highlighted the United Nations Convention on the Rights of Persons with Disability that provided for specially trained teachers and alternative teaching and communication methods for effective realisation of the rights. Lastly, it referred to Article 41 of the Directive Principles of the Constitution that, among other things, obliged the state to make effective provisions to secure the right to education of persons with disability. Considering these provisions, the Court directed the University of Delhi and the Empowered Committee to effectively mitigate the grievances raised by the Appellants within a week’s time.

### SIGNIFICANCE

The case emphasised the importance of securing the right to inclusive education to persons with disabilities, tracing it to the Constitutional scheme and India’s international legal obligations in addition to the PWD Act, 1995.

43

## Manif Alam v. Indian Institute of Technology

### RIGHT IN QUESTION

Right of a student with disability to not be expelled due to academic performance and be provided the necessary additional support for their academic development.

### CASE NUMBER

Writ Petition (Civil) No.1158 of 2018 & C.M No.4843 of 2018, decided on February 16, 2018

### COURT

High Court of Delhi

### JUDGE

Rekha Palli, J.

### CITATION

2018 SCC OnLine Del 7255



### FACTS

The Petitioner, a person with 50% locomotor disability was aggrieved by the Respondent-University’s Order expelling him after his first term of the M.Sc course due to a poor academic performance, without providing him an opportunity to show-cause.

### COURT DECISION AND REASONING

The Court adverted to Section 16 of the Rights of Persons with Disabilities Act, 2016 under which educational institutions are mandated to:

“(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion ...

(vii) monitor participation, progress in terms of attainment levels and completion of education with respect of every student with disability”;

It noted that this mandate can never be achieved if persons with disabilities are expelled without giving them an opportunity to attain the necessary levels. The Court held that educational institutes must provide special facilities such as extra coaching and mere reservation at the time of entry into the Institute, would become meaningless otherwise. The Court also rejected the Respondent University’s submission that it was not obligated to provide an Equal Opportunity Cell as it was not under the purview of the UGC. Accordingly, the Court set aside the Petitioner’s expulsion.

### SIGNIFICANCE

This decision is important in recognizing that reservation for persons with disabilities will not allow them to fully realise their right to education without support from institutions to provide reasonable accommodations and proper support throughout their academic journey. Further, it laid down that expulsion of a student with disability would be contrary to the provisions of the RPD Act.



44

## Aryan Raj v. Chandigarh Administration

### RIGHT IN QUESTION

Right of a candidate with disability to the same concession as an SC/ST candidate in the matter of eligibility for admission.

### CASE NUMBER

Civil Appeal No. 2718 of 2020, decided on July 8, 2020.

### COURT

Supreme Court of India

### JUDGES

R. F. Nariman, Navin Sinha & B. R. Gavai, JJ.

### CITATION

(2021) 19 SCC 813



### FACTS

The Petitioner, a person with a 50% intellectual disability, applied for a Diploma in Fine Arts for Divyang (DFAD) at the Respondent's college, but was aggrieved by the requirement of an Aptitude Test for which the minimum passing marks was 40%. The Petitioner submitted that persons with disabilities should be given the same concession as SC/ST students, for whom the passing mark was 35%. The High Court dismissed the case, reasoning that the DFAD course is specifically designed for students with disabilities, with eligibility conditions set by field experts to accommodate their limitations.

### COURT DECISION AND REASONING

The Court reversed the decision passed by the High Court, relying on Anamol Bhandari v. Delhi Technological University (2012) 121 DRJ 583, in which the Delhi High Court stated that people suffering from disabilities are also socially backward, and are therefore, at the very least, entitled to the same benefits as given to the SC/ST candidates. In the present case, since SC/ST students require 35% to pass the Aptitude Test, the same was held to apply to persons with disabilities as well.

### SIGNIFICANCE

In securing the right to proportionate relief of persons with disabilities as compared to persons belonging to the SC/ST category, this decision widens the scope for persons with disabilities to claim similar relaxations in other mainstream educational programmes as well.

45

## Rajneesh Kumar Pandey v. Union of India

### RIGHT IN QUESTION

Right of Children with Special Needs (CwSN) to adequate number of qualified teachers.

### CASE NUMBER

Writ Petition (Civil) No. 132 of 2006, decided on October 28, 2021.

### COURT

Supreme Court of India

### JUDGES

A. M. Khanwilkar, Dinesh Maheshwari & C. T. Ravikumar, JJ.

### CITATION

2021 INSC 689; (2021) 17 SCC 1



### FACTS

The Petition was filed on behalf of specially trained teachers catering to Children with Special Needs (CwSN). The petitioners allege that the teachers' employment in recognised schools on a contractual basis instead of permanently was unlawful and resulted in non-observance of the required pupil to teacher ratio of 5:1.

### COURT DECISION AND REASONING

The Court first went through the major legislations and schemes that were relevant to the issues at hand concerning the appointment of specially trained teachers and the maintenance of the pupil-teacher ratio. These included the Rehabilitation Council of India Act, 1992, the Right of Children to Free and Compulsory Education (RCFCE) Act, 2009, the National Trust Act, 2009, Rights of Persons with Disabilities Act, 2009 and schemes issued by the Department of School Education and Literacy. The Court observed the absence of a separate standard of pupil-teacher ratio for special schools. As a "stopgap" solution, the pupil-teacher ratios for students with different categories of disabilities ascertained in the Reshma Parveen v. Directorate of Education, State (NCT of Delhi) case would apply. On the issue of contract appointments, the Court held that the contractual appointments were not unlawful and given the dearth of specially trained personnel, there was a need for a multipronged approach. It accordingly issued directions to the Central Government to notify norms and standards for the pupil-teacher ratio in special schools, create permanent posts as per a "just ratio" for specially trained teachers and fill vacancies in a similar manner and conduct training and sensitization programmes.

### SIGNIFICANCE

The decision underscores the importance of setting appropriate standards for pupil-teacher ratios in the context of children with special educational needs and is made more significant by the Court's widening of the scope of this decision to all States and UTs. Further, the Court empowered State Commissioners to make suo moto inquiries to monitor compliance with its directions.



## 46

## Manish Lenka v. Union of India &amp; Others

## RIGHT IN QUESTION

Right of persons with disability to assistive devices and other educational support measures free of cost.

## CASE NUMBER

W.P.(C) No. 14032 of 2022, decided on December 12, 2022

## COURT

Delhi High Court

## JUDGE

Pratibha M. Singh, J.

## CITATION

2022 SCC OnLine Del 4403



## FACTS

The Petition was filed on behalf of a child with 75% visual impairment and studying in a Kendriya Vidyalaya. The child, a son of a daily-wage worker, approached the Chief Commissioner under the RPD Act for the provision of learning materials, assistive devices, uniforms and transportation fee waivers, which he could not afford. The Chief Commissioner directed an order in his favour, however the same was not complied with by the school.

## COURT DECISION AND REASONING

The Court cited Sections 16 and 17 of the RPD Act, 2016 and held that they imposed an obligation on the State to provide basic facilities such as uniforms, computer fee waiver and transportation costs to students with disabilities to ensure that they were “not deprived of proper education.” Accordingly, the Court directed the Respondents to meet all the needs of the Petitioner free of cost and file a status report in such terms.

## SIGNIFICANCE

The decision reaffirmed that educational institutions are obligated to ensure that all students with disabilities are provided the means to secure and fully realise their right to education, which includes ensuring they are not burdened by the ancillary costs of education such as transport and uniforms, but also the costs of specialised assistive devices that they might require to access education on an equal basis with others.

**04**

# **ACCESS TO HEALTHCARE**

# ABOUT ACCESS TO HEALTHCARE

Persons with disabilities have greater health needs than the general population and are more susceptible to secondary health issues such as diabetes, asthma, obesity, strokes and depression. This is not only due to biological factors but also inequities in the health system and other factors which result in high rates of poverty among persons with disabilities.

