

In Re: Recruitment of Visually Impaired in Judicial Services

(Suo Motu Writ Petition (Civil) No. 2 of 2024)

03 March 2025

[J.B. Pardiwala and R. Mahadevan,* JJ.]

Issue for Consideration

Whether visually impaired candidates can be said to be ‘not suitable’ for judicial service; Whether the amendment made in Rule 6A of Madhya Pradesh Judicial Services (Recruitment and Conditions of Service) Rules, 1994 falls foul of the constitution; Whether proviso to Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 violates the equality doctrine and the principle of reasonable accommodation; Whether relaxation can be done in assessing the suitability of candidates when adequate PwD candidates are not available, after selection in their respective category; Whether a separate cut-off is to be maintained and selection conducted accordingly for visually impaired candidates.

Headnotes[†]

Judicial Services – Judicial Services Examination – Visually impaired candidates, eligible to participate – Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 – 2023 amendment – r.6A – Rajasthan Judicial Service Rules, 2010 – Rights of Persons with Disabilities Act, 2016 – Challenge to amendment in r.6A, MP Judicial Service Rules, 1994 excluding visually impaired and low vision candidates from appointment in judicial service – Suo moto cognizance of letter petitions – Amendment, if falls foul of the constitution – Visually impaired candidates, if ‘not suitable’ for judicial service:

Held: Visually impaired candidates cannot be said to be ‘not suitable’ for judicial service – They are eligible to participate in selection for posts in judicial service – Amendment made in r.6A of the 1994 Rules falls foul of the Constitution, hence, struck down to the extent it does not include visually impaired persons who are educationally qualified for the post to apply therefor – r.6A is against the guarantee of substantive equality embodied in the RPwD Act, 2016 and the principle of reasonable accommodation therein – The impugned rule

* Author

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based on the medical report of a doctor cannot have any place in the disability jurisprudence that is ever evolving – Such conclusions based merely on a clinical assessment of disability, innocent of the principle of reasonable accommodation are not a fair and proper assessment of the capability of judicial officers with disabilities while participating in the selection to the post of judicial officers – Once a person has been permitted to the degree of law course, all other opportunities, whether in the form of practice as well as appointments, assignments whether public or private, would automatically make them eligible to participate for selection to the same – The principle of legitimate expectation also stands attracted to this case as part of the aspect of non-arbitrariness while furthering the equality doctrine – India is a signatory to United Nations Convention on the Rights of Persons with Disabilities and hence, under an obligation to fulfil this object of inclusive equality. [Paras 42, 68(i)]

Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 – 2023 Amendment – r.7 – Principle of indirect discrimination – The amendment proposed to substitute r.7 prescribing the additional requirement, to appear in the preliminary examination of the MP Judicial Service examination, of either a three-year practice period or securing an aggregate score of 70% in the first attempt – Challenge to the amendment and the consequential advertisement dtd.17.11.2023 issued by the High Court of MP – Proviso to r.7, if violates the equality doctrine and the principle of reasonable accommodation:

Held: r.7 to the extent of prescribing additional requirement of either a three-year practice period or securing an aggregate score of 70% in the first attempt violates the equality doctrine and the principle of reasonable accommodation – It is struck down in its application to differently abled persons who have the requisite educational qualifications for applying to the posts under judicial service – Applying the test of indirect discrimination, the ease of practice as well as the securing of marks cannot be said to be an equal condition to both classes of citizens, viz., disabled and able-bodied lawyers as the atmosphere in which they operate are not the same – r.7 will be applicable to the PwD candidates insofar as it prescribes the educational and other qualifications as eligibility criteria including the minimum aggregate score of 70% (with relaxation as may be determined like in the case of SC/ST candidates), but without the requirement of either that it should be in the first attempt or that they should have three years' practice – Impugned order dtd. 01.04.2024

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passed by the High Court and the consequential notification dtd.17.11.2023 issued by the High Court of Madhya Pradesh, set aside as against the PwD candidates – The appellant-‘AY’ in SLP (C) No.12179 of 2024 and similarly placed persons are entitled to be considered for participating in the selection process in the light of this decision. [Paras 46, 67.1(iii), 68(ii)]

Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 – 2023 Amendment – r.19 – Relaxation in cut-off marks – Relaxation in assessing the suitability of PwD candidates when adequate PwD candidates are not available, after selection in their respective category – Permissibility:

Held: Relaxation of minimum marks is permissible in law – PwDs are to be identified as a separate class in itself and therefore, some kind of benefits has to be extended to them with respect to eligibility which was extended similarly to other vertical reserved class – Relaxation in marks can be given to PwD candidates – This relaxation in minimum marks does not dilute the efficiency in administration – In view of this and the 1994 Rules as amended on 22.06.2023 which empowers the High Court with the power to relax, relaxation of marks in interview is possible for PwD candidates – Furthermore, the Office Memorandum No. 36035/02/2017-Estt (Res) [Reservation for Persons with Benchmark Disabilities] dated 15.01.2018 issued by Ministry of Personal, Public Grievances & Pensions, Department of Personnel & Training also provides for relaxation in standards of suitability – Therefore, relaxation in minimum cut-off marks is permissible, especially when there is a specific power of relaxation available to the appointing authority – Relaxation can be done in assessing suitability of candidates when enough PwD are not available after selection in their respective category, in the light of existing Rules and Official Circulars and executive orders in this regard, as in the present case. [Paras 52, 59, 62, 67.1(iv)]

Judicial Services – Judicial Services Examination – Visually-impaired candidates – Separate cut-off for – Rights of Persons with Disabilities Act, 2016 – Rajasthan Judicial Service Rules, 2010 – rr.10, 41:

Held: A separate cut-off is to be maintained and selection made accordingly for visually-impaired candidates – Further, maintaining and operating a separate cut-off list is mandatory for each category, which includes PwD category as well – When the Rules considered

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the PwD as a separate category and provided them with reservations, it is indispensable on the part of the authorities concerned to declare separate cut-off marks for PwD category at each stage to ensure that those similarly placed candidates are adequately represented in the service fulfilling the very purpose of reservation – Non-disclosure of cut-off marks leads to a situation where such candidates may not be adequately represented in the judicial service, which is against the provisions of the RPwD Act, 2016 – Writ petitioners in WP (C) Nos. 484 and 494 of 2024 contending that separate cut-off was not applied in the Rajasthan Judicial Service Preliminary Examinations and consequently were not selected for the main examination, are entitled to be considered in the light of this decision in the next recruitment, if they so apply to the post notified along with the post unfilled now and carried forward to the next recruitment by maintaining a separate cut off and merit list for PwDs – Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994. [Paras 63.3, 67.1(v), (vi), 68(iv)].

Persons with Disabilities (PwD) and Persons with Benchmark Disabilities (PwBD), if distinct:

Held: For the purpose of rights and entitlements of persons with disabilities, particularly in employment and more specifically in respect of the issues covered in the present judgment, there is no distinction between Persons with Disabilities (PwD) and Persons with Benchmark Disabilities (PwBD) – Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 – Judicial Services. [Paras 63.3, 67.1(v), (vi)].

Disability Rights – Constitution of India – Articles 21, 41 – Right to dignity u/Article 21 – Principle of reasonable accommodation – Rights of Persons with Disabilities Act, 2016 – Rights-based approach – Role of Constitutional Courts:

Held: Reasonable accommodation is not a discretionary measure but a fundamental right integral to achieving substantive equality for PwD, forming part of the right to dignity as guaranteed u/Article 21 of the Constitution – The 73rd and 74th Amendments of the Constitution of India made it a Constitutional obligation for the State to make provisions for safeguarding the interest of the weaker section of the society, including ‘handicapped and mentally retarded’ – State has an obligation to apply the Directive Principles of securing a social order in promotion of the welfare of the people – Article 41 of the Constitution is in the nature of a Directive Principle and it imposes

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a duty on the State to make an effective provision, inter alia, for public assistance to disabled persons – RPwD Act, 2016 reveals that the principle of reasonable accommodation is a concept that not only relates to affording equal opportunity to the PwD but also it goes further as to ensuring the dignity of the individual by driving home the message that the assessment of a person's suitability, capacity and capability is not to be tested and measured by medical or clinical assessment of the same but must be assessed after providing reasonable accommodation and an enabling atmosphere – Significance of judgement in Vikash Kumar case, stated – Constitution of India is blind to the differences between able-bodied and differently abled citizens in matters of providing equal opportunity to all citizens in all spheres of life, including employment, and envisages equality and non-discrimination – This principle is to be enforced by the Constitutional Courts by adopting a rights-based approach providing an enabling environment and atmosphere and ensuring that PwD are provided with equal opportunities, and accommodation that they need and deserve in order to make sure that they can lead their lives with dignity, realising their fullest potential without facing discrimination. [Paras 3, 40, 41]

Disability Rights – Rights of Persons with Disabilities Act, 2016, a 'super-statute' – Scheme, discussed – Elevating right against disability based discrimination to a fundamental right – Need for:

Held: RPwD Act, 2016 has acquired the status equal to that of a 'super-statute' and hence, contains the ingredients of a quasi-constitutional law – The RPwD Act, 2016 marks a significant legislative shift by expanding the rights of PwDs and broadening the recognized categories of disabilities – It ensures equality and non-discrimination, mandates reasonable accommodation, and prohibits barriers to community life, education, employment, and access to justice – It also provides for social security measures, inclusive education, reservations in higher education and employment, and protection from cruelty and exploitation – It also imposes clear responsibilities on the State and other stakeholders in this regard – The right against disability-based discrimination, as recognized in the RPwD Act 2016, needs to be seen of the same stature as a fundamental right, ensuring that no candidate is denied consideration solely on account of their disability. [Paras 36, 67]

Judicial Services – Rights of Persons with Disabilities Act, 2016 – Principle of reasonable accommodation – Substantive equality:

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Held: The principle of reasonable accommodation as enshrined in international conventions, established jurisprudence, and the RPwD Act, 2016, mandate that accommodations be provided to PwDs as a prerequisite to assessing their eligibility – Any indirect discrimination resulting in the exclusion of PwDs, whether through rigid cut-offs or procedural barriers, must be interfered with in order to uphold substantive equality – The commitment to ensuring equal opportunity necessitates a structured and inclusive approach, where merit is evaluated with due regard to the reasonable accommodations required, fostering judicial appointments that truly reflect the principles of fairness and justice – Disability Rights – International Disability Jurisprudence/International Conventions. [Para 67]

Rights of Persons with Disabilities Act, 2016 – s.34 – Challenge to the notification dtd.18.02.2023 in so far as it related to non-selection of the appellant in SLP(C) No.7683 of 2024 on the vacant post of Physically Handicapped Quota under the Unreserved category on the post of Civil Judge, Junior Division (Entry Level) – High Court dismissed the writ petition holding that the benefit u/s.34 and Clause 11 of the Office Memorandum dated 15.01.2018 cannot be granted to the appellant – Correctness:

Held: Impugned order and the notification dated 18.02.2023 are set aside as far as the appellant 'AS' and similarly placed persons are concerned – Thus, the appellant and similarly placed persons who had participated in the selection process are entitled to be considered in the light of this decision and they may be appointed, if otherwise eligible in the vacant posts after applying applicable relaxation as provided for in the executive orders. [Para 68 (iii)]

Constitution of India – Article 15 – United Nations Convention on the Rights of Persons with Disabilities – Rights of Persons with Disabilities Act, 2016 – ss.32, 34:

Held: While Article 15 of the Constitution bars the State from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth, or any of them, the specific ground of 'disability' is conspicuous by its absence – The fact that 'disability' as a ground is not specifically stated under Article 15 of the Constitution, would not mean that the same is not part of the constitutional obligations of the State – ss.32 and section 34, RPwD Act, 2016 indicates that similar to the State's obligations to provide for special protection including in the form of reservation for socially and educationally backward classes in educational institutions

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as well as in employment as stated in Articles 15 and 16 of the Constitution, the State has taken up the obligation of providing similar protection including reservation in respect of PwD – However, now an anti-discrimination clause ought to be included in the Constitution with a specific provision that the State shall not discriminate on the grounds of mental or physical disability in line with the principles as stated in the RPwD Act, 2016 – Disability Rights. [Paras 34, 35]

Disability Rights – International Disability Jurisprudence – Discussed – United Nations Convention on the Rights of Persons with Disabilities, 2007. [Paras 37, 38]

Disability Rights – Judicial Services – Distinguished/ accomplished lawyers and judges with disabilities – Exemplary achievements of, enumerated – Reasonable accommodations for PwD, necessity. [Para 65]

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991 : (2008) 3 SCC 1; *Dr. Kavita Khamboj v. High Court of Punjab and Haryana and others* [2024] 2 SCR 1136 : (2024) 7 SCC 103; *Abhimeet Sinha and Others v. High Court of Judicature at Patna and others* [2024] 6 SCR 530 : (2024) 7 SCC 262 – referred to.

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2017; Madhya Pradesh Judicial Service Examination (Amendment) Act, 2023; Delhi Judicial Service Rules, 1970; Himachal Pradesh Judicial Services Rules, 2004; Himachal Pradesh Judicial Service (2nd amendment) Rules, 2016; Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

List of Keywords

Visually impaired candidates; Appointment in judicial service; Judicial service examination; Exclusion of blind persons from judiciary; Exclusion of visually impaired, low vision candidates from appointment in judicial service; Suo-moto cognizance; Letter petitions; Disability rights; Persons with Disabilities (PwD); Persons with Benchmark Disabilities (PwBD); Deafness; Cerebral palsy; Autism; Intellectual disability; Specific learning disability; Mental illness; Relaxation in assessing the suitability of PwD candidates; Separate cut-off; Non-declaration of cut-off marks; Test of indirect discrimination; Principle of reasonable accommodation; Reservation of posts for PwD; Transparency; Fairness; Equal opportunity; Dignified life; Fundamental rights; Principle of legitimate expectation; Right against disability based discrimination; Mandamus; Non-discrimination; Doctrine of equality; Equality for PwD; Right to dignity; Safeguarding interest of weaker section of society; Medical or clinical assessment; Inclusivity; Non-arbitrariness; Eligibility criteria; Separate class; Minimum qualifying marks; Public employment; Relaxation in minimum marks; PH category; Unreserved category; Preliminary examination; Horizontal reservation; Main examination; General category; Fully-abled candidates; Recruitment process; Unreserved category of the physically handicapped quota; Art.14 of the Constitution; Art.15 of the Constitution; Art.16 of the Constitution; Art.19 of the Constitution; Art.21 of the Constitution; Art.253 of the Constitution; Rights-based model of disability; United Nations Convention on the Rights of Persons with Disabilities, 2007; International Principles and Guidelines on Access to Justice for Persons with Disabilities 2019; Vienna Convention on the Law of Treaties, 1969; United Nations Committee on the Rights of Persons with Disabilities; Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region; Asian and Pacific Decade of Disabled Persons

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1993-2002; Economic and Social Commission for Asia and Pacific; International human rights law; UNCRPD Committee; Ontario Human Rights Code; European Court of Human Rights; Human Rights Tribunal of Canada; Department of Empowerment of Persons with Disabilities (Divyangjan).

Case Arising From

CIVIL ORIGINAL JURISDICTION: Suo Motu Writ Petition (Civil) No. 2 of 2024

(Under Article 32 of The Constitution of India)

In Re: Recruitment Of Visually Impaired In Judicial Services

With

Suo Motu Writ Petition (Civil) No. 6 of 2024, Civil Appeal Nos. 3496 and 3497 of 2025 and Writ Petition (Civil) Nos. 484 and 494 of 2024

Appearances for Parties

By Courts Motion.

Gaurav Agrawal, Sr. Adv./Amicus Curiae.

Advs. for the Petitioners:

Ravi Prakash Mehrotra, Sr. Adv., Nishit Agrawal, Ms. Kanishka Mittal, Siddhartha Iyer, Utkarsh Sonkar, Shrey Kapoor, Ms. Upasna Agrawal, Ms. Aparna Mehrotra, Jabar Singh, Prmoad Kumar, Apoorva Srivastava, Vishvajeet Vijaykumar Shinde, M/s. V. Maheshwari & Co., Ravi Raghunath, Manan Daga, Nakul Patwardhan, Karan Singh, Ms. Kaarunya Lakshmi, Ms. Sejal Jain.

Advs. for the Respondents:

Ms. Archana Pathak Dave, A.S.G., Harmeet Singh Ruprah, D.A.G., S.K. Rungta, Sr. Adv., Arjun Garg, Ms. Kriti Gupta, Ponnammahesh Babu, Brahma Prakash Soni, Mukul Kumar, Sunny Choudhary, Sarad Kumar Singhania, Ms. Vijaya Singh, Alabhya Dhamija, Bhuvan Kapoor, Madhav Sinhal, Dr. N. Visakamurthy, Shyam Gopal, Sameer Shrivastava, Prashant Singh, D.K. Garg, Abhishek Garg, Dhananjay Garg, Ms. Enakshi Mukhopadhyay Siddhanta, Ravi Kumar S., Ms. Susmita Lal, Kamakhya Srivastava, Gautam Narayan, Sandeep Sudhakar Deshmukh, Nishant Sharma, Savadikar Ankur Shirish, G. Sivabalamurugan, Selvaraj Mahendran, C.Adhikesavan, Harikrishnan P.V., C. Kavin Ananth.

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Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

Leave granted. This judgment is organized under the following heads for easy reference and understanding:

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I. INTRODUCTION

2. January 4, 2019 was chosen as the World Braille Day by the United Nations to commemorate the birthday of Louis Braille and to remember him as the man who invented the system 'Braille' in 1829, which is used by the visually impaired for reading and writing, till date. Louis Braille who became completely blind in both eyes by the age of five, had developed this system by himself at the age of 20 inspired by the communication system devised by Captain Charles Barbier of the French Army, and offered professorship at the National Institute for Blind Youth, Paris, where he taught history, geometry and algebra while also having an ear for music. Almost two centuries ago from now, Louis Braille had understood that what the visually impaired needed was not pity or sympathy but accommodation and an enabling atmosphere in which communication played an important role. In his own words, *"access to communication in the widest sense is access to knowledge, and that is vitally important for us if we (the Blind) are not to go on being despised or patronized by condescending sighted people. We do not need pity, nor do we need to be reminded we are vulnerable. We must be treated as equals and communication is the way this can be brought about."* His words are a poignant

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and resounding reminder of the fervent appeal of Persons with Disabilities¹ to be afforded equal opportunities so as to enable them to enjoy a life of dignity and progress in all spheres on par with their able-bodied counterparts.

