

Disability Bulletin

Developments in Disability Law & Policy

Edition 3

Policy Developments

1) A Memorandum of Understanding between Ministry of Social Justice and Empowerment and Council of Architecture (February 14, 2023)

A [Memorandum of Understanding](#) (MOU) was signed on 14th February, 2023 between the Council of Architecture (COA) and the Department of Empowerment of Persons with Disability (DEPwD) in the Ministry of Social Justice and Empowerment to work collaboratively to create and strengthen physical access of buildings and public spaces for persons with disabilities through efforts including creation of education modules/courses, capacity building of relevant stakeholders, and financial support.

The MOU envisages the following objectives:

1. Inclusion of mandatory credits/modules related to universal accessibility, accessibility features for persons with disabilities in the B.Arch. program.
2. To develop and deliver refresher courses for practicing architects/academicians/faculty members related to universal accessibility, accessibility features for persons with disabilities to ensure that all future buildings are designed and planned with such mandatory features.
3. COA and DEPwD would work together to facilitate the Architects by developing a certified course to create expertise for them to conduct accessibility audits of the building all over India.
4. COA and DEPwD agree to work together to reach out to all local self-government institutions, such as Development Authority, Municipal Corporations, Municipalities, Cantonment Board, and Municipal Councils.

5. To identify if the accessibility norms are incorporated in the local building bye laws for approval of building plans and issuance completion certificates of buildings.

6. COA and DEPwD (in collaboration) would work to develop a comprehensive manual comprising best practices of existing guidelines/documents/standards (national as well as international) as a ready to use reference to all the Architects and other building professionals for making universally accessible norms and their implementation.

7. COA and DEPwD may jointly conduct workshops, seminars, training programmes/accessibility design competition for the promotion and creation of awareness about public spaces and buildings accessible for PwDs.

8. COA and DEPwD to undertake any other activity to further the objects of this MOU.

9. DEPwD may facilitate COA by providing financial support to achieve the objectives of MOU, as required.

2) Accessibility Standards for Health Care, 2023

Section 40 of the Rights of Persons with Disabilities Act, 2016 mandates the central government, in consultation with the chief commissioner, to formulate rules laying down standards of accessibility for facilities and services to the public in urban and rural areas.

Section 25 of RPwD Act, 2016 mandates appropriate government and local authorities to take necessary measures to provide barrier free access in all parts of government and private hospitals and other health-care institutions and centers. To operationalise these provisions, the Ministry of Health and Family Welfare, developed and notified the [“Accessibility Standards for Healthcare”](#) guidelines specifying standards for accessible healthcare facilities.

The main aim of these standards is to provide barrier-free **“equal access”** for persons with disability to healthcare facilities including hospitals, nursing homes and private clinics, and sub centers including primary health centers, community health centers, sub – district hospitals, district hospitals, first referral units, dispensaries, medical laboratories and diagnostic centers, and avail healthcare services with dignity and complete independence.

The specific aims of these standards are (as laid out in the document):

1. To provide access to persons with disabilities to preventive, curative and rehabilitative medical services.
2. To provide a reference guide for delivering accessible medical care.
3. To enable health care providers, meet the statutory requirements for accessible health care.
4. To serve as a manual for training of staff in accessibility, in communication with people with disabilities and taking care of special needs of PwD.

The criteria for making healthcare accessible are (as laid out in the document):

1. Availability of accessible services,
2. Accessible physical design of healthcare infrastructure and its accessibility,
3. Access to required information,
4. Ease of communication,

5. Trained staff with sensitivity, awareness and skills to cater to the needs of persons with disabilities based on individual differences,
6. Affordability and acceptability of the services.

The document provides detailed accessible standards and guidelines to fulfill the enumerated criteria.

Creating Accessible Environment and Services

Various codes of construction such as the National Building Code of India, 2016 need to be used and adhered to for creating an accessible environment. Based on these national codes, access to healthcare requires following to be accessible (as laid out in the document):

1. Entrance to premises of the health facility
2. Path from the health facility entrance to parking
3. Parking
4. Front entrance of the building or accessible alternative entrance
5. Doors
6. Routes to move to the areas related to getting healthcare and other related services
7. Reception counters and service windows
8. Writing desk/table
9. Seating/waiting area
10. Phone for voice, data and video communication and for access to various apps and services
11. Amenities like toilets, bathroom, changing rooms etc.
12. Information, including electronic information
13. Room like examination room, laboratories etc.
14. Medical equipment
15. Aids and appliances for an easy approach
16. Manpower trained in accessibility

The requirements to build accessible building features such as parking, ramps, staircases, lifts, washrooms and drinking water facilities are covered in [Harmonized Guidelines and Standards for Universal Accessibility, 2021](#) and other standards are detailed in the Accessibility Standards for Healthcare manual.