Health inequities for persons with disabilities may include:

1. Stigma and discrimination
2. Lack of affordable access to adequate healthcare
3. Misinformation or lack of information on appropriate healthcare
4. Physically inaccessible health care centres or lack of access to transport
5. Untrained medical personnel
6. Understaffed health centres
7. Harmful and outdated practices, particularly towards persons with mental and psychosocial disabilities.

Section 25 of the RPD Act entrusts the Government to take the necessary steps to ensure free healthcare to economically disadvantaged persons with disabilities, barrier-free access to healthcare centres and priority treatment. It also directs the Government to spread awareness on the causes of disability and take steps to prevent the incidence of cases.

Courts have recognized the right to health of all persons as a fundamental right under Article 21 of the Constitution. This includes the right to access essential medicines and healthcare, including emergency medical care and non-discriminatory treatment. In the context of disability, courts have reaffirmed the Government's responsibility to take positive steps to realise the right to health of persons with disabilities including ensuring equitable access to insurance, provision of medical care, and schemes to provide education and awareness.

# 47

## RIGHT IN QUESTION

Right to health of persons affected by leprosy to be able to live a life of equality and dignity.

## CASE NUMBER

Writ Petition (C) No. 767 of 2014, decided on September 14, 2018

## COURT

Supreme Court of India

## JUDGES

Dipak Misra, CJI.,  
A. M. Khanwilkar &  
Dr. D. Y. Chandrachud, JJ.

## CITATION

2018 INSC 819; AIR 2018 SC 4297



## Pankaj Sinha v. Union of India & Others

## FACTS

This was a public interest litigation brought in the interests of persons living with and affected by leprosy. Despite leprosy being a curable disease and manageable with drug treatments, millions of families affected by the disease continue to suffer denials of their rights to health, education, livelihoods and other consequences because of stigma, discrimination and ignorance. The Petition sought directions to the government to conduct periodic surveillance on the incidence of leprosy, awareness campaigns to dispel stigma, to ensure the provision of leprosy treatments and medicines free of cost and the provision of hygienic conditions in leprosy colonies and to prevent discrimination against pregnant women with leprosy by health workers and children affected by leprosy by schools.

## COURT DECISION AND REASONING

The Court considered the facts brought to light by the petition, which included improper dispensation of MDT (Multidrug therapy) to persons with leprosy, denials of treatment by government hospitals to pregnant women with leprosy, lack of adequate education facilities, deprivation of proper housing and sanitary conditions and the denial of BPL cards which would enable leprosy-affected persons to access food. It held that the conditions of the leprosy affected community, caused by stigma and marginalisation, violated their fundamental right to equality and the right to live with dignity. The Court issued directions to the Union and States to undertake periodic national surveillance on the incidence and prevalence rates, which must be made public; conduct massive awareness campaigns on signs and symptoms of leprosy and its curability; ensure free and continuous availability of MDT in all government health centres; ensure non-discrimination and non-isolation of persons with leprosy in government and private-run medical facilities especially women; ensure non-discrimination by public and private schools of children from leprosy affected families; and provide schemes for rehabilitation.

## SIGNIFICANCE

The case highlights the systematic marginalisation of persons affected by leprosy, even within the disability community. The extreme vulnerability of persons with leprosy requires a multipronged approach to address their socio-economic rights and right to live with dignity.

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## Amit Kumar Agarwal v. Union of India

### RIGHT IN QUESTION

Right of patients with Thalassaemia to adequate supply of medicines, equipment and blood products.

### CASE NUMBER

Civil Writ Jurisdiction Case No.10986 of 2021, decided on November 1, 2021

### COURT

High Court of Patna

### JUDGES

Sanjay Karol, C.J. & P. B. Bajantri, J.

### CITATION

2021 SCC OnLine Pat 2777



### FACTS

The Petitioners are people with Thalassaemia, a genetically inherited blood disorder. The Petition sought to address the lack of adequate medicines, equipment and facilities in the State for persons with Thalassaemia. Several incidents of children's fatalities were reported due to the lack of filters to regulate iron levels, the drug Desferal along with its pump, and the lack of blood products. The Petition urged the Court to mandate the State to establish Thalassaemia Day Care Centres (TDCC) to prevent patients from experiencing iron overdose, a common side effect of blood transfusions, and to take necessary actions to address the issue.

### COURT DECISION AND REASONING

Thalassaemia is recognized as a disability under the RPD Act. The Court referred to Section 25 of the Act which mandates the State to take necessary measures to improve accessibility of healthcare. The Court reiterated that the right to health is a fundamental right and read with the principle of 'reasonable accommodation', patients with Thalassaemia were entitled to all possible medications, facilities and care to realise their right to life and liberty under Article 21 of the Constitution. The Court held that the unavailability or shortage of blood, medicines or any other essential items needed for the treatment of Thalassaemia patients was not a pathway available to the Government. Further, the Court condemned the State for failing to acknowledge the tragic and avoidable deaths of children with Thalassaemia and directed them to compensate families who suffer losses solely due to non-availability of medical facilities. It directed the formation of an independent committee of doctors to assess the State's facilities and report to the Chief Secretary, Government of Bihar, within four months to ensure no other child meets the same fate.

### SIGNIFICANCE

The decision reaffirms the constitutional right to health of all persons, but additionally in the case of Thalassaemia patients who are also persons with disability, there is no justification for the non-availability of life-saving medicines, blood and treatment. This means that the State cannot cite a lack of available financial resources or other issues to delay or deny treatment to Thalassaemia patients.

49

## Saurabh Shukla v. Max Bupa Health Insurance Co. Ltd

### RIGHT IN QUESTION

Right to non-discrimination in availing health insurance by a person with disability.

### CASE NUMBER

W.P.(C) No. 6074 of 2019, decided on December 13, 2022

### COURT

Delhi High Court

### JUDGES

Pratibha M. Singh, J.

### CITATION

2022 SCC OnLine Del 4471



### FACTS

The Petitioner who had tetraplegia and paralysis was refused health insurance by Max Bupa Health Insurance Co. Ltd. & Oriental Insurance Co. Ltd. On approaching the Court of Chief Commissioner of Disabilities (CCCD), the Chairperson of Insurance Regulatory and Development Authority of India (IRDAI) was directed to investigate the matter and initiate the insurance policies for persons with disabilities. This was not done, and the matter was taken to the High Court.

### COURT DECISION AND REASONING

The Court examined the IRDAI Health Regulations, 2016 and an IRDAI circular issued on 2.06.2022, which provides that persons with disabilities, HIV and those affected with mental illness should be given health coverage. The Court reiterated the right to health of all persons as a part of the right to life, which includes access to medical care and facilities. It relied on the High Court's decision in Vikas Gupta v. Union of India, W.P.(C), No.10323/2009 which stated there should be no difference between the premium paid by persons with disabilities and able-bodied persons. All persons with disabilities cannot be grouped together for the purpose of insurance, and risk must be assessed on an individual basis along the same standards. In view of this and the obligations under the RPD Act, 2016 and the Mental Healthcare Act, 2017, the Court held that the Petitioner was entitled to health insurance and directed the Respondent companies to consider his application. It also issued directions to all insurance companies to ensure that the products are designed for persons with disabilities. Additionally, it criticised the usage of the term 'sub-standard lives' in the IRDAI Regulations and directed IRDAI to modify the same.

### SIGNIFICANCE

The decision is significant as it held that the denial of health cover by private insurance companies to persons with disabilities as discriminatory. Although private establishments are not made directly accountable under the RPD Act, the Court held the insurance companies liable through their non-conformance with circulars from the regulatory authority, IRDAI.

05

ACCESS TO  
JUSTICE

# ACCESS TO JUSTICE

Access to justice is a fundamental part of democracy and the rule of law. It means that persons are made aware of their rights and enabled to raise their voice to access and claim their rights. The government is under a duty to provide fair, effective, transparent and non-discriminatory services to persons to be able to secure justice.

