

Rajive Raturi vs Union Of India on 8 November, 2024

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Bench: Dhananjaya Y Chandrachud

Reportable

2024 INSC 858

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 243 of 2005

Rajive Raturi

...Petitioner

Versus

Union of India & Ors.

...Respondents

And with Writ Petition (C) No. 228 of 2006 JUDGMENT Dr Dhananjaya Y Chandrachud, CJI Table of Contents A. Background 3 i. Genesis of the proceedings 3 ii. Assignment to NALSAR-CDS 6 B. Understanding Accessibility 8 i. International Framework on Accessibility..... 9 ii. Accessibility as a Human Right 12 iii. Accessibility Jurisprudence 14 C. Reaffirming Disability as a Social Model: Two-Pronged Approach 16 i. Integrating a Universal and Inclusive Model of Design 17 ii. A two-pronged approach to accessibility 18 iii. Reasonable Accommodation and Accessibility..... 20 D. NALSAR Report and its findings: Sector Wise 23 E. Inconsistencies in the Existing Legal Framework 31 i. Accessibility provisions in the RPWD Act and Rules 32 ii. Inconsistency between Rule 15 and the RPWD Act 42 F. Conclusion 48 PART A "Disability only becomes a tragedy when society fails to provide the things we need to lead our lives – job opportunities or barrier-free buildings. It is not a tragedy to me that I'm living in a wheelchair."

- Judith Heumann

1. This judgment arises from a Writ Petition instituted in 2005 seeking directions to ensure meaningful access to public spaces for persons with disabilities ¹. On 15 December 2017, this Court rendered a judgement containing directions to all the States and Union Territories with eleven action points. In view of the slow progress in complying with the judgement, this Court appointed the Centre for Disability Studies, NALSAR University of Law ² to assess the situation on the ground and recommend steps to ensure compliance with accessibility standards for PWDs. We write this judgment in view of the report submitted by NALSAR-CDS to this Court and the submissions filed by the petitioner on the next steps to be taken. Submissions have also been filed by the Union of India.

A. Background

i. Genesis of the proceedings

2. The Petitioner, Rajive Raturi, is a visually challenged person who works with a human rights organisation. He instituted a Writ Petition before this Court in 2005 seeking directions to the respondents to take certain measures towards ensuring safety and accessibility in public spaces, such as roads, public ¹ “PWDs” ² “NALSAR-CDS” PART A transport and other facilities for visually challenged persons. At the time of filing the petition, the legislation governing the rights of persons with disabilities was the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The current framework is governed by the Rights of Persons with Disabilities Act 2016. ³

3. By a judgment dated 15th December 2017, ⁴ this Court, speaking through Justice AK Sikri, identified eleven action points pursuant to the RPWD Act and the Accessible India Campaign for compliance. These action points pertained to the accessibility of a range of infrastructure, including government buildings, railways, airports, ICT ecosystem and transport carriers. The Union of India, all States and Union Territories were directed to file their compliance affidavits, and the case was re-listed after three months. Most of the States and Union Territories did not provide the required information and failed to file their compliance affidavits within the period of three months.

4. This Court issued several orders directing the States and Union Territories to provide the requisite information with details of the status of completion and compliance reports. On 25 July 2018, this Court noted that while the Union of India had filed its affidavit, the response was not in accord with the directions in the 2017 judgement and “lacked material particulars”. This Court stipulated a format in which affidavits were to be filed by the Union of India, the States and the Union Territories.

³ “RPWD Act” ⁴ “2017 Judgement” PART A

5. On 15 January 2019, when the case was placed before a bench comprising Justice AK Sikri and

Justice Abdul Nazeer, all the States and Union Territories had filed their affidavits. However, this Court noted that many States and Union Territories had not filed their affidavits in the stipulated format or provided incomplete information about all the targets; and in cases where information was provided, it was not complete as target dates were not mentioned. The Court took strong exception to this and opined:

“More than a year has passed since the judgment was delivered The indifferent attitude of the States and the Union Territories shows that they are not serious in complying with the directions contained in the judgment. It may be recapitulated that the directions which were given in the judgment dated 25.07.2018 are simply to the effect that provisions contained in the Rights of Persons with Disabilities Act, 2017 (hereinafter referred to as “the said Act”) by providing necessary facilities to the persons suffering from different disabilities, should be provided with.

The said Act specifically makes provisions for these facilities. The said Act also sets down the timelines within which these are to be provided. It is in the consonance with the aforesaid provisions that directions were given in the judgment and order dated 15.12.2017 whereas the Parliament has passed an enactment which entitles the persons suffering from different disabilities to get the said facilities as a matter of right and the States and the Union Territories cannot shy away from giving these facilities to such persons.” (Emphasis Supplied)

6. Accordingly, the States and Union Territories were granted a final opportunity to submit the complete information in the stipulated format within three weeks. This Court directed that the Chief Secretaries of States and Union Territories which do not comply with these instructions to be personally present on the next PART A date of hearing. This Court also noted that the Union of India had failed to submit a proper affidavit and granted an additional three weeks to comply, failing which the Secretary of the Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disability) was directed to be personally present.

7. This Court also recorded the prayers in an interlocutory application seeking certain facilities for visually handicapped lawyers in the High Courts and this Court. All the High Courts and the Secretary General of this Court were directed to submit their response to the reliefs sought in the application before the next date of hearing.

ii. Assignment to NALSAR-CDS

8. On 29 November 2023, when the case was placed before this Court, it was noted that several orders had already been passed regarding the poor progress made by the Union, States and Union Territories in implementing the provisions of the RPWD Act. Therefore, this Court was of the view that a comprehensive exercise was necessary to assess the situation on the ground. Accordingly, the NALSAR-CDS was directed to submit a report on the steps required to be taken in accordance with the guidelines and the Accessible India Campaign to, inter alia, make all State and Central Government buildings, airports, railway stations, public transport carriers, all Government websites, all public documents and the ICT ecosystem fully accessible to PWDs. It was directed that

the report be completed within six months and the Department of PART A Empowerment of Persons with Disabilities, Union Ministry of Social Justice and Empowerment cooperate with the NALSAR-CDS by providing necessary logistical assistance.

9. On 12 January 2024, pursuant to an email sent by Professor Amita Dhanda, Head of the NALSAR-CDS, this Court noted that NALSAR-CDS had accepted the assignment. It was further directed that the expenses which are incurred by the NALSAR-CDS shall be borne by the Union Ministry of Justice and Empowerment, and all reimbursements shall be made within a fortnight of the submission of invoices. The head of the NALSAR-CDS was granted liberty to chalk out the modalities for implementing the work, including engaging requisite experts and field workers to carry out the exercise in the States and Union Territories.

10. Pursuant to the directions of this Court, the NALSAR-CDS submitted its report, which is aptly titled “Finding Sizes for All: A Report on the Status of the Right to Accessibility in India” to this Court. The NALSAR-CDS conducted surveys, expert interviews and first-person accounts to prepare its report and document accessibility barriers across various spheres.

11. Before discussing the NALSAR-CDS report, we will briefly discuss the underlying theoretical framework that governs the right to accessibility and gives it meaning.

PART B B. Understanding Accessibility

12. Accessibility refers to the design of products, services, environments, and systems to ensure that all individuals, including those with disabilities, can access, use, and benefit from them fully and independently. This encompasses physical access, such as entry to buildings and transport, as well as access to information, communication, and digital platforms. It is essential for promoting inclusion and enabling participation in all aspects of public life.