3. *“Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”* This prophetic dissenting opinion of Justice John Marshall Harlan in *Plessy v. Ferguson* (1896) can well be said to capture the spirit of what we are called upon to decide today. To draw a parallel, the Constitution of India is *blind* to the differences between able-bodied and differently abled citizens in matters of providing equal opportunity to all citizens in all spheres of life, including employment, and envisages equality and non-discrimination. This principle is to be enforced by the Constitutional Courts, by adopting a rights-based approach, providing an enabling environment and atmosphere, and ensuring that PwD are provided with equal opportunities, and accommodation that they need and deserve in order to make sure that they can lead their lives with dignity, realising their fullest potential without facing discrimination. Holding this concept of equality and non-discrimination as the basic foundation on which all issues arising from the cases on hand are to be decided, we proceed further to deal with them.

II. RELIEFS PRAYED FOR

Suo Motu Writ Petition (C) No. 2/2024

4. On 07.03.2024,² this Court has taken *suo motu* cognizance of a letter petition dated 15.01.2024, which was addressed to the Hon’ble Chief Justice of India, by the mother of a judicial aspirant who is a visually

1 For short, “PwD”

2 1. The Madhya Pradesh Judicial Services Examination (Recruitment and Conditions of Service) Rules 1994 have been amended, as a consequence of which, Rule 6A excludes visually impaired and low vision candidates from appointment in the judicial service.
 2. A letter petition has been converted into a petition under Article 32 of the Constitution.
 3. We direct issuance of notice, returnable in two weeks to:
 (i) The Registrar General of the High Court of Madhya Pradesh;
 (ii) The State of Madhya Pradesh; and
 (iii) The Union of India.
 4. We request Mr Gaurav Agarwal, senior counsel to assist the Court as Amicus Curiae in the matter. At this request, Mr Ravi Raghunath, counsel shall stand nominated as Advocate-on-Record to assist him.
 5. List the Petition on 1 April 2024.

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impaired candidate, challenging the legality of the Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules 1994, as amended on 23.06.2023, whereby Rule 6A excludes visually impaired and low vision candidates from appointment in the judicial service. According to the letter petitioner, the action of the Madhya Pradesh High Court is arbitrary, discriminatory, unjust and violative of the spirit of the Constitution. Hence, she requested this court to examine the matter and protect the interests of visually impaired candidates ensuring their right to equal opportunity and a dignified life, as per the Rights of Persons with Disabilities Act, 2016³.

Suo Motu Writ Petition (C) No. 6/2024

5. This case arises from a letter petition sent by a visually impaired law student to the Hon'ble Chief Justice of India, requesting to take necessary steps to ensure transparency, fairness and equal opportunity for persons with disabilities candidates in judicial service examinations in Rajasthan.

Appeal arising from SLP(C) No.12179/2024

6. Challenge is to the final order dated 01.04.2024 passed by the High Court of Madhya Pradesh at Jabalpur in W.P. No. 30465 of 2023, whereby, the High Court rejected the challenge to the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 and the consequential notification dated 17.11.2023 issued by the High Court of Madhya Pradesh as they do not provide a specific exemption for persons with disabilities, and consequential direction to the respondent authorities to give relaxation of Rule 7 to the appellant herein.

Appeal arising from SLP(C) No.7683 of 2024

7. Challenge is to the order dated 11.01.2024 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No.11175/2023. The said writ petition was filed by the appellant (i) to set aside the notification dated 18.02.2023 as far as it relates to non-selection of the appellant on the vacant post of Physically Handicapped Quota under the Unreserved category on the post of Civil Judge, Junior

3 For short, "the RPwD Act, 2016"

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Division (Entry Level), and (ii) to direct the respondent authorities to grant appointment to the appellant on the post of Civil Judge, Junior Division (Entry Level) under Physically Handicapped candidate under the Unreserved category along with all consequential benefits. By the order impugned herein, the High Court dismissed the writ petition by observing that the benefit under Section 34 of the RPwD Act, 2016 and Clause 11 of the Office Memorandum dated 15.01.2018, cannot be granted to the appellant herein.

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8. To issue a writ of Mandamus directing the High Court of Rajasthan, to publish separately and declare the results and cut off marks for persons with benchmark disabilities⁴ category for the Rajasthan Judicial Service Examinations at every stage viz., Preliminary, Mains, Interviews and final result.

I.A.No.242002 of 2024 in W.P(C) No. 494 of 2024

- 8.1. In addition to the above reliefs, the petitioner sought the following prayers, by way of this amendment application:
 - (i) To issue a declaration that the Rajasthan Judicial Service Rules, 2010 are violative of Articles 14, 16 and 21 of the Constitution of India insofar as they do not provide for the declaration of a separate merit list and/or cut-off for persons with benchmark disabilities' candidates despite the candidates constituting a separate class of candidates competing amongst themselves;
 - (ii) To issue a Mandamus directing the Respondent No.1 to amend the Rajasthan Judicial Service Rules, 2010 to bring them in accordance with Rights of Persons with Disabilities Act, 2016 and Office Memorandum issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Govt. of India time and again to include specific provisions for the declaration of a separate merit list for Persons with Benchmark Disabilities;

⁴ For short, "PwBD"

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- (iii) To issue a Mandamus directing the Respondent No.1 to hold the separate main examinations for the candidates of persons with benchmark disabilities category including the petitioner herein, for selection in the Rajasthan Judicial Service Examination, 2024;
- (iv) To issue a Mandamus directing the Respondent No.1 to declare the results for the candidates of persons with benchmark disabilities category separately for each stage of shortlisting for the purposes of selection in the Rajasthan Judicial Service Examination, 2024.

III. SUMMARY OF PLEADINGS & SUBMISSIONS OF LEARNED COUNSELS**A. IN RE: RECRUITMENT OF VISUALLY IMPAIRED IN JUDICIAL SERVICES VS. REGISTRAR GENERAL, HIGH COURT OF MADHYA PRADESH AND OTHERS [SUO MOTU WRIT PETITION (CIVIL) NO.2 OF 2024]**

- 9. Based on the letter petition dated 15.01.2024 given by the mother of a visually impaired candidate to the Hon'ble Chief Justice of India, challenging the amendment made in Rule 6A of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, whereby reservation granted in favour of blind and low vision persons, was withdrawn, this Court has registered the captioned *suo motu* Writ Petition.
- 10. The respondents in this *suo motu* writ petition are the High Court of Madhya Pradesh, Government of Madhya Pradesh and Union of India. *Vide* order dated 15.04.2024, this Court impleaded one Dr. Sanjay S. Jain, a professor of Law at the National Law School of India University, Bangalore, with over 25 years of teaching experience and totally blind since birth, as an intervenor, to assist the Court in connection with the present issue concerning the appointment of visually impaired persons as Judges in District Judiciary.

Submissions of the Letter Petitioner

- 11. According to the letter petitioner, Rule 12(1)(a) of the Madhya Pradesh Rights of Persons with Disabilities Rules, 2017 framed by the Madhya Pradesh Government in exercise of power conferred

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under Article 101 of the RPwD Act, 2016 provides for reservation in favour of blind and low vision persons. In light of the judgment in *Rashmi Thakur v. High Court of Madhya Pradesh and others*⁵ and the Madhya Pradesh District Court Establishment (Recruitment and Conditions of Service) Rules 2016, reservation was given to visually impaired persons. Other States, such as Haryana, Delhi, *etc.*, also provide reservation for the same category. Hence, the amendment made in Rule 6A of Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, is in violation of Articles 14, 15, 16 and 21 of the Constitution of India. It was also stated in the said letter petition that the Madhya Pradesh High Court granted reservation for blind and low vision candidates in the Judicial service vacancies of 2021 and therefore, removing such reservation for the present would amount to unjust discrimination between those selected in the same category before 2023 and those after. Stating so, the letter petitioner requested this Court to consider the issue and protect the interests of the visually impaired candidates.

Submissions on the side of High Court of Madhya Pradesh

12. It was submitted that the impugned rule viz., clause 6A of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 deals with reservation of posts for PwD in recruitment to the post of Civil Judge (Entry Level) and the same reads as under:

“6A. 6% posts shall be horizontally reserved, only at the time of initial recruitment of persons suffering from locomotor disability including leprosy cured, dwarfism, muscular dystrophy and acid attack victims, excluding cerebral palsy, as specified under S.34 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016).

Provided that if such reserved posts or any of them are not filled in a given recruitment year due to non-availability of suitable students, such vacancy shall be carried forward into the succeeding recruitment year and if no suitable candidate is available, then they shall be treated as unreserved posts.”

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When the Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2017⁶ were being framed, an opinion was sought from the then Dean, Netaji Subhash Chandra Bose Medical College & Hospital, Jabalpur, (An Autonomous Government Medical College) District Jabalpur (M.P.) on the suitability of PwD as stipulated in the RPwD Act, 2016 for the post of District Judge (Entry Level). The Dean, *vide* letter no. 6417 dated 04.10.2017 opined that a person suffering from certain disabilities, such as, being blind or having low vision, deafness or hard of hearing, cerebral palsy, autism, intellectual disability, specific learning disability and mental illness and multiple disabilities under clauses (a) to (d) of the RPwD Act, 2016 cannot perform the duties of a Judge in the Higher Judicial Service. In light of the opinion given by the Dean, the provision providing for 2% reservation to persons suffering from disabilities mentioned in Cl (a), (b), (c - cerebral palsy only), (d) and (e) of the RPwD Act, 2016 was proposed to be removed from the MPHJS Rules, 2017. Thereafter, the matter was referred to the Commissioner, Disabilities in terms of the second proviso to Section 34 of the RPwD Act, 2016 and as per the exemption given by the State Government, Department of Social Justice and Disabilities Welfare Department, the MPHJS Rules, 2017 were published and made applicable with effect from 13.03.2018. Thus, there is full compliance with the requirements of Section 34 of the RPwD Act, 2016.

- 12.1. According to the learned counsel, the terminology used in second proviso to Section 34 is 'regard to the type of work carried out in any Government Establishment'. The type of work performed by a member of the Higher Judicial Service (Entry Level) is identical to that carried out by a Civil Judge (Entry Level). Therefore, it was informed orally by the State authorities that there was no necessity to obtain separate permission seeking exemption for the establishment of High Court/District Courts as mere change in nomenclature of the post does not require separate notification, given that the nature of work and the establishment remain the same. In view of the said fact that an exemption has already been granted in favour of the establishment of District Judiciary by the State Government of Madhya Pradesh in terms of the

6 For short, "the MPHJS Rules, 2017"

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provisions contained in Section 34 of the RPwD Act, 2016, without challenging the *vires* of the Rules, the letter petition is thus not maintainable.

- 12.2. The learned counsel further submitted that the High Court in its letter dated 23.02.2023 had approved the amendment to increase the reservation for PwD from 4% to 6% in light of Rule 12 of the Madhya Pradesh Rights of Persons with Disability Rules, 2017 and the said amendment as approved by the State of Madhya Pradesh, was published in the Government gazette on 23.06.2023.
- 12.3. Thus, according to the learned counsel, there is no restriction of any nature on visually impaired persons to participate in the recruitment examinations for judicial service. However, the opinion of the medical expert i.e., Dean of Netaji Subhash Chandra Bose Medical College & Hospital, Jabalpur District, reflects that a person suffering from the disability stated in clause (a), (b), (c - cerebral palsy only), (d) and (e) of the RPwD Act, 2016, would not be able to perform the duties expected of a judge, *viz.*, going through pleadings of parties, reading case documents, recording oral evidence, assessing the demeanour of witnesses, facilitating compromise between parties, reading judicial pronouncements, conducting court proceedings, delivering judgments, and handling administrative responsibilities. In view of the same, it was felt that a person with blindness or low vision, deafness and hard of hearing, autism, cerebral palsy, intellectual disability, specific learning disability, mental illness, multiple disabilities would not be able to fulfil the duties and responsibilities required of a judge. Therefore, the action of the High Court is pursuant to the exemption granted by the State Government, in accordance with second proviso to section 34(1) of the RPwD Act, 2016; and the amendment in Rule 6A has a reasonable nexus with the object sought to be achieved, and is neither discriminatory nor arbitrary in any manner.
- 12.4. It was submitted by the learned counsel that pursuant to the interim order of this Court dated 21.03.2024, all visually impaired candidates, who secured the minimum qualifying marks in their respective categories at the preliminary examination, were permitted to participate in the main examinations conducted on

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30.03.2024 and 31.03.2024. That apart, this Court, in its order dated 07.11.2024 in S.M.W.(C)No.2 of 2024, issued guidelines to be followed by the High Courts for the selection of candidates belonging to PwD to the District Judiciary across the country. In compliance with the same, a proposal was placed before the Rule Making Committee to align the MPJS Rules, 1994.

- 12.5. Stating so, the learned counsel submitted that this Court may consider issuing necessary directions to the respondents permitting individuals with low vision or visual impairment to avail the benefits of the RPwD Act, 2016, provided that a medical assessment confirms the fact that their condition is unlikely to lead to blindness or significant vision loss within a reasonable time frame - typically 25 to 30 years from the time of recruitment - so as to ensure that they can work without difficulty throughout their tenure.

A.1 SUBMISSIONS OF DR. SANJAY JAIN – INTERVENOR

13. According to the learned counsel appearing for the intervenor, the Madhya Pradesh Judicial Service Examination (Amendment) Act, 2023 violates the right of the visually impaired persons to participate in the Judicial Service Examinations. Through various documents filed along with the intervening application, the learned counsel invited our attention to the recruitment rules for appointment of Judges from among PwDs prevailing across India. The learned counsel submitted that out of the 25 High Courts in India, only a few have made provisions for the reservation of PwDs, which are as follows:
 - (a) As far as the High Court of Delhi is concerned, the recruitment is governed by Delhi Judicial Service Rules, 1970. Rule 22 substituted in 2019 reads as under:

“22. Recruitment made to the service by direct recruitment shall be subject to provisions regarding reservation and other concessions (except age relaxation) for the Scheduled Castes, Scheduled Tribes and Persons with Disability candidates [suffering from any of the disabilities mentioned in sub section (1) of Section 34 of the Rights of Persons with Disabilities Act, 2016] as provided by law or orders issued by the Central Government from time to time.”

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- (b) As far as High Court of Madhya Pradesh is concerned, the MPHJS Rules, 2017 was enacted in supersession of the earlier rules governing the field. Rule 6(2) provides for 2% reservation in favour of *persons suffering from locomotor disabilities excluding those suffering from cerebral palsy*. Apart from reservation in appointments, the High Courts of Delhi and Madhya Pradesh provide for partial fee concessions and scribe facilities to candidates.
- (c) Rule 5 of Himachal Pradesh Judicial Services Rules, 2004, as amended by the Himachal Pradesh Judicial Service (2nd amendment) Rules, 2016 provides for a 3% reservation for PwDs, for the posts of Additional District Judge and Civil Judge.
- (d) In Andhra Pradesh, the reservation for PwDs is quantified such that out of every 100 posts, 54 are to be made on the basis of open competition, and 3 are to be earmarked for direct recruitment of physically handicapped persons. Apart from that, upper age limit for Persons with Locomotor Disability is determined as 45 years.
- (e) In Telangana, the quantum of reservation is same as followed in Andhra Pradesh and the same is provided only to persons who are Orthopaedically Handicapped, with no upper age relaxation provided.
- (f) The Orissa High Court also restricts reservation to Orthopaedically Handicapped persons however the percentage of reservation is only 1%.
- (g) The Chhattisgarh High Court adopts a superimposed conception of disability by providing that 2% of the posts shall be reserved for the physically handicapped persons having orthopaedic disabilities subject to a sub-rule stating that '*the person has good character and is of sound health and mind and is free from any disability which renders him unfit for such appointment*'.
- (h) In the State of Rajasthan, blind candidates are extended the benefit of reservation under the Rajasthan Judicial Services Rules, 2010. Rule 36 of the Rajasthan Employment of Disabled Persons Rules, 2000 mandates 3% reservation for disabled persons, out of which, 1% must be reserved for persons with low vision/blindness, hearing impairment or locomotor disability.

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- (i) The High Court of Madras *vide* Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 follows the PwD Act 1995 by providing 1% in each category separately reserved for blind, deaf and orthopaedically handicapped candidates and the appointment are made in turn and in the order of rotation as specified in Schedule III-A. The recruitment rules further stipulate that if no qualified and suitable candidate is available in a particular disability category, the vacancy may be filled by candidates from other disability categories. The Government of Tamil Nadu *vide* *Instructions to The Candidates Applying for The Post of District Judge (Entry Level) By Direct Recruitment in The Tamil Nadu State Judicial Service* dated 01.07.2023 has set out a comprehensive reservation policy for PwDs. The High Court also provides a complete fee waiver for the examination however, the notification is silent on the provision of a scribe facility. It explicitly denies upper age relaxation to PwDs. While recognising the post of District Judge to be one of the identified posts for PwDs, the recruitment notification adopts a superimposed conception of disability. The post of District Judge (Entry Level) has been identified as suitable for Hard of Hearing / One Arm / One Leg / Both Legs / Leprosy cured / Dwarfism / Acid Attack Victims (without the assistance of the scribe and with the assistive device) categories of Differently Abled Persons as per the Rules. The candidates who are able to perform the following physical activities alone are eligible as per Rule 10 of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, as amended in G.O.(Ms) No.234, Home (Courts-I) Department, dated 03.04.2018:
- (a) Work performed by Sitting – S
 - (b) Work performed by Standing - ST
 - (c) Work performed by Walking – W
 - (d) Work performed by Seeing – SE
 - (e) Work performed by Hearing - H
 - (f) Work performed by Reading and Writing – RW
 - (g) Communicating (Including verbal or nonverbal communication).

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- (j) As many as 11 High Courts *viz.*, Jammu and Kashmir, Calcutta, Jharkhand, Sikkim, Uttarakhand, Manipur, Meghalaya, Allahabad, Karnataka, Bombay and Tripura do not provide for any reservation or concession to PwDs in the recruitment of Judges.
- 13.1. The learned counsel further submitted that Section 32 of the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, corresponding to Section 33 of the RPwD Act 2016, required the State to identify posts in establishments that could be reserved for PwDs. Accordingly, an Expert Committee was set up on 30.12.2010 under the Chairmanship of the Additional Secretary, Ministry of Social Justice and Empowerment, Government of India to identify these posts. The Committee submitted its report in 2012, and the list of posts identified for them under Section 32 of the PwD Act, was published *vide* notification dated 29.07.2013. The notification groups various posts into 4 different categories with the post of Judges and Magistrates, specifically identified under serial number 466 in Group A.
- 13.2. It was also submitted that a Division Bench of the Delhi High Court by order dated 23.08.2006 in W.P.No.9840 of 2006, expressly considered the inclusion of blind persons for the post of Judges. In view of the same, persons with blind/low vision were made eligible for reservation to the posts of Judges/Magistrates in the Delhi Judicial Service. Subsequently, another Division Bench of the Delhi High Court in W.P No.983 of 2014 titled 'Nishant S. Diwan v. High Court of Delhi' decided on 25.03.2014, extended the benefit of Section 32 of the PwD Act, 1995, to the Delhi Higher Judicial Service also.
- 13.3. It was further submitted that the RPwD Act, 2016 replaced the PwD Act, 1995 with effect from 19.04.2017. Section 3(3) of the RPwD Act, 2016 prohibits discrimination on the ground of disability, while Section 20 specifically prohibits discrimination in matters of public employment. Furthermore, the RPwD Act, 2016 casts a duty on the State to "appoint" not less than 4 per cent of the total number of vacancies in the cadre strength in each group of posts from PwD. Commenting upon the sea

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change brought about by the RPwD Act, 2016, this Court in *Justice Sunanda Bhandare Foundation v. Union of India* vide order dated 25.04.2017 in I.A. No. 10 of 2015 in W.P. No.110 of 1998, made several observations relating to the PwD. Thus, according to the learned counsel, while right to live with dignity has been recognized as an integral facet of the right to life under Article 21 of the Constitution of India, non-adherence to the commitment of the State to protect the dignity of PwD under Section 3 of the RPwD Act, 2016 constitutes a serious violation of Fundamental Rights.