Persons with disabilities face unique challenges in accessing and participating in the justice system including exclusionary and ableist judicial processes, inaccessible legal documents and court environments, lack of sensitivity and the perpetuation of stereotypes that persons with disabilities are weak and lack autonomy.

Under Section 12 of the RPD Act, 2016, the State is directed to ensure that persons with disabilities can access their right to justice and shall not be discriminated because of their disability. This includes making all public documents available in accessible formats and ensuring that court facilities and services are equipped to accommodate the needs of persons with disabilities. The Act also mandates the establishment of mechanisms to ensure that persons with disabilities can participate effectively in legal proceedings.

50

## RIGHT IN QUESTION

Whether a non-minor with intellectual disability to be covered by the POCSO Act, 2012 if their mental age is below 18.

## CASE NUMBER

Criminal Appeal Nos. 1217-1219 of 2017, decided on July 21, 2017

## COURT

Supreme Court of India

## JUDGES

Rohinton Fali Nariman & Dipak Misra, JJ.

## CITATION

2017 INSC 658; (2017) 15 SCC 133



## Eera through Manjula Krippendorf v. State (Govt of NCT of Delhi) & Others

## FACTS

The Appellant, a 38 year woman with an intellectual disability, was raped by the Respondent. Through her mother, the Appellant urged the Court to conduct the criminal trial of the Respondent in the Special Court under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) because the Appellant's functional age was equivalent to that of a 6 to 8-year-old child.

## COURT DECISION AND REASONING

The Supreme Court declined to broaden the definition of the term "child" under Section 2(1)(d) of the POCSO Act, 2012, to encompass the "mental age" of an individual. It noted that the legislature expressed its intent through the Statement of Objects and Reasons and the detailed Preamble of the POCSO Act, where it explicitly defined "age" as being "below the age of 18 years." It also held that the POCSO Act sets a statutory age limit to identify minors and protect them, correlating this limit with the legal capacity to give consent. In cases involving a victim with intellectual disability, the Court must assess whether there was consent, considering the degree of disability or understanding. The Court held that it cannot equate a child under 18 years of age with a person who has a mental age below 18 years.

## SIGNIFICANCE

The decision, various issues in the criminal justice system which make accessing justice for victims with disabilities challenging and traumatic. Women with intellectual disabilities are vulnerable to more abuse and exploitation, and having already endured the trauma of rape, the Appellant was expected to testify in an environment which was deeply distressing to her mental and emotional state. Under POCSO, there is an emphasis on enabling a child-friendly and stress-free environment for victims at every stage of the judicial process. Similar provisions would go a long way towards protecting victims with intellectual and psychosocial disabilities while accessing justice.



51

## Accused X v. State of Maharashtra

### RIGHT IN QUESTION

Right of a person with post-conviction mental illness to not be executed.

### CASE NUMBER

Review Petition (Criminal) No. 301 of 2008, decided on April 12, 2019

### COURT

Supreme Court of India

### JUDGES

N. V. Ramana,  
Mihan M. Shantanagoudar,  
Indira Banerjee, JJ.

### CITATION

2019 INSC 518; (2019) 7 SCC 1



### FACTS

The Petitioner was a death-row convict who developed a mental illness while in prison. The Petition submitted that his illness was grounds for commuting his death sentence to life imprisonment.

### COURT DECISION AND REASONING

The Court noted that the Petitioner was a death-row convict for almost 17 years and had developed a mental illness after his conviction. It acknowledged that multiple circumstances such as overcrowding, violence, enforced solitude, lack of privacy and inadequate healthcare take a toll on the mental health of prisoners. The Court held that for the purposes of the death penalty, the right to dignity under Article 21 of the Constitution of an accused subsists till his last breath. It also cited Section 20(1) of the Mental Healthcare Act, 2017, which provides that “every person with mental illness shall have a right to live with dignity”. It stated that if the Accused is incapable of understanding the impact and purpose of his execution because of his disability, then the entire basis for the execution collapses. The Court further relied on Article 20 of the Constitution which guarantees criminals the right to not be subjected to excessive criminal penalty. Moreover, as a signatory to the CRPD, India endorses the “prohibition of cruel, inhuman or degrading punishments” for persons with disabilities. In view of this, the Court saw fit to issue guidelines for the future to ensure that extreme cases of post-conviction mental illness would prevent execution of the convict. In the case of the Petitioner, the Court considered his long incarceration and illness and commuted his death sentence to life in prison, further directing the authorities to provide mental healthcare services to him and others under the Mental Healthcare Act, 2017.

### SIGNIFICANCE

This is a landmark judgment where the Court reaffirmed the need for a human-rights approach to sentencing, particularly in the case of persons with mental illness. This approach is founded in constitutional principles of human dignity and the right against cruel and excessive punishment. The Court however stopped short of protecting all persons with mental illness from being subjected to the death sentence.

52

## State Bank of India v. Ajay Kumar Sood

### RIGHT IN QUESTION

Right of persons with disabilities to accessible judgments.

### CASE NUMBER

Civil Appeal No.5305 of 2022, decided on August 16, 2022

### COURT

Supreme Court of India

### JUDGES

Dhananjay Y. Chandrachud, J.  
& A.S. Bopanna, J.

### CITATION

2022 INSC 833; (2023) 7 SCC 282



### FACTS

This appeal was against an order of the High Court of Himachal Pradesh in a case relating to a charge of gross misconduct against the respondent in a disciplinary enquiry. The Supreme Court hauled up the High Court of Himachal Pradesh due to the incomprehensibility of the judgment passed by it.

### COURT DECISION AND REASONING

While the case was relating to a disciplinary proceeding, the Supreme Court criticised the judgment passed by the High Court for being incomprehensible, holding that judicial writing should be clear and accessible. The Supreme Court made a special observation on the importance of making judgments accessible to persons from all sections of society, especially persons with disability. It held that all courts must ensure that the judgments and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. Courts and tribunals must also ensure that the version of the judgments and orders uploaded is accessible and signed using digital signatures, and that they should not be scanned versions of printed copies

### SIGNIFICANCE

The decision reaffirms the rights of persons with disabilities to access information and the judicial process, which is also enshrined in the Rights of Persons with Disabilities Act, 2016.

RIGHT IN QUESTION

Right of persons with disability to an accessible trial ensuring their effective participation.

CASE NUMBER

Writ Petition (Criminal) No. 2500 of 2022, decided on August 24, 2023

COURT

Delhi High Court

JUDGES

Swarana Kanta Sharma, J.

CITATION

2023 SCC OnLine Del 5261



# Rakesh Kumar Kalra Deaf Divyang v. State Government of NCT Delhi

FACTS

The Petitioner, a person with a hearing impairment, blurred vision and a jaw injury was facing criminal charges of cruelty against his wife. He contended that his disabilities prevented him from properly understanding and participating in verbal conversations during court arguments or evidence recording and sought to access the justice system effectively.

COURT DECISION AND REASONING

The Court held that the RPD Act is an anti-discrimination legislation, the object of which is to ensure full participation of persons with disabilities in the judicial process. It stated that Section 12 of the Act, which deals with “access to justice” to persons with disabilities was mandatory and the State must ensure that the “judicial machinery is accessible to all persons with disabilities in its true intent”. It accordingly made various suggestions including:

- **Braille and sign language:** Use of braille and sign language to enable persons with disability to read materials and to facilitate communication.
- **Use of disabled friendly technology:** New technology for use of speech synthesizers, to enlarge the printed text, display it for people with low vision,
- **Disabled-friendly Court Facilities and special courtrooms:** Courts must ensure accessibility to courtrooms, providing wheelchairs, elevators, and mobility aids.
- **Designated Court Rooms:** Specific courtrooms for disabled accused should be clearly designated, with contact details of appointed officials for assistance.
- **Technological Support:** Courts should employ sign language interpreters and adopt new technologies to aid visual and hearing-impaired individuals.