13. The World Report on Disability published by the World Health Organization and World Bank stresses that inaccessibility within the built environment, transport systems, and communication channels severely limits the opportunities for PWDs to live fully in society. 5 This inaccessibility leads to exclusion from education, employment, healthcare, and public services, effectively reinforcing the social and economic marginalisation of PWDs. Moreover, the lack of accessibility exacerbates inequalities, as it limits the ability of PWDs to engage in community life, and often results in dependence on others, restricting their autonomy and opportunities for self-determination. This, in turn, results in broader societal costs, as PWDs are often prevented from contributing to the workforce and society, thus perpetuating a cycle of poverty and isolation. 5 World Health Organization and World Bank, World Report on Disability (2011). See Summary, pp. 10. The report provides the best available evidence about what works to overcome barriers to health care, rehabilitation, education, employment, and support services, and to create the environments which will enable people with disabilities to flourish.

i. International Framework on Accessibility

14. The evolution of accessibility as a right has been influenced by progressive international legal standards, which recognise it as integral to the dignity, equality, and autonomy of PWDs. 6 The recognition of accessibility within the international human rights context highlights its importance as a prerequisite for the enjoyment of a range of rights, fostering a shift from charity-based approaches to rights-based ones. 7

15. Accessibility is woven throughout the United Nations Convention on the Rights of Persons with Disabilities 8 as a cross-cutting right, reinforcing its critical role in achieving social inclusion. It is highlighted in paragraph (e) of the Preamble, which calls for an environment that supports full personal development and societal participation. 9 Article 3 sets out accessibility as a general principle, which highlights the necessity of removing both tangible and intangible barriers to ensure that PWDs can fully exercise their rights. 10 These barriers can be physical, such as inaccessible buildings and transportation systems, or intangible, such as discriminatory attitudes or inaccessible digital content. 6 Frédéric Mégrét, 'The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?', *Human Rights Quarterly* 30, no. 2 (2008): 507. 7 Accessibility was a key element of the third goal of the World Programme of Action (WPA), titled 'Equalization of Opportunities,' as outlined in UN General Assembly Resolution 37/52, adopted on 3 December 1982. Another crucial document addressing the principle of accessibility is the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993 under Resolution 48/96, passed on 20 December 1993. 8 "CRPD" 9 CRPD, Preamble para. (e) states as follows: 'Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms'.

10 CRPD, Article 3.

PART B

16. Article 9 of the CRPD 11 is particularly significant as it sets out explicit obligations for States Parties to promote accessibility as an essential right. 12 Article 9(1) mandates that States take proactive steps to ensure persons with disabilities have equal access to public spaces, transportation, information, communication systems, and services. 13 This directive encompasses the development, implementation, and monitoring of standards and guidelines that promote access. Article 9(2)(a) elaborates on these obligations by detailing the areas that require targeted action, such as ensuring that the design and construction of buildings and public facilities adhere to universal design principles. 14 This commitment extends to digital spaces and information technologies, reflecting 11 Article 9 reads:

(1) To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

b) Information, communications and other services, including electronic services and emergency services.

12 Referred to Francesco Seatzu, 'Article 9 [Accessibility]', in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, ed. Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (Cham: Springer, 2017), 229.

13 CRPD, Article 9(1).

14 CRPD, Article 9(2); States Parties shall also take appropriate measures:

a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

d) To provide in buildings and other facilities open to the public signage in Braille and in easy-to-read and understand forms;

e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information; g) To promote access for persons with disabilities to new information and communications technologies and systems,

including the Internet;

h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

PART B the need for inclusive approaches in an increasingly digital world. Accessibility under this article is meant to influence both public and private sectors, encouraging a society where all members can participate without barriers.¹⁵

17. Article 9 emphasises that accessibility requirements for urban and rural areas must be all-encompassing, ensuring that measures address the needs of diverse environments. ¹⁶ While urban areas may exhibit more advanced infrastructure due to better resources and policy implementation, they can still present challenges such as intricate layouts, insufficiently accessible public transit, and overcrowded spaces that hinder movement. On the other hand, rural areas frequently face a scarcity of basic facilities, transport options, and services, creating substantial barriers for PWDs. Recognising these disparities, Article 9 requires States to tailor their accessibility strategies to suit the specific conditions of both urban and rural regions.

18. International Principles and Guidelines on Access to Justice for Persons with Disabilities reinforce the critical role of accessibility within legal systems, embedding it as a non-negotiable aspect of justice. ¹⁷ Principle 2 emphasizes that justice facilities and related services must be universally accessible, thus preventing discrimination and ensuring that all individuals, regardless of disability, can fully engage in legal processes. ¹⁸ This includes adapting all modes of transportation within the justice framework to be accessible, allocating ¹⁵ General Comment on Accessibility, CRPD/C/GC/2, para. 4. ¹⁶ Ibid.

¹⁷ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2019). Issued by Special Rapporteur on the rights of persons with disabilities. ¹⁸ Ibid, Principle 2. Principle 2 lays down that facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities. PART B financial resources for necessary infrastructure changes, and embedding accessibility in both physical and digital environments. Furthermore, these guidelines call for procedural accommodations such as the use of assistive technologies, sign language interpreters, and simplified formats for legal documentation to remove communication barriers.

ii. Accessibility as a Human Right

19. The right to accessibility is not a new or separate human right, but rather an integral part of existing human rights frameworks. Accessibility is embedded within several international human rights treaties, reinforcing its foundational role in ensuring equality and dignity for all individuals, including those with disabilities. For example, access to the physical environment and public transportation is essential for the realisation of freedom of movement, which is guaranteed under Article 13 of the Universal Declaration of Human Rights ¹⁹ and Article 12 of the International

Covenant on Civil and Political Rights. 20 Similarly, access to information and communication is crucial for exercising the right to freedom of opinion and expression, as articulated in Article 19 of the UDHR. These rights are foundational for enabling PWDs to live independently, participate in society, and enjoy their rights on an equal basis with others. 21 19 “UDHR” 20 “ICCPR” 21 See also United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, para. 12, 2000.

PART B

20. The European Economic and Social Committee 22, in its 2014 Opinion on Accessibility as a Human Right for Persons with Disabilities, recognized that Article 9 of the CRPD represents a human right in itself. 23 The EESC stated that accessibility is a crucial prerequisite for ensuring the full enjoyment of civil, political, economic, social, and cultural rights for PWDs. 24

21. The accessibility norm, as articulated in Article 9 of the CRPD, mandates that all individuals with disabilities have equal access to facilities, goods, and services, providing them with essential entitlements to ensure they can fully engage with and contribute to society. 25 This framing situates accessibility as an essential human right that is indispensable for the realisation of broader social, economic, and political rights.

22. Accessibility is not merely a convenience, but a fundamental requirement for enabling individuals, particularly those with disabilities, to exercise their rights fully and equally. Without accessibility, individuals are effectively excluded from many aspects of society, whether that be education, employment, healthcare, or participation in cultural and civic activities. Accessibility ensures that persons with disabilities are not marginalised but are instead able to enjoy the same opportunities as everyone else, making it an integral part of ensuring equality, freedom, and human dignity. By embedding accessibility as a human right 22 “EESC” 23 European Economic and Social Committee. (2014). Opinion on accessibility as a human right for persons with disabilities. <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52013IE3000> 24 Ibid.

25 See CRPD, Article 9.

PART B within existing legal frameworks, it becomes clear that it is an essential prerequisite for the exercise of other rights.

iii. Accessibility Jurisprudence

23. The Committee on the Rights of Persons with Disabilities has consistently highlighted accessibility as a key issue in its dialogues with State parties reviewing their initial reports. Accessibility has also been a focal point in jurisprudence. In the case of Szilvia Nyusti, Péter Takács and Tamás Fazekas v. Hungary²⁶, the Committee emphasized that all public services must be accessible in accordance with Article 9 of the CRPD. The State party was specifically urged to ensure that blind individuals could access automatic teller machines (ATMs).

