

Handbook on Rights of Persons with Disability

Second Edition

In collaboration with the **Godrej DEI Lab**

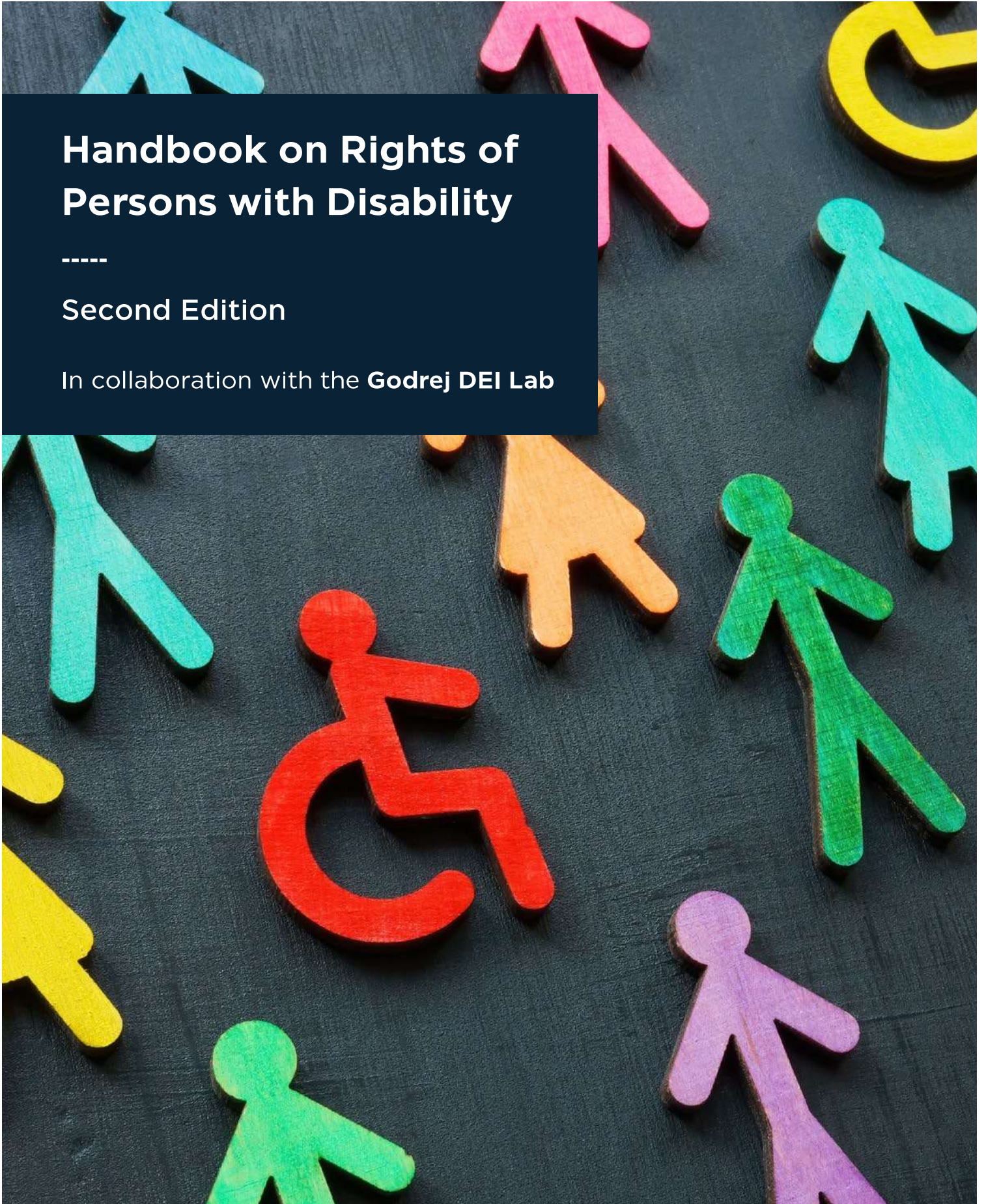


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Introduction

"There is no greater disability in society than the inability to see a person as more." - Robert M. Hensel.

Born with spina bifida, Robert M. Hensel, is at present a Guinness World Record holder for the longest non-stop wheelie in a wheelchair, covering almost 10 kilometres.