The Court issued detailed directions to the State to provide infrastructure and resources for assistive devices, formulate guidelines on access to justice by persons with disabilities, increase public awareness and conduct judicial training officers on the rights of persons with disabilities and treating them with due sensitivity, including towards persons with invisible disabilities.

SIGNIFICANCE

The decision marks a huge step towards ensuring persons with disabilities can access the judicial system on an equal basis with others.

06

# ACCESSIBILITY

To Information, Public Facilities & Recreation

ABOUT

# ACCESSIBILITY: TO INFORMATION, PUBLIC FACILITIES & RECREATION

In the context of disability, “accessibility” means access by persons with disability to their physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public.

In India, approximately 4–8% of the population, comprising 40-90 million persons, live with disabilities

However, the roads, buildings, signage, online and offline media and the host of other public services and facilities fail to reflect this reality.

The lack of accessible platforms prevents persons with disabilities from living their daily lives with the same opportunities as others and has a direct impact on their rights to education, health, livelihood, freedom of speech and expression, freedom to vote and participate in political life and ability to secure justice.

Section 40 of the RPD Act mandates the Government to notify standards for 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. Section 41 provides for access to public transport, air travel and accessible roads, in addition to schemes to enhance personal mobility of persons with disabilities. Section 42 provides for accessibility to information and communications technology, including audio, print and electronic media. Sections 43 – 46 mandate the compliance of accessibility standards by both private and public establishments.

The right of persons with disabilities to be able to access and participate in cultural life and recreation (Section 29) and sports (Section 30) includes aspects of physical accessibility, informational accessibility, rights to language, art and entertainment, access to places of worship and sports and play.

Despite the notification of several accessibility standards in the realms of transport, built infrastructure and informational access, there continues to be a major gap in implementation.

54

## Arman Ali v. Union of India & Others

### RIGHT IN QUESTION

Right against harassment, discrimination and exploitation of persons with disability while accessing public facilities.

### CASE NUMBER

W.P. (C) No. 6272 of 2011, decided on March 11, 2019

### COURT

High Court of Gauhati

### JUDGES

Ujjal Bhuyan, J.

### CITATION

2019 SCC Online Gau 4822



### FACTS

The Petitioner, a disability rights activist with cerebral palsy, was advised to enhance his upper limb stamina and lose weight, leading him to visit Gold's Gym. There, he faced an unfriendly staff who subjected him to a rigorous initial workout and numerous unrelated questions about his medical condition, before he was directed to pay additionally for a trainer. Feeling discriminated against, the Petitioner filed a writ petition. The Respondents, including the Social Welfare Department and Gold's Gym, denied the claim, asserting that precautions are necessary for the safety and well-being of individuals with disabilities to prevent injuries and medical complications.

### COURT DECISION AND REASONING

The Court stated that the Rights of Persons with Disabilities Act, 2016 shows that the provisions of the said Act permeate not only Government facilities but the private space as well. Further, a positive duty is cast upon the appropriate Government to conduct, encourage, support or promote awareness campaigns and sensitization programmes to ensure that rights of persons with disabilities are protected. The Court noted that the State of Assam and the officers and staff of the Social Welfare Department lack sensitivity to the difficulties faced by persons with disabilities. Consequently, the Court issued directives requiring training for all Social Welfare Department personnel in Assam on disability rights, in collaboration with awareness campaigns and guidelines for accessibility to be implemented within two months. Lastly, it directed the Respondents to pay exemplary compensation of Rs. 50,000/- each to the Shishu Sarothi which will be used for the benefit of specially abled children.

### SIGNIFICANCE

The Court highlighted the importance of sensitizing private establishments and the public in general about treating persons with disabilities with dignity and respect, and with due sensitivity.

55

## The National Association of the Deaf v. Union of India & Others

### RIGHT IN QUESTION

The right of persons with hearing impairments to access sign language interpreters in public facilities and services.

### CASE NUMBER

W.P. (C) No. 6250/2010 decided on November 24, 2011

### COURT

Delhi High Court

### JUDGE

Rajiv Sahai Endlaw, Acting C.J

### CITATION

2011 SCC OnLine Del 4954



### FACTS

The Petitioner filed a public interest petition seeking various reliefs to ensure the recruitment, training and availability of sign language interpreters across multiple public institutions, including government departments, courts, hospitals, educational institutions, and transportation facilities. The petition highlighted that there are approximately 25 million persons with hearing impairment who would use sign language, but due to the non-availability of Indian Sign Language (ISL) interpreters, they face untold hardships in being able to effectively communicate and thus participate in public life.

### COURT DECISION AND REASONING

The Court recognized the lack of sign language interpreters as a significant barrier to equal opportunities and full participation for persons with hearing impairments. It directed the conduct of a comprehensive study to assess the need for sign language interpreters at public buildings, hospitals, transportation facilities, and other significant interaction points. This study was to be completed within one year, following which a report on the required posts for interpreters was to be prepared and recruitment undertaken. Further, directions were issued to establish courses for training sign language interpreters. The court also mandated regular progress reports to ensure compliance with these directives.

### SIGNIFICANCE

This case emphasizes the judicial recognition of the rights of persons with hearing impairments to promote inclusivity and full participation in society.

# 56

## P. Ramkumar v. State of Tamil Nadu

### RIGHT IN QUESTION

Right of persons with disability to access literary works in accessible formats.

### CASE NUMBER

Writ Petition (MD) No. 23886 of 2022, decided on December 12, 2022

### COURT

Madras High Court

### JUDGES

R. Mahadevan & J. Sathya Narayana Prasad, JJ.

### CITATION

2022 SCC OnLine Mad 4947



### FACTS

The Petitioner, an individual with 100% visual disability, claimed the right to be provided with a Braille version of Thirukkural, a seminal text in Tamil literature and moral philosophy, in Tamil and English languages with standard interpretation. This was to ensure visually impaired people could read, recite and enjoy the essence of Thirukkural on their own.

### COURT DECISION AND REASONING

The Court stated that Thirukural, aside from being a part of the formal curriculum, was a part of Tamil informal education as well. The non-dissemination of the work in accessible formats impaired the enjoyment of cultural life and inclusive education of visually challenged persons. This in turn amounts to discrimination and disregards reasonable accommodation as defined in Sections 2(h) and 3 of the RPD Act. The petition was dismissed upon a submission by the Government that a Braille format would be provided free of cost to the Respondents and distributed along with 45 Sanga Ilakkiya Noolgal to visually impaired persons.

### SIGNIFICANCE

This judgment reaffirms the statutory right of persons with disability to access information and cultural works in a format suitable to them, to participate in society on an equal basis with others.

# 57

## Jeeja Ghosh & Another v. Union of India & Others

### RIGHT IN QUESTION

Right of persons with disabilities to dignity and non-discrimination in transport and airlines.

### CASE NUMBER

Writ Petition (Civil) No. 98 of 2012, decided on May 12, 2016

### COURT

Supreme Court of India

### JUDGES

A. K. Sikri & R. K. Aggarwal, JJ.

### CITATION

2016 INSC 412; (2016) 7 SCC 761



### FACTS

The Petitioner, a person with cerebral palsy was forcibly deplaned from a flight by crew members due to her disability, without any consent or consideration that she could fly alone. The incident further led to the Petitioner suffering long standing trauma and anxiety.

### COURT DECISION AND REASONING

The Court observed that the treatment faced by the Petitioner at the hands of the airline was unfair, inappropriate and lacked all due sensitivity. It held that the right to equality must be interpreted based on the value of human dignity. Article 21 of the Constitution guarantees the right to life and thereby the right to live with human dignity. The State has an obligation to take positive measures to ensure that persons with disabilities can exercise the rights accorded to them, and recognize that they are an integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. The Civil Aviation Requirements, 2008 (CAR) are rooted in the respect for human rights and the spirit of human dignity runs through it. The airline crew, in failing to comply with the CAR instructions, violated her dignity and unreasonably discriminated against her. Accordingly, the Petitioner was awarded damages for the mental and physical suffering undergone by her.