24. Similarly, the European Court of Human Rights 27 has recognized the importance of accessibility in its judgments, ruling that public buildings should be equipped with facilities for PWDs. 28 In 2022, EtCHR in *Lárusson v. Iceland* recognized that accessibility falls within the scope of Article 8 of the European Convention on Human Rights, which protects the right to respect for private and family life. 29 The case involved the lack of accessibility to cultural event venues in the applicant's municipality, which hindered his participation in cultural and 26 CRPD, Communication No. 1/2010, Views of 16 April 2013, Szilvia Nyusti and Péter Takács (represented by Tamás Fazekas, Hungarian Helsinki Committee) v. Hungary. 27 "EtCHR" 28 See *Molka v. Poland*, application no. 56550/00, decision of 11 April 2006; *Zehnalová and Zehnal v. Czech Republic*; *Botta v. Italy*. The complaint concerned the applicant's inability to access the beach in a town that was not his hometown.

29 *Lárusson v. Iceland*, [43].

PART B social activities, including attending events with his children. 30 The Court acknowledged that accessibility is essential for individuals with disabilities to live independently and fully participate in society. 31 The lack of accessibility affected the applicant's personal development and ability to form relationships.

25. In Indian jurisprudence, several significant decisions have addressed accessibility within the built environment. This court in a catena of decisions has reinforced the principle of accessibility in public infrastructure. In *Disabled Rights Group v. Union of India* 32, this Court directed all educational institutions run or aided by the Government to comply with their obligation to reserve 5% seats for the disabled and directed them to report their compliance with the same to authorities set up under the Act. 33 This court also directed the setting up of a committee to suggest measures on how the physical infrastructure and methods of pedagogy adopted by educational institutions can be made accessible to the disabled within the stipulated time frame.

26. Similarly, Justice A K Sikri in the 2017 Judgment grounded the right to accessibility in the fundamental rights chapter of the Constitution, emphasizing that access to public spaces and services is an essential aspect of the right to life and dignity. This Court observed:

"The vitality of the issue of accessibility vis-à-vis visually disabled person's right to life can be gauged clearly by the Supreme Court's judgement in *State of Himachal Pradesh v Umed Ram Sharma* (1986) where the right to life under Article 21 has been held broad enough to incorporate the right to accessibility." 30 *Ibid*, [43-46].

31 *Ibid*, [46].

32 *Disabled Right Group v Union of India* [2018] 2 SCC 397. 33 *Ibid*.

PART C

27. The inclusion of accessibility within the fundamental rights framework ensures that PWDs are entitled to full participation in society under Articles 14, 19, and 21 of the Constitution. Article 14 upholds equal access to spaces, services, and information; Article 19 guarantees the freedom to move and express oneself; and Article 21 ensures the right to live with dignity. Together, these provisions guarantee not only formal equality but also substantive equality, which requires the state to take positive steps to ensure that individuals can enjoy their rights fully, irrespective of disabilities. This Court in a plethora of judgments has repeatedly recognized that the right to dignity and the right to a meaningful life under Article 21 necessitate conditions that enable PWDs to enjoy the same freedoms and choices as others.³⁴ Thus, the right to accessibility is foundational, enabling PWDs to exercise and benefit from other rights enshrined in Part III of the Constitution.

C. Reaffirming Disability as a Social Model: Two-Pronged Approach

28. The Social Model of Disability challenges the traditional understanding of disability, which often views it through the lens of the Medical Model. In the Medical Model, disability is seen as an individual problem or impairment that needs to be treated or fixed. However, the Social Model, introduced by disabled academic Mike Oliver in 1983, shifts the focus from the person's condition to the barriers they face in society. ³⁵ It argues that disability is not inherent in the ³⁴ See Jeeja Ghosh v Union of India 2016 INSC 412; Rajive Raturi v Union of India 2017 INSC 1243; Ravinder Kumar Dhariwal v Union of India 2021 INSC 916; Vikash Kumar v Union Public Service Commission 2021 INSC 78.

³⁵ On the social model generally, see Michael Oliver, 'If I had a Hammer', in *Implementing the Social Model of Disability: Theory and Research*, ed. Colin Barnes and Geof Mercer (Leeds: The Disability Press 2004), 18–31.

PART C person, but is created by external factors such as physical, organizational, and attitudinal barriers. These barriers prevent full participation in society and can be removed through societal change, promoting inclusion and equality for PWDs.

29. The Social Model directly relates to the concept of accessibility. By focusing on removing societal barriers rather than "fixing" individuals, it advocates for accessible environments, services, and opportunities. i. Integrating a Universal and Inclusive Model of Design

30. The goal of universal design is to create products and environments that are usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. ³⁶ Universal design emphasizes the importance of creating environments, services, and products that can be accessed by everyone, regardless of their ability, age, or status. This approach is rooted in the belief that inclusion should be integrated into the design process from the very beginning, rather than as an afterthought.

31. Universal or inclusive design goes beyond just making things accessible; it encourages creative and imaginative engagement with the diverse needs of all users. This means considering not only physical accessibility but also addressing social, informational, and technological barriers. The

objective is to 36 The 7 Principles of Universal Design were developed in 1997 by a working group of architects, product designers, engineers and environmental design researchers in North Carolina State University (NCSU). PART C eliminate environments that disable people and replace them with enabling ones for everyone.

32. The RPWD Act and the CRPD both define "universal design" in similar terms. Under Section 2(ze) of the RPWD Act, universal design refers to the creation of products, environments, and services that are usable by everyone, to the greatest extent possible, without the need for specialised adaptation. 37 This also includes assistive devices and advanced technologies for specific groups of PWDs. The CRPD expands its scope to include the necessity of assistive devices for those who need them.³⁸

33. When considering the design of products and services, it is crucial to account for environmental and structural factors that impact accessibility. For example, transportation systems must be designed with features that cater to various needs - whether through accessible vehicles, infrastructure, or communication systems. These factors play a critical role in ensuring that all individuals, including those with disabilities, can engage fully with public services and transportation.

ii. A two-pronged approach to accessibility

34. Addressing accessibility requires a balanced approach that focuses on both adapting existing environments and proactively designing new spaces with 37 Right of Persons with Disabilities Act 2016, Section 2(ze). "universal design" means the design of products, environments, programmes and services to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities. 38 CRPD, Article 2. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

PART C accessibility in mind. A two-pronged approach is needed - one that focuses on ensuring accessibility in existing institutions/activities and the other that focuses on transforming new infrastructure and future initiatives. Both are essential to achieving true inclusivity in society.

35. The first prong focuses on ensuring that existing institutions and activities are made accessible and inclusive for all. This approach emphasizes the importance of retrofitting existing systems and structures to meet the needs of PWDs, women, older individuals, children, and other vulnerable groups. While retrofitting is important, it is often more complex and expensive than designing inclusive spaces from the outset.

36. The second prong is about transforming infrastructure - rethinking and redesigning physical spaces to accommodate PWDs. This transformation involves reimagining public spaces, transportation, educational institutions, and other facilities to ensure that accessibility is embedded from the very beginning, rather than retrofitted later. When introducing any new service, product, or feature - whether physical or functional - accessibility must be considered at the inception stage.

It is far more efficient to integrate accessibility from the start than to make adjustments later. By embedding universal design principles into the core of our systems, processes, and infrastructure, we can ensure that they are usable by all, making inclusivity a foundational element rather than an afterthought.

iii. Reasonable Accommodation and Accessibility

37. At this stage, it is also crucial to understand the relationship between reasonable accommodation and accessibility, as both are essential for achieving equality for PWDs. While accessibility generally refers to the removal of barriers in the environment or infrastructure to ensure equal access for all, reasonable accommodation is more individualised.³⁹ It involves making specific adjustments to meet the unique needs of a person with a disability. In other words, accessibility ensures that environments are designed to be inclusive from the outset, while reasonable accommodation ensures that individuals who face specific challenges can enjoy their rights on an equal basis in particular contexts.