Disability is a part of human experience resulting from the interaction between health conditions and a range of environmental and personal factors. Persons with disabilities are a diverse group facing myriad challenges affecting their health outcomes and causing significant limitations in navigating their day-to-day lives. An additional challenge is posed by several structural and non-structural factors such as sex, age, gender identity, sexual orientation, economic situation, religion, race and ethnicity, which also have an effect on the lived experiences of persons with disabilities.

The World Health Organization estimates that approximately 1.3 billion people, or 16% of the world's population experience a significant disability today.¹ Out of the above, it is estimated that 80% of persons with disabilities are residents of developing countries.² Therefore, the advocacy for the rights of persons with disability is of critical importance for the progress of humanity.

Rights of persons with disabilities are an offshoot of fundamental human rights which in turn arise out of constitutional rights. India is proud to have a rich and vibrant constitution, forcefully supported by its courts of law. Indian policy makers too have strived to recognise the rights of persons with disabilities as early as 1970s. A centrally sponsored scheme of "Integrated Education for the Disabled Children" was launched in 1974. In 1977, the government reserved jobs for persons with disabilities by identifying posts, but these were mostly lower cadre jobs.³ In the late 1980s and heavily influenced by the developments happening internationally, activists in India started lobbying for a disability law in India, touching upon multiple issues of disability. These led to the enactment of several legislations such as the Mental Health Act 1987, the Rehabilitation Council of India Act 1992, and the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999. However, the most important achievement of all was the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 ("**PWD Act, 1995**"). The enactment of this law was a major shift in the perspective of dealing with disability-based issues from a medical, charitable and rehabilitation model to a rights-based model of disability.

Finally, we reach the enactment of the Rights of Persons with Disabilities Act 2016 ("**PWD Act**"), and the Mental Healthcare Act 2017 ("**MH Act**"). Both these legislations are the outcome of decades of activism and advocacy, and persistent efforts made by the state, the judicial system and civil society to create a legal framework that addresses the needs and challenges of persons with disability, and to extend to them an equal opportunity to meaningfully participate in society, and exercise their civil, constitutional and fundamental rights as citizens of India.

¹ Factsheet on Persons with Disabilities, <https://www.who.int/en/news-room/fact-sheets/detail/disability-and-health> (accessed on 18 November 2024 at 8:37 PM)

² Factsheet on Persons with Disabilities, <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html> accessed. (accessed on 18 November 2024 at 8:37 PM) | ³ Anitha Ghai, 'Rethinking disability in India', p 129.

The legal framework embodied under the MH Act and the PWD Act embody a paradigm shift from a “substituted decision-making framework” to a “supported decision-making framework” that recognizes the inherent worth of every individual, and extends the same to persons with disabilities, thereby empowering them to make decisions for themselves, in relation to their disabilities with the State playing a supportive role in this endeavour. The framework also codifies several rights and entitlements of persons with disabilities and creates institutions to address their challenges. Policies at the state level such as the Maharashtra State Policy for Persons with Disabilities 2017, the Tamil Nadu Rights of Persons with Disabilities Rules 2018, the West Bengal Rights of Persons with Disabilities Rules 2018, among others.

But as with any other legal framework, the legislation and policies need the support of practice to be meaningful to persons with disabilities and ensure that it required for fulfilling its objectives. We see businesses, groups and markets coming together to attempt at creating an ecosystem conducive for persons with disabilities. Perception of disabilities itself has gone through a metamorphosis when we now count visible and invisible disabilities as part of the regime needing specific focus.

This handbook attends to the legal framework governing the rights of persons with disabilities and takes the liberty to propose best practices that companies in private and public sectors, institutions and even markets could consider for the legal framework to take effect and progress.

We delve into the inception of the law, latest amendments brought by the legislation, interpretation and refining afforded by our judicial system. The entire fabric has a common thread woven into it which is to place persons with disabilities at the centre of the narrative and address their issues in a manner that best addresses their challenges.

We have also taken the liberty to provide certain additional suggestions on best workplace practices, based on our study of the existing legal framework. These practices should assist the stakeholders from a practical standpoint. We have also during the preparation of this handbook noticed a glaring gap in available data and survey surrounding persons with disabilities. A more focussed survey and census of population with disabilities will help us understand the proportion better which will lead to better allocation of resources for it. Removing various anomalies on our data can lead to better policies and take us closer to our target of more equitable distribution of our resources.