- 13.4. The learned counsel submitted that the impugned Rule i.e., clause 6A of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, creates a stereotype-based classification between persons with blindness and low vision and “persons with locomotor disability including leprosy cured, dwarfism, muscular dystrophy and acid attack victims” entitling the latter to the benefit of reservation and not the former. Similar to the provision at issue in *Anuj Garg v. Hotel Association of India*⁷ which created a classification between women and men, and this Court declared the same as unconstitutional, after having pointed out that *‘the impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role; the perspective thus arrived at is outmoded in content and shifting in means.’* Thus, according to the learned counsel, Clause 6A proceeds on the stereotypical assumption that the loss of sight cannot be offset by a PwD consequently perpetuating their oppression.
- 13.5. It was further submitted that the impugned rule is indicative of the ignorance to what the disabled, when provided appropriate support, could accomplish. Such ignorance cannot serve as a valid legal basis for sustaining the impugned rule. Moreover, even if the argument that a blind or low vision judicial officer in the Madhya Pradesh Judiciary would be unable to effectively discharge judicial functions, is accepted, the responsibility for this lies with the High Court administration itself. Rather than outrightly excluding an entire class of citizens from the

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reservation to which they are statutorily entitled, the appropriate response should have been to identify and address the specific challenges that hinder their full participation. Such an approach would encourage constructive solutions to remove or mitigate these barriers, paving the way for greater inclusivity in the future. In keeping with the shift from the medical model of disability to the social model, which this Court has repeatedly recognized, the focus must not be on how the disability itself creates obstacles but rather on how the societal / institutional barriers prevent full and equal participation of PwDs and how these barriers can be effectively dismantled.

- 13.6. The learned counsel also contended that the very same argument which is now being advanced by the Madhya Pradesh High Court was accepted by a Division Bench of the Madras High Court in *V. Surendra Mohan v. State of Tamil Nadu*,⁸ which was also affirmed by this Court in *V. Surendra Mohan v. State of Tamil Nadu*.⁹ However, in *Vikash Kumar v. Union Public Service Commission and others*,¹⁰ this Court overruled its previous judgment in *Surendra Mohan* (supra), wherein, the issue was relating to the decision of the Tamil Nadu Public Service Commission (“TNPSC”) in imposing a ceiling of 40-50% visual/hearing impairment as the eligibility criterion for appointment as a Civil Judge (Junior Division); the Appellant therein, who had visual impairment of 70%, was rendered ineligible by virtue of this ceiling; the Madras High Court had upheld this ceiling. When the matter was taken up by this Court, a two-judge bench affirmed the Madras High Court’s view by holding that a judicial officer in a State has to possess reasonable faculties of hearing, sight and speech in order to hear cases and write judgments and therefore, the impugned ceiling created a legitimate restriction. However, in the later judgment in *Vikash Kumar* (supra), this Court held that the ratio in *Surendra Mohan* was flawed as the said judgment had been delivered after India became a party to the United Nations Convention on the Rights of Persons with Disabilities

8 (2015) 4 Madras Law Journal 513

9 (2019) 4 SCC 237

10 (2021) 5 SCC 370

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(UNCRPD) and enacted the RPwD Act, 2016, both of which recognize the principle of Reasonable Accommodation (“RA”). This Court further held that the view in *Surendra Mohan* (supra) had failed to consider, whether the appellant would have been able to discharge the duties of a Civil Judge (Junior Division), after being provided the reasonable accommodation necessitated by his disability. This Court further held that RA, by definition, has an “exhortatory dimension” and requires going the extra mile to accommodate PwDs and an institution cannot refuse to provide RA on the ground that providing the same would cause avoidable complications. This Court also held that an RA analysis required “a consideration of the specific accommodations needed, the cost of providing them, reference to the efficacy with which other Judges with more than 40- 50% visual/hearing impairment in India and abroad can discharge judicial duties after being provided the necessary accommodations, amongst other factors”. Furthermore, in *Jeeja Ghosh and Ors. v. Union of India and Ors.*,¹¹ this Court recognized the principle of reasonable accommodation as being a component of the constitutional equality guarantee. Thus, according to the learned counsel, the impugned rule is violative of the principle of RA.

- 13.7. The learned counsel also pointed out that able-bodied judges routinely resort to the support of staff members to perform their obligations effectively. This includes court masters/stenographers, to whom judges dictate their orders and judgments. It also includes secretarial staff and judicial law clerks, who are responsible for assisting the judge with tasks such as management of files, making synoptic notes of the cases in that judge’s court and research assistance. At the highest, all that can be said is that a judge with a disability will need some extra human support. However, that does not, *ipso facto*, translate into greater loss of secrecy. Judges with disabilities must be trusted with the ability to exercise their discretion, to determine how they can discharge their functions in a way that helps preserve secrecy. Human support, coupled with technological solutions, can facilitate

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the effective participation of blind and low vision judges in our judicial system. Therefore, the notion that these judges cannot be effectively accommodated stems more from the mental block that this is beyond the realm of possibility than from the logistical challenges in getting this done.

13.8. Furthermore, the learned counsel submitted an interview series titled *'It Can Be Done'* featuring 21 interviews of legal professionals with disabilities from six jurisdictions, published by Rahul Bajaj, Anusha Reddy and Madhavi Singh, discussing RA for PwDs. Additionally, he also cited real world examples of successful judges with disabilities, few of whom are as follows:

- (i) T. Chakkaravarthy from Tamil Nadu, who was appointed as III Additional District Munsif in Coimbatore in the year 2009, lost his eyesight due to smallpox at age 4.
- (ii) Brahmananda Sharma, who in 2013 secured rank 83 in the Rajasthan Judicial Service Examinations and is presently working as a Civil Judge and Judicial Magistrate of Sarwar in the city of Ajmer District, lost his eyesight due to glaucoma at the age of 22.
- (iii) Ms. Helen Keller, the deaf-blind disability rights activist, was appointed for a nine-year term as a judge of the European Court of Human Rights in 2011. Since 2020, she has held the esteemed position of an international judge at the Constitutional Court of Bosnia and Herzegovina.

Despite their respective disabilities, there was no evidence to suggest that they were unable to perform their judicial duties effectively.

13.9. By way of reply to the submissions made on the side of the High Court of Madhya Pradesh, the learned counsel submitted that the approach of the High Court in seeking the opinion of the Dean Medical College, Jabalpur, reflects a closed-minded stance and an inherent bias against individuals who are blind or have low vision, are deaf or hard of hearing, or have cerebral palsy, autism, intellectual disabilities, specific learning disabilities, mental illness, or multiple disabilities. The learned counsel argued that the High Court, in effect, framed a leading question to elicit a predetermined response from

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the Dean. Consequently, the Dean rendered his opinion in a non-speaking order, devoid of any legally tenable rationale or justification. The assumption that blindness necessarily impairs the performance of judicial duties is rooted in the outdated Medical Model of disability, which conflates impairment with disability. While impairment pertains to a bodily or mental condition, disability arises from the interaction of impairment with external barriers, be they physical, socio-economic, political, or cultural. The denial or failure to provide reasonable accommodation effectively deprives individuals of an appropriate environment, amounting to a violation of Sections 3(2)(3), and (5) of the RPwD Act 2016 read with Articles 5(3) and 2 of UNCRPD. Exclusion of Blind Persons from Judiciary amounts to both *de jure* and *de facto* equality as the exclusion is not in furtherance of any legitimate State interest, rather it amounts to denial of representation of Blind persons in the Judiciary without following due process of Law.

- 13.10. The learned counsel further submitted that both Rule 6 A and the exemption sought by the High Court are unconstitutional as they violate Articles 14 and 16(1) read with Section 3 of the RPwD Act 2016. Rule 6 A is unconstitutional as it is innocent to the principle of RA and the exemption is vitiated as the State Commissioner for Disability has mechanically adopted the opinion of the Dean, Medical College Jabalpur, which did not account for and rather overlooks the decision of the Union Government through notification dated 04.01.2021 which identifies 'Posts of judges, Magistrates subordinate judiciary' as suitable for PwD including Blind Persons. This said classification is not based on intelligible differentia and does not have any nexus with the purpose sought to be achieved by the High Court. Besides, Rule 6 A is also in violation of *International Principles and Guidelines on Access to Justice for Persons with Disabilities 2019*. Para 7.1 of these guidelines reads, "The right to equal access to justice requires that persons with disabilities have the opportunity to participate directly in adjudicative processes and be involved in various roles in the administration of justice on an equal basis with others. States should ensure that persons with disabilities are able to act as judges, lawyers, prosecutors, witnesses,

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jurors, experts and court officials in the justice system without discrimination.” In this connection, para 7.2(b) also reads, “Remove all disability-related barriers, including laws, that prevent persons with disabilities from being judges or jurors or serving in any other justice related positions”. The learned counsel submitted that these guidelines are in direct response to and serve as a catalyst for Article 13 of the UNCPRD, which guarantees the right of PwDs to access justice. The learned counsel also invited the attention of this Court to the Vienna Convention on the Law of Treaties, 1969 (VCLT), which has assumed the status of customary law thereby, restraining the State from exercising power in contravention of its treaty obligations.

- 13.11. Finally, the learned counsel submitted that in order to foster justice for PwDs, Society must abandon negative ontology of disability. The quest for epistemology to eliminate inequality and to ameliorate the overall state of PwDs must be driven by the virtue of respect for difference. Besides, criteria for assessment of competence should not be influenced by Ableist and paternalistic considerations. To combat injustice and to promote inclusivity for PwDs, the idea of ‘Nothing about us without us’ has to be countenanced by assigning appropriate value to lived experiences of PwDs.

B. INRE: RECRUITMENT OF PwD CANDIDATES IN RAJASTHAN JUDICIAL SERVICE [S.M.W.(CIVIL) No.6 of 2024]

14. This *suo motu* writ petition arises from a letter sent by a visually challenged law student to the Hon’ble Chief Justice of India, complaining about lack of transparency in Judicial Service Examinations for PwD candidates in Rajasthan. According to him, while the Rajasthan Public Service Commission consistently mentions reserved posts for PwD in its examination notifications as mandated by Rule 10 of the Rajasthan Judicial Service Rules, 2010, the final results published by the High Court of Rajasthan fail to reflect any such reservations. It was further stated that the High Court of Rajasthan justifies this practice by citing ‘horizontal’ reservation for PwD candidates and claiming that separate cut-offs are unnecessary. However, it was submitted that reservations for women, widows, divorcees among others, which are horizontal

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reservations, are provided with separate cut-off marks. Therefore, the letter petitioner has requested this court to intervene in this matter and uphold justice and equality.

15. The respondents are the High Court of Rajasthan and the Government authorities. During the pendency of the aforesaid *suo motu* writ petition, one Rekha Sharma filed an application seeking permission of this Court to intervene in this matter. In her affidavit, she stated that on 09.04.2024 the High Court of Rajasthan at Jodhpur issued an advertisement for Civil Judge Cadre, wherein out of the total 222 vacancies, 9 posts were reserved for PwBD candidates. The applicant, who has a 40% permanent physical disability in her eyes, appeared in the preliminary examination and qualified for main examination under the category of PwBD. In the main examination, the applicant secured 109 marks out of 300, which is about 36.3% of the total marks and 40.5 marks out of 100 in Law Paper-I and II, which is about 40.5%.
16. The applicant further stated that as per Clause 23 of the advertisement, a PwBD candidate would be deemed to be eligible for the interview, if he has obtained minimum 30% marks in each Law Papers and 35% marks in aggregate in the Main Examination. In the case of the applicant, she had secured more than 30% marks in each Law Paper and 35% marks in aggregate in the Main Examination, however, she was not called for the interview. In the said circumstances, the applicant submitted that she is a necessary party and would be affected by the order, if any, passed in this case. Therefore, she has filed the present application.

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17. According to the appellant, he is a person with Benchmark Disability and suffers from Thalassemia, which results in physical weakness and fatigue and requires regular blood transfusions among other challenges. He, along with other candidates, challenged the amendment to the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 dated 23.06.2023 as well as the consequential advertisement dated 17.11.2023 issued by the High Court of Madhya Pradesh. The amendment proposed to substitute Rule 7, which prescribes the eligibility criteria to appear in the preliminary examination of the Madhya Pradesh Judicial

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Service examination i.e., in addition to basic requirements, such as citizenship of India, L.L.B. Degree *etc.*, a candidate must also meet the requirement of 3 years of practice at the bar or pass in all examinations in the first attempt, with an aggregate score of at least 70% in case of general and other backward class categories and 50% in case of SC/ ST categories. Further, the advertisement dated 17.11.2023 clarified that to qualify for the exemption from the 3-year practice requirement, a candidate must have passed all examinations without appearing in a supplementary examination or availing of the Allowed to Keep Terms (ATKT) provision.

18. The appellant secured an aggregate of 67% in his L.L.B. degree, but was unable to clear his first semester on the first attempt due to his disability, and as a result of the same, he had to appear for a supplementary examination under ATKT. Consequently, the amendment rendered him ineligible to participate in the judicial service examination. Therefore, he filed W.P.No.30465 of 2023 to set aside the said amendment and advertisement, insofar as it fails to provide any relaxation of the rules for PwD candidates. The High Court dismissed the writ petition filed by the appellant as well as other writ petitions, by order dated 01.04.2024 which is impugned herein.

Submissions of the learned counsel for the appellant

19. The learned counsel submitted that in order to be eligible to write the exam, a candidate must have either completed three years of practice or obtained more than 70% marks in the first attempt while doing their law course, in which case, they are exempt from the three compulsory years of practice. While this rule has been relaxed for candidates belonging to the SC and ST Category, no such relaxation has been given to the persons with disabilities. Resultantly, the appellant, who obtained an aggregate of 67% and suffers from 40% disability, is no longer eligible to participate in the selection process. Hence, the appellant challenged the amended rule on the ground that specially-abled candidates ought to have been given relaxation. However, the High Court upheld the amended rule and dismissed the batch of writ petitions. In doing so, it failed to examine the amendment in the context of persons with disabilities and treated the appellant's challenge on par with that of fully abled candidates.
- 19.1. According to the learned counsel, the uniform application of a cut-off rule of 70% marks in the first attempt to all candidates

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is arbitrary and irrational. Different colleges and universities have different marking schemes. Even the highest scoring candidates from top law schools, such as, Faculty of Law, Delhi University and National School of India University, Bengaluru, might not be able to meet this criterion. Applying this criterion to all candidates including persons with disabilities is unfair and arbitrary. As far as fully abled candidates are concerned, the consequence of not meeting this eligibility criterion is that they can acquire eligibility to participate in the selection process after completing three years of practice at the bar. However, this may not be a viable option for persons with disabilities. Most public places, including Court rooms and Court complexes are not disabled friendly, lacking infrastructural facilities making it difficult for persons with disabilities, particularly those with visual impairments, mobility impairments or other benchmark disabilities, to practice.

- 19.2. It was further submitted that for the appellant, who suffers from Thalassaemia, practicing in Courts would be physically strenuous and extremely challenging and therefore both limbs of the proviso to the eligibility criteria, i.e., passing all papers on the first attempt or securing an aggregate score of 70%, should not be made applicable to persons with disabilities. A physically disabled candidate may not be able to cope up with the physical levels of activity required by an advocate, such as walking, climbing stairs, carrying heavy files *etc.*, but may still have the mental ability to perform judicial duties, which do not require the same level of physical exertion. In the circumstances, the learned counsel submitted that insisting on 3-year practice is unfair in respect of candidates with benchmark disability, who may not have secured 70% in aggregate, or had to take a supplementary examination, especially if the latter resulted from their disability. The proviso is therefore discriminatory and arbitrary as it treats the unequals equally thereby violating Article 14 of the Constitution of India.
- 19.3. Therefore, it was contended that the amended Rule 7 and the consequential advertisement dated 17.11.2023 are arbitrary, unconstitutional and liable to be set aside, insofar as they do not provide a specific exemption for persons with disabilities and all persons with disabilities, who are otherwise qualified (such as,

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possessing L.L.B., *etc.*) should be permitted to appear in the preliminary examination, without insisting on the requirements of the proviso to Rule 7 of Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994.

Submissions of the learned counsel for High Court of Madhya Pradesh

20. According to the learned counsel, the Special Leave Petitions viz., SLP(C) No.9570 of 2024 titled 'Garima Khare v. High Court of Madhya Pradesh' and SLP (C) No.9885 of 2024 titled 'Tejas Tripathi v. State of Madhya Pradesh' filed against the same order impugned herein, have been dismissed by this Court *vide* Orders dated 26.04.2024 and 03.05.2024 respectively.
21. As far as the present appellant is concerned, the learned counsel submitted that the appellant participated in the selection process for the post of Civil Judge (Junior Division) for the year 2023, pursuant to the order of this Court dated 15.12.2023 in SLP(C) No.27337 of 2024 and cleared the preliminary examination. Thereafter, pursuant to the interim order dated 21.03.2024 passed by this court in S.M.W.(C) No.2 of 2024, the High Court of Madhya Pradesh *vide* order dated 21.03.2024 in WP (C) No.7452 of 2024 permitted all persons with disabilities candidates to participate in the main examination, provided they secured the minimum qualifying marks / minimum benchmark in their respective categories. Consequently, out of 35 PwD candidates, 31 candidates including the appellant herein, appeared in the main written examinations held on 30.03.2024 and 31.03.2024; and the result of the same for Civil Judge Junior Division (Entry Level), 2022, was declared on 10.05.2024. While so, this court by order dated 21.05.2024 in SMW(C) No.2 of 2024, directed that if any of these 31 candidates had secured the requisite minimum marks prescribed for reserved (SC/ST) candidates, they shall be called for interview, subject to the outcome of the proceedings. Accordingly, only one candidate, out of 31, became eligible for the interview, in terms of the order dated 21.05.2024. The appellant did not obtain the minimum benchmark for SC/ST category i.e., securing 45 marks in each paper, and thus was not called for interview. However, this court *vide* order dated 28.05.2024 in SLP(C) No.12179/2024, directed the appellant to appear for the interview for selection of Civil Judge (Jr. Division). Following this, the High Court of Madhya Pradesh preferred an

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application being I.A.No.135745 of 2024 seeking clarification of the order dated 28.05.2024 stating that the appellant could have been permitted to participate in the interview only if he had secured the minimum qualifying marks for reserved (SC/ST) candidates in the main examination i.e., 45% marks in each paper; there was no specific direction in the order dated 28.05.2024 with respect to minimum qualifying marks, except referring to its earlier order dated 21.05.2024 passed in S.M.W.(C).No.2 of 2024, and the application is pending consideration before this court. Thus, according to the learned counsel, since the appellant has not secured the aforesaid benchmark, allowing him to participate in interview will cause prejudice to other remaining specially-abled candidates and is also likely to cause anomaly for future selection.