38. As highlighted by the Committee on the Rights of Persons with Disabilities in General Comment 6, reasonable accommodation is integral to the principle of inclusive equality, acting as a facilitator for substantive equality.⁴⁰ The General Comment articulated the relationship between reasonable accommodation and accessibility as follows:

“22. Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an ex ante duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards, which must be negotiated with organizations of persons with disabilities, and they need to be

³⁹ Anna Lawson, ‘Reasonable Accommodation in the Convention on the Rights of Persons with Disabilities and Non-Discrimination in Employment: Rising to the Challenges?’, in *Disability Law and Policy: An Analysis of the UN Convention*, ed. Charles O’Mahony and Gerard Quinn (Dublin: Clarus Press, 2017), 366.

⁴⁰ General Comment on Accessibility, CRPD/C/GC/2, para. 25. PART C specified for service-providers, builders and other relevant stakeholders. Accessibility standards must be broad and standardized. In the case of individuals who have rare impairments that were not taken into account when the accessibility standards were developed or do not use the modes, methods or

means offered to achieve accessibility (not reading Braille print, for example), even the application of disability standards may not be sufficient to ensure them access. In such cases, reasonable accommodation may apply.

23. The duty to provide reasonable accommodation is an *ex nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation (workplace, school, etc.) in order to enjoy her or his rights on an equal basis in a particular context. Here, accessibility standards can be an indicator, but may not be taken as prescriptive. Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account. Thus, a person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard. The decision to provide it or not depends on whether it is reasonable and whether it imposes a disproportionate or undue burden.” (Emphasis Supplied)

39. It is crucial to reiterate that accessibility is an *ex-ante* duty, meaning that the State is required to implement accessibility measures proactively, before an individual even requests to enter or use a place or service. This proactive responsibility ensures that accessibility is embedded in the infrastructure and services from the outset. The State must establish broad, standardised accessibility standards in consultation with disability organizations, ensuring that these standards are enforced by service providers, builders, and all PART C relevant stakeholders. The state cannot negate its duty to accessibility by relying solely on existing standards or waiting for individual requests. For example, inaccessible information for a person with intellectual disabilities would require reasonable accommodation (such as a verbal explanation), whereas accessible information (e.g., in an easy-read format) would eliminate the need for such accommodation.⁴¹

40. In such cases, reasonable accommodation may be necessary only as a complementary measure to ensure equal access. The duty to accommodate plays an important role in enabling people with disabilities to challenge accessibility barriers in particular, individualised cases. Compliance with the reasonable accommodation duty for one individual with a disability can, in turn, enhance the overall accessibility of structures for all people.

41. In *Vikash Kumar v. Union Public Service Commission*,⁴² this Court also highlighted that reasonable accommodation must consider not only the benefit to the individual but also to others in similar situations in the future. Accessibility and reasonable accommodation require a departure from the status quo and that challenges in implementing such measures should not be seen as barriers to inclusion. Complications in implementation are inevitable, but they should not be used as an excuse to deny accommodations.

⁴¹ There is a ‘close and mutually reinforcing relationship’ between reasonable accommodation and accessibility measures; See further Anna Lawson, ‘Reasonable Accommodation and Accessibility Obligations: Towards a More Unified European Approach?’, *European Anti-Discrimination Law Review* 11 (2011): 11–21.

42 Vikash Kumar v Union Public Service Commission, 2021 INSC 78. PART D

42. The RPWD Act and international frameworks such as the CRPD emphasize that accessibility should be built into systems and infrastructure from the outset. However, where this is not enough, reasonable accommodation comes into play to tailor solutions to individual needs. This dual approach ensures that all individuals, regardless of their impairments, have equal opportunities and access to participate fully in society. Both accessibility and reasonable accommodation must therefore be seen as interdependent and complementary, each reinforcing the other in the pursuit of full inclusion and equality.

43. From the above, the following guiding principles emerge:

a. Accessibility is not a standalone right; it is a prerequisite for PWDs to exercise other rights meaningfully; and b. Accessibility requires a two-pronged approach. One focuses on ensuring accessibility in existing institutions/activities often through retrofitting and the other focuses on transforming new infrastructure and future initiatives. D. NALSAR Report and its findings: Sector Wise

44. Having discussed the theoretical framework to understand accessibility, we will now briefly summarise the NALSAR-CDS Report. The NALSAR-CDS employed the following methodology in preparing its report:

a. The NALSAR-CDS reached out to the Union and State governments, Union Territories, court administrations, and prison establishments to gather details on their accessibility initiatives. Responses were received from only PART D fourteen States, three Union Territories and the Union Ministry of Social Justice and Empowerment. The remaining fourteen States and five Union Territories did not respond;

b. NALSAR-CDS also gathered individual affidavits from PWDs, including those whose impairments were not covered by the RPWD Act Schedule. The studies and surveys conducted were undertaken by individuals and organisations using their own resources;

c. Expertise and lived experiences of PWDs were central to the report. Various organizations conducted surveys on the right to education, transportation, and sports to assess how access impacts these rights. Law students contributed by auditing accessibility in Mumbai; d. To understand the impact of the existing accessibility guidelines, NALSAR- CDS conducted interviews with accessibility experts and organised focused group discussions with doctors with disabilities. Additionally, expert opinions were sought on how access affects higher education, and personal testimonies were included to reflect the lived experiences of PWDs; e. A draft of the report was shared for feedback with all contributors, ensuring accountability and recognition of their inputs; and f. The report was prepared using personal resources,

and no financial claims have been made to the Union Ministry of Social Justice and Empowerment.

45. It is now necessary to look at the findings of the report. The report mentions that the 2021 Harmonising Guidelines marked a significant shift by including a chapter on "Accessibility, Diversity and Universal Design," broadening the focus to address all impairments and recognizing accessibility needs for groups PART D beyond individuals with disabilities, such as children, the elderly, and those temporarily disabled. However, the guidelines only briefly covered less-discussed disabilities. The NALSAR-CDS documented these gaps through affidavits from individuals with conditions like autism, cerebral palsy, and ichthyosis. 43 For example, individuals with autism emphasized the benefit of subsidized communication devices, while those with cerebral palsy highlighted the need for a register of scribes.

46. The report explored the intersectional nature of the right to accessibility, aiming to demonstrate its impact on the enjoyment of other rights. It emphasised that the right to accessibility cannot be viewed in isolation but must be considered alongside other forms of disadvantage, such as caste, sex, region, and religion. The report also stressed the importance of addressing the compounded discrimination that arises when disability intersects with these other factors. It called for a more inclusive approach that takes into account the multiple dimensions of vulnerability and disadvantage, ensuring that policies and practices do not overlook these intersections.

47. The report pointed out that inaccessibility often leads to compounded discrimination, creating additional layers of disadvantage for PWDs, particularly when these individuals are also subject to other forms of marginalisation. The findings emphasised the need for a comprehensive and intersectional approach to accessibility that recognizes and addresses these overlapping challenges. 43 Ability Development and Inclusion (AADI), Muskaan, Action for Autism, National Platform for the Rights of the Disabled, and Surbhi Meshram facilitated the filing of affidavits by individuals with cerebral palsy, intellectual disabilities, autism, and sickle cell disease. PART D

48. The report found the following with regard to compliance in various sectors:

a. Accessibility in Courts – NALSAR- CDS engaged Ms. Roma Bhagat and Associates for a pilot survey assessing accessibility in all High Courts. No responses were received from the High Courts of Allahabad (both at Allahabad and Lucknow), Madhya Pradesh (all benches), and Jammu and Kashmir and Ladakh (Srinagar). The Madras High Court (Madurai Bench) replied after the data analysis, and Delhi High Court data remained unvalidated. Out of thirty High Court benches analysed, findings showed that accessibility for locomotor disabilities was relatively better. 44 However, only two courts had tactile guiding strips and interpreters for the hearing impaired. Awareness for intellectual and developmental disabilities stood at just 6.6%. The report also referenced a separate study by Mr Rajesh Deoli on accessibility within the courts of Uttarakhand, highlighting additional challenges and needs. Moreover, suggestions provided by Mission Accessibility were also noted, offering recommendations on how courts could be made more accessible for all individuals,

including those with disabilities. 45 b. Accessibility in Prisons - The report found that most states claimed to provide wheelchairs, crutches, Western toilets, prosthetics, and medical referrals to civil hospitals, with some offering special diets and counselling. However, these facilities were mainly available in central and women's 44 Roma Bhagat and Associates-Accessibility of Courts in India. 45 Rajesh Deoli - The Court System Accessibility and Echoes from the Mountains Districts of Uttarakhand; Mission Accessibility - Addressing the need for Accessibility for Persons with Disabilities along with Access to Justice Checklist.