### SIGNIFICANCE

The Court grounded the rights of persons with disability in the constitutional value of human dignity. It held that disability must be viewed in terms of the societal and structural barriers that hamper persons with disabilities from exercising their rights and freedoms, rather than from a charitable or welfare approach, which sees persons with disabilities as incapable of enjoying the same opportunities as others. In a later order in the same case dated December 1st, 2021, the Supreme Court observed that no person with disability should be manually lifted without their consent, as such a practice was inhumane. It also held that the requirement for persons with disability to remove prosthetic limbs/calipers for security checks should be removed.



“...there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings, and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability... There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perception has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights.” We are having none of it. To accept this position would be contrary to statute and a travesty of every concept of justice.”

**JUSTICE DR. A.K. SIKRI**

Jeeja Ghosh & Another v. Union of India and Others

# 58

## Rajive Raturi v. Union of India & Others

### RIGHT IN QUESTION

Right of persons with disability to safe, accessible, and inclusive public spaces and services.

### CASE NUMBER

Writ Petition (Civil) No.243 of 2005 decided on December 15, 2017

### COURT

Supreme Court of India

### JUDGES

A.K. Sikri & Ashok Bhushan, JJ

### CITATION

2017 INSC 1243; (2018) 2 SCC 413



### FACTS

The Petitioner, a disability rights activist, filed this Public Interest Litigation (PIL) on behalf of persons with disabilities for proper and adequate access to public places. It particularly sought a direction to the State to comply with the accessibility requirements necessary for visually impaired persons to access roads and transport facilities safely.

### COURT DECISION AND REASONING

The Court held that the rights of persons with disabilities, particularly those who are visually impaired, to have adequate access to road and transport facilities and in public spaces, are constitutionally derived. Without the facilities of movement, the fundamental right of persons with disabilities under Article 19 of the Constitution would be infringed. Article 21, which guarantees the right to life and the right to live with dignity “assumes greater proportions in respect of persons with visual impairments, who need a higher number of compensative skill enhancing facilities in order to go about their daily lives without suffering the indignity of being generally perceived as being dependant and helpless”. The Court also referenced its decision in State of H.P. v. Umed Ram Sharma (1986) 2 SCC 68, where the right to accessibility was held to be part of the right to life; and Jeeja Ghosh v. Union of India (2016) 7 SCC 761, where, as part of the right to dignity, it was held imperative to provide such facilities so that persons with disability could enjoy life meaningfully and contribute to the progress of society. The Court held there could be no denial of the rights of persons with disabilities to proper and adequate access to public spaces.

The Central Government did not challenge the merits of the case and filed several reports to show the measures which were taken from time to time over the years, which were monitored by the Court and the Petitioner. The Court finally issued time-bound directions to the Centre and State Governments to comply with these measures.

### SIGNIFICANCE

The decision firmly entrenched the right of persons with disabilities to accessibility under Articles 19 and 21 of the Constitution. Several infrastructural enhancements were made by States in compliance with the directions in this case, however due to the lack of enforcement and political will, there continue to exist major gaps in accessibility of built infrastructure and roads for persons with disabilities in India.

59

K.R. Raja v. State of Tamil Nadu

RIGHT IN QUESTION

Right of persons with disabilities to access tourist places on an equal basis with others.

CASE NUMBER

Writ Petition (MD) No.19896 of 2018, decided on November 25, 2022

COURT

Madras High Court

JUDGES

R. Mahadevan & J. Sathya Narayana Prasad, JJ

CITATION

AIR 2023 Mad 47



FACTS

The Petitioner, a wheelchair user, prayed for easy accessibility for persons with disabilities to all the tourist places in Tamil Nadu following a visit Courtallam Water Falls in Tirunelveli, which he could not enjoy with his friends.

COURT DECISION AND REASONING

The Court referenced the international and domestic laws which recognize the right of people with disabilities to engage in cultural life and recreational activities. Under Section 29 of the RPD Act, the Government and local authorities were required to take steps to promote the right to equal participation in cultural and recreational life for persons with disabilities. It held that accessible tourism was integral for equal participation of persons with disabilities in recreation and cultural life. Consequently, the Court directed the Government to devise a programme in consultation with expert bodies and including persons with disabilities, to make tourist destinations in Tamil Nadu accessible in accordance with Section 40 of the RPD Act and other applicable guidelines. It further directed the State to prepare and publish a travel guide of disability-friendly and accessible tourist destinations

SIGNIFICANCE

The case recognized the value of persons with disabilities being able to enjoy their rights to the fullest, which would include access to tourist destinations and places of culture and recreation.

60

Akshat Baldwa and Others v. Yash Raj Films & Others

RIGHT IN QUESTION

The right of persons with disabilities to access audio-visual entertainment in an accessible format.

CASE NUMBER

W.P. (C) 445/2023 decided on March 15, 2024

COURT

Delhi High Court

JUDGES

Pratibha M. Singh. J.

CITATION

Not available



FACTS

The Petition was filed by persons with visual and hearing disabilities seeking the inclusion of accessibility features in films in consonance with the RPD Act, 2016. The film "Pathaan," produced by Yash Raj Films, was cited as an example where accessibility features like audio description, subtitles, and closed captions were not adequately provided. The Petitioners highlighted the challenges faced by persons with disabilities in accessing audio-visual content in both traditional theatres and online streaming platforms.

COURT DECISION AND REASONING

The Court recognized the significance of accessibility in audio-visual content for persons with disabilities and the obligation on the government in Section 42 of the RPD Act to ensure all content in audio, print, and electronic media is accessible. The Petitioners submitted that audio descriptions, closed captions and subtitles in the original language of the movie were all essential accessibility features for the visual and hearing impaired, however such facilities were largely not provided in India. Following instructions of the Court to the Ministry of Information and Broadcasting (MIB) to consult with all stakeholders on this issue, the MIB prepared "Draft Guidelines of Accessibility Standards in the Public Exhibition of Feature Films in Cinema Theatres for Persons with Visual and Hearing Impairment", which the Court directed must be notified by 15th July 2024, making the provision of accessibility features mandatory.

SIGNIFICANCE

The case marks a significant win towards realising the right to accessible entertainment and the right to culture for persons with disabilities. The Court's directions to the Government to bridge the gap between legal provisions and practical implementation directly led to the creation of mandatory accessibility standards for the entertainment industry, ensuring the inclusive participation of persons with disabilities in enjoying audio-visual content.

61

# Nipun Malhotra v. Sony Pictures Films India Private Limited & Others

## RIGHT IN QUESTION

Rights of persons with disabilities regarding their portrayal in films.

## CASE NUMBER

C.A.No.7230 of 2024  
decided on July 8, 2024

## COURT

Supreme Court of India

## JUDGES

Dhananjay Y. Chandrachud,  
CJI. & J.B. Pardiwala, J.

## CITATION

2024 INSC 465



## FACTS

Nipun Malhotra objected to the portrayal of persons with disabilities in the movie “Aankh Micholi”. He claimed the film violated the rights of persons with disabilities and relevant legal provisions. Malhotra sought directions for including disability experts in the Central Board of Film Certification (CBFC), mandating guidelines for filmmakers, and seeking relief against Sony Pictures.

## COURT DECISION AND REASONING

The Supreme Court disposed of the appeal without granting the specific reliefs sought by the Appellant. The Court endorsed minimal interference with the determinations of expert bodies under the Cinematograph Act, particularly regarding film exhibition. It also declined to recommend alterations to the film or mandate Sony Pictures to create an awareness film. The Court noted that existing laws and rules sufficiently cover this area. However, the Court observed that in the context of the historical oppression of persons with disabilities, “speech that entrenches stereotypes and is opposed to the dignity of such individuals”. It is therefore important to distinguish between “disabling humour”, which demeans persons with disabilities and “disability humour”, which attempts to better understand disability or challenges conventional wisdom. The Court consequently provided a general framework for the portrayal of persons with disabilities in visual media, emphasizing inclusive language, accurate representation of medical conditions, balanced depiction of challenges and successes, avoidance of stereotypes, and the importance of involving persons with disabilities in media representation.