We conclude with a fond hope that the journey that began in India with our first ever recognition of our basic rights as humans in 1950 and finally brought us to the PWD Act and the MH Act, continues unabated and uninterrupted with added vigour, compassion and empathic approach and path breaking judgements and laws.

Lastly, it is only fitting that our Firm not only practices in spirit and actions the values discussed in this Handbook, but also continues to spread awareness with an aspiration to work deeper towards fostering inclusion and eliminating discrimination of any kind a part of our lives. After all, the great luminary, Mr Debi Prasad Khaitan, the founder of our Firm, laid the very first foundation of these morals when his team advocated for and crafted the very first code of human rights in the country – the Constitution of India 1950 (**“Constitution”**). With the conjoined efforts of all concerned and conscious, we continue to traverse this footpath, and remind ourselves of famous and apt words of Francis Bacon, *“We rise to great heights by a winding staircase of small steps”*.

Arva Merchant

Partner | Khaitan & Co



Foreword

In India, accessibility is a constitutional value. The word does not appear in the letter of the Constitution of India. But if we are to take forward the progressive spirit of the founding document of our republic, and its vision of an equal, polyphonic and pluralistic society, we have no option but to strive for a country co-created by and for persons with disabilities.

Khaitan & Co's handbook of law and disability rights seeks to build bridges between our foundational ideals, how they have been reflected in India's legislations and jurisprudence in recent years, and the work we are called to do to uphold these principles. The updated edition, which includes new information and a list of best practices for our workplaces, reflects Khaitan & Co's renewed commitment to working for a truly inclusive society.

The handbook offers laypersons a framework by which to understand the universe of accessibility, equity and opportunity envisioned through Indian law. It is also a glimpse of the systemic challenges Indian persons with disabilities face in lived reality. Through its precise notes on the relevant jurisprudence, the handbook offers us a view of how courts have attempted to further this vision. But this view is framed by the structural bias that confronts persons with disabilities, both visibly through infrastructural and economic inequities; and invisibly, through a culture of silence, shame and lack of accommodations. And so, the handbook is also a call to action, to do more and do better for disability inclusion — or, as will be the case for many reading this, to start doing.

That commitment to outcomes is at the heart of the purpose of the Godrej DEI Lab, which seeks to amplify efforts at diversity, equity and inclusion both within the Godrej Industries Group, and through corporate India, and the world beyond. We recognise that laws provide a foundation for equality, and that true inclusion requires sustained effort, learning, and action. Over the last decade, Indian governments and political institutions have recognised the importance of this mission in light of our pursuit of revitalised national greatness. We believe this should inspire businesses and economic institutions to recognise it, too.

The handbook is meant to be a tool for employers, educators, caregivers, and persons with disabilities, as well as all readers looking to better understand disability rights, and their role in driving creativity, innovation and growth for all of us. It aims to help individuals and organisations begin proactively working to meet, and even surpass, current legal standards. I see it as a vital translation of policy to the realm of experience. I hope you will find it useful, and join us in working towards a more accessible India — one where we belong and thrive alongside each other.

Parmesh Shahani
Head | Godrej DEI Lab



Legal Framework

India's ratification of the Convention on Rights of Persons with Disabilities 2006 ("**Convention**") in 2007 gave India an opportunity to set its own tasks to transform the treatment of persons with disabilities. These tasks were aimed at empowering concerned persons with rights to protect them against discrimination of many kinds. The Convention mandated that its signatories change their national laws to identify and eliminate obstacles and barriers and comply with the terms of the Convention. To align its legal structure with the objectives of the Convention, the Government of India enacted the PWD Act in 2016 to replace the erstwhile law of 1995. Additionally, the MH Act was also passed in 2017, replacing the Mental Health Act 1987. Although the PWD Act and the MH Act are rights-based legislations, the statutes' success will depend on proactive measures taken by the respective State Governments on its implementation. Proactive initiatives from stakeholders in the private and public space will create critical support and build on India's objectives in advancing the inclusion of citizens with disabilities in every aspect of Indian life.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT 2016