D. ALOK SINGH VS. STATE OF MADHYA PRADESH AND OTHERS [SLP(C)No.7683 of 2024]

22. According to the appellant, he is a person with disability having 40% permanent low vision. It is his grievance that despite securing higher aggregate marks (written examination and interview) than two other selected candidates in the Physically handicapped category, the appellant was not selected for recruitment to the post of Civil Judge, Junior Division (Entry Level) in the 2021 Examination conducted by the Madhya Pradesh High Court, since in the interview he secured slightly lower qualifying marks. According to him, the requisite relaxations as mandated under the RPwD Act, 2016 were not applied, leading to the carrying forward of vacant seats for the persons with disabilities year after year, denying the appellant his rightful selection and also defeating the purpose of the RPwD Act, 2016. Therefore, he preferred W.P.No.11175 of 2023 assailing the final result dated 18.02.2023 of the Government of Madhya Pradesh insofar as it relates to his non-selection to the vacant post under the Unreserved Category of the Physically Handicapped Quota for the post of Civil Judge, Junior Division (Entry Level). The High Court dismissed the said writ petition, by judgment and order dated 11.01.2024 impugned herein.

Submissions of the counsel for the appellant:

23. The learned counsel submitted that the advertisement issued by the High Court of Madhya Pradesh for recruitment to the post of

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Civil Judge, Junior Division (Entry level) provided for a 4 percent quota for PwD under Section 34 of the RPwD Act, 2016. The appellant applied for the said post and having qualified in both the preliminary and main examinations, proceeded for the interview process. However, his name did not find place in the final result of the Notification dated 18.02.2023, despite the availability of vacant posts under the Physically Handicapped (PH) quota. According to the learned counsel, Section 34 of the RPwD Act, 2016 stipulates that vacant posts reserved for PwDs can be carried forward or filled by candidates from other categories in case of backlog only when no eligible PwD candidate is available. In the present case, the appellant secured 18.1 marks out of 50 in the interview – falling short by less than 2 marks from the minimum qualifying requirement of 20 marks (i.e., 40% of 50 marks). Therefore, it was submitted that the appellant should have been accommodated for appointment by respondent Nos.3 and 4, rather than the post being left vacant and carried forward.

23.1. The learned counsel further contended that in light of section 34 of the RPwD Act, 2016, the Central Government, *vide* its office memorandum dated 15.01.2018 issued directions for relaxation of standards of suitability in the case of PwBD candidates. Further, clause 11 of the said Office Memorandum reinforces this by stating that there should be relaxation of standards of suitability where sufficient number of candidates from benchmark disabilities are not available. In *Union of India v. National Federalism of the Blind*,¹² this Court in paragraphs 51, 52 and 54 observed that the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International Treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Further, this Court directed the authorities to issue orders modifying the Office Memorandum impugned therein and the subsequent Memorandums to compute the number of vacancies available for the disabled persons within a stipulated time and also directed implementation of the directions issued therein. It was further observed that non-

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compliance with the reservation scheme for persons with disabilities should be treated as an act of non-obedience, and the Nodal Officer of the concerned Department, Public Sector Undertaking, or Government Company is responsible for its strict implementation. In the present case, out of 7 seats, only 2 were filled. Therefore, the standards should have been relaxed to accommodate the appellant considering his disability and eligibility, and the action of the fourth respondent denying appointment to the appellant for the post of Civil Judge, Junior Division (Entry Level) based on the criteria of minimum cut-off marks in the interview under the PH quota under Unreserved Category, despite there being vacant posts, is perverse and arbitrary. It was specifically submitted that even though the appellant secured 237.85 marks eligible for selection, he was not selected, rather a candidate securing 218.78 marks (bearing Roll No.1028) was selected. If the appellant is not granted the benefit of relaxed standard, it would only be a sheer violation of Articles 14, 16 and 21 of the Constitution of India and would also defeat the purpose of RPwD Act, 2016 as the office memorandum was drafted only to meet the ends of the RPwD Act, 2016.

- 23.2. The learned counsel submitted that the impugned High Court order dated 11.01.2024 ought to have been set aside for failing to consider the entitlements under the RPwD Act, 2016. It was contended that the 2021 recruitment process violated the RPwD Act, 2016 and did not adequately provide for persons with disabilities. The impugned order, at paragraph 8, states that the appellant cannot avail the benefit of the RPwD Act, 2016 as his disability—low vision—would have no bearing on the interview, since he was merely required to answer questions. The learned counsel refuted this reasoning, relying on the decision in *Vikash Kumar (supra)*, wherein this Court held that Persons with disabilities can effectively discharge their duties if reasonable accommodations are made for them. The said judgment further emphasized the State's obligation to ensure their full and effective participation in society. Thus, it was argued that the High Court erred in holding that the appellant's disability had no impact on the interview and that he was not entitled to any relaxation.

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- 23.3. It was further submitted that the minimum qualifying marks should not be imposed in *viva voce* examination for entry level selection, such as, the post of Civil Judge. In support of the same, he placed reliance on the decisions of this Court in (i) *Dr.Kavita Khamboj v. High Court of Punjab and Haryana and others*,¹³ in which it was stated that ‘viva voce examination may not apply for entry-level junior officers’ and (ii) *Abhimeet Sinha and Others v. High Court of Judicature at Patna and others*,¹⁴ wherein, while upholding the distinction between recruitment at the entry-level and higher level, it was pointed out that ‘interview or viva voce examination alone may not be a holistic criteria to gauge eligibility’. Since the present recruitment pertains to Civil Judge, Junior Division (Entry Level), prescribing a minimum viva voce cut-off unfairly disadvantage candidates, leading to anomalies, such as, the appellant’s case, where despite a higher aggregate score, he was not selected. It was also submitted by the learned counsel that before 2018, there was no prescription of minimum marks for the viva voce component of the recruitment, which would indicate that due consideration was given to the perils of prescribing such stringent criteria for entry-level recruitment in the subordinate judiciary, particularly after the candidates have cleared the stages of the preliminary and written examinations only to falter at the last stage of viva.
- 23.4. It was ultimately submitted that presently, there are 6 seats from the PH category that have been carried forward from the 2021 recruitment and recruitment for the 2022 year has not been completed. In the 2022 main examination declared on 10.05.2024, no eligible candidate in PH category could secure qualifying marks to appear in the interview. Thus, the unfilled PH seats for the 2022 selection and those carried forward, will again be carried forward to the next year. Therefore, the appellant being entitled to the relaxation and fully meritorious, ought to be accommodated against these available PH seats as a Civil Judge.

13 (2024) 7 SCC 103 (3 Judge Bench)

14 (2024) 7 SCC 262

In Re: Recruitment of Visually Impaired in Judicial ServicesSubmissions of the learned counsel for High Court of Madhya Pradesh

24. According to the learned counsel, totally four posts were reserved for physically handicapped persons under the unreserved category. The appellant got qualified in the preliminary examination and was also successful in the main examinations. As per the selection criteria in the advertisement dated 21.12.2021, there was a requirement to secure minimum 40% marks in the interview to be eligible for consideration. Accordingly, a candidate securing 20 or more marks in the interview was alone eligible for consideration for appointment. Since the appellant secured 18.1 marks out of 50 in the interview, and thus was not considered for appointment.
- 24.1. It was further submitted that the contention of the appellant that he is entitled to the benefit of Section 34 of the RPwD Act, 2016 and also for relaxation in standard of suitability in terms of Clause 11 of the office memorandum dated 15.01.2018 issued by DoPT, was rejected by the High Court on the ground that the appellant failed to achieve the minimum qualifying marks in the interview; and that, he was well aware of the criteria for the process of selection before participation and hence, cannot be permitted to challenge the same, having remained unsuccessful. It was also submitted that fixation of minimum marks in the interview for a judicial officer has been upheld by this Court in *Kavita Kamboj (supra)* and *Abhimeet Sinha (supra)* and therefore, the only issue to be decided in this matter is, whether the appellant is entitled for relaxation of standards in suitability and if so, to what extent.
- 24.2. Referring to Section 34 of the RPwD Act, 2016 and Clause 11 of DoPT Circular dated 15.01.2018, the learned counsel submitted that firstly, the Office Memorandum is applicable only *qua* the posts and services of the Central Government and thus, not applicable in the present case and secondly, what is required to be borne in mind is that in any selection process there may be two benchmarks, first to become eligible for selection, and second would be a cut off arrived at based on the performance of the candidates. For selection, a candidate must not only secure the minimum marks, making him eligible for selection, but should also be above the cut off. In the case on hand, the appellant did not secure the required 20 marks

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in the interview for becoming eligible for selection and hence, his candidature cannot be considered for selection although he may have secured more marks than the selected candidates in the main examinations. The learned counsel also submitted that 1 candidate with locomotor disability and 1 candidate with low vision disability, i.e., total 2 candidates with disabilities in the unreserved category secured more than the minimum marks in the interview and were duly selected in the 2021 examination. Hence, the reliance placed by the appellant on Section 34 (2) of the RPwD Act, 2016 is also misplaced, inasmuch as mere availability of the appellant was not sufficient, and he was not eligible for selection, since he had not secured the minimum marks in the interview. Since other candidates with benchmark disabilities (including a candidate with low vision) were duly selected in the selection process, the appellant cannot claim any violation of Articles 14, 16 & 21. That apart, no separate cut-off/relaxation for PwBD candidates or any other class of candidates has been provided in the original advertisement dated 21.12.2021 or any of the circulars issued by the High Court with regard to selection procedure for Civil Judge, Junior Division (Entry Level). Even this Court, in its order dated 07.11.2024 passed in S.M.W (C) No.2 of 2024, issued guidelines to be followed by the High Courts for the selection of PwBD candidates to the District Judiciary across the country. Notably, even within these guidelines, this Court did not mandate the selection committee to lay down a separate benchmark or minimum cut-off for persons with disabilities' candidates at the interview stage. Therefore, the High Court has not committed any error in passing the impugned judgment which need not be interfered by this court.

E. MANVENDRA SINGH RATHORE AND ORS. VS. HIGH COURT OF RAJASTHAN AND ORS. [W.P.(C) No.484 OF 2024] & ALISHA KHAN VS. HIGH COURT OF RAJASTHAN AND ORS [W.P.(C) No.494 of 2024]

25. The Petitioners in the present set of writ petitions were candidates in the Rajasthan Judicial Service Examination, 2024. The Respondent No.1 *vide* notification dated 09.04.2024 announced the Civil Judge Cadre Direct Recruitment Examination, 2024, specifying 222

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vacancies across the years, i.e., 83 posts in 2022, 57 posts in 2023, and 82 posts in 2024 and a total of 9 posts were reserved for PwBD i.e., Blindness and Low Vision – 2 seats, Deaf and Hard of Hearing – 3 seats, Locomotor – 2 seats and Autism – 2 seats with horizontal reservation across total vacancies. Further, persons with disabilities' candidates needed to secure a minimum of 40% marks in the Preliminary Examination to qualify for the Main Examination. Clause 23(ii) of the notification stated that the number of candidates admitted to the Main Examination would be fifteen times the total vacancies (category-wise), ensuring that all candidates securing the same percentage as the last cut-off would be included. Therefore, applying the same, a total number of 135 PwD candidates across all vertical classifications ought to have been selected for the main examination. However, only 11 PwD candidates were selected for the main examinations. Moreover, the Respondent No.1 at the time of declaring the result *vide* notice dated 15.07.2024 for the preliminary examination, failed to identify any specific cut-off for PwD candidates, thus making it unascertainable to determine the lowest score at which a PwD candidate was declared qualified for the main examination. In contrast, cut-offs were clearly mentioned for other horizontal reservation categories such as women, divorced candidates, and widows. The petitioners assert that the omission by Respondent No.1 has left them and other PwD candidates without clarity regarding their selection for the Main Examination. Consequently, they have filed the present writ petitions seeking appropriate directions to Respondent No.1 to declare the results separately for PwD candidates and additionally specify the cut-off marks for their category. They contend that this failure violates their constitutional and statutory rights to a fair selection process and deprives them of a legitimate opportunity to be considered for the seats reserved for their category in the Rajasthan Judicial Service Examination, 2024.

Submissions on the side of the Petitioners:

26. It was submitted that instead of declaring a separate cut-off for PwD candidates, the first respondent applied the cut-off for the respective vertical category of each PwD candidate, essentially making PwD candidates compete with the candidates of their respective vertical categories, thereby defeating the very purpose of reservation. In fact,

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one of the candidates in the PwD category scored 72 marks in the Preliminary Examination but was not allowed to participate in the Main Examination as the cut-off for his vertical category, viz., General Category was 73 marks. Such an approach is in direct violation of Rule 11(4) of the Rights of Persons with Disabilities Rules, 2017 and Rule 5 of the Rajasthan Rights of Persons with Disabilities Rules, 2018, which categorically states that vacancies for PwD candidates would be maintained as a separate class. Therefore, the cut-off for PwD candidates against such “separate class” of vacancies ought to have been declared separately. In this regard, the learned counsel drew the attention of this Court to Clause 15(iii) of the Notification dated 09.04.2024 which states that selected PwD candidates would be adjusted to their respective categories.

26.1. The learned counsel further submitted that in an identical case in Writ Petition(C)No.710 of 2024 titled ‘Siddharth Sharma v. High Court of Rajasthan & Ors.’ this Court *vide* order dated 24.10.2024, allowed the petitioner therein (a blind PwD candidate) to appear in the interview round of the Rajasthan Judicial Service Examination, 2024, considering the fact that the selection process had not been undertaken properly. In view of the same, in another case in Writ Petition (C) Diary No.49998 of 2024 titled ‘Tishan Jangid v. High Court of Judicature for Rajasthan & Anr.’, this Court *vide* interim order dated 25.10.2024, allowed the petitioner therein (suffering from 60% locomotor disability) to participate in the interview round of the Rajasthan Judicial Service Examination, 2024. Thus, only a total of 2 candidates who obtained interim relief from this Court, got the opportunity to appear in the interview round and finally secured the seats against the vacancies as per the result dated 27.10.2024; and the remaining reserved seats for PwD candidates were converted to general category seats and were filled accordingly. The said appointment was also confirmed by this Court *vide* final order dated 07.11.2024. Due to the erroneous approach of the first respondent in the selection process from the stage of Preliminary Examination itself, sufficient and correct number of PwD candidates could not be selected in the subsequent rounds, thereby resulting in the non-fulfilment of the vacancies reserved for them. Consequently, individuals

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with vastly different abilities were compelled to compete under a single category, causing a substantial number of eligible PwD candidates to be eliminated from the selection process and since they were required to compete with fully-abled candidates in their respective vertical categories, the selection process was contrary to the spirit of the Constitution and the RPwD Act, 2016.

Submissions made by the learned counsel for Rajasthan High Court:

27. According to the learned counsel, the petitioners participated in the Civil Judge Cadre Direct Recruitment Examination, 2024 in pursuance of the advertisement dated 09.04.2024 and appeared in the Preliminary Examination conducted on 23.06.2024. Since the petitioners could not secure the qualifying marks for the main examinations, they have preferred the present writ petitions.
 - 27.1. Adding further, the learned counsel submitted that during the pendency of the Writ Petitions, Main examinations for the Civil Judge Cadre were conducted on 31.08.2024 and 01.09.2024 and the result of the same was declared on 01.10.2024. Thereafter, interview was conducted between 16.10.2024 and 26.10.2024 and the merit-wise list of 222 selected candidates was declared on 27.10.2024 with corrigendum on 07.11.2024.
 - 27.2. Continuing further, it was submitted that the reservation for PwD candidates is provided in Rule 10 of the Rajasthan Judicial Service Rules, 2010, as per which reservation of vacancies for persons with benchmark disabilities in the recruitment to the judicial service shall be in accordance with the rules of the State as amended from time to time. Hence, it was pointed out that the Notification dated 16.03.2024 introduced an amendment to the Rajasthan Judicial Service Rules, 2010, providing relaxation in age and a concession of 5% in marks in favour of persons with benchmark disabilities' candidates.
 - 27.3. It was further submitted that the issue regarding declaring separate cut-off marks for the persons with benchmark disabilities arose in the context of recruitment to Civil Judge Cadre in the State of Rajasthan in C.A.Nos.5051/2023 and 5052/2023 and this Court, *vide* judgment dated 21.08.2024 observed as follows:

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“15.... The respondents therefore in the notice declaring result of Preliminary Examination had rightly shown the cut off marks for all the categories except for the category of persons with benchmark disabilities. The Persons with benchmark disabilities for being adjusted in the category for which he or she had applied, had to secure the minimum cut off marks fixed for such category under which he or she had applied. Such fixation of cut off marks for other categories and non-fixation of cut off marks for the category of persons with benchmark disability could neither be said to be arbitrary nor violative of any of the Fundamental Rights of the appellants.”

Therefore, according to the learned counsel, no relief can be granted to the petitioners in the 2024 Civil Judge Cadre recruitment process.

Reply of the learned counsel for the petitioners

28. The learned counsel submitted that in the judgment dated 21.08.2024 rendered by this Court in Civil Appeal Nos.5051 of 2023 and 5052 of 2023, which has been relied upon by the first respondent, it was observed that non-fixation of cut off marks for persons with benchmark disabilities' candidates did not amount to a violation of fundamental rights. However, it is pertinent to note that the factual matrix in the aforementioned Civil Appeals was distinct, as no separate minimum qualifying marks had been allocated for persons with benchmark disabilities' candidates in that case. It was also submitted that subsequent to the aforesaid judgment, a three-judge bench of this Court has passed an order dated 07.11.2024 in S.M.W.(C)No.2 of 2024 laying down general guidelines for the governance of selection of candidates to the district judiciary across the country. Therefore, the learned counsel prayed for appropriate orders to be passed in these writ petitions.