Other aspects of accessibility

1. Training Programmes

Guidelines on how to communicate with persons with disabilities and understand their unique needs are included in the document. The manual provides the do's and don'ts on communicating with persons with disabilities based on the type of disability.

2. Accessible Information

Access to accessible information is the right of a person with disability per Article 9 of the UNCRPD. The manual provides the know-how on delivering accessible information to persons with disabilities in the healthcare space including providing information that is easy to understand in an easy-to-understand format through various media such as websites, publications, and social media, so the persons with disabilities are able to make informed choices and decisions regarding their health.

3. Use of Information and Communication Technology

The guidelines refers to the use of accessible ICT for different purposes such as providing online information, appointment, registration and payment facility using debit cards, credit cards or payment applications.

a. Website Accessibility

The standards provide for accessible healthcare websites to cater to a wide range of accessibility needs across disabilities by complying with the '[Guidelines for Indian Government Websites \(version 2.0\)](#)', which is prepared by National Informatics Center (NIC), Ministry of Electronics & Information Technology (MeitY).

b. BIS standard for Accessibility for ICT Product and Services

Relevant websites, applications, digital documents and software including all applications used by citizens/patients/caregivers for registration, payment, for consent forms, e-prescription, e-pharmacy and telemedicine, and all the components of healthcare preventive, curative and palliative where ICT interventions must be compliant with recently published BIS standard IS 17082 on '[Accessibility for ICT Products and Service Requirements](#)' under the GIGW 2.0.

4. Standards for Equipment

The standards illustrate specific dimensions for aids and appliances that would be required for the treatment and rehabilitation of persons with disabilities in a healthcare facility. The equipment dimensions pro-

vided for include wheelchairs, transfer surface, equipment used by patients in the seating and standing position, transfer to imaging equipment.

3) Divyangjan Sanjeevani Policy - National

The National Insurance Company Ltd. has introduced the [Divyangjan Sanjeevani Policy](#) at the National level. The policy is in addition to the already existing policies offered by the center namely, [Niramaya Health Insurance](#) and the [Swavalamban Health Insurance Schemes](#). The Divyangjan Sanjeevani Policy is a more comprehensive plan covering all disabilities under the RPWD Act, 2016. More details can be found [here](#).

Eligibility Coverage:

1. Persons with disabilities as described under the RPWD Act, 2016
2. Persons with disabilities with greater than 40% measurable disabilities/benchmark defined under the RPWD Act, 2016 and/or individuals with HIV/AIDS defined under the HIV and AIDS (Prevention and Control) Act, 2017.
3. Those with a certification of disability issued by the medical board appointed by the government for certifying disabilities.

Exclusion criteria (as per the document)

1. Treatment outside India,
2. Sexually transmitted diseases other than HIV/AIDS,
3. Experimental treatment,
4. Any hospital admission primarily for investigation/diagnostic purposes,
5. Drug/alcohol abuse,
6. Expenses related to any treatment necessitated due to participation in hazardous or adventure sports,
7. War, warlike operations,
5. Radioactivity.

Developments in Law

1) Supreme Court Directs States to Appoint a Chief Commissioner of Disability by August 31, 2023 per the RPWD Act, 2016

[Seema Girija Lal & Anr. versus Union of India & Ors.](#)

Through this case, the petitioners representing the Union of India brought forth the issue of effective implementation of the Rights of Persons with Disabilities Act, 2016 (RPWD Act) with regard to the appointment of the disability commissioner at the state level and their directives to monitor the implementation of the corresponding provisions of the Act to the Supreme Court of India. The petitioners alleged non-compliance by various states and union territories particularly related to the lack of proper implementation at the grassroot levels.

Section 72 of the Act provides for the formation of a 'District-Level Committee' and thrusts responsibility on the committee to carry out the implementation of the provisions of the Act. These committees include both government officials and respected members from the community.