The PWD Act endeavours to protect the right to equality for persons with disabilities. It prohibits discrimination on grounds of disability to facilitate the acceptance of persons with disabilities and ensure their inclusion across society at large, including in the workplace.⁴

The preamble to the PWD Act incorporates the principles set out in Article 3 of the Convention, which contains the general principles governing the interpretation and operation of the Convention. These comprise eight principles of paramount importance, which are:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
2. Non-discrimination
3. Full and effective participation and inclusion in society
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
5. Equality of opportunity
6. Accessibility
7. Equality between men and women; and
8. Respect for the evolving capacity of children with disabilities and respect for the right of children with disabilities to preserve their identities

⁴Section 20 of the PWD Act.

Key terms defined under the PWD Act

Barriers

Any factor including communication, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors, which hampers the full and effective participation of persons with disabilities in society.

Discrimination

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.

Person with benchmark disability

A person with not less than 40% 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.

Person with disability

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.

Person with disability having high support needs

A person with benchmark disability who needs high support.

High support

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.

Person with multiple disabilities

A person who has more than one type of a specified disability.

Beneficiaries under the PWD Act: Who does it cover?

Pursuant to Section 56 of the PWD Act, the Department of Empowerment of Persons with Disabilities, the Ministry of Social Justice and Empowerment has notified guidelines for the evaluation and procedure for certification of specified disabilities. **Specified disabilities detailed in the guidelines include locomotor disability, blindness / low vision, deafness, intellectual disability, mental illness, chronic neurological conditions, haemophilia and multiple disabilities.** Persons with such disabilities are required to apply for a certificate of disability in accordance with the provisions of the PWD Act.

While the PWD Act identifies specified disabilities in its Schedule (and empowers the Union Government to notify additional specified disabilities), it is important to note that all persons with disability, not just specified disabilities, enjoy the rights and protections provided under the PWD Act, though there are special provisions *including* in relation to affirmative action that are applicable specifically to persons with benchmark disability.

Disabilities defined under the PWD Act

Physical Disability

- Locomotor disability
 - » Leprosy cured person
 - » Cerebral palsy
 - » Dwarfism
 - » Muscular dystrophy
 - » Acid attack victims
 - Visual Impairment
 - » Blindness
 - » Low vision
 - Hearing impairment
 - » Deaf
 - » Hard of hearing
 - Speech and language disability
-

Intellectual Disability

- Specific learning disabilities
 - Autism spectrum disorder
-

Mental Behaviour

- Mental illness
-

Disability caused due to Neurological /Conditions

- Multiple sclerosis
 - Parkinson's disease
-

Disability caused due to Blood Disorder

- Haemophilia
- Thalassemia
- Sickle cell disease

Entitlements under the PWD Act

- Right to equality, dignity and non-discrimination, to ensure their full participation, and reasonable accommodation (Section 3)
- Right to live in the community, and access to a range of in-home, residential, and other community support services, including personal assistance, with due regard to their age and gender (Section 5)
- Right to receive protection and safety, at the time of need (Section 8)
- Right of children with disability to be ensured a home and a family (Section 9)
- Access to information regarding reproduction and family planning (Section 10)
- Access to polling stations and making sure that the details and information regarding the processes is understood by all (Section 11)
- Right to justice before the relevant authority with jurisdiction (Section 12)
- Recognition of legal capacity of persons with disabilities, and making such persons competent to exercise various rights enjoyed by others (Section 13); and
- Assignment of a guardian to take care of the needs of persons who are unable to make legal decisions on their own (Section 14)

Remedies under the PWD Act

The PWD Act enumerates wide-reaching protections and remedies for persons with disabilities and empowers the Executive Magistrate to pass any of the following orders to protect persons with disabilities from abuse, violence and exploitation:

- Safe custody or rehabilitation of the victim, by police or organizations working for these persons
- Protective custody if the victim demands; and
- Maintenance for such victim

Section 56(4) of the PWD Act also mandates the police officer to explain the rights available to such victim.

Further, Section 38 of the PWD Act also empowers any person with disability having high support needs to apply to the appropriate authorities requesting such support. Such applications may also be made on their behalf by any person or organization.



⁵ Section 16 of the PWD Act. | ⁶ Section 19 of the PWD Act. | ⁷ Sections 24, 25, 26 and 27 of the PWD Act. | ⁸ Sections 29 and 30 of the PWD Act.