PART D prisons, while district and sub-jails were less equipped. Key systemic issues identified include several shortcomings. First, many states do not officially recognize all categories of disabilities as defined in the RPWD Act, leading to underreporting and insufficient provision of services. Second, District and Sub Jails are significantly underserved. Third, there is a severe shortage of mental health professionals in prisons. While at least 1,146 psychologists/psychiatrists should be employed, only 69 positions have been sanctioned, and just 25 are filled. 46 c. Accessibility in Educational institutions - A survey involving 947 parents of children with disabilities across twenty three states highlighted significant educational access challenges. 47 While 56% of children were enrolled in primary classes, enrolment dropped sharply in higher grades. Notably, 4% never attended school despite being enrolled, due to reasons like schools asking them not to come or inaccessible transport. Only 2% of students could access school toilets, and many could not participate in assemblies or receive mid-day meals. Just 17% were provided with learning materials and 64% faced barriers due to inaccessible formats. These issues contribute to children with disabilities feeling marginalized and overlooked, even when physically present in schools.

d. Accessibility in Employment – NALSAR-CDS relied upon a report from Enable India which highlights barriers to employment for PWDs, including those with benchmark disabilities and high support needs.48 These barriers 46 Murali Karnam- Access to Prisons.

47 ASTHA -Present but Forgotten: CDS Report on Access to Education of Children with Disabilities in Government Schools in India, In Coordination with 40 Organizations. 48 Enable India-Accessibility of Employment and Allied Areas of Persons with Disabilities. PART D occur both pre- and post-employment and vary based on geographic location and the nature of impairments. Key barriers include inaccessible job portals, lack of accessible educational facilities, and inconsistent implementation of accessibility standards. Specific issues for various impairments include:

- 1) Visual impairments: Inaccessible job portals and complex application processes;
- 2) Hearing and speech impairments: Lack of sign language recognition and inaccessible application methods;
- 3) Locomotor disabilities: Physical infrastructure barriers and non-

compliance with accessibility standards;

4) Neurodevelopmental disorders and learning disabilities: Rigid selection criteria and inaccessible assessment methods;

5) Multiple disabilities: Need for inclusive recruitment processes and practical assessments;

6) Acid attack survivors: Attitudinal barriers and lack of sensitization. e. Accessibility in Buildings and Transport - The report emphasizes that freedom of movement, a fundamental right, relies on both accessible transport and buildings. Accessibility in transport is essential for disabled individuals to access education, employment, healthcare, and social participation. For example, in Delhi, 3,775 low-floor CNG buses make transport accessible to wheelchair users, whereas Tamil Nadu has only PART D 1,917 accessible buses out of 21,669. 49 Accessible transport, such as buses with audio systems, enhances daily activities like healthcare appointments for visually impaired individuals. In contrast, inaccessible infrastructure, such as pothole-filled footpaths, hinders mobility and safety. In terms of building accessibility, a study by Dr Suman Kalani on Mumbai's infrastructure found mixed results. 50 Newer facilities, like Andheri Metro Station, meet accessibility standards, but older buildings, such as the Bombay Art Gallery, lack basic features like accessible restrooms. This disparity affects the ability of disabled individuals to move freely and access opportunities. For example, the Andheri Metro Station provides independent commuting, while the inaccessible entrance of Krishna Curve Shopping Mall in Santa Cruz limits business and employment opportunities for PWDs.

f. Right to form relationships - The report highlights the emotional and relational challenges faced by PWDs, particularly regarding access to love, desire, and intimacy. Abhishek Annica, a disability activist, emphasized that disabled life is often lonely and alienating, with public discourse on accessibility ignoring private, intimate needs like access to sex and relationships. 51 Emotional needs, such as privacy and self-pleasure, are often overlooked, leaving disabled individuals, especially those living with families, without private spaces to express these needs. 49 Yes to Access, The Association of People with Disability -Accessibility in Transportation Systems 50 Dr.Suman Kalani, SVKM's Pravin Gandhi College of Law-A study of Lego/ Framework and its Implementation About Accessibility of Public Buildings in Mumbai 51 Abhishek Annica -Accessibility and sexual rights.

PART D g. Right to Health - In the realm of health, significant barriers persist for PWDs in accessing healthcare, primarily due to the medical establishment's pathologizing view of disabled bodies and minds. A panel discussion highlighted the positive impact of having doctors with disabilities in the healthcare system. 52 However, disabled individuals still face significant obstacles in becoming healthcare professionals and obtaining necessary accommodations. Studies have revealed that many healthcare services lack proper accessibility, and healthcare professionals are often untrained in accommodating the needs of disabled individuals. A Survey by National Centre for Promotion of Employment for Disabled People found that healthcare infrastructure is frequently not designed with accessibility in mind, which hinders the ability of disabled people to receive timely and appropriate care.

h. Participation in Sports - In sports, accessibility remains a major issue. Only 21.4% of surveyed sports facilities had fully accessible restrooms, with just 3.6% providing sensory rooms for athletes with sensory processing disorders. 53 89.3% of these venues lacked assistive listening systems. Additionally, communication accessibility was limited, with only 7.1% of locations offering captioning or sign language interpretation. When it comes to digital access, only 25% of sports websites were fully accessible, and merely 7.1% of apps met accessibility standards.

52 Doctors With Disabilities: Agents of Change (DwDAoC)- Focussed group Discussion Access to health:Stories from Health Professionals with Disabilities. 53 Vidya Sagar -1)Accessibility Audit Survey for sports facilities in India 2) Accessibility of sports facilities in Chennai.

PART E i. Political Participation - while temporary accessibility measures like ramps are erected during elections, these are removed afterwards, leading to inconsistent access. 54 The report stresses the importance of permanent solutions, such as permanent ramps and facilities, to ensure reliable and ongoing accessibility for PWDs, enabling them to fully exercise their right to vote.

E. Inconsistencies in the Existing Legal Framework

49. In addition to reporting on inadequate accessibility measures in various spheres, as summarised above, NALSAR-CDS has reported that there is an inconsistency in the legal framework, which lies at the root of the slow progress. The report states that while the RPWD Act creates a mechanism for mandatory compliance with a set of non-negotiable accessibility rules, the Right of Persons with Disabilities Rules, 2017 55 create a mechanism which only prescribes self-regulatory guidelines. Therefore, the report states, that Rule 15 of the RPWD Rules, which contains the accessibility standards, is ultra vires the RPWD Act. Further, it is contended that the situation on the ground reveals that the absence of non-negotiable rules and excessive reliance on guidelines, compromises the effective realisation of accessibility rights.

50. With regard to this contention, Mr Colin Gonsalves, Senior Counsel for the petitioner submitted that Rule 15 of the RPWD Rules uses the term “shall” and thus, all the standards prescribed under the RPWD Rules are in fact mandatory. 54 Disability Rights Alliance -Accessibility in Elections-2024 55 “RPWD Rules” PART E He seeks a declaration from this Court to the effect that Rule 15 and the various standards prescribed in the rule are mandatory. This entails, according to Mr Gonsalves, that new establishments which do not comply with the standards under Rule 15 cannot get clearances and old establishments must be mandatorily retrofitted in accordance with these rules. Mr Vikramajit Banerjee, the learned Additional Solicitor General, also conceded that Rule 15 read with Sections 44 to 46 of the RPWD Act prescribes a mandatory compliance framework. The Union has also filed written submissions detailing the various steps taken to comply with the standards prescribed in Rule 15 and towards the targets in the Accessible India Campaign. These submissions have been taken on record along with the compliance affidavits filed by the States and Union Territories. In the following section, we analyse the alleged inconsistency in the legal framework.

i. Accessibility provisions in the RPWD Act and Rules a. RPWD Act

51. The RPWD Act came into force on 19 April 2017. 56 The long title of the Act states that it is “An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith and incidental thereto”.