IV. ISSUES THAT ARISE FOR CONSIDERATION

29. The questions that need to be addressed have been outlined in the pleadings and submissions made by the learned counsel. While discussing and analysing them, there may be overlapping or intersectional aspects, making it rather necessary to address

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all the issues collectively. However, for clarity and a structured understanding, conclusions will be stated issue-wise.

29.1. The following issues arise in the cases on hand:

- i. Whether visually impaired candidates can be said to be 'not suitable' for judicial service?
- ii. Whether the amendment made in Rule 6A of Madhya Pradesh Judicial Services (Recruitment and Conditions of Service) Rules, 1994 falls foul of the constitution?
- iii. Whether proviso to Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 violates the equality doctrine and the principle of reasonable accommodation?
- iv. Whether relaxation can be done in assessing the suitability of candidates when adequate PwD candidates are not available, after selection in their respective category?
- v. Whether a separate cut-off is to be maintained and selection conducted accordingly for visually impaired candidates?

V. DISCUSSION & ANALYSIS

30. Heard the learned counsel appearing for all the parties and perused the records.
31. The present set of cases raise important issues that touch upon the umbrella of rights in respect of the differently abled persons or PwD who have been afforded special protection under the law. More particularly, the main question that needs to be addressed relates to the suitability of visually impaired persons qualified with a degree in law to be appointed as judicial officers, apart from allied issues and ancillary principles as to the application of the equality doctrine read with the principle of reasonable accommodation as has been recognised and specifically provided for in the RPwD Act, 2016. This Court consciously uses the word "suitability" as against "eligibility" as it is a matter of fact that once a person completes a degree in law and acquires the other required educational qualifications as stipulated for appointment as a judicial officer, he/she is eligible for appointment to the said post. However, what has been raised here

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relates to the validity of the rules that touch upon the suitability of the candidates to the said post. This in our opinion, requires a detailed discussion and finding in order that such doubts relating to suitability may not be raised in the future and the statutory rules in this regard be framed and modulated accordingly.

32. The crux of the issue in the cases therefore is, on the one hand, the validity of the Rules that bar visually impaired persons from participating in the selection of judicial service both directly and indirectly, and on the other hand, the non-selection of the candidates (where they were permitted to participate) to the vacant posts under the Unreserved Category of the Physically Handicapped Quota for the post of Civil Judge, Junior Division (Entry Level).

A. EXISTING CONSTITUTIONAL FRAMEWORK & NEED FOR ELEVATING RIGHT AGAINST DISABILITY BASED DISCRIMINATION TO A FUNDAMENTAL RIGHT

33. If there is one principle that forms part of the bedrock of the Constitution of India, it is 'inclusivity' on which also rests the doctrine of equality, which, apart from being one of the ideals set out in the preamble to our Constitution, has been specifically stated in Articles 14, 15 and 16 under the Fundamental Rights Chapter, and forms part of the basic structure of our Constitution. Furthermore, the other provisions of the Constitution, more importantly the golden triangle of Articles 14, 19 and 21 would take within their sweep every right that forms part of the Right to life which certainly and most importantly includes the right to live with dignity.
34. While Article 15 of the Constitution specifically bars the State from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth, or any of them, the specific ground of 'disability' is conspicuous by its absence. Though the anti-discrimination and non-discrimination clauses under Article 15 were discussed at length in the Constituent Assembly, 'disability' as a ground for non-discrimination was not included in Article 15. A constitutional amendment of Article 15 to address this glaring omission has been a long-standing demand of the disability rights movement. This demand was also affirmed by the United Nations Committee on the Rights of Persons with Disabilities in its concluding observations in 2019 while reviewing India's compliance with the United Nations

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Convention on the Rights of Persons with Disabilities.¹⁵ Though Article 15 contains a strong anti-discrimination clause, the fact that it specifies other grounds while not mentioning ‘disability’ as a ground has remained a stumbling block for bringing in legislation, and the first legislation in this regard was the Persons with disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995. The preamble to the Act would make it clear that this Act was passed pursuant to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, adopted at the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993 - 2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992.

35. Thereafter, the United Nations Convention on the Rights of Persons with Disabilities was adopted in 2006 to which India is a signatory. Pursuant thereto, the RPwD Act, 2016 came to be passed. While it is true that the RPwD Act, 2016 came to be passed as part of fulfilment of India’s obligations under the treaty implementation regime and was enacted by the Parliament under Article 253 of the Constitution, the fact that ‘disability’ as a ground is not specifically stated under Article 15 of the Constitution, would not mean that the same is not part of the constitutional obligations of the State. The provisions under section 32 and section 34 of the RPwD Act, 2016 would also be a clear indication that similar to the State’s obligations to provide for special protection including in the form of reservation for socially and educationally backward classes in educational institutions as well as in employment as stated in Articles 15 and 16 of the Constitution, the State has taken up the obligation of providing similar protection including reservation in respect of PwD. In view of the same, it can now be said that it is high time that an anti-discrimination clause be included in the Constitution with a specific provision that *the State shall not discriminate on the grounds of mental or physical disability* in line with the principles as stated in the RPwD Act, 2016. At this juncture, it is relevant to point out that as many as 70 countries out of 189 contain ‘disability’ as one of the grounds mentioned specifically in the constitutional provisions containing the anti-discrimination clause.

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36. In this context, it is also relevant to mention that the RPwD Act, 2016 today has acquired the status of a 'super statute'. The term 'super statute' was first applied in 2001 by William N. Eskridge and John A. Ferejohn to characterise an ordinary statute that not only reveals intention but also establishes a new normative or institutional framework in the public culture and has a broad effect on the law. As a result, such statutes have a quasi-constitutional significance that exceed its former status as a statute. In the words of the authors, "*these super-statutes penetrate the public normative and institutional and institutional culture*".¹⁶ Applying this test, it can safely be said that the RPwD Act, 2016 has acquired the status equal to that of a 'super-statute' and hence, contains the ingredients of a quasi-constitutional law.

B. INTERNATIONAL DISABILITY JURISPRUDENCE, DOCUMENTS AND COMMITMENT

37. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of PwD, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to PwD represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of PwD within the category of universal human rights.
38. It would be apposite to extract some of the provisions contained in United Nations Convention on Rights of Persons with Disabilities,

¹⁶ William N. Eskridge Jr and John A. Ferejohn, super-statutes, 50 duke law journal 1215-1276 (2001)

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2007, where all member states and signatories, including India, are bound by, and they are as under:

PREAMBLE

b. Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind

c. Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination....”

ARTICLE 1 – PURPOSE

“The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

ARTICLE 5 – EQUALITY AND NON-DISCRIMINATION

States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

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ARTICLE 9 – ACCESSIBILITY

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.

ARTICLE 13 – ACCESS TO JUSTICE

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

ARTICLE 14 – LIBERTY AND SECURITY OF THE PERSON

States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a. Enjoy the right to liberty and security of person;*
- b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.*

ARTICLE 21 – FREEDOM OF EXPRESSION AND OPINION, AND ACCESS TO INFORMATION

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

In Re: Recruitment of Visually Impaired in Judicial Services**ARTICLE 24 – EDUCATION**

States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning.

ARTICLE 27 – WORK AND EMPLOYMENT

To achieve de facto equality in terms of the Convention, States parties must ensure that there is no discrimination on the grounds of disability in connection to work and employment. In order to ensure reasonable accommodation as laid out in Article 5(3) and to achieve or accelerate de facto equality in the work environment as laid out in Article 5(4), States parties should:

(a) Facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market, and in the meantime also ensure the immediate applicability of labour rights to those settings;

(b) Promote the right to supported employment, including to work assistance, job coaching and vocational qualification programmes; protect the rights of workers with disabilities; and ensure the right to freely chosen employment;

(c) Ensure that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start work;

(d) Expressly recognize the denial of reasonable accommodation as discrimination and prohibit multiple and intersectional discrimination, and harassment;

(e) Ensure proper transition into and out of employment for persons with disabilities in a non-discriminatory manner. States parties are obliged to ensure equal and effective access to benefits and entitlements, such as retirement or unemployment benefits. Such entitlements must not be infringed upon by exclusion from employment, thereby further exacerbating the situation of exclusion;

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(f) Promote work in inclusive and accessible, safe and healthy working environments in the public and private sectors;

(g) Ensure that persons with disabilities enjoy equal opportunities regarding career advancement opportunities through regular assessment meetings with their managers and by defining the objectives to be achieved, as a part of a comprehensive strategy;

(h) Ensure access to training, retraining and education, including vocational training and capacity-building for employees with disabilities, and provide training on the employment of persons with disabilities and reasonable accommodation for employers, representative organizations of employees and employers, unions and competent authorities;

(i) Work towards universally applicable occupational health and safety measures for persons with disabilities, including occupational safety and health regulations that are non-discriminatory and inclusive of persons with disabilities;

(j) Recognize the right of persons with disabilities to have access to trade and labor union.

ARTICLE 30 – PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT

States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities enjoy access to cultural materials in accessible formats.

ARTICLE 32 – INTERNATIONAL COOPERATION

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant

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international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

a. Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

b. Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

c. Facilitating cooperation in research and access to scientific and technical knowledge;

d. Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

Thus, this convention is intended to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. It also aims to promote respect for their inherent dignity and it combines civil and political rights provided by anti-discrimination legislation along with an array of social, cultural, and economic measures to fulfil the guarantee of equality.

C. RPwD Act, 2016 - PROVISIONS AND GUARANTEES

39. The RPwD Act 2016 seeks to operationalize and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance. The important provisions of the RPwD Act, 2016 are as follows:

SECTION 2

(C) “**barrier**” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;

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(h) “**discrimination**” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

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

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

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

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

SECTION 3

“**Equality and non-discrimination-** (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. (2) The appropriate Government shall take steps to utilise the capacity

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of persons with disabilities by providing appropriate environment”.

SECTION 5

Community life-*(1) The persons with disabilities shall have the right to live in the community.*

SECTION 6

Protection from cruelty and inhuman treatment-*(1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.*

SECTION 12

Access to justice-*(1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.*

SECTION 16

Duty of educational institutions-*The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall— (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;*

SECTION 20

Non-discrimination in employment-*(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:*

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

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(3) No promotion shall be denied to a person merely on the ground of disability.

SECTION 17

Specific measures to promote and facilitate inclusive education.

The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

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(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required.

SECTION 20

Non-discrimination in employment- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability

SECTION 21

Equal opportunity policy. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

SECTION 24

Social security- (1) The appropriate Government shall within the limit of its economic capacity and development

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formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community.

SECTION 32

Reservation in higher educational institutions:

(1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

SECTION 33

Identification of posts for reservation: *The appropriate Government shall—*

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

SECTION 34

Reservation- *(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent.*

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for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities.

As it can be seen, the RPwD Act, 2016 marks a significant legislative shift by expanding the rights of PwDs and broadening the recognized categories of disabilities. It ensures equality and non-discrimination, mandates reasonable accommodation, and prohibits barriers to community life, education, employment, and access to justice. It also provides for social security measures, inclusive education, reservations in higher education and employment, and protection from cruelty and exploitation. More importantly, it imposes clear responsibilities on the State and other stakeholders in this regard.

D. JUDICIAL APPROACH - PROGRESS MADE THUS FAR

40. The following judgments of this Court would illustrate the progress made thus far on the judicial front, including elucidation of the concept of reasonable accommodation:

- (i) In *Union of India & Ors v. National federation of Blind & Ors*,¹⁷ this Court has recognized that employment opportunities play an instrumental role in empowering PwD. Justice P.Sathasivam (as he then was) observed thus:

“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of

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job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.”

- (ii) In *Jeeja Ghosh (supra)*, it has been noted by this Court that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of PwD, to pave the way for substantive equality. Justice A.K. Sikri stated in the said judgement as follows:

*“40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. **Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”***

- (iii) In *Vikash Kumar (supra)*, it has been held as follows:

“35. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable

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accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination.”

“44. The principle of reasonable accommodation. Individual dignity undergirds the RPwD Act, 2016. Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act, 2016 travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed

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event in providing a legal foundation for equality of opportunity to the disabled.

45. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realization of these ends."

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

49. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must

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also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable accommodation requires the policy makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations. Reasonable accommodation cannot be construed in a way that denies to each disabled person the customization she contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable accommodation requires the policy makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations.

- (iv) In *Justice Sunanda Bhandare Foundation v. Union of India*,¹⁸ it has been held as under:

“9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic...”

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- (v) *In Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors*,¹⁹ this Court has held as under:

“The fundamental right to life which is the most precious human right and which forms the ark of all other rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of human person.”

Right to dignity has been particularly recognized in this judgment as one of the facets of right to life: “every act which offends against or impairs human indignity would constitute deprivation pro tanto of this right to live.” This expansive understanding of right to life assumes greater proportions in respect of persons with visual impairments, who need a higher number of compensative skill enhancing facilities in order to go about their daily lives without suffering the indignity of being generally perceived as being dependent and helpless.

- (vi) In *Rajive Raturi v. Union of India*,²⁰ Justice A.K. Sikhri, held as follows:

“26. The States and the Union Territories must realize that under the 2016 Act their responsibilities have grown and they are required to actualize the purpose of the Act, for there is an accent on many a sphere with regard to the rights of the disabilities. When the law is so concerned for the disabled persons and makes provision, it is the obligation of the law executing authorities to give effect to the same in quite promptitude. The steps taken in this regard shall be concretely stated in the compliance report within the time stipulated. When we are directing the States, a duty is cast also on the States and its

19 (1981) 1 SCC 608

20 AIRONLINE 2018 SC 544

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authorities to see that the statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms, associations and establishments, institutions, are scrupulously followed. The State Governments shall take immediate steps to comply with the requirements of the 2016 Act and file the compliance report so that this Court can appreciate the progress made.”

- (vii) In *Ravinder Kumar Dhariwal v. Union of India*²¹, this Court has observed as under:

“77. Since disability is a social construct dependent on the interplay between mental impairment with barriers such as social, economic and historical among other factors, the one-size-fits-all approach can never be used to identify the disability of a person. Disability is not universal but is an individualistic conception based on the impairment that a person has along with the barriers that they face. Since the barriers that every person faces are personal to their surroundings — interpersonal and structural, general observations on “how a person ought to have behaved” cannot be made.

78. The legislative framework and decisions of this Court on the impact of “barriers” or circumstances on the mental health of an individual have been discussed above. When the interaction with the barriers causes a person to feel “disabled”, it is extremely important to not stigmatise or discriminate against persons having mental health issues or any other form of disability. Such discrimination would only further entrench the feeling of being “disabled”.

...

82. CRPD is an international human rights treaty of the United Nations which is intended to promote, protect and ensure the full and equal enjoyment of

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all human rights and fundamental freedoms by all persons with disabilities. [Article 1, CRPD 2006.] It also aims to promote respect for their inherent dignity. [Article 1, CRPD 2006.] It is a holistic treaty that combines civil and political rights provided by anti-discrimination legislation along with an array of social, cultural, and economic measures to fulfil the guarantee of equality. [Jayna Kothari, "The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India", 45(18) Economic and Political Weekly 65-72 (2010).] India is a signatory to CRPD and has ratified it on 1-10-2007. Article 1 of the CRPD provides an inclusive definition of persons with disabilities. It recognises that disability is an evolving concept and that disability results from the interaction of persons with impairments with attitudinal and environmental barriers that hinder their full participation in society [Preamble, CRPD 2006]. Article 1 states thus:

"1. ... Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." In light of Section 20(4) and the general guarantee of reasonable accommodation that accrues to persons with disabilities, the appellant is entitled to be reassigned to a suitable post having the same pay scale and benefits. The CRPF may choose to assign him a post taking into consideration his current mental health condition. The suitability of the post is to be examined based on an individualised assessment of the reasonable accommodation that the appellant needs. The authorities can ensure that the post to which the appellant is accommodated does not entail handling

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or control over firearms or equipment which can pose a danger to himself or to others in or around the workplace.”

Thus, these rulings underscore the principle that reasonable accommodation is not a discretionary measure, but a fundamental right integral to achieving substantive equality for PwD, forming part of the right to dignity as guaranteed under Article 21 of the Constitution. It is also worthy to mention that the 73rd and 74th Amendments of the Constitution of India made it a Constitutional obligation for the State to make provisions for safeguarding the interest of the weaker section of the society, including ‘handicapped and mentally retarded’. Further, it is a well-established principle that the State has an obligation to apply the Directive Principles of securing a social order in promotion of the welfare of the people. The importance of Article 41 in the Constitutional scheme can be measured by this Court’s judgment in *Jacob M. Puthuparambil & others v. Kerala Water Authority and others*²², wherein, it was held that ‘a Court should interpret an Act so as to advance Article 41’. Therefore, Article 41 of the Constitution which is in the nature of a Directive Principle, imposes a duty on the State to make an effective provision, *inter alia*, for public assistance to disabled persons.

E. RIGHTS-BASED APPROACH

41. The spirit of the RPwD Act, 2016 would reveal that the principle of reasonable accommodation is a concept that not only relates to affording equal opportunity to the PwD but also it goes further as to ensuring the dignity of the individual by driving home the message that the assessment of a person’s suitability, capacity and capability is not to be tested and measured by medical or clinical assessment of the same but must be assessed after providing reasonable accommodation and an enabling atmosphere. The judgement of this Court in *Vikash Kumar* (supra) assumes increased significance in this regard. This Court in this case has expounded in detail the principle of reasonable accommodation by invoking the social model of disability. In response to the judgement, the Department of Disability Affairs, Government of India has notified guidelines for

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availing of scribes by all persons with specified disabilities to appear in written examinations thereby widening the ambit of its earlier guidelines issued in 2018 confining this privilege only to persons with benchmark disabilities. Very importantly, while overruling the earlier decision in *Surendra Mohan (supra)*, this Court has held that any decision which is innocent to the principle of reasonable accommodation would amount to disability-based discrimination and is also in deep tension with the ideal of inclusive equality. After the judgement which has focused on a rights-based model and rejection of the medicalisation of the disability in order to assess the suitability and capability of PwD, the “suspicion ridden medical expertise driven model”,²³ is directly opposed to the principle as laid down by this court and also the spirit of the RPwD Act, 2016.