Development and upliftment of persons with disabilities

In addition to corrective and prohibitive actions and remedies, the PWD Act also provides for the upliftment and growth of persons with disabilities. The appropriate government and / or the concerned authority is required to ensure education⁵ for persons with disabilities along with the right to be admitted in schools without being discriminated against.

In addition to recognizing the importance of education, the PWD Act also seeks to harness the talents of persons with disabilities by providing loans at concessional rates and other necessary facilities in order to encourage persons with disabilities to engage in vocational training and self-employment.⁶

Other protections

The government is also required to provide social, healthcare and other support to persons with disabilities, implement insurance schemes for persons with disabilities and ensure that there are measures undertaken for their rehabilitation in areas with proper health, education and other facilities.⁷

Additionally, the PWD Act mandates measures to be undertaken to promote cultural and sporting activities among persons with disabilities, to ensure their participation in all kinds of activities.⁸

Children who are identified with benchmark disabilities are provided additional benefits, such as the right to free education between 6 to 14 years of age,⁹ reservation in higher educational institutions,¹⁰ and government jobs.¹¹ The PWD Act also imbibes provisions pertaining to special treatment given to those with high support needs, upon identification by the government.¹²

The Central Government also aims to ensure adequate accessibility to transport, information and communication technologies, consumer goods, etc, as a part of duties under Section 40 to Section 46 of the PWD Act.

Registration

The PWD Act prescribes for the registration of institutions for persons with disabilities by following the procedure prescribed under the PWD Act, upon satisfaction of which, the competent authority will grant them a certificate by the powers conferred to them under Section 50 of the PWD Act.

Authorities and Boards

- Government designated authority to create awareness among the persons with disabilities, regarding the exercise of their legal capacity.¹³
- Grievance Redressal Officer appointed by the concerned Government to deal with grievances relating to opportunities regarding vocational training and self-employment.¹⁴
- Competent authority appointed by relevant State Governments, to grant registration certificates to institutions for persons with disabilities.¹⁵
- Persons designated by the Government to grant certificates of disability to persons eligible for such certificates.¹⁶
- Central advisory board, state advisory boards and district level committees on disability to be constituted in the prescribed manner.¹⁷

Enforcement of the PWD Act: Judicial Mechanism, Penalties and Punishments

The PWD Act aims at quick resolution of disputes by mandating the various State Governments to set up dedicated special courts in each district, with the concurrence of the Chief Justices of the relevant High Courts. The State Government is required to specify any one Court of Sessions to act as such

⁹ Section 31 of the PWD Act. | ¹⁰ Section 32 of the PWD Act. | ¹¹ Section 34 of the PWD Act. | ¹² Section 38 of the PWD Act. | ¹³ Section 15 of the PWD Act. | ¹⁴ Section 23 of the PWD Act. | ¹⁵ Section 49 of the PWD Act. | ¹⁶ Section 57 of the PWD Act. | ¹⁷ Section 60, Section 66 and Section 71 of the PWD Act.

special court, which shall have the jurisdiction to try all offences under the PWD Act. Any contravention of the provisions of the PWD Act is punishable with fines of up to INR 10,000 for first time offenders and between INR 50,000 to INR 5,00,000 for subsequent offences.¹⁸

Section 11(1) of the Special Courts Act 1979 permits an appeal against any judgment, sentence or order of a special court, except for an interlocutory order, to the SC. It is important to note that such appeal should be made within a period of 30 days from the judgment of the special court. However, if the SC is satisfied that sufficient cause exists for delay in filing the appeal, it may allow the same to be filed after the expiry of the prescribed period of 30 days.

Appeals for grievances against any order of the competent authority regarding grant of registration certificates to institutions or persons with disabilities shall lie with the appellate authority prescribed by the relevant State Governments.

Judicial Stance

Indian courts have lauded the current regime under the PWD Act for treating disability not simply as a medical condition, but a social condition, which causes people with disabilities to be excluded from various places and activities. They have consistently enacted judgments to uphold the spirit of the PWD Act. Courts have also recognised that disabilities can exacerbate other kinds of discrimination such as those rooted in gender or other systemic inequalities, such as biases caused on account of social conditioning. Through various judgments, courts have emphasised that the PWD Act is a beneficial legislation, and ought to be interpreted liberally in a manner that protects and preserves the rights of persons with disabilities in all relevant contexts.