PART E

52. Chapter VIII pertains to the ‘Duties and Responsibilities of Appropriate Governments’. The term “appropriate government” has been defined in Section 2(b).⁵⁷ Section 39 imposes an obligation on the appropriate government, in consultation with the Chief Commissioner or State Commissioner, to conduct, encourage, support or promote awareness campaigns and sensitisation programmes in relation to the protection of the rights of PWDs.

53. Section 40 pertains to “Accessibility” and states that the Central Government, shall, in consultation with the Chief Commissioner, formulate rules for “persons with disabilities laying down the standards of accessibility for physical environment, transportation, information and communication including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.” The word “shall” indicates that the Central Government is mandated to make rules laying down the standards of accessibility. Section 40 must be read with Section 100 of the Act, which prescribes the power of the Central Government to make rules.

54. Section 41 deals with one aspect of accessibility, namely, ‘access to transport’. Sub-section (1) states that the appropriate government shall take suitable measures to provide:

57 Section 2(b) states: “(b) “appropriate Government” means, —

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.” PART E a. facilities for PWDs at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;

b. access to all modes of transport that conform to the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for PWDs, economically viable and without entailing major structural changes in design; and c. accessible roads to address mobility necessary for persons with disabilities.

Sub-section (2) mandates that the appropriate government develop schemes and programmes to promote the personal mobility of PWDs at an affordable cost to provide for incentives and concessions, retrofitting of vehicles, and personal mobility assistance.

55. Sections 42 and 43 pertain to “information and communication technology” and “consumer goods”, respectively. Section 42 mandates that the appropriate government take measures to ensure that:

- a. all contents available in audio, print and electronic media are in accessible format;
- b. PWDs have access to electronic media by providing audio description, sign language interpretation and close captioning;
- c. electronic goods and equipment which are meant for everyday use are available in universal design.

PART E Section 43 stipulates that the appropriate government shall take measures to promote the development, production, and distribution of universally designed consumer products and accessories for general use of PWDs.

56. Section 44 deals with the mandatory observance of the accessibility rules framed by the Central Government under Section 40 and the consequence of non-compliance. Sub-section (1) states that no establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under Section 40. Sub-section (2) stipulates that no establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government. Therefore, at both stages – when the building plan is made and at the stage of completion – mandatory adherence to the accessibility rules is envisaged by the Act.

57. While Section 44 deals with mandatory compliance with the accessibility rules for all new buildings, Section 45 deals with the “retrofitting” of existing public buildings to comply with the accessibility rules within a prescribed time period, subject to extensions on a case-by-case basis. Section 45 stipulates that all existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules. The proviso to sub-section (1) allows the Central Government to grant an extension of time to the States on a case- to-case basis for adherence with this provision depending on their state of preparedness and other related parameters. Sub-section (2) states that the PART E appropriate government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

58. Section 46 pertains to the time limit for compliance with the accessibility rules by service providers. It stipulates that all service providers – both Government and private – shall provide services in accordance with the rules on accessibility within a period of two years from the date of notification of such rules. The proviso to the provision states that the Central Government, in consultation with the Chief Commissioner may grant an extension of time for providing certain categories of services in accordance with the accessibility rules.

59. Section 89 prescribes punishment for contravention of provisions of the RPWD Act or its allied rules. It states that any person who contravenes any of the provisions of the RPWD Act or rules made thereunder shall be liable to pay a fine which may extend to ten thousand rupees for the first contravention, and a fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, for subsequent contraventions.

b. Chapter VI the RPWD Rules

60. The RPWD Rules, issued by the Central Government, came into force on 15 June 2017. 58 At the heart of the issue before this Court lies Chapter VI of the PART E RPWD Rules, which is titled “Accessibility”. Rule 15, in its original form, read as follows:

“15. Rules for Accessibility. - (1) Every establishment shall comply with the following standards relating to physical environment, transport and information and communication technology, namely:-

(a) standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons With Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March, 2016;

(b) standard for Bus Body Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways, vide number G.S.R. 895(E), dated the 20th September, 2016;

(c) Information and Communication Technology-

(i) website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India;

(ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format:

Provided that the standard of accessibility in respect of other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of these rules. (2) The respective Ministries and Departments shall ensure compliance of the standards of accessibility specified under this rule through the concerned domain regulators or otherwise.”

61. Rule 15(1) provides that every establishment shall comply with the standards relating to the physical environment, transport and information and communication technology, prescribed in the subsequent clauses of the PART E provision. Barring the requirement in Rule 15(1)(c)(ii) which requires that the documents on websites be in ePUB or OCR-based pdf format, all the other clauses

in Rule 15(1) refer to documents/guidelines issued by various Ministries of the Union Government. Originally, these prescribed 'standards' were:

- a. For public buildings – Harmonised Guidelines and Space Standards for Barrier-Free Built Environment for Persons With Disabilities and Elderly Persons issued by the Government of India, Ministry of Urban Development in March 2016; [Original Clause (a) of Rule 15(1)]
- b. For transportation – standard for Bus Body Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways dated 20 September 2016; [Item (i) of Clause (b) of Rule 15(1)]
- c. For Information and Communications Technology⁵⁹ – website standard as specified in the guidelines for Indian Government websites adopted by the Department of Administrative Reforms and Public Grievances, Government of India. [Clause (c) of Rule 15(1)]

62. The proviso to Rule 15(1) provides that the standard of accessibility with respect to other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of the RPWD rules. Rule 15(2) stipulates that the concerned Ministries and departments shall ensure compliance with the standards of accessibility specified in the rule through the concerned domain regulators or otherwise. ⁵⁹ “ICT” PART E

63. As required by the proviso to Rule 15(1), subsequent to the notification of the RPWD Rules, additional standards have been specified by various ministries of the Central Government. Amendments have been made to Rule 15(1) and these standards have been included as clauses to Rule 15(1). The standards that have been incorporated by the amendments are as follows:

- a. Standard for public buildings as specified in the Harmonised Guidelines and Standards for Universal Accessibility in India – 2021, issued by the Government of India, Ministry of Housing and Urban Affairs dated 27 December 2021⁶⁰ [amended clause (a) of Rule 15(1)]
- b. For ICT products and services – compliance with Indian standards IS 17802 (Part 1), 2021 and IS 17802 (Part 2), 2022, published by the Bureau of Indian Standards. [item (iii) in clause (c) of Rule 15(1)] ⁶¹
- c. Culture sector-specific harmonised accessibility standards/guidelines, notified by the Government of India in the Ministry of Culture dated 18 January 2023. [clause (d) of Rule 15(1)] ⁶²
- d. Guidelines on accessible sports complex and residential facilities for sports persons with disabilities, notified by the Government of India in the Ministry of Youth Affairs and Sports (Department of Sports) dated 13 October 2022 [clause (e) of Rule 15(1)]⁶³
- e. “HG 2021” ⁶⁰
- f. Rights of Persons with Disabilities (Amendment) Rules, 2023 notified on 10.05.2023 ⁶²
- g. Rights of Persons with Disabilities (Amendment) Rules, 2023 notified on 13.07.2023 ⁶³
- h. Rights of Persons with Disabilities (Amendment) Rules, 2023 notified on 17.07.2023 PART E
- i. Accessibility Standards and Guidelines for Civil Aviation 2022, notified by the Government of India in the Ministry of Civil Aviation dated 9 January 2023. [clause (f) of Rule 15(1)] ⁶⁴
- j. Accessibility Standards for Healthcare, notified by the Government of India in the Ministry of Health and Family Welfare dated 4 May 2023 [clause (g) of Rule