42. In the present case also, the opinion of the medical expert is driven only by clinical assessment and suspicion. On the basis of the same, the impugned rule, viz., clause 6A of the Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 specifically excluding visually impaired candidates from participation for selection as judicial officers, came to be substituted by way of amendment, which is against the guarantee of substantive equality embodied in the super-statute, i.e., the RPwD Act, 2016, and the principle of reasonable accommodation as set out therein, pursuant to India’s international obligation. The rights-based model of disability has now become part of the national and normative structure of anti-discrimination regime of this country. The impugned rule, which is based on the medical report of a doctor, in the light of the foregoing analysis, cannot have any place in the disability jurisprudence that is ever evolving in a country like ours. Such conclusions based merely on a clinical assessment of disability, innocent of the principle of reasonable accommodation, cannot be said to be a fair and proper assessment of the capability of judicial officers with disabilities while participating in the selection to the post of judicial officers. It is relevant to point out here that once a person has been permitted to the degree of law course, all other opportunities, whether in the form of practice as well as appointments, assignments whether public or private, would automatically make them eligible

23 Sandra Fredman, “substantive Equality Revisited” Vol.14(3), International journal of constitutional law (2016) 712-738

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to participate for selection to the same. The principle of legitimate expectation also stands attracted to this case as part of the aspect of non-arbitrariness while furthering the equality doctrine. Here it also relevant to mention that UNCRPD Committee in its General Comment No.6 on Article 5, equality and non-discrimination, has developed the idea of inclusive/transformational equality. The relevant portion of the committee's observation reads as follows:

..... *"Inclusive equality corresponds to a new model of disability, the human rights model of disability, which leaves a charity, welfare, and medical approaches behind and is based on the assumption that disability is not primarily a medical issue. Rather disability is a social construct and impairment must not be taken as legitimate ground for the denial or restriction of human rights".*

India is a signatory to this convention and hence, under an obligation to fulfil this object of inclusive equality. In view thereof, visually impaired candidates cannot be said to be 'not suitable' for judicial service and Rule 6A of the Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 falls foul of the Constitution.

F. INDIRECT DISCRIMINATION

43. In the context of the Rule viz., Proviso to Rule 7 of the Madhya Pradesh Judicial Service Rules, though it was challenged by PwD as well as able-bodied persons, it has been placed on record that the order under appeal relates to scrutiny of the said Rule only *vis-a-vis* the general principles of law while not examining the same in the context of the disability jurisprudence. In the present case, the said rule is only being dealt with in the context of the challenge made to it by PwD more particularly, visually impaired candidates, who have qualified themselves as lawyers and are aspiring for the post of judicial officers. Therefore, the principle of indirect discrimination assumes significance. Briefly put, the principle of indirect discrimination has its basis in the fundamental principle that unequals cannot be treated equally, and sometimes equal treatment may lead to unequal results. The counsel for the appellants pointed out the difficulties that are practically faced by PwD, which would go to prove that the three-year practice as well as the alternative rule of securing 70% in the first attempt of the examinations, though seems fair at the first blush,

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and on the face of it, is truly discriminatory in operation. At this juncture, it is pertinent to point out that the relaxation was granted to SC/ST candidates in relation to the aggregate marks required for obtaining a law degree. In *Col. Nitisha v. Union of India*,²⁴ Justice D.Y. Chandrachud (as he then was), while noting that the jurisprudence relating to indirect discrimination in India is still at a nascent stage, observed that indirect discrimination is caused by facially neutral criteria by not taking into consideration, the underlying effects of a provision, practice or criterion. While the observations made in the said case relate to gender-based discrimination, they are still relevant on principle here and hence, quoted as follows:

“We must recognise here that the structures of our society have been created by males and for males. As a result certain structures that may seem to be the “norm” and appear to be harmless, are a reflection of the insidious patriarchal system. These adjustments and amendments however, are not concessions being granted to a set of persons but instead are the wrongs being remedied to obliterate years of suppression of opportunities which should have been granted to women....Facially equal application of laws to unequal parties is a farce, when the law is structured to cater to a male standpoint”.

The observations made by this Court as stated above, can equally be applied to PwD candidates.

44. The judgment in *Navtej Singh Johar and Ors. v. Union of India (UOI) and Ors.*²⁵ also explains the concept of indirect discrimination with judgments across the world, while dealing with the validity of a legal provision which though appears facially neutral, has the effect of discriminating against a particular group of citizens or particular identities. The relevant portion of the judgment is extracted hereunder for reference:

“E 1- Facial Neutrality: Through the Looking Glass

441. *The moral belief which underlies Section 377 is that sexual activities which do not result in procreation*

²⁴ 2021 SCC online SC 261

²⁵ (06.09.2018 - SC): MANU/SC/0947/2018 : (2018) 10 SCC 1

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are against the 'order of nature' and ought to be criminalized Under Section 377. The intervenors submit that Section 377, criminalizes anal and oral sex by heterosexual couples as well. Hence, it is urged that Section 377 applies equally to all conduct against the 'order of nature', irrespective of sexual orientation. This submission is incorrect. In NALSA this Court held that Section 377, though associated with specific sexual acts, highlights certain identities. In Naz, the Delhi High Court demonstrated effectively how Section 377 though facially neutral in its application to certain acts, targets specific communities in terms of its impact:

Section 377 Indian Penal Code is facially neutral and it apparently targets not identities but acts, but in its operation, it does end up unfairly targeting a particular community. The fact is that these sexual acts which are criminalised are associated more closely with one class of persons, namely, the homosexuals as a class. Section 377 Indian Penal Code has the effect of viewing all gay men as criminals. When everything associated with homosexuality is treated as bent, queer, repugnant, the whole gay and lesbian community is marked with deviance and perversity. They are subject to extensive prejudice because what they are or what they are perceived to be, not because of what they do. The result is that a significant group of the population is, because of its sexual nonconformity, persecuted, marginalised and turned in on itself.

To this end, it chronicled the experiences of the victims of Section 377, relying on the extensive records and affidavits submitted by the Petitioners that brought to fore instances of custodial rape and torture, social boycott, degrading and inhuman treatment and incarceration. The court concluded that while Section 377 criminalized conduct, it created a systemic pattern of disadvantage, exclusion and indignity for the LGBT community, and for individuals who indulge in non-heterosexual conduct.

442. *Jurisprudence across national frontiers supports the principle that facially neutral action by the State may have a*

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disproportionate impact upon a particular class. In Europe, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 defines 'indirect discrimination' as: "where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary."

443. *In Griggs v. Duke Power Co. MANU/USSC/0066/1971: 401 U.S. 424 (1971), the US Supreme Court, whilst recognizing that African-Americans received sub-standard education due to segregated schools, opined that the requirement of an aptitude/intelligence test disproportionately affected African-American candidates. The Court held that "The Civil Rights Act" proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."*

444. *In Bilka-Kaufhaus GmbH v. Karin Weber von Hartz (1986) ECR 1607, the European Court of Justice held that denying pensions to part-time employees is more likely to affect women, as women were more likely to take up part-time jobs. The Court noted:*

Article 119 of the EEC Treaty is infringed by a department store company which excludes part-time employees from its occupational pension scheme, where that exclusion affects a far greater number of women than men, unless the undertaking shows that the exclusion is based on objectively justified factors unrelated to any discrimination on grounds of sex.

445. *The Canadian Supreme Court endorsed the notion of a disparate impact where an action has a disproportionate impact on a class of persons. In Andrews v. Law Society of British Columbia MANU/SCCN/0036/1989: (1989) 1 SCR 143, the Court noted:*

Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal

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characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.

Thus, when an action has "the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society", it would be suspect.

446. *In City Council of Pretoria v. Walker MANU/ SACC/0001/1998: (1998) 3 BCLR 257, the Constitutional Court of South Africa observed:*

The concept of indirect discrimination ... was developed precisely to deal with situations where discrimination lay disguised behind apparently neutral criteria or where persons already adversely hit by patterns of historic subordination had their disadvantage entrenched or intensified by the impact of measures not overtly intended to prejudice them.

In many cases, particularly those in which indirect discrimination is alleged, the protective purpose would be defeated if the persons complaining of discrimination had to prove not only that they were unfairly discriminated against but also that the unfair discrimination was intentional. This problem would be particularly acute in cases of indirect discrimination where there is almost always some purpose other than a discriminatory purpose involved in the conduct or action to which objection is taken."

45. Some other decisions relating to Indirect Discrimination in the context of proviso to Rule 7 of the Madhya Pradesh Judicial Service Rules, may also be noted to understand the concept deeper and they are as follows:

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- (i) *Walter E. Washington, etc., et. al. v. Alfred E. Davis et al.*,²⁶ wherein, the case involves the validity of a qualifying test administered to applicants, who are two negro police officers, alleging that the promotion policies of the Department were racially discriminatory, which is violative of the rights under the due process clause of the Fifth Amendment to the United States Constitution. The test was sustained by the District Court, but invalidated by the Court of Appeals. The Supreme Court of United States was in agreement with the District Court and accordingly, reversed the judgment of the Court of appeals. While doing so, it was observed that “*a rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white*”.
- (ii) *Council Directive 2000/78/EC (February 27, 2000)* defines the concept of “indirect discrimination”. In *S. Coleman v. Attridge Law and Steve Law*,²⁷ it was held by the Grand Chamber, UK that “*the prohibition of harassment laid down by the provisions of the Directive 2000/78 is not limited only to people who are themselves disabled; where it is established that the unwanted conduct amounting to harassment, which is suffered by an employee, who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the provisions to the prohibition of harassment*”.
- (iii) The South African Constitutional Court in *City Council of Pretoria v. Walker*,²⁸ while interpreting and enforcing the Constitution, has held that “*the concept of indirect discrimination... was developed precisely to deal with situations where discrimination lay disguised behind apparently neutral criteria or where persons*

26 426 U.S. 229

27 European Court Reports 2008 1-05603

28 SACC – 1998 (2) SA 363

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*already adversely hit by patterns of historic subordination had their disadvantage entrenched or intensified by the impact of measures not overtly intended to prejudice them”. ... “In many cases, particularly those in which indirect discrimination is alleged, the protective purpose would be defeated if the persons complaining of discrimination had to prove not only that they were unfairly discriminated against but also that the unfair discrimination was intentional. This problem would be particularly acute in cases of indirect discrimination where there is almost always some purpose other than a discriminatory purpose involved in the conduct or action to which objection is taken”. The same was referred to by this Court in *Nitisha* (*supra*) and the Delhi High Court in *Madhu v. Northern Railway*.²⁹*

- (iv) In a recent decision in *Mahlangu v. Minister of Labour*,³⁰ the South African Constitutional Court (SACC) had to rule on the constitutionality of Section 1(xix)(v) of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. This provision explicitly excluded domestic workers from the definition of employees under the Act. This had the consequence of depriving domestic workers access to the social security benefits contained in the legislation, in the event of injury, disablement and death. The SACC, *inter alia*, rendered a finding that the provision was hit by the constitutional prohibition on indirect discrimination.
- (v) In *Ontario Human Rights Commission v. Simpsons - Sears*,³¹ the Canadian Supreme Court expounded the doctrine of indirect discrimination, while entertaining a challenge under Section 4(1)(g) of the Ontario Human Rights Code.³² In analyzing whether a work policy mandating inflexible working hours on Friday evenings and Saturdays indirectly discriminated against the appellant on the basis of her creed, in that her religion required her to strictly observe the Sabbath, the Court noted as follows:

²⁹ Order dated 17.01.2018 in LPA.640/2017

³⁰ [2020] ZACC 24

³¹ “Ontario HRC”, MANU/SCCN/0009/1985

³² Section 4(1)(g) of the Ontario Human Rights Code prohibited discrimination against an employee with regard to any term or condition of employment on the basis of race, creed, colour, sex, age, etc.

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“18. A distinction must be made between what I would describe as direct discrimination and the concept already referred to as adverse effect discrimination in connection with employment. Direct discrimination occurs in this connection where an employer adopts a practice or rule which on its face discriminates on a prohibited ground. For example, “No Catholics or no women or no blacks employed here.” There is, of course, no disagreement in the case at bar that direct discrimination of that nature would contravene the Act. On the other hand, there is the concept of adverse effect discrimination. It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force. For essentially the same reasons that led to the conclusion that an intent to discriminate was not required as an element of discrimination contravening the Code I am of the opinion that this Court may consider adverse effect discrimination as described in these reasons a contradiction of the terms of the Code. An employment rule honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply, may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply. From the foregoing I therefore conclude that the appellant showed a prima facie case of discrimination based on creed before the Board of Inquiry.”

- (vi) In *Orsus v. Croatia*,³³ the allegation raised by the applicants was that they had been attending separate classes comprising only roma pupils at times during their primary education and thereby

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discriminated in the enjoyment of that right on account of their race or ethnic origin. The European Court of Human Rights was of the view that “*indirect discrimination shall be taken to occur, where an apparently neutral provision, criterion or practice would put persons of an ethnic origin at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate, necessary and proportionate*”.

- (vii) The Supreme Court of Canada, in *Action Travail des Femmes v. Canadian National Railway Company*³⁴ analyzed the claim of woman seeking equal employment opportunities in the National Railroad Company. In echoing the mutually reinforcing consequences of direct and indirect discrimination within organizational structures as a systemic feature, the Court observed as under:

“Systemic discrimination in an employment context is discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is a result of “natural forces”, for example, that women “just can’t do the job”(see the Abella Report, pp.9-10). To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged”....

In prescribing remedies against systemic discrimination, the Court consciously noted as follows:

“the remedies do not have to be merely compensatory, but also prospective in terms of the benefit that is designed to improve the situation in the future”. The Court structured the remedy as follows: “An employment equity program thus is designed to work in three ways.

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First, by countering the cumulative effects of systemic discrimination, such a program renders further discrimination pointless....”.

- (viii) The framework provided in *Action Travail des -Femmes* was followed by the Human Rights Tribunal of Canada, in *National Capital Alliance on Race Relations v. Canada (Health and Welfare)*³⁵ wherein the Court had to examine a case against the Health and Welfare Department of Canada for discriminating against visible minorities by establishing employment policies and practices that deprive visible minorities (race, colour and ethnic origin) of employment opportunities in senior management. The Court conducted a holistic analysis of the organization by collating testimonies of workers in the organization and by engaging experts on statistical analysis and human resource management. The evidence of the expert on human resources was analysed to situate systemic issues ranging from ghettoization of minorities in Canada translating into lesser encouragement for professional ambition. Societal impact of discrimination was evidenced in the informal staffing decisions providing fertile ground for unconscious bias and a broader perception of visible minorities as unfit for management. In upholding the claims of the plaintiffs, corrective measures were prescribed to counteract the effects of systemic discrimination in the workforce. The said decision was pointed out by this Court in *Nitisha (supra)*.
- (ix) In *Abdulaziz, Cabales and Balkandali v. United Kingdom*,³⁶ the European Court of Human Rights held that “*As to the present matter, it can be said that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention*”. Following the said decision, the European Court of Human Rights once again observed in *Van Raalte v. The*

35 1997 28 C.H.R.R.D / 179 (Canadian Human Rights Tribunal)

36 [1985] ECHR 7

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Netherlands,³⁷ that in the applicant's submission, differences in treatment based on sex were already unacceptable when section 25 of the General Child Care Benefits Act was enacted in 1962. The wording of Article 14 of the Convention showed that such had been the prevailing view as early as 1950. Moreover, legal and social developments showed a clear trend towards equality between men and women. Further reference was made to *Abdulaziz*, which stated explicitly that "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe" and that "very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention". These observations were referred to by this Court in *Anuj Garg (supra)*.

- (x) In relation to the principle of indirect discrimination, the judgement of the Madras High Court in *M. Sameeha Barvin v. Government of India*,³⁸ assumes significance, in which, one of us (Justice R. Mahadevan) observed that "*while the jurisprudence on Indirect discrimination is still growing, it is pertinent to identify these instances of systemic and indirect discrimination, couched in neutrality and seemingly innocent reasons perpetuated by social conditioning but which cannot stand scrutiny before law in the teeth of the expansive substantive equality as envisioned and envisaged in our Constitution, and to discard them just as stark instances of discrimination. Such instances of indirect discrimination perpetuate inequality and cripple the salient personal freedom and autonomy available to every citizen of this country, irrespective of their personal attributes and differences*".

46. Thus, the principle of indirect discrimination hereinbefore applied to counter gender-based discrimination, can also be applied to the facts of the present case, where disabled/visually impaired legal practitioners are sought to be equated with their able-bodied counterparts in the matter of application of certain conditions for participation for selection to the post of judicial officers. Applying such a test of indirect discrimination, the ease of practice as well

37 [1997] ECHR 6

38 (2021) 1 Madras Law Journal 466

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as the securing of marks cannot be said to be an equal condition to both classes of citizens, *viz.*, disabled and able-bodied lawyers, given that the atmosphere in which they operate cannot be said to be the same. This is also a perfect example of how unequals are sought to be treated equally, and that itself would be a negation of the principle of substantive equality. Therefore, it can easily be inferred that the rule relating to practice or in the alternative, to secure 70% in the first attempt in the examinations, is a case of indirect discrimination as the provisions are facially neutral but discriminatory in operation. In view of the same, Rule 7 of the Madhya Pradesh Judicial Service Rules, 1994, to the extent it prescribes the additional requirement of either a three-year practice period or securing an aggregate score of 70% in the first attempt, is liable to be struck down insofar as it applies to PwD candidates. Accordingly, the impugned Rule will be applicable to PwD candidates insofar as it prescribes the educational and other qualifications as eligibility criteria including the minimum aggregate score of 70% (with relaxation as may be determined like in the case of SC/ST candidates) but without the requirement of either that it should be in the first attempt or that they should have three years' practice. This issue stands answered in the said terms.

G. RELAXATION IN CRITERIA FOR SELECTION & SEPARATE CUT-OFF MARKS FOR DISABLED CANDIDATES - WHETHER PERMISSIBLE

47. The learned counsel for the appellant [SLP(C)No.7683 of 2024], in his arguments prayed for relaxation of marks on the basis of vacancy and Office Memorandum No. 36035/02/2017-Estt (Res) [Reservation for Persons with Benchmark Disabilities] dated 15.01.2018.
48. The primary contention is that though the appellant has secured more marks in aggregate than the selected disabled candidates, he could not secure the minimum cut-off of 20 marks in the interview, due to which he fell out of the zone of consideration, and that inspite of there being vacancies available, the authority has not relaxed the interview minimum cut-off marks, despite there being a power to relax the same pursuant to the Office Memorandum referred to in the previous paragraph. The further case of the appellant is that even generally, prescription of any minimum cutoff for interview alone is not permissible in law.

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49. We may refer to the following judgment, which would make it clear that mere existence of vacancies cannot be a ground to claim relaxation in marks. At the same time, this Court in several cases has held that laying down a minimum cutoff for interview is legally permissible. Therefore, the only question that remains to be decided is, when there are suitable executive instructions/orders giving the authority the power to relax, whether such a power should be exercised in order to relax the minimum required marks in favour of the visually impaired candidates for selection.

49.1. *Neetu Devi Singh v. High Court of Allahabad*,³⁹ wherein, it was held as under:

'In view thereof, as the reservation is provided for physically handicapped persons, though horizontal in nature, he/she must secure minimum qualifying marks as fixed by the authority concerned. The appellant-petitioner who has failed to achieve the said benchmark as she secured 36 percent marks while qualifying marks had been fixed as 55 percent, would be denied further consideration in view of the provisions of Article 335 of the Constitution of India. It is not the case of the appellant-petitioner that any other physically handicapped person securing lesser marks than her, is being permitted consideration any further.'

