

For Blooming and Blossoming – Revisiting the Disability Accommodations for Persons with Neurological Disabilities

Introduction

As per the 2011 Census, India is estimated to have roughly 2.68 Crore persons with disabilities (PwD) – around half of whom were (at the time of recording) between 20 to 60 years of age.¹ A larger number of disabilities are legally recognized in the Rights of Persons with Disabilities Act 2016, than its 2000 counter-part. So, the Census figure for PwD might be far short of the actual number. Despite a significant disabled population, their inclusion in the public spheres is limited. A recent report by Uearthinsight, a market intelligence firm, suggested that half of the disabled population in India, accounting to about 1.3 Crore people, have potential for employment but only 1/4 of them are currently employed in different sectors.² Similar can be inferred from the Census data which suggests that around 54% of persons with disabilities have basic literacy while around 17% have education greater than matriculation.

Persons with Neuro-Developmental Disabilities face greater exclusion. The government's efforts to increase inclusiveness, including employment reservation for PwD³, are often limited to persons with physical or audio-visual disabilities and fail to benefit those with mental, intellectual or neurological disabilities. However, the latest SC ruling in [Vikas Kumar vs Union Public Service Commission](#) gives hope for greater inclusion of them.

Vikas Kumar vs Union Public Service Commission

The Supreme Court's judgment in *Vikas Kumar* is a landmark decision. It recognized the flaw of [V Surendra Mohan v. State of Tamil Nadu](#) where the Madras High Court held that a visual impairment or hearing disability of 70% would render a candidate ineligible to be appointed as a civil judge. The HC had upheld a rule, allowing judicial appointment *only* for those with

¹ [enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/](#)

² [economictimes.indiatimes.com/news/india/half-of-people-with-disabilities-population-in-india-employable-report/articleshow/84418292.cms](#)

³ [enabled.in/wp/government-jobs-physically-disabled-candidates/](#)

less than 50% disability, to ensure that practical problems and “avoidable complications” don’t arise.

The SC in *Vikas Kumar* critiqued this for failing to consider the possibility of reasonable accommodation for such appointment. What are reasonable accommodations?

Reasonable Accommodation and Special Measures

As per the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) and the [Rights of Persons with Disability Act, 2016 \(RPwD\)](#), disability is understood to emerge from physical, mental, intellectual or sensory disability in interaction with social barriers. As a measure against exclusion, both the Convention and the Act requires the governments to reasonably accommodate persons with disabilities through special facilities to ensure they enjoy fundamental freedoms on an equal basis. These are called reasonable accommodation.

“Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non-

In *Vikas Kumar*, the court gave a crucial clarification/reiteration that the concept of Benchmark Disability is different and separate from the mandate of reasonable accommodation.

discrimination.”

Unreasonable Pre-condition for “Reasonable Accommodation”

In the judgment, ‘Benchmark Disability’ was held to be not a legitimate or lawful precondition for obtaining accommodative facilities such as a scribe, reader or a lab assistant. The Court clarified that the definition of ‘Persons with Disability’ under the Act has been phrased in broad terms to ensure full and effective participation in society for persons who suffer long term physical, mental, intellectual or sensory impairment. Differentiating it from the concept of ‘persons with benchmark disabilities’, the court held, *“Conflating the rights and entitlements which inhere in persons with disabilities with*

the notion of benchmark disabilities does dis-service to the salutary purpose underlying the enactment of the RPwD Act 2016.”

Accommodating Difference: New Rules for Written Examination

Following the SC's order in *Vikas Kumar* Judgment, the Department of Persons with Disabilities (MoSWJ) has proposed the [Draft Guidelines](#) to provide reasonable accommodation for persons with disabilities who face writing incapacity during written examinations. Titled 'Draft Guidelines for Conducting Written Examination for Persons with Less than 40% Disabilities', these guidelines are different from the examination guidelines applicable to those **with [benchmark disabilities](#)** (2018). Both the Draft and the 2018 Rules have a wide scope with application from school examinations to employment gateway examinations.

Although a crucial step towards inclusivity, the [2021 draft suffers from several defects](#), and still restrictive of the right to equality.

1. Different Standards for Certification

Several differences stand out between the 2018 Rules for those with Benchmark Disability and the 2021 Draft Guidelines for those with <40% disabilities. A crucial one is the different standards of scrutiny (paperwork/proof) required for permitting the use of reasonable accommodations.

As per the 2018 Guidelines, the facility of a scribe, reader or lab assistant can be availed if:

- (1) If the candidates have benchmark disabilities within the categories of:
 - (i) blind candidates;
 - (ii) candidates suffering from locomotor disability (both arms affected);and
 - (iii) cerebral palsy; or

(2) If the persons falling within other categories of benchmark disabilities **and** has a certificate recognising that the person has “physical limitation to write and scribe is essential to write examination on his behalf.”

In the latter situation, the certificate must be issued by the CMO, Civil Surgeon or Medical Superintendent of a government healthcare institution.

According to the Draft Guidelines (effective against those with <40% disabilities), the facility of scribe, reader, or lab assistant will be provided to those persons with disabilities who are medically certified to have a writing incapacity. However, this must be backed by certification from a committee of members consisting of:

- (i) Chief Medical Officer/Civil Surgeon/Chief District Medical Officer (as a Chairman)
- (ii) Orthopedic/ PMR specialist
- (iii) Neurologist
- (iv) Clinical Psychologist/ Rehabilitation Psychologist/Psychiatrist/Special Educator
- (v) Occupational therapist

A more intensive procedure is, thus, to be followed as per the Draft guidelines applicable on the persons with <40% disability. This raises suspicion of stereotypical thoughts – of people fraudulently or unfairly taking advantage – against persons with disability underlining these guidelines.

2. Limited Nature of Accommodation

It can be observed that the accommodations provided under the Draft Guidelines are limited in nature:

- No distinction in treatment of younger examinees vis-à-vis older examinees
- No distinction in examinations for employment vis-à-vis education
- Not factored online examination that have become common place post covid
- Accommodations specific to children on autistic spectrum such as allowing parents as prompters not included
- Providing alternate formats of examination in response to problems faced by those with ADHD not considered

- Being guidelines there is no binding effect – there is also no provision for reporting or tracking compliance with these guidelines, rendering them almost toothless.

Conclusion

Denying legitimate needs of persons with disability is unlike what the Supreme Court has espoused in the *Vikas Kumar* judgment. Differences between the Draft Guidelines and 2018 Rules must, thus, be removed. It is crucial to foster an environment where reasonable accommodations are not demands for concessions, but rather the only way in which the disabled, as well as their caretakers, can live a life of dignity. As rightly stated, *“in their blooming and blossoming, we all bloom and blossom.”*