In *Vikash Kumar v. Union Public Service Commission*,¹⁹ the SC held that the PWD Act is aligned with and upholds the rights granted by Articles 14, 19 and 21 of the Constitution, and bestows the same upon persons with disabilities. In doing so, it relied upon the earlier decision of *Jeeja Ghosh v. Union of India*,²⁰ wherein it was held that imposing positive obligations upon State and Central Governments to provide additional support to persons with disabilities furthers the principle of 'reasonable differentiation' which is a key component of the right to equality enumerated under Article 14. In its decision in *Union of India v. National Federation of the Blind*,²¹ the SC reiterated the importance of providing adequate employment opportunities to persons with disabilities.

In *M. Sameeha Barvin v. Government of India*²², the Madras High Court took an intersectional view of disability and gender discrimination, drawing strength from the language of Section 2(6) of the PWD Act, and settled jurisprudence from across the world, including from the judgment of the SC in *Vikash Kumar v. Union Public Service Commission*.²³ The court held that the PWD Act confers a duty upon the State to identify systemic biases against persons with disabilities which are "masked as neutrality" and redress such biases. The court held that these biases, rooted in social conditioning, cannot compromise the principles of substantive equality envisioned by the Constitution under Articles 14, 19 and 21.

In *Akanksha Singh v. High Court of Delhi*²⁴, the SC, upholding an earlier decision of the Delhi High Court in *Bhavya Nain v. High Court of Delhi*²⁵, emphasized the beneficial nature of the PWD Act, and the need to construe it liberally while protecting the rights of persons with disabilities. In the judgment, the SC protected the rights of a person affected with bipolar affective disorder to be appointed as a judicial officer, holding that denial of their candidature merely on the basis of mental illness of the candidate would constitute a breach of Sections 20 and 34 of the PWD Act. The SC specifically observed that when a government establishment provides reservations for persons with benchmark disabilities for any post, any candidate who fulfils the criteria must be assumed to be fit and proper for the post and could not be denied the position merely on the assumption that they would be unable to perform the expected duties.

In *TR Ramanathan v. Tamil Nadu State Mental Health Authority*²⁶, the Madras High Court, while interpreting Section 58 of the PWD Act read with Articles 14 and 21 of the Constitution, held that persons with serious disabilities are entitled to have the assessment of their disabilities required under the PWD Act to be

²⁴ Akanksha Singh v. High Court of Delhi, 2021 SCC Online SC 3326. | ²⁵ Bhavya Nain v. High Court of Delhi, 2020 SCC Online Del 2525. | ²⁶ TR Ramanathan v. Tamil Nadu State Mental Health Authority, 2022 SCC Online Mad 3032. | ²⁷ Patan Jamal Vali v. State of Andhra Pradesh, 2021 INSC 272. | ²⁸ Smruti Tukaram Badade v. State of Maharashtra, 2022 INSC 39.

issued at their place of residence, thereby reiterating the need to make the PWD Act accessible to all persons with disabilities, and empower them to exercise their rights without taking resort to technicalities as a ground for denial of rights.

The SC has also addressed the issue of negation of credibility of persons with disabilities to act as witnesses and offer testimony before Courts. In *Patan Jamal Vali v. State of Andhra Pradesh*²⁷, the SC observed that devaluation of the testimonies given by persons with disabilities reflects an incorrect understanding of disability and causes miscarriage of justice, by perpetuating stereotypes against persons with disabilities. In *Smruti Tukaram Badade v. State of Maharashtra*²⁸, the SC emphasized the need to establish a secure environment of recording testimony of vulnerable witnesses and included persons suffering from mental illness, under the MH Act, as well as persons with any other disabilities within the definition of vulnerable witnesses.

THE MENTAL HEALTHCARE ACT 2017

The MH Act is the primary legislation dealing with rights of persons with mental illnesses. The legislation defines mental illness as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, or the ability to meet the ordinary demands of life, or mental conditions associated with the abuse of alcohol and drugs. The preamble to the MH Act aims to provide mental healthcare and services for persons with mental illness and to promote and fulfil the rights of such persons during delivery of mental healthcare and services.