50. Examining whether relaxation of cut off marks can be granted to the appellant, reliance may be placed to *Taniya Malik v. High Court of Delhi*,⁴⁰ wherein it was held as under:

'Merely by the fact that some more posts were advertised and they are lying vacant, it could not have been a ground to relax the minimum marks for interview after the interview has already been held. It would not have been appropriate to do so and the High Court has objected to relaxation of minimum passing marks in viva voce examination in its

39 2008 (2) AWC 1541

40 (2018) 14 SCC 129

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reply and as the power to relax is to be exercised by the High Court and since it has opposed such a prayer on reasonable ground and the institutional objective behind such prescription, we are not inclined to direct the High Court to relax the minimum marks.'

51. In a similar case of *Rajinder Pal Singh v. State of Punjab & Ors*,⁴¹ the writ petitioner (PwD) secured 48.8%, whereas the minimum aggregate passing mark for clearing mains examination was 50%, prayed for relaxation of 5% marks for PwD on the ground that there are 4 vacancies. The Punjab & Haryana High Court dismissed the prayer of the petitioner holding as under:

"Merely because the posts advertised under Category 9 have gone abegging would by itself not clothe the writ court to issue a direction contrary to the Rules of service to fill up such posts by relaxing standards. But looking to the fact that persons with disabilities have not made it on general standards, the appropriate Government i.e. the Government of Punjab may consider the issue raised in this petition in the light of the 1995 Act and take a final decision with respect to grant or non-grant of relaxed standards to persons with disabilities consistent with its duty both of affirmative action and empowerment and to maintain the efficiency required for holding judicial office and to do so within a reasonable period and preferably before the next recruitment is made to the P.C.S. (Judicial Branch)."

52. However, it is now well-established that PwD are supposed to be identified as a separate class in itself and therefore, some kind of benefits has to be extended to them with respect to eligibility which was extended similarly to other vertical reserved class. The Delhi High Court in *Anamol Bhandari v. Delhi Technological University*⁴², provided for relaxation or concession marks to PwD at the same par as that of SC/ST candidates. The relevant paragraph is extracted as under:

41 2012 SCC Online P&H 2017

42 2012 SCC Online Del 4788

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“21. Reference to the aforesaid judgment is made by us to highlight the decision taken by the Government, and accepted by the Supreme Court that reservation for disabled is called horizontal reservation which cuts across all vertical categories such as SC, ST, OBC & General. Therefore, what was recognized was that since PwDs belonging to SC/ST categories, i.e., vertical categories enjoyed the relaxation which is provided to SC/ST categories, there is no reason not to give the same benefit/concession to those disabled who are in General Category or Other Backward Class Category as that process only would bring parity among all persons’ disparity irrespective of their vertical categories. This itself provides for justification to accord same concession, viz., 10% concession to PwDs as well, in all categories which is extended to those PwDs who fall in the category of SC/ST.

22. All the aforesaid clinchingly demonstrates that the people suffering from disabilities are equally socially backward, if not more, as those belonging to SC/ST categories and therefore, as per the Constitutional mandates, they are entitled to at least the same benefit of relaxation as given to SC/ST candidates.

- 52.1. This Court in *Aryan Raj v. State (UT) of Chandigarh*⁴³ affirmed the above principle and held as follows:

*“3. We are of the view that the High Court is correct on the bifurcation aspect. Further, insofar as the aptitude test having to be passed is concerned, the High Court is correct in saying that no exemption ought to be granted, but **we follow the principle laid down in the Delhi High Court’s judgment in Anamol Bhandari v. Delhi Technological University [Anamol Bhandari v. Delhi Technological University, 2012 SCC OnLine Del 4788 : (2012) 131 DRJ 583] in which the High Court has correctly held that people suffering from disabilities are also socially***

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backward, and are therefore, at the very least, entitled to the same benefits as given to the Scheduled Caste/Scheduled Tribe candidates.

..

5. In our view, considering that Scheduled Caste/ Scheduled Tribe candidates require 35% to pass in the aptitude test, the same shall apply so far as the disabled are concerned in future. Shri Gonsalves's client is, therefore, at liberty to apply afresh for the current year, in which the requisite certificate that is spoken about in the advertisement dated 31-5-2019, is furnished stating that he is fit to pursue the course in Painting or Applied Art. Further, it is clear that aptitude test pass mark, so far as disabled are concerned, is now 35%."

53. This Court in S.M.W.(C). No 2/2024 passed the following order on 21.05.2024:

"1. After our order dated 21.03.2024, we are informed that thirty one specially abled candidates appeared in the main examination. We are also informed that they are not called for interview either on the ground that they are ineligible or that they have not secured minimum marks.

2. In furtherance of our order dated 21.03.2024, and to take it to its logical conclusion, we direct that if anyone of these thirty one candidates have secured the requisite minimum mark(s) as is provided for reserved (SC/ST) candidates, they shall be called for interview."

- 53.1. This Court in this case, thus exercising its powers, found fit to undo the discrimination of not treating PwD as a separate class which requires to be treated so as to ensure equality of results, by not specifying any relaxations or concessions which was provided to other reserved candidates.
54. This Court in *Haridas Parsedia v. Urmila Shakya*,⁴⁴ dealt with whether when relaxation of marks is not permitted to SC/ST candidates who

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compete in the same exam, the posts reserved for these categories will go unfilled and after such unfilled carry forward posts continue to remain unfilled for the given permissible period of recruitment, these reserved posts would get unreserved and would be available to general category candidates and that this would frustrate the policy decision taken by the State under Article 16 (4) for enabling the SC/ST candidates to be appointed in the posts reserved for them. This Court held that under Article 309, Rules relaxation power is available to the government, the exercise of that power can be either by a General Administrative order or by special administrative order and hence, relaxation/concession of marks were permissible.

55. This Court in S.M.W.(C) No.2/2024 also issued directions to the High Court on 07.11.2024, that while making recruitment to judicial service, they ought to provide separate qualifying marks for PwBD in the Preliminary and Main Examinations. This Court also observed that *the qualifying marks should ordinarily be the same as for SC/ST candidates or can even be lower if so prescribed by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks.*
56. It is also pertinent to point out at this juncture that pursuant to the order of this Court dated 07.11.2024, the Delhi High Court has been providing reservation for persons with benchmark disabilities on reserved post in judicial service. Further, the copy of the minutes of the meeting of Examination Committee held on 11.12.2024, proceeds to state that the order passed by this Court issuing directions governing the selection of candidates to the District Judiciary across the country has been perused and accordingly, separate qualifying marks for persons with benchmark disabilities at different stages of the examinations have been provided under the Delhi Higher Judicial Service Rules, 1970 and Delhi Judicial Service Rules, 1970, besides providing separate cut-off for persons with benchmark disabilities at various stages of the selection process. It also states that this High Court is providing the benefit of reservation to persons with benchmark disabilities in terms of the Gazette Notification dated 04.01.2021 issued by the Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan), whereby various disabilities including blindness and low vision, have been identified to be suitable for the post of Judicial Officers.

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57. In the present case, the High Court though gave relaxation of marks to candidates belonging to SC / ST in written examinations (both prelims and mains), but it explicitly deemed not to give any relaxation to candidates from the other categories in the interview. The above direction passed by this court in a connected matter also deemed not to specify any minimum qualifying mark separately in interview for any categories.
58. In *Indra Sawhney v. Union of India*,⁴⁵ seven judge Constitution Bench proposed for reservation of PwD candidates in public employment and for relaxation of lesser qualifying marks as amounting to affirmative action in their favour. The following paragraphs are relevant:

“293. Preference without reservation may be adopted in favour of the chosen classes of citizens by prescribing for them a longer period for passing a test or by awarding additional marks or granting other advantages like relaxation of age or other minimum requirements. (See the preferential treatment in State of Kerala v. N.M. Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906]). Furthermore, it would be within the discretion of the State to provide financial assistance to such persons by way of grant, scholarships, fee concessions etc. Such preferences or advantages are like temporary crutches for additional support to enable the members of the backward and other disadvantaged classes to march forward and compete with the rest of the people. These preferences are extended to them because of their inability otherwise to compete effectively in open selections on the basis of merits for appointment to posts in public services and the like or for selection to academic courses. Such preferences can be extended to all disadvantaged classes of citizens, whether or not they are victims of prior discrimination. What qualifies persons for preference is backwardness or disadvantage of any kind which the State has responsibility to ameliorate. The blind and the deaf, the dumb and the maimed, and

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other handicapped persons qualify for preference. So do all other classes of citizens who are at a comparative disadvantage for whatever reason, and whether or not they are victims of prior discrimination. All these persons may be beneficiaries of preferences short of reservation. Any such preference, although discriminatory on its face, may be justified as a benign classification for affirmative action warranted by a compelling State interest.

294. In addition to such preferences, quotas may be provided exclusively reserving posts in public services or seats in academic institutions for backward people entitled to such protection. Reservation is intended to redress backwardness of a higher degree. Reservation prima facie is the very antithesis of a free and open selection. It is a discriminatory exclusion of the disfavoured classes of meritorious candidates : M.R. Balaji [1963 Supp 1 SCR 439 : AIR 1963 SC 649] . It is not a case of merely providing an advantage or a concession or preference in favour of the backward classes and other disadvantaged groups. It is not even a handicap to disadvantage the forward classes so as to attain a measure of qualitative or relative equality between the two groups. Reservation which excludes from consideration all those persons falling outside the specially favoured groups, irrespective of merits and qualifications, is much more positive and drastic a discrimination — albeit to achieve the same end of qualitative equality — but unless strictly and narrowly tailored to a compelling constitutional mandate, it is unlikely to qualify as a benign discrimination. Unlike in the case of other affirmative action programmes, backwardness by itself is not sufficient to warrant reservation. What qualifies for reservation is backwardness which is the result of identified past discrimination and which is comparable to that of the Scheduled Castes and the Scheduled Tribes. Reservation is a remedial action specially addressed to the ill effects stemming from historical discrimination. To ignore this vital distinction between affirmative action

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short of reservation and reservation by a predetermined quota as a remedy for past inequities is to ignore the special characteristic of the constitutional grant of power specially addressed to the constitutionally recognised backwardness.

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831. We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training in Karamchari Sangh [(1981) 1 SCC 246, 289 : 1981 SCC (L&S) 50 : (1981) 2 SCR 185, 234] are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs — consistent with the efficiency of administration and the nature of duties attaching to the office concerned — in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove.

832. In Balaji [1963 Supp 1 SCR 439 : AIR 1963 SC 649] and other cases, it was assumed that reservations are necessarily anti-meritarian. For example, in Janki Prasad Parimoo [(1973) 1 SCC 420 : 1973 SCC (L&S) 217 : (1973) 3 SCR 236, 252] it was observed, “it is implicit in the idea of reservation that a less meritorious person be preferred to another who is more meritorious”. To the same effect is the opinion of Khanna, J in Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906], though it is a minority opinion. Even Subba Rao, J who did not

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agree with this view did recognize some force in it. In his dissenting opinion in Devadasan [T. Devadasan v. Union of India, (1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560] while holding that there is no conflict between Article 16(4) and Article 335, he did say, "it is inevitable in the nature of reservation that there will be a lowering of standards to some extent", but, he said, on that account the provision cannot be said to be bad, inasmuch as in that case, the State had, as a matter of fact, prescribed minimum qualifications, and only those possessing such minimum qualifications were appointed. This view was, however, not accepted by Krishna Iyer, J in Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] . He said : (SCC p. 366, para 132)

"[E]fficiency means, in terms of good government, not marks in examinations only, but responsible and responsive service to the people. A chaotic genius is a grave danger in public administration. The inputs of efficiency include a sense of belonging and of accountability which springs in the bosom of the bureaucracy (not pejoratively used) if its composition takes in also the weaker segments of 'We, the people of India'. No other understanding can reconcile the claim of the radical present and the hangover of the unjust past."

833. A similar view was expressed in Vasanth Kumar [1985 Supp SCC 714 : 1985 Supp 1 SCR 352] by Chinnappa Reddy, J. The learned Judge said (SCC p. 739, para 36)

"[T]he mere securing of high marks at an examination may not necessarily mark out a good administrator. An efficient administrator, one takes it, must be one who possesses among other qualities the capacity to understand with sympathy and, therefore, to tackle bravely the problems of a large segment of population constituting the weaker sections of the people."

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And, who better than the ones belonging to those very sections? Why not ask ourselves why 35 years after Independence, the position of the Scheduled Castes, etc. has not greatly improved? Is it not a legitimate question to ask whether things might have been different, had the District Administrators and the State and Central Bureaucrats been drawn in larger numbers from these classes? Courts are not equipped to answer these questions, but the courts may not interfere with the honest endeavours of the Government to find answers and solutions. We do not mean to say that efficiency in the civil service is unnecessary or that it is a myth. All that we mean to say is that one need not make a fastidious fetish of it."

834. *It is submitted by the learned counsel for petitioners that reservation necessarily means appointment of less meritorious persons, which in turn leads to lowering of efficiency of administration. The submission, therefore, is that reservation should be confined to a small minority of appointments/posts, — in any event, to not more than 30%, the figure referred to in the speech of Dr Ambedkar in the Constituent Assembly. The mandate of Article 335, it is argued, implies that reservations should be so operated as not to affect the efficiency of administration. Even Article 16 and the directive of Article 46, it is said, should be read subject to the aforesaid mandate of Article 335.*

835. *The respondents, on the other hand, contend that the marks obtained at the examination/test/interview at the stage of entry into service is not an indicium of the inherent merit of a candidate. They rely upon the opinion of Douglas, J in DeFunis [40 L Ed 2d 164 : 416 US 312 (1974)] where the learned Judge illustrates the said aspect by giving the example of a candidate coming from disadvantaged sections of society and yet obtaining reasonably good scores — thus manifesting his "promise and potential" — vis-a-vis a candidate from a higher strata*

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obtaining higher scores. (His opinion is referred to in para 716.) On account of the disadvantages suffered by them and the lack of opportunities, — the respondents say — members of backward classes of citizens may not score equally with the members of socially advanced classes at the inception but in course of time, they would. It would be fallacious to presume that nature has endowed intelligence only to the members of the forward classes. It is to be found everywhere. It only requires an opportunity to prove itself. The directive in Article 46 must be understood and implemented keeping in view these aspects, say the respondents.

836. We do not think it necessary to express ourselves at any length on the correctness or otherwise of the opposing points of view referred to above. (It is, however, necessary to point out that the mandate — if it can be called that — of Article 335 is to take the claims of members of SC/ST into consideration, consistent with the maintenance of efficiency of administration. It would be a misreading of the article to say that the mandate is maintenance of efficiency of administration.) Maybe, efficiency, competence and merit are not synonymous concepts; maybe, it is wrong to treat merit as synonymous with efficiency in administration and that merit is but a component of the efficiency of an administrator. Even so, the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed. We also firmly believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with — and may, in some cases, excel — members of open competition. It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not,

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therefore, be said that reservations are anti-meritarian. Merit there is even among the reserved candidates and the small difference, that may be allowed at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency along with others.

*837. Having said this, we must append a note of clarification. **In some cases arising under Article 15, this Court has upheld the removal of minimum qualifying marks, in the case of Scheduled Caste/Scheduled Tribe candidates, in the matter of admission to medical courses.** For example, in *State of M.P. v. Nivedita Jain* [(1981) 4 SCC 296: (1982) 1 SCR 759] admission to medical course was regulated by an entrance test (called Pre-Medical Test). For general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For Scheduled Caste/Scheduled Tribe candidates, however, it was 40% and 30% respectively. On finding that Scheduled Caste/Scheduled Tribe candidates equal to the number of the seats reserved for them did not qualify on the above standard, the Government did away with the said minimum standard altogether. The Government's action was challenged in this Court but was upheld. Since it was a case under Article 15, Article 335 had no relevance and was not applied. But in the case of Article 16, Article 335 would be relevant and any order on the lines of the order of the Government of Madhya Pradesh (in *Nivedita Jain* [(1981) 4 SCC 296: (1982) 1 SCR 759]) would not be permissible, being inconsistent with the efficiency of administration. To wit, in the matter of appointment of Medical Officers, the Government or the Public Service Commission cannot say that there shall be no minimum qualifying marks for Scheduled Caste/Scheduled Tribe candidates, while prescribing a minimum for others. **It may be permissible for the Government to prescribe a reasonably lower standard for Scheduled Castes/Scheduled Tribes/Backward Classes — consistent with the requirements of efficiency of***

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administration — it would not be permissible not to prescribe any such minimum standard at all. While prescribing the lower minimum standard for reserved category, the nature of duties attached to the post and the interest of the general public should also be kept in mind.”

59. The above judgment therefore illustrates that relaxation in marks can be given to PwD candidates and this relaxation in minimum marks does not dilute the efficiency in administration as contended by the learned counsel for the respondent. This, coupled with Madhya Pradesh Judicial Service Rules (Recruitment and Conditions of Service) Rules, 1994) [As amended up to F. No. 3106/XXI-B(One)/2023, dated 22-6-2023] which empowers the High Court with the power to relax, may be used to arrive at a conclusion that relaxation of marks in interview is possible for PwD candidates. The said Rule is extracted hereunder:

19. Power to relax.— *Where the Hon’ble Chief Justice is satisfied that the operation of any of these rules causes undue hardship in any particular case or class of cases, he may for reasons to be recorded in writing dispense with or relax the particular rule to such an extent and subject to such exceptions and conditions as may be deemed necessary:*

Provided that as and when any such a relaxation is granted by the Hon’ble Chief Justice, the Governor shall be informed of the same.

60. Furthermore, the Office Memorandum No. 36035/02/2017-Estt (Res) [Reservation for Persons with Benchmark Disabilities] dated 15.01.2018, issued by Ministry of Personal, Public Grievances & Pensions, Department of Personnel & Training also provides for relaxation in standards of suitability, the relevant clause of which reads as under:

“11. RELAXATION OF STANDARD OF SUITABILITY:

11.1 If sufficient number of candidates with benchmark disabilities candidates are not available on the basis of the general standard to fill all the vacancies reserved for them,

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candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of disability.

Same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/SC/ST/OBC. No further relaxation of standards will be considered or admissible in favour of any candidate from any category whatsoever.”

61. In this connection, it is apt to refer to a three-judge bench decision of this Court in *Om Rathod v. Director General of Health Services*⁴⁶ wherein it was observed as follows:

“57. The provision of an audit trail to assess whether a given accommodation required by a student with disability places an undue burden on the institution is a vital safeguard for transparency and fairness. Dr Satendra Singh in his report dated 20 October 2024 has made suggestions to (i) rename the Disability Assessment Boards as Ability Assessment Boards to align them better with their intended purpose; (ii) include a doctor with disability or who is well conversant with disability rights in such Boards; (iii) use a human rights model of disability for assessment; (iv) issue guidance on clinical accommodations; (v) train the Boards in carrying out the disability competency assessment; and (vi) use the Enabling Units to serve as a contact point for clinical accommodations. As far as the inclusion of doctors with disabilities in the Disability Assessment Boards is concerned the first respondent has issued a circular on 24 March 2022 mandating such inclusion. This direction shall be complied with by all Boards.