15(1)] 65 g. Rural sector-specific harmonized accessibility standards/guidelines, as specified in the notification of the Ministry of Rural Development, Government of India dated 26 June 2023 [clause (h) of Rule 15(1)] 66 h. Guidelines on accessible and inclusive piped water supply for persons with disabilities and for other population groups with access challenges, as specified in the notification of the Department of Drinking Water and Sanitation, Government of India, dated 2 August 2023. [clause (i) of Rule 15(1)] 67 i. Accessibility standards for community toilets in Rural areas, as specified in the notification of the Department of Drinking Water and Sanitation, Government of India dated 4 August 2023 [clause (j) of Rule 15(1)] 68 j. Guidelines for Accessibility Standards in the Port Sector, as specified in the notification of the Ministry of Port Shipping and Waterways, Government of India dated 8 November 2023 [clause (k) of Rule 15(1)] 69 64 Rights of Persons with Disabilities (Amendment) Rules, 2023 notified on 21.07.2023. 65 Rights of Persons with Disabilities (Amendment) Rules, 2023 notified on 09.08.2023. 66 Rights of Persons with Disabilities (Amendment) Rules, 2023, notified on 16.11.2023. 67 Rights of Persons with Disabilities (Amendment) Rules, 2023, notified on 02.04.2024. 68 Ibid.

69 Rights of Persons with Disabilities (Amendment) Rules, 2024, notified on 15.02.2024.

PART E k. Guidelines on the accessibility of Indian Railway stations and facilities at stations for differently-abled persons (Divyangjan) and passengers with reduced mobility as specified, in the notification of the Ministry of Railways, Government of India dated 13 November 2023 [clause (l) of Rule 15(1)] 70 l. Accessibility Standards and Guidelines for MHA Specific Built Infrastructures & Associated Services for Police Stations, Prisons & Disaster Mitigation Centres, as specified in the notification of the Ministry of Home Affairs, Government of India dated 2 January 2024 [clause (m) of Rule 15(1)] 71 m. Accessibility Code for Educational Institutions as specified, in the notification of the Department of School Education and Literacy, Ministry of Education, Government of India dated 10 January 2024. [clause (n) of Rule 15(1)] 72 n. Accessibility Guidelines and Standards for Higher Education Institutions and Universities as specified, in the notification of the Department of Higher Education, Ministry of Education, Government of India dated 19 January 2024. [clause (o) of Rule 15(1)] 73 o. Accessibility standards and Guidelines for the Banking Sector specified in the notification in the Department of Financial Services, Ministry of Finance, Government of India dated 2 February 2024 [clause (p) of Rule 15(1)] 74 70 Rights of Persons with Disabilities (Amendment) Rules, 2024, notified on 08.03.2024. 71 Rights of Persons with Disabilities (Amendment) Rules, 2024 notified on 22.03.2024. 72 Rights of Persons with Disabilities (Amendment) Rules, 2024 notified on 20.06.2024. 73 Rights of Persons with Disabilities (Amendment) Rules, 2024 notified on 25.06.2024. 74 Rights of Persons with Disabilities (Amendment) Rules, 2024 notified on 02.07.2024. PART E

64. Therefore, at present there is a list of seventeen documents prescribed in clauses (a) to (p) of Rule 15(1), which comprise the “accessibility rules” that shall be complied with in accordance with the RPWD Act. Further, the Department of Empowerment of Persons with Disabilities states on its

website that more standards of accessibility are in the pipeline, and are to be included in Rule 15 after necessary steps are taken by the concerned ministries. These include (i) Accessibility Guidelines for Bus Terminals and Bus Stops from the Ministry of Road Transport and Highways; (ii) Accessible Tourism Guidelines for India from the Ministry of Tourism; (iii) Accessibility Standards for TV programmes for hearing and visually impaired from the Ministry of Information and Broadcasting; and (iv) Accessibility guidelines for pension, other financial institutions and insurance sector from the Department of Financial Service.

65. Rule 16 mandates a review of accessibility standards, and states that the Central Government shall review from time to time the accessibility standards based on the “latest scientific knowledge and technology”. ii. Inconsistency between Rule 15 and the RPWD Act

66. The RPWD Act creates a mandatory compliance mechanism with regard to accessibility rules. Section 40 states that the Central Government “shall” frame rules which lay down the standards of accessibility. Sections 44, 45, 46 and 89 indicate that these rules are mandatory, provide timelines for compliance, and prescribe consequences for non-compliance. Section 44 stipulates mandatory compliance of the accessibility rules by new establishments and provides PART E significant consequences for non-compliance with the rules. At the stage prior to construction, it is stipulated that no establishment will be granted permission to build the structure if the building plan does not adhere to the accessibility rules. At the stage after construction, it is stipulated that no establishment shall be issued a certificate of completion or take occupation of a building if it fails to comply with the accessibility rules. Therefore, Section 44 deals with the second prong of the right to accessibility identified above – planning for the future and ensuring that new infrastructure is accessible from its inception. Sections 45 and 46 deal with the first prong, i.e. to retrofit existing inaccessible infrastructure to ensure accessibility. They provide a timeline for compliance with the accessibility rules. Section 45 lays down a timeline of five years from the date of the notification of the RPWD Rules for making existing public buildings accessible in accordance with the accessibility rules. Similarly, Section 46 provides a timeline of two years for service providers to comply with the accessibility rules. As noted above, the RPWD rules came into force on 15 June 2017 and thus, the timelines in these provisions have long passed.

67. The marginal note to Rule 15(1) states that it contains “Rules for Accessibility”. Further, Rule 15(1) uses “shall” in its chapeau indicating that the standards that follow in clauses (a) to (p) are mandatory. Till this understanding of the framework, the counsel for the petitioner, the Union of India and the NALSAR-CDS are all in agreement. The next step, therefore, is to look at the content of the various standards prescribed in Rule 15(1).

68. A perusal of the “standards” for accessibility laid down in clauses (a) to (p) of Rule 15(1), in the form of the guidelines issued by the concerned ministries, PART E indicates that most of these documents do not contain mandatory or non- negotiable prescriptions. The use of the term ‘guidelines’ rather than ‘rules’ in most of these documents is not a mere difference in nomenclature, but is evident in the content of these documents as well. 75 To better appreciate this, we may refer to one of these standards, namely, HG 2021 which is prescribed under Rule 15(1)(a). The stated objectives of this document are as follows:

“1.2 Objectives [...] following are the key objectives of these guidelines:

1. Sensitize diverse stakeholders regarding the various accessibility needs and provisions for diverse population groups in the built environment.
2. Introduce and orient universal design perspectives to all stakeholders for creating inclusive built environments for all.
3. Recommend specific built environment elements along with their accessibility attributes and specifications.
4. Develop a holistic approach to accessibility through integration of appropriate technologies.
5. Guide accessibility assessment and implementation in built environments.”
(Emphasis Supplied)

69. The objectives extracted above indicate that the idea of the document is not to lay down rules, which are non-negotiable and have tangible consequences in case of non-compliance, but rather to merely “sensitize”, “recommend” and “guide”. Over 400 pages long, the HG 2021 contains guidelines which are couched in the language of a policy document. It uses discretionary terms, such as “recommend”, “may”, “it is desirable for...” and so on while laying down the 75 Gulf Goans Hotels Co. Ltd. v. Union of India, (2014) 10 SCC 673 [15-16]. PART E standards of accessibility. It is impractical, as to how guidelines framed in such terms, can be understood as “non-negotiable”, failing which certain consequences follow under the RPWD Act, including no permission to build, holding back of completion certificates or penal fines.