## SIGNIFICANCE

This judgment declined to give reliefs to the Petitioner despite exhorting the importance of the protection of the dignity of the persons with disabilities and took contradictory stances on restrictions of speech under Article 19(1) of the Constitution. It stated that free speech does not include the right to lampoon or stereotype persons with disabilities, but goes on to declare that if the overall message justifies the disparagement of persons with disabilities, there cannot be any restrictions on it. The outcome is therefore one of uncertainty for persons with disabilities in future such cases.

**07**

**WOMEN WITH  
DISABILITIES**

# DISCRIMINATION AGAINST WOMEN WITH DISABILITIES

Women with disabilities in India experience discrimination due to their sex and their disability. This “double discrimination” heightens the vulnerability of women with disabilities to violence, sexual violence, exploitation, denials of legal and bodily autonomy, denial of parental rights and discrimination.

Further intersections of caste, socio-economic status, gender and sexual orientation, religion and other identities result in complex and multifaceted manifestations of discrimination. Section 4 of the RPD Act, 2016 mandates that the appropriate government shall take measures to ensure that women with disabilities enjoy their rights equally with others.

However, several landmark cases have spotlighted the unique challenges faced by women with disabilities such as neglect and violence in institutional settings, sexual violence, deprivation of their reproductive and health rights, denial of their legal capacity, and the conflation of disability with the concept of “unsoundness of mind” in divorce proceedings.

62

RIGHT IN QUESTION

Right of a woman with an intellectual disability to bear a child and not be subjected to forcible termination of pregnancy.

CASE NUMBER

Civil Appeal No. 5845 of 2009, decided on August 28, 2009

COURT

Supreme Court of India

JUDGES

K.G. Balakrishnan, CJI. & P. Sathasivam & B.S. Chauhan, JJ.

CITATION

2009 INSC 1086; (2009) 9 SCC 1



## Suchita Srivastava & Another v. Chandigarh Administration

FACTS

The Appellant, a woman with a mild intellectual disability, became pregnant by rape while she resided in a government-run welfare home. The High Court of Punjab & Haryana ordered the termination of the Appellant’s pregnancy, despite her expression of willingness to bear the child. Against this, a petition was taken to the Supreme Court on behalf of the Petitioner.

COURT DECISION AND REASONING

The Court unequivocally held that the reproductive choice of the woman must be respected and that her right to reproductive choice is a dimension of her right to personal liberty, privacy, bodily integrity and dignity under the Constitution. Under the Medical Termination of Pregnancy Act, 1971, the Court drew a distinction between “mentally ill” persons, who require a guardian’s consent under Section 3(4)(a) of the Act, and persons with “mental retardation” who are not mentioned. The Appellant, falling in the latter category, did not require a guardian’s consent, and instead her own consent was paramount. It urged the need to look beyond social prejudices as it cannot be assumed that a person who has a condition of mild mental retardation cannot be capable of parenting and held that measures such as termination of pregnancy would be violative of the guarantee of ‘equal protection before the law’ as laid down in Article 14 of the Constitution. The judgment also placed reliance on the UN Declaration on the Rights of Mentally Retarded Persons, 1971 and the UNCRPD, 2006 which recognize the autonomy and legal capacity of persons with intellectual disabilities. Regarding the concerns about the victim’s mental capacity to cope with the demands of carrying the pregnancy to its full term and subsequent childcare, the Court directed that the best medical facilities be made available to ensure proper care and supervision during pregnancy and post-natal care. The Chairperson under the National Trusts Act 1999 had also undertaken to look after the interests of the Petitioner and aid with childcare.

SIGNIFICANCE

The Supreme Court’s recognition of a woman’s right to reproductive choice as a fundamental right under the Article 21 of the Constitution was a significant milestone in women’s rights in India, especially for women with intellectual disabilities.



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# M. Sameeha Barvin v. Joint Secretary Ministry of Youth & Sports Dept. of Sports Government of India & Others

## RIGHT IN QUESTION

Right of female athletes with disability to not be discriminated against due to their gender or disability.

## CASE NUMBER

Writ Petition No. 16953 of 2021, decided on December 20, 2021.

## COURT

Madras High Court

## JUDGE

R. Mahadevan, J.

## CITATION

(2022) 1 Mad LJ 466



## FACTS

The Petitioner, a woman with 90% hearing impairment, secured the first position in the National Selection Test for Long Jump and High Jump, out of 12 candidates (10 male and 2 female). Despite this, she was not sent for the Fourth World Deaf Athletics Championship, 2021. The selection authorities preferred sending all male participants citing unsafe conditions for a lone female member.

## COURT DECISION AND REASONING

In an interim order, this Court had directed the selection authorities to allow the Petitioner to compete in the championship. In the final order, the Court noted that “women in general and disabled women in particular, struggle with both the oppression of being women in male-dominated societies and the oppression of being disabled in societies dominated by the able-bodied.” It considered the practice of “romantic paternalism”, which justifies limits on the personal freedoms and autonomy of women with the need for their protection. Further, it considered the barriers to women with disabilities in sports which include the lack of women in power and lack of financial support. The Court also emphasised the importance of sports to persons with disabilities. The Petitioner had excelled in her sport despite her disability and yet faces discrimination from the Sports Council of the Deaf at both State and Central levels due to their attitudes towards women with disabilities. The Court allowed the petition and issued several directives to the Respondent Authorities for female athletes with disabilities such as providing financial assistance, adhering to proper selection processes, supplying accessible equipment, and sensitising male counterparts.

## SIGNIFICANCE

This decision is a pivotal step in the advancement of the rights of women with disabilities. It is one of the first cases where a High Court addressed intersectional discrimination of women with disabilities and laid down directions to prevent discrimination in sports.

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# Patan Jamal Vali v. State of Andhra Pradesh

## RIGHT IN QUESTION

Right of a visually impaired person to have their testimony considered with full legal weight and on an equal footing with others.

## CASE NUMBER

Crl.A.No. 452 of 2021, decided on April 27, 2021

## COURT

Supreme Court of India

## JUDGES

Dr. D. Y. Chandrachud, M. R. Shah, JJ.

## CITATION

2021 INSC 272; (2021) 16 SCC 225



## FACTS

The victim, a person with 100% visual impairment belonging to the Scheduled Caste, was raped by the Accused in broad daylight at her residence, while her mother was working nearby. The Sessions Judge tried the Accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which mandates enhanced punishment for crimes committed against SC/ST members due to their caste identity, and he was given a life sentence and fined. Despite the Accused’s attempts to cast doubt on the credibility of the victim’s evidence due to her disability, the conviction and sentence was upheld by the High Court. The Accused challenged the conviction order on grounds that the offence was not committed because of the victim’s caste identity.

## COURT DECISION AND REASONING

The Court set aside the conviction of the Accused under the SC ST Act, 1989 and upheld his conviction under Section 376 (rape) of the Indian Penal Code. However, it confirmed his punishment of life imprisonment without any reduction in sentence. It stated that in the present case, the Accused took advantage of the victim’s visual impairment and familiarity with the victim’s family. Although the Court held that there was nothing on record to prove that the victim’s caste identity was a factor in the commission of the crime, it opined on the principle of “intersectionality”, according to which multiple sources of oppression operate cumulatively to produce a specific experience of subordination. Therefore, the victim in this case, who is a person with disability, and a woman, and belonging to a scheduled caste, is in a uniquely disadvantaged position. The Court also highlighted the need for the judiciary to not perpetuate stereotypes and biases against persons with disabilities by failing to provide equal weightage to their testimonies as compared to their able-bodied counterparts. It held that the victim’s testimony is entitled to full weight as that of a person without visual impairment.