The Court considered an affidavit filed by the Union government, outlining the status of implementation across the regions as of May 11, 2023 highlighted in the judgment. Based on the status report, the Court found that many states and territories did not fully comply with the provisions of the Act such as notifying rules, forming committees, advisory boards, or appointing commissioners. The Court directed all states and territories to correct these inadequacies by **September 30, 2023** and mandated the appointment of the commissioner for disability by **August 31, 2023** across all states and union territories.

2) Supreme Court Grants Relief to an RBI Employee based on Persons with Disability Act, 1995 on Reservations in Promotions

[Reserve Bank of India & Ors. v. A.K. Nair & Ors.](#)

The Supreme Court of India invoked Article 142 of the Constitution to direct the Reserve Bank of India (RBI) to give promotions with reservation benefits to an employee who had a physical disability. The court stated that the employee had a right to reservation in promotion based on Section 33 of the Persons with Disabilities Act, 1995.

The original petitioner Mr. A. K. Nair initially fell short of qualifying for promotion and was denied promotion by the RBI based on disability. The earlier Bombay High Court's ruling on horizontal reservations (2006), which did not directly grant promotion to Mr. Nair, brought the present petition to the Supreme Court, which favored Mr. A.K. Nair, criticizing RBI's rigid approach. The Supreme Court granted notional promotion to Mr. Nair since 2006 and actual promotion since 2014. The Supreme Court judgment ruled upon the importance of accommodation for persons with disabilities and Directed the RBI to provide Mr. Nair monetary benefits accruing since 2014 and retirement benefits calculated from 2006 based on the promotion.,

3) Two cases on granting reasonable accommodation for candidates in professional examinations (cases undertaken by the Disability Law Initiative, New Delhi)

[Shri Zeeshan Ali v. General Manager, SBI & Ors.](#)

Shri Zeeshan Ali, a person with 90% multiple disabilities, filed a complaint at the Court of the Chief Commissioner of Disability (CCPD) after being denied accessible means to appear in the Online Pre-Exam of SBI PO 2022-23 due to his visual and hearing impairments. The complainant required a magnifier with specific features to accommodate for his visual impairment. The device which the complainant used had recording and photo-capturing features gave rise to concerns such as cheating and unfair advantage. The respondent (Deputy General Manager, Institute of Banking Personnel Selection (IBPS)) in this case argued that having such a device was against exam rules and could lead to cheating.

The principle of "Reasonable Accommodation" from the RPWD Act, 2016 was cited by the CCPD and stressed that necessary adjustments should be made to ensure equal rights for persons with disabilities. The complainant's need for a screen magnifier with specific features due to his visual and hearing impairments was deemed reasonable. The court concluded that the device's limited storage capacity made such misuse impossible. The judgment sets a significant precedent by emphasizing the obligation of government establishments to provide necessary accommodations to persons with disabilities.

[Raju Ranjan v. Union Of India and Anr.](#)

The petitioner, a person with disability with a 40% disability in one arm, challenged two orders from the Central Administrative Tribunal (CAT) dated March 13, 2019, and May 2, 2019. The case centered around the petitioner's application for the position of Social Security Assistant (SSA) with the Employees' Provident Fund Organization (EPFO). The petitioner sought exemption from a typing test with a speed requirement of 5000 Key Depressions Per Hour due to his disability. His request was denied, and he qualified for the test at a lower speed of typing. The case brought forth was whether the petitioner's disability should be given an exemption from the typing test's speed requirement with the understanding that similar kinds of exemptions were given to internally promoted candidates with disabilities. The Tribunal rejected the petitioner's challenge, asserting that the skill test was essential for the SSA post, and no relaxation could be applied after the selection process concluded. The court found that the EPFO's refusal to consider the petitioner's disability and grant exemption was unjust. The Court examined government instructions and notifications exempting physically disabled individuals from typing tests, particularly those with a one-arm disability. The court criticized the EPFO for not establishing lower standards for disabled candidates, leading to unfair comparisons. Emphasizing the RPWD Act, 2016, the court upheld the principle of reasonable accommodation and equal treatment for persons with disabilities. The Court ruled that the requirement of typing test should be exempted for the petitioner due to his one-arm disability. The court directed the EPFO to declare the petitioner's result based on the written test performance, urging prompt action and appointment in the same year to rectify the extended selection process.