70. Similar objectives are found in the guidelines prescribed in other clauses of Rule 15 as well. Illustratively, at random, we may refer to the (i) Guidelines for Accessibility Standards in the Port Sector issued by the Ministry of Port Shipping and Waterways; and (ii) Accessibility Standards and Guidelines for Civil Aviation 2022. The stated objectives of these documents are as follows:

“Accessibility Standards in the Port Sector “The guidelines provided here are illustrative in nature and not exhaustive. They intend to meet the immediate requirements of Accessibility to ensure that the facilities are made usable by the persons with disability and reduced mobility. Besides these guidelines, the sector specific detailed guidelines made by Experts such as the guidelines on Accessibility Standards prepared by Tourism and Travel Department, Transport Department, Hotel Industry, Commercial and Industrial Department may also be, to the extent relevant, relied upon and used at different places in the Port, Harbours and Piers. To this extent, these guidelines are not conclusive; but are open to continual improvement.” These guidelines can be used as broad guiding principles for planning of Accessibility Standards at the time of construction of Cruise and Passenger Terminals, Transport Hubs in the Ports and harbours as also in retrofitting the

existing structures. To ensure that these guidelines remain practical for implementation, salient features of the guidelines have been discussed with the Nodal Officer for Cruise Tourism and the other Stakeholders.” PART E Accessibility Standards and Guidelines for Civil Aviation This document is a foundation stone in achieving accessible airports. It’s true success shall be seen in the implementation at various airports resulting in more safe, inclusive and convenient customer experience and we believe that it will happen over time.” (Emphasis Supplied)

71. The above extracts indicate that these two documents also do not envisage mandatory rules and instead appear to be recommendatory guidelines. The Accessibility Standards in the Port Sector are conceived as “illustrative”, and “non-conclusive” and only as “broad guidelines” for both new construction and retrofitting. It is difficult to fathom how a document which is only illustrative and contains broad guidelines, can be mandatorily enforced, with consequences such as fines and withholding of completion certificates. Similarly, the Accessibility Standards and Guidelines for Civil Aviation also indicate that they seek to be achieved “over time”. As noted above, Section 44, which deals with new buildings, requires immediate compliance and Sections 45 and 46, which deal with existing infrastructure prescribe fixed timelines. Guidelines which are aspirational and require compliance “over time” run contrary to this legislative intent. Some other guidelines and documents prescribed in Rule 15(1), do state that they are “mandatory codes”, however, this segregation between mandatory and discretionary guidelines has not been carried out.

72. Further, not only do several of these documents themselves state that they are guidelines or aspirational principles, but the NALSAR-CDS report indicates that even if this nomenclature is ignored, they cannot be practically enforced as PART E mandatory rules. This is because inter alia several of these guidelines contain different standards for the same or similar accessibility requirements and allegedly contain technical errors. For instance, with regard to “accessible toilets”, almost all the guidelines contain different requirements – both in terms of requirements and measurements. For instance, there is a difference in the requirements stipulated in HG 2021 and Accessibility Standards and Guidelines for Civil Aviation with regard to accessible toilets. 76 It is difficult to fathom, therefore, which of the two requirements is “mandatory” to follow.

73. It is trite law that the legislature cannot abdicate essential legislative functions to the delegated authority. The legislature can entrust subsidiary or ancillary legislation to the delegate. However, before such delegation, the legislature should enunciate the policy and the principles for the guidance of the delegated authority. As a corollary, the delegated authority must carry out its rule-making functions within the framework of the law. The delegated legislation must be consistent with the law under which it is made and cannot go beyond the limits of policy and standards laid down in the law. 77

74. Rule 15, in its current form, does not provide for non-negotiable compulsory standards, but only persuasive guidelines. While the intention of the RPWD Act to use compulsion is clear, the RPWD Rules have transformed into self- regulation by way of delegated legislation. The absence of compulsion in the Rules is contrary to the intent of the RPWD Act. While Rule 15 creates an 76 See Table 4.1, HG 2021.

77 Gaurav Kumar v. Union of India & Ors., 2024 INSC 558 [27-29]. PART F aspirational ceiling, through the guidelines prescribed by it, it is unable to perform the function entrusted to it by the RPWD Act, i.e., to create a non- negotiable floor. A ceiling without a floor is hardly a sturdy structure. While it is true that accessibility is a right that requires “progressive realization”, this cannot mean that there is no base level of non-negotiable rules that must be adhered to. While the formulation of detailed guidelines by the various ministries is undoubtedly a laudable step, this must be done in addition to prescribing mandatory rules, and not in place of it. Therefore, Rule 15(1) contravenes the provisions and legislative intent of the RPWD Act and is thus ultra vires, the Act. F. Conclusion

75. In view of the above, we hold that several of the guidelines prescribed in Rule 15, appear to be recommendatory guidelines, under the garb of mandatory rules. Rule 15(1) is thus ultra vires the scheme and legislative intent of the RPWD Act which creates a mechanism for mandatory compliance. Creating a minimum floor of accessibility cannot be left to the altar of “progressive realization”.

76. The Union Government is, accordingly, directed to delineate mandatory rules, as required by Section 40, within a period of three months from the date of this Judgment. This exercise may involve segregating the non-negotiable rules from the expansive guidelines already prescribed in Rule 15. The Union Government must conduct this exercise in consultation with all stakeholders, and NALSAR- CDS is directed to be involved in the process. It is clarified that progressive compliance with the standards listed in the existing Rule 15(1) and the progress PART F towards the targets of the Accessible India Campaign must continue unabated. However, in addition, a baseline of non-negotiable rules must be prescribed in Rule 15.

77. Once these mandatory rules are prescribed, the Union of India, States and Union Territories are directed to ensure that the consequences prescribed in Sections 44, 45, 46 and 89 of the RPWD Act, including the holding back of completion certificates and imposition of fines are implemented in cases of non- compliance with Rule 15.

78. The following principles of accessibility should be considered while carrying out the above exercise:

- a. Universal Design: The rules should prioritize universal design principles, making spaces and services usable by all individuals to the greatest extent possible, without requiring adaptations or specialized design;
- b. Comprehensive Inclusion Across Disabilities: Rules should cover a wide range of disabilities including physical, sensory, intellectual, and psychosocial disabilities. This includes provisions for specific conditions such as autism, cerebral palsy, intellectual disabilities, psychosocial disabilities, sickle cell disease, and ichthyosis;
- c. Assistive Technology Integration: Mandating the integration of assistive and adaptive technologies, such as screen readers, audio descriptions, and accessible digital interfaces, to ensure digital and informational accessibility across public and private platforms; and
- PART F d. Ongoing Stakeholder Consultation: This process should involve continuous

consultation with persons with disabilities and advocacy organizations to incorporate lived experiences and practical insights.

79. The Petitioner and NALSAR CDS have proposed a series of recommendations with regard to the existing legal framework. The Union Government is directed to meaningfully consider these recommendations while reworking the content of Rule 15.

80. NALSAR-CDS states that the report has been prepared using their own resources, and no financial claims have been made to the Ministry of Social Justice and Empowerment. Annexure II of the NALSAR-CDS Report indicates that it has been prepared over a period of six months, after consulting fifty-two experts, receiving reports from fourteen states and three Union Territories, and with over hundred reports from organizations and individual testimonies. As the report states, it is “a present-day example of creating a knowledge commons.” This Court records its appreciation for and is cognizant of the labour of time, effort, and resources expended by the NALSAR-CDS in preparing this report. Accordingly, the Union of India in the Ministry of Social Justice and Empowerment is directed to pay NALSAR-CDS an amount of INR 50,00,000 as compensation for the work, which was carried out in a timely and comprehensive manner. The amount shall be disbursed to NALSAR-CDS no later than 15 December 2024.

PART F

81. With the above direction, the Writ Petitions are adjourned to 7 March 2025 on which date, the Union Government must report compliance to this Court.

... .. C J I [D r D h a n a n j a y a Y C h a n d r a c h u d]
.....J [J. B. Pardiwala]J [Manoj Misra]
New Delhi;

November 08, 2024