## SIGNIFICANCE

The decision highlights the vulnerability of women with disabilities to sexual violence, and the barriers within the legal system in accessing justice. It roundly rejects the presumption that the first-hand testimony of a visually impaired person is less credible due to their disability.

“ Our aim is to highlight the increased vulnerability and reliance on others that is occasioned by having a disability which makes women with disabilities more susceptible to being at the receiving end of sexual violence. As the facts of this case make painfully clear, women with disabilities, who inhabit a world designed for the able-bodied, are often perceived as “soft targets” and “easy victims” for the commission of sexual violence. It is for this reason that our legal response to such violence, in the instant case as well as at a systemic level, must exhibit attentiveness to this salient fact.”

**JUSTICE D.Y. CHANDRACHUD**

Patan Jamal Vali v. State of Andhra Pradesh

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## G. Babu v. The District Collector & Others

### RIGHT IN QUESTION

Right of a relative to be appointed as guardian for an individual with a mental illness.

### CASE NUMBER

WP(MD) No. 18042 of 2022, decided on October 6, 2023

### COURT

Madras High Court

### JUDGE

G. R. Swaminathan, J.

### CITATION

2023 SCC OnLine Mad 568



### FACTS

The Petitioner’s sister was suffering from chronic schizophrenia and was unable to support herself financially. She was also reliant on her family for daily care. Consequently, the Petitioner approached the District Court seeking to be appointed as her legal guardian. The application was rejected citing the absence of a provision to appoint a legal guardian for a person with mental illness.

### COURT DECISION AND REASONING

The High Court in its analysis of the prevailing legal framework, concluded that the only legislation which provided for guardianship was the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. It held that Local Level Committees should adopt a more lenient approach and consider disabilities beyond the congenital conditions specified under the Act, and look to those enlisted in the RPD Act, 2016. Consequently, the Court reversed the District Court order and appointed the Petitioner guardianship of her sister, recognizing the condition as a benchmark disability.

### SIGNIFICANCE

The High Court has failed to recognize that both the RPD Act and the MHC Act reflect the principle of presumed legal capacity of persons with disabilities and intentionally limit the powers of guardians. Under the RPD Act, guardians may be appointed for persons with disabilities under Section 14 for a limited period and for a specified purpose. However, the Act also provides that the designated authority may also provide for total support to the persons who requires such support. This decision undermines the mandate of the RPD Act to create a supported-consent model which considers first and foremost, the will of the person with disability in question. In this case, the Court instead empowers Local Level Committees appointed under the National Trust Act, to appoint guardians for any person with a benchmark disability specified in the RPD Act.

08

# MENTAL & PSYCHO-SOCIAL DISABILITIES

## ABOUT

# DISCRIMINATION AGAINST PERSONS WITH MENTAL & PSYCHO-SOCIAL DISABILITIES

Persons with mental and psychosocial disabilities are among the most marginalised and excluded groups of persons with disabilities. There continues to be a significant lack of awareness of mental and psychosocial disabilities (its types, causes and degrees of severity) and poor sensitivity towards people with such disabilities. This results in a denial of their rights to dignity, legal capacity, personal liberty and security and basic health and educational needs.

The RPD Act under the Schedule includes within its scheme of specified disabilities, persons with mental illness and those with intellectual disabilities which includes learning disabilities, autism and conditions of mental retardation.

The Mental Health Care Act 2017 which focuses on persons with mental illness, reaffirms the right to non-discriminatory health services, treatment and rehabilitation for persons with mental illness under Sections 18 and 21. Further, Section 19 expressly states that persons with mental illness have the right to be a part of, and not segregated from society, and therefore the institutionalisation of persons with mental illness must be a last resort.

The Supreme Court has favourably considered the rights of persons with mental illness to reasonable accommodations and non-discrimination in the workplace in *Ravinder Kumar Dhariwal v. Union of India and Ors.* where it also held that a holistic approach was necessary in responding to cases of mental disabilities.

In *Accused X v. Union of India*, the Apex Court held that capital punishment in the case of persons with extreme post-conviction mental illness was cruel and inhuman, and a violation of the right to dignity. It is evident however, from the cases in this section that there is still a long way to go in ensuring equality, autonomy and personal liberty to persons with mental and psychosocial disabilities in India.

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## Veena Sethi v. State of Bihar & Others

### RIGHT IN QUESTION

Right of persons with mental illness to not be illegally detained.

### CASE NUMBER

W.P.(Criminal) 73 of 1982 decided on May 11, 1982

### COURT

Supreme Court of India

### JUDGES

D. A. Desai and P. N. Bhagwati, JJ.

### CITATION

(1982) 2 SCC 583, AIR 1983 SC 339



### FACTS

The Petitioner brought to the Court's attention the plight of several inmates in Bihar jails who were continued to be detained despite being acquitted on grounds of insanity or having served their sentences. These individuals were kept in jail instead of being released or transferred to appropriate mental health facilities.

### COURT DECISION AND REASONING

The Supreme Court, in its decision, expressed deep concern over the egregious violation of human rights and personal liberty in this case. The Court held that detaining persons acquitted on grounds of insanity or those who have served their sentences in jails instead of mental health facilities is both illegal and unconstitutional. Such detention violates the fundamental right to personal liberty guaranteed under Article 21 of the Constitution. The judgment emphasized the State's duty to provide appropriate care and treatment for persons with mental illness in proper facilities, rather than in prisons. In its orders, the Court directed the immediate release of individuals who had served their sentences and mandated the transfer of those acquitted on grounds of insanity to appropriate mental health institutions. Furthermore, the Court instructed the State to conduct a comprehensive review of all similar cases in Bihar jails and take necessary action.

### SIGNIFICANCE

This case affirmed that persons with mental illness cannot be indefinitely detained in prisons after acquittal or completion of sentences. It underscored the State's obligation to provide proper mental health care facilities, and reaffirmed the right to personal liberty to persons with mental illness. Importantly, this ruling was a catalyst for reforms in the treatment of persons with mental illness within the criminal justice system.

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## Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu, In Re v. Union of India & Others

### RIGHT IN QUESTION

Right of persons with intellectual and psychosocial disabilities to humane and appropriate treatment and institutional care.

### CASE NUMBER

Writ Petition (Civil) No.334 of 2001, decided on February 5, 2002

### COURT

Supreme Court of India

### JUDGES

M. B. Shah, B. N. Agrawal, Dr Arijit Pasayat, JJ.

### CITATION

2002 INSC 63 ; (2002) 3 SCC 31



### FACTS

The Court took suo motu action on an incident in Tamil Nadu in which more than 25 patients housed in an asylum were charred to death after a fire broke out in the facility. They had not been able to escape on account of being chained to poles or beds. The Court issued a notice to the Union of India and called for a report from States on the conditions of asylums.

### COURT DECISION AND REASONING

The Court observed that there was "slackness on the part of the authorities concerned" in implementing laws enacted by the Parliament, in this case, the Mental Health Act, 1987, which relates to the treatment and care of the persons with mental illness. Consequently, the Court issued various directions to the States and Centre to ensure institutions offering mental health services comply with the Act and establish government-run mental hospitals in every State and Union Territory. The Court also directed the States undertake mental health awareness campaigns.

### SIGNIFICANCE

While the decision of this Court was limited to directions on implementation of the existing Act, the gruesome incident which led to the Court's intervention highlights the pathetic treatment faced by persons with mental illness in India. This led to the closure of all the mental health institutions in Erwadi district which followed similar practices. The owner of the institution in which the fire occurred and other responsible were subsequently convicted and imprisoned. Despite this judgment, subsequent cases [see High Court Legal Aid Committee v. State of Kerala, 2016 SCC OnLine Ker 462; Reena Banerjee & Others v. Government of NCT of Delhi & Others, (2016) 13 SCC 153] show the persisting exploitation and abuse of persons with mental and psychosocial disabilities in institutions.