*58. The second respondent has submitted that in light of the judgment of this Court in *Omkar Gond (supra)*, it will be*

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constituting a new committee of domain experts to comply with the directions in that judgment. We note the assurance of the second respondent and direct that this committee shall include persons with disability or one or more experts who are well conversant with disability rights. The committee shall recommend fresh guidelines to replace the existing guidelines. The above suggestions shall be duly considered by the government on its own merits. The recommendations so formulated shall comply with this judgment.”

These observations may be borne in mind by the appointing authorities so that specially-abled persons form part of the interview panel, enabling them to put themselves in the shoes of the candidates and assess their capabilities accordingly.

62. Thus, it is discernible from the above that in light of the decision in *Indra Sawhney v. Union of India*,⁴⁷ relaxation of minimum marks is permissible in law. Further, the aforesaid Office Memorandum clearly permits the authority to relax the minimum marks. Therefore, we are of the opinion that relaxation in minimum cut-off marks is permissible, especially when there is a specific power of relaxation available to the appointing authority. Accordingly, these issues are answered by us.

Ancillary issues

63. With respect to the main contention of the learned counsel appearing for the writ petitioners in WP Nos. 484 and 494 of 2024, as well as the subject matter in *Suo Motu* Writ Petition No. 6/2024, regarding the non-publication of separate cutoff marks for persons with disabilities' candidates in the Rajasthan Judicial Service Examinations, despite clear cut-offs being specified and published for other horizontal reservation categories, such as women, divorced candidates, and widows, let us first examine the relevant provisions of the Rajasthan Judicial Service Rules, 2010, which read as follows:

“10. Reservation of vacancies for Scheduled Castes, Scheduled Tribes, Other Backward Classes, More

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Backward Classes, Economically Weaker Sections, Persons with Disabilities and Women candidates.

(4) Reservation of vacancies for Persons with benchmark disabilities in the recruitment to the service shall be in accordance with the rules of the State issued from time to time in this behalf."

"20. Scheme of Examination and Syllabus – (1) The competitive examination for the recruitment to the post of Civil Judge shall be conducted by the Recruiting Authority in two stages i.e. preliminary examination and Main examination as per the Scheme specified in Schedule-IV. The marks obtained in the preliminary Examination by the candidate who are declared qualified for admission to the main examination will not be counted for determining their final merit.

(2) The number of candidate to be admitted to the main examination will be fifteen times the total number of vacancies (Category wise) to be filled in the year but in the said range all those candidates who secure the same percentage of marks as may be fixed by the Recruiting Authority for any lower range will be admitted to the Main Examination.

(3) On the basis of marks secured in Main Examination, candidates to the extent of three times of total number of vacancies (Category wise) shall be declared qualified to be called for interview.

(3-A) The committee consisting of two sitting judges of the High Court and an expert not below the rank of Professor (Law), nominated by the Chief Justice, shall interview the candidates.

(4) The Recruiting Authority shall not recommend a candidate who has failed to appear, in any of the written paper or before the Board for Viva Voce.

(5) Syllabus shall be such as may be prescribed by the Recruiting Authority from time to time."

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“24. List of candidates recommended by the Recruiting Authority.- The Recruiting Authority shall prepare a list of the candidates in the order of their performance on the basis of their aggregate marks. If two or more of such candidates obtain equal marks in the aggregate, the Recruiting Authority shall arrange them in the order of merit on the basis of their general suitability for service and recommend their names to the Appointing Authority for appointment to the Cadre of Civil Judge:

Provided that the Recruiting Authority shall not recommend a candidate of Scheduled Castes or Scheduled Tribes category unless he obtains minimum 35% marks in the aggregate of written examination and the interview, and, in the case of other candidates, unless he obtains minimum 40% marks in the aggregate of written examination and the interview.”

“41. List of selected candidates.- The Court shall prepare the merit list category wise on the basis of aggregate marks obtained in Main examination and interview considering the suitability in general.

Provided that notwithstanding anything contained in any rule or schedule, and having regard to the requirement of efficiency in service, the court may determine such cut off marks as considered fit for being recommended for appointment.”

The above provisions lead us to conclude that under Rule 10, the rule making body delineated PwBD as a separate category by providing them reservation separately; and Rule 41 mandates that the High Court shall prepare a merit list of candidates' category wise by determining cut off marks as may be deemed fit.

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- 63.1. According to the High Court of Rajasthan, the notification dated 16.03.2024 amends Rajasthan Judicial Service Rules, 2010, by providing relaxation in age and concession of 5% in marks in favour of PwBD candidates; and they are abiding by any orders/directions issued by this Court.
- 63.2. In the light of the discussion in the preceding paragraphs, we hold that relaxation of cutoff marks is permissible in respect of persons with disabilities' candidates appearing for the judicial service examinations.
- 63.3. Taking note of all these aspects, we are of the opinion that maintaining and operating a separate cut-off list is mandatory for each category, which axiomatically includes PwD category as well. Non-declaration of cut-off marks affects transparency and creates ambiguity, and candidates being not informed about the basis of their results. Such candidates are left uninformed about the last mark scored by the qualifying candidate belonging to the particular category, to be able to get through to the next stage of selection process. In effect, it compels PwD candidates to compete with other category candidates on unequal terms. Further, when the Rules referred to above, considered the PwD as a separate category and provided them with reservations, it is indispensable on the part of the authorities concerned to declare separate cut-off marks for PwD category at each stage to ensure that those similarly placed candidates are adequately represented in the service fulfilling the very purpose of reservation. The non-disclosure of cut-off marks would lead to a situation, where such candidates may not be adequately represented in the judicial service, which is against the provisions of the RPwD Act, 2016. Therefore, we direct the authorities concerned to declare separate cut-off marks and publish separate merit list for the PwD category at every stage of the examination and proceed with the selection process accordingly.
64. At this juncture, this Court reiterates that for the purpose of rights and entitlements of persons with disabilities, particularly in employment, and more specifically in respect of the issues covered in this judgment, there can be no distinction between Persons with

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Disabilities (PwD) and Persons with Benchmark Disabilities (PwBD). It is made abundantly clear that any such technical distinction sought to be made by the authorities cannot be sustained in law. It will be appropriate to state that this principle has been maintained by this Court and the same is evident from the observation made in *Vikash Kumar* as follows:

“31. Conflating the rights and entitlements which inhere in Persons with disabilities with the notion of benchmark disabilities does dis-service to the salutary purpose underlying the enactment of the RPwD Act 2016. Worse still, to deny the rights and entitlements recognized for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the RPwD Act 2016.”

H. SHINING EXAMPLES TO SHOW - ‘IT CAN BE DONE’

65. The findings and conclusions reached by this Court are strongly reinforced by the exemplary achievements of distinguished individuals in the legal profession who have demonstrated that visual impairment is no barrier to attaining professional excellence, competing on equal footing, and making significant contributions to the justice delivery system alongside their able-bodied counterparts. In this regard, the learned counsel for the intervenor drew our attention to several visually impaired legal experts from various branches of the profession, featured in the IDAP interview series, ‘It Can Be Done,’ conducted by Rahul Bajaj, Anusha Reddy, and Madhavi Singh. The series aims to provide actionable insights from lawyers and judges with disabilities on the strategies they have used to succeed, while also promoting awareness and fostering meaningful dialogue on the necessity of reasonable accommodations for PwD. A few of the interviews are outlined below:

- (i) Justice Zak Mohammed Yacoob, who lost his sight at 16 months due to meningitis, served as a judge on the South African Constitutional Court from 1998 to 2013. Despite his blindness, he effectively discharged his judicial duties with the assistance of a legally trained personal assistant, a talking computer, a braille printer, and a note-taker who converted text into braille. While acknowledging that reading case materials took longer,

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he firmly rejected the misconception that blind individuals are incapable of assessing critical evidence, such as charts, maps, or witness demeanour. He argued that the belief that one must “see” a witness to assess credibility was unfounded. Throughout his tenure, Justice Yacoob strongly advocated for the constitutional protection of the rights of differently-abled individuals, emphasizing the need for accessibility and equality within the justice system.

- (ii) Justice David S. Tatel, a judge on the United States Court of Appeals for the District of Columbia Circuit, adapted to his blindness by employing law clerks and a reader to assist with visual materials. Though less adept with modern technology, he relied on a braille keyboard. He firmly asserted that blindness does not limit a lawyer’s ability to argue cases effectively. Rejecting the imposition of low expectations on blind professionals, he preferred to be recognized as a “judge who happens to be blind” rather than a “blind judge” reinforcing the principle that competence in the legal profession is not diminished by disability.
- (iii) David Lepofsky, a distinguished Canadian lawyer, has argued over 30 cases before the Supreme Court of Canada and more than 200 before the Ontario Court of Appeal. Acknowledged as one of Canada’s most influential lawyers, he has leveraged technological advancements to enhance his legal practice. Previously reliant on volunteers to read trial transcripts, he now accesses case materials digitally through screen readers and cloud-based platforms, allowing him to work from anywhere. Despite the inherent challenges, Lepofsky remains steadfast in his commitment to ensuring litigants receive their rightful entitlements, demonstrating perseverance and self-reliance in overcoming professional barriers.
- (iv) Senior Advocate S.K. Rungta of India, conferred with the prestigious title of Senior Advocate by the Delhi High Court in 2011, has dedicated his career to breaking down barriers for the differently-abled. Initially reliant on clerks for mobility and legal filings, he has substantially reduced this dependence with the advent of assistive technology. While he encountered skepticism

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from some judges regarding his capabilities, he asserts that the judiciary has largely been supportive. His contributions have been instrumental from facilitating entry of the blind to into the civil services to enforcing disability reservations under Indian law, securing the right of blind individuals to serve as witnesses, and shaping India's disability legislation- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

- (v) Tomer Rosner, a blind legal advisor to the Israeli Parliament, plays a crucial role in drafting and analyzing legislation, particularly concerning disability rights. Given the extensive volume of legal documents he must review, he employs screen readers and optical character recognition (OCR) technology to access text that is otherwise inaccessible. Despite these technological aids, there remain instances where he relies on personal readers. He acknowledges the challenges inherent in his profession but maintains that with the effective use of technology and adaptive strategies, legal professionals with disabilities can manage their responsibilities with competence and efficiency.
- (vi) Mr. Jack Chen, a blind patent attorney at Google, highlighted that the primary challenge for visually impaired lawyers is not completing legal tasks but doing so with efficiency. Tasks such as legal drafting and formatting, particularly those requiring adherence to citation standards like the Bluebook, demand significantly more time. He noted that while blind professionals may take longer in certain tasks, they often outperform their sighted peers in others, particularly in reading speed when using screen readers. His success exemplifies the capacity of blind legal professionals to adapt and excel in highly technical fields through the strategic use of assistive technology.
- (vii) Yetnebersh Nigussie, an Ethiopian lawyer and disability rights activist, attributes her ability to pursue a legal career to the loss of her eyesight at the age of five, an event she considers to have spared her from early child marriage. She has dedicated herself to using education as a tool to empower persons with disabilities, particularly women and girls, who often face

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compounded discrimination. She emphasizes that genuine inclusion requires changing societal mindsets and providing tangible facilities to ensure access to education and healthcare. Arguing that no form of discrimination should be tolerated, she stresses the importance of adopting a holistic approach to human rights, reinforcing the principle that all individuals, irrespective of gender or disability, deserve equal opportunities.

- (viii) Judge Ronald M. Gould of the U.S. Court of Appeals for the Ninth Circuit, who has progressive multiple sclerosis, underscores the significance of legal protections such as the Americans with Disabilities Act (ADA) in ensuring that reasonable accommodations are not a matter of discretion but a legally enforceable right. He advocates for systemic reforms that balance accessibility with professional excellence, emphasizing that disabled individuals should not be viewed through the lens of charity but as professionals capable of delivering high-quality legal work when provided with appropriate accommodations.
- (ix) Nirmita Narasimhan, a visually impaired lawyer and Policy Director at the Centre for Internet and Society, has been instrumental in advancing digital accessibility and policy reforms. A graduate of Campus Law Centre, Delhi University, with additional degrees in German and Music, she played a key role in drafting India's National Policy on Universal Electronic Accessibility and has worked extensively with government agencies to integrate accessibility into public programs. Recognized with multiple awards, including the National Award for Empowerment of Persons with Disabilities (2010), she highlights the challenges of working with government institutions, where accessibility is often overlooked and progress is slowed by bureaucratic hurdles. She emphasizes that addressing these systemic hurdles as a broader governance issue affecting everyone, rather than focusing solely on disability, would indirectly lead to more effective accessibility reforms.
- (x) Haben Girma, the first deafblind graduate of Harvard Law School, has established herself as an influential accessibility consultant, working to remove barriers that hinder professionals with disabilities. She engages with legal materials using screen

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readers, braille displays, and notetaking support. Highlighting the challenges faced by blind legal professionals in accessing visual information, she emphasizes the need for institutions to provide alternative formats, such as text descriptions or tactile graphics. She underscores that access to legal work is not just about individual effort but also about systemic responsibility, urging legal institutions to proactively adopt inclusive practices that ensure equal participation for professionals with disabilities.

66. Similarly, several other accomplished individuals who are blind or visually impaired and part of the interview series, have excelled in the legal profession and beyond, showcasing that visual impairment does not preclude one's ability to make significant contributions to the field of law. Richard Chen, counsel in the corporate and securities practice group at Arnold & Porter LLP, Isaac Lidsky, former clerk for U.S. Supreme Court Judges Sandra Day O'Connor and Ruth Bader Ginsburg, a Harvard graduate (cum laude), founder of multiple startups and nonprofits, and a New York Times best-selling author of *Eyes Wide Open*, Milan Mittal, a lawyer at Indus Law, Rajesh Asudani, who began his career as a railway announcer, later pursued law, and rose to become an Assistant Manager at the RBI, and Shirish Deshpande, a faculty member at MNLU, Nagpur, who pursued his studies at the University of Oxford—all stand as a testament to the fact that disability is no bar to excellence in the legal profession or any other field.

VI. CONCLUSION

67. The overall analysis would demonstrate that a rights-based approach necessitates that PwDs must not face any discrimination in their pursuit of judicial service opportunities, and instead, there must be affirmative action on behalf of the State to provide an inclusive framework. Now, it is high time that we view the right against disability-based discrimination, as recognized in the RPwD Act 2016, of the same stature as a fundamental right, thereby ensuring that no candidate is denied consideration solely on account of their disability. Further, as extensively discussed, the principle of reasonable accommodation, as enshrined in international conventions, established jurisprudence, and the RPwD Act, 2016, mandate that accommodations be provided to PwDs as a prerequisite to assessing their eligibility. In the light of

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the above, any indirect discrimination that results in the exclusion of PwDs, whether through rigid cut-offs or procedural barriers, must be interfered with in order to uphold substantive equality. The commitment to ensuring equal opportunity necessitates a structured and inclusive approach, where merit is evaluated with due regard to the reasonable accommodations required, thereby fostering judicial appointments that truly reflects the principles of fairness and justice.

67.1. Thus, after considering the pleadings, submissions of the learned counsel appearing for all the parties, as well as the legal positions and case laws, we conclude as follows:

- (i) Visually impaired candidates cannot be said to be 'not suitable' for judicial service and they are eligible to participate in selection for posts in judicial service.
- (ii) The amendment made in Rule 6A of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 falls foul of the Constitution, and is hence, struck down to the extent that it does not include visually impaired persons who are educationally qualified for the post to apply therefor.
- (iii) The proviso to Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 relating to additional requirements, violates the equality doctrine and the principle of reasonable accommodation, and is hereby struck down in its application to differently abled persons who have the requisite educational qualifications for applying to the posts under judicial service.
- (iv) Relaxation can be done in assessing suitability of candidates when enough PwD are not available after selection in their respective category, to the extent as stated in the relevant paragraphs above, and in the light of existing Rules and Official Circulars and executive orders in this regard, as in the present case.
- (v) A separate cut-off is to be maintained and selection made accordingly for visually-impaired candidates as has been indicated in the relevant paragraphs in line with the judgment in *Indra Sawhney*.

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- (vi) For the purpose of rights and entitlements of persons with disabilities, particularly in employment, and more specifically in respect of the issues covered in this judgment, there can be no distinction between Persons with Disabilities (PwD) and Persons with Benchmark Disabilities (PwBD).

VII. RESULT

68. In the upshot:

- (i) Visually impaired candidates are eligible to participate in selection for the posts under the judicial service and hence, Rule 6A of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 is struck down insofar as it excludes visually impaired and low vision candidates for appointment in judicial service.
- (ii) Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 to the extent of prescribing additional requirement of either a three-year practice period or securing an aggregate score of 70% in the first attempt, is struck down insofar as it applies to PwD candidates. The said rule will be applicable to the PwD candidates insofar as it prescribes the educational and other qualifications as eligibility criteria including the minimum aggregate score of 70% (with relaxation as may be determined like in the case of SC/ST candidates), but without the requirement of either that it should be in the first attempt or that they should have three years' practice. As a sequel, the impugned order dated 01.04.2024 passed by the High Court and the consequential notification dated 17.11.2023 issued by the High Court of Madhya Pradesh, are set aside as against the PwD candidates and the appellant viz., Ayush Yardi and similarly placed persons, are entitled to be considered for participating in the selection process in the light of this decision.
- (iii) The order of the High Court dated 11.01.2024 and the notification dated 18.02.2023 are set aside as far as the appellant viz., Alok Singh and similarly placed persons are concerned. The appellant and similarly placed persons who had participated in the selection process, are entitled to be considered in the

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light of this decision, and they may be appointed, if they are otherwise eligible in the vacant posts after applying applicable relaxation as provided for in the executive orders.

- (iv) The writ petitioners in WP (C) Nos. 484 and 494 of 2024, who contend that separate cut-off was not applied in the Rajasthan Judicial Service Preliminary Examinations, and consequently were not selected for the main examination, shall be entitled to be considered in the light of this decision in the next recruitment, if they so apply to the post notified along with the post unfilled now and carried forward to the next recruitment by maintaining a separate cut off and merit list for PwDs.
 - (v) The respective authorities are directed to proceed with the selection process for appointment of the judicial officers, in the light of this decision and complete the same, as expeditiously as possible, preferably, within a period of three months, from today.
69. All the cases stand disposed of, on the above terms. No costs. Connected Miscellaneous Application(s), if any, shall stand disposed of.

Post the matters after three months “for reporting compliance”.

Result of the case: Matters disposed of.

[†]Headnotes prepared by: Divya Pandey