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# T.R. Ramanathan v. Tamil Nadu State Mental Health Authority & Another

## RIGHT IN QUESTION

Right of a person with severe intellectual disability to not be unduly burdened in the process of acquiring a disability certificate.

## CASE NUMBER

Writ Petition No.12540 of 2022, decided on May 12, 2022

## COURT

Madras High Court

## JUDGES

G. R. Swaminathan, J.

## CITATION

2022 SCC Online Mad 3032



## FACTS

The Petitioner’s 61-year-old son had an intellectual disability and could neither speak nor move freely, and he had severe anxiety disorder. To obtain a disability certificate, the son was required to appear for an in-person assessment. Due to the son’s extreme agitation, the Petitioner and his family had to resort to using an ambulance to take him to the Institute where his assessment was done. However, the Institute insisted on further tests before providing the certificate, despite the severe trauma experienced by the Petitioner’s son because of the previous visit.

## COURT DECISION AND REASONING

The Court stated that the fundamental right to life and liberty under Article 21 entitles persons with disabilities to receive a disability certificate under Section 58 of the RPD Act, 2016 without any hassle or difficulty. Further it held that assessments for the purpose of acquiring a disability certificate must be simple and “not cause any difficulty or trauma or even the least burden to the individual concerned”. Given the considerable stress and anxiety triggered by an environment like the Government hospital for the Petitioner’s son, it was appropriate to have the assessment done at his home. Further, when the first assessment was done, the insistence that he should be produced again in-person at a government hospital for a 2nd assessment was arbitrary. The Court concluded that persons with intellectual disabilities or mental illness were entitled to have the assessment done at the place where they reside and directed the Institute to issue a disability certificate to the Petitioner’s son.

## SIGNIFICANCE

The Court highlighted the need for a holistic and individualised approach by State authorities towards persons with disabilities, particularly those with mental and psychosocial disabilities. Further, it held that such persons were entitled to an at-home assessment for the purpose of acquiring a disability certificate.



09

COMMISSIONERS

For Persons With Disabilities

## ABOUT

# COMMISSIONERS FOR PERSONS WITH DISABILITIES & GRIEVANCE REDRESSAL

Under the RPD Act, 2016, persons with disabilities may address grievances on the violation of their rights to the Commissioners for Persons with Disabilities appointed at the Centre (Section 74) and the States (Section 79). These authorities are empowered to investigate deprivations of rights, review safeguards, and take up matters with appropriate authorities for corrective action.

The Act also mandates the appointment of Grievance Redressal Officers in every government establishment (Section 23) to address complaints relating to denial of rights and discrimination in employment. For speedy trials of offences under the Act, Special Courts are to be designated in each district (Section 84).

Additionally, the Act provides for free legal aid to persons with disabilities to file complaints and initiate legal proceedings. While this Resource Book focuses on High Court and Supreme Court judgments, it is important to note the significant work being done by the Chief Commissioner for Persons with Disabilities (CCPD) and State Commissioners in addressing grievances.

These authorities have been instrumental in resolving numerous cases related to accessibility, employment discrimination, and denial of rights, often without the need for litigation in higher courts. For instance, the CCPD has taken up cases against both government and private entities to ensure compliance with accessibility standards, particularly in digital platforms and services.

Two judgments of the Supreme Court have addressed the powers of the Disability Commissioners in securing the rights of persons with disability. In *Geetaben Ratilal Patel v. District Primary Education Officer*, the Court clarified the Commissioner's powers under the earlier PWD Act, 1995 to inquire into and intervene in cases of service dismissals. Conversely, *Vaishali Walmik Bagul v. Secretary, Prerna Trust & Others* delineated the limits of the State Commissioner's powers.

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## Vaishali Walmik Bagul v. Secretary, Prerna Trust & Others

### RIGHT IN QUESTION

Duty of the Disability Commissioner to follow principles of natural justice in inquiries into complaints by persons with disabilities.

### CASE NUMBER

LPA 295 of 2011 with LPA 223 of 2010, decided on January 15, 2013

### COURT

Bombay High Court (Aurangabad)

### JUDGES

A. H. Joshi & Sunil P. Deshmukh, JJ.

### CITATION

2013 (5) Mah LJ 221



### FACTS

The Respondent advertised for the post of Instructor (Tailoring) for reserved category candidates in February 2008. Vaishali Bagul, a Scheduled Caste woman, was selected and appointed to the post on 23.6.2008. Respondent No.4, a person with a disability from the open category who had previously worked in the post on a temporary basis, filed a complaint with the Commissioner for Handicap Welfare, Pune (Maharashtra State Commissioner under the PWD Act) in July 2008, without mentioning Bagul’s appointment. The Commissioner ordered the appointment of Respondent No. 4 to the post on 10.8.2009, leading to Bagul’s services being terminated on 1.9.2009 and Respondent No. 4 being appointed.

### COURT DECISION AND REASONING

The High Court allowed the appeals and set aside the Single Judge’s order and the Commissioner’s order. The Court held that the Commissioner’s powers under Sections 61 and 62 of the PWD Act are limited to taking up matters with appropriate authorities, not issuing direct appointment orders. It found Respondent No. 4’s claim to be belated, suffering from laches as he remained silent for over 9 years. The Court emphasized that the Petitioner’s rights were violated as she was not given an opportunity to be heard before the Commissioner issued an order affecting her appointment. It noted that the advertisement and selection process that led to the Petitioner’s appointment were not challenged and created certain rights in her favour. Finally, the Court clarified that the order dated 30.6.1999 by the District Social Welfare Officer did not create an absolute right for Respondent No. 4’s appointment.

### SIGNIFICANCE

This judgment limited the State Disability Commissioner’s powers under the PWD Act and emphasizes the importance of natural justice in proceedings that may affect a person’s employment rights.

# 70

## Geetaben Ratilal Patel v. District Primary Education Officer

### RIGHT IN QUESTION

The power of a Disability Commissioner to look into the legality of an order of dismissal of service of a person with disability under Section 62 of the PWD Act.

### CASE NUMBER

C.A.No.9324 of 2012 decided July 2, 2013

### COURT

Supreme Court of India

### JUDGES

G. S. Singhvi & Sudhansu Jyoti Mukhopadhaya, JJ.

### CITATION

2013 INSC 418; (2013) 7 SCC 182



### FACTS

Geetaben Ratilal Patel, appointed as a primary teacher in 1990, developed mental disability after her divorce in 1998. She remained absent from duty intermittently from June 1999. Despite multiple notices, she failed to respond or provide medical certificates. She was ultimately dismissed from service on April 15, 2004 by the Respondents. In 2007, she approached the Commissioner claiming her dismissal violated Section 47 of the PWD Act as she was suffering from 40-70% mental disability at the time. The Commissioner set aside the dismissal and directed the Respondents to reasonably accommodate the Petitioner in an alternative suitable post. The case was taken up by a Single Judge and a Division Bench of the High Court in consecutive appeals which upheld the Petitioner’s dismissal from service.

### COURT DECISION AND REASONING

The Supreme Court held that the Commissioner under Section 62 of the PWD Act had the power to look into complaints regarding the deprivation of rights of persons with disabilities, including matters of dismissal from service. The dismissal of Geetaben was in violation of Section 47(1) of the Act, as it occurred during her mental disability. It was also in violation of principles of natural justice, as no proper departmental inquiry was conducted. Therefore, Geetaben should be reinstated in service immediately and paid regular salary and she is entitled to arrears of salary from February 1, 2008, as per an earlier interim order of the High Court. Further, the Court directed the authorities to determine the suitable duties for her reinstatement, considering her mental condition.

### SIGNIFICANCE

This judgment authoritatively clarifies the powers of the Commissioner under the PWD Act to intervene in cases of unfair dismissal of persons with disabilities. It upholds the protection provided under Section 47 of the PWD Act against the dismissal of employees who acquire disabilities during service. The decision emphasizes the need for proper inquiry and adherence to principles of natural justice in such cases, even when dealing with employees with mental disabilities.