The MH Act distinguishes “mental retardation” from mental illness, as described in greater detail in Section I of this handbook. Various Indian laws bar persons of “unsound mind” from entering into contracts or undertake certain acts in general, such as marrying, voting or holding public office and making wills. The MH Act, however, takes a contrary view on this issue. This is a step in the right direction because, simply put, a person with mental illness cannot be said to have an unsound mind unless a court accords this legal status to them. It is stigmatising to be categorised as a person with an unsound mind, thereby thwarting mental healthcare, as persons with mental illness would prefer to go untreated over being tagged as a person with an unsound mind.



Authorities under the MH Act

The MH Act is a patient-centric legislation, i.e., it recognises the need for healthcare for persons with mental illness as the primary object. The MH Act has established the Central Mental Health Authority and State Mental Health Authority to oversee the implementation of the MH Act in tandem with the spirit of the law. These authorities typically regulate mental health establishments to ensure the quality of these establishments' services. Mental health establishments, clinical psychologists, mental health nurses and psychiatric social workers are required to register with these authorities. The MH Act has also set up a Mental Health Board, which shall serve as an adjudicating authority.

Judicial Stance

Indian courts have recognized that the MH Act has brought into effect a paradigm shift in the way the rights of persons who suffer from mental illnesses are protected under laws. In *Ravinder Kumar Dhariwal v. Union of India*²⁹, the SC held that the MH Act contemplates a rights-based framework, and a supported decision-making model which enables persons with disabilities to make decisions with proper support; and not a substituted decision-making model, where persons with disabilities are presumed to be lacking the capacity to make decisions for themselves. In the judgment, the SC upheld the rights to employment for persons with mental illnesses and emphasised that mental illnesses cannot be a ground to treat a candidate as unsuitable for employment.

Other Protections: Duties of the Government

The governments have specific duties to undertake under the MH Act. These include the promotion of mental health and preventive programmes, creating awareness about mental health and illness and reducing the stigma associated with mental illness, human resource development and training, and co-ordinating amongst the various arms of the government such as ministries and departments including those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education, to name a few, in order to address mental healthcare issues.

Offences under the MH Act: Penalties & Punishments

To ensure enforcement of the MH Act, the MH Act provides for penalty and punitive actions:

- In case of contravention of provisions of the MH Act by a mental health establishment, the penalty varies from the bracket of INR 5,000 to INR 50,000 for a first-time contravention to INR 50,000 to INR 2,00,000 for second time contravention to INR 2,00,000 to INR 5,00,000 for subsequent contravention(s).
- For non-registration with the authority, the penalty may extend up to INR 25,000.
- In case of contravention of provisions of the PWD Act or rules or regulations made thereunder, a person would be punishable with imprisonment up to 6 months, or fine up to INR 10,000, or both, for imprisonment up to 2 years, or a fine of INR 50,000 or INR 5,00,000, or both.
- In case the offence under the MH Act is committed by a company, every person in-charge and responsible for the conduct of the business of such company, shall be proceeded against under the MH Act.

²⁹ *Ravinder Kumar Dhariwal v. Union of India*, (2023) 2 SCC 209.



Focus Areas – Rights of Persons with Disabilities

The rights of persons with disabilities inherently stems from the fundamental human rights enshrined in Part III of the Constitution. The SC in *Vikash Kumar v. UPSC*³⁰ has held that the PWD Act is based on the principles of equality and non-discrimination, which derive from the constitutional rights embodied in Articles 14, 19 and 21 of the Constitution. Section 3 of the PWD Act has been held to be a statutory recognition of these constitutional rights. Therefore, it is fruitful to embark upon a brief overview of the fundamental human rights provided for under Indian law, and the manner in which these rights have been interpreted, to understand the conceptual underpinnings of the rights-based framework sought to be brought into force through the PWD Act.

Section A | Fundamental Human Rights

Question	Answer
1. Is there any specific enactment which guarantees fundamental human rights in India?	Yes. Section 2(d) of the Protection of Human Rights Act 1993 defines human rights as rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the international covenants recognized by India. Part III of the Constitution also sets out fundamental rights available to all persons. It is not an exhaustive list but an indicative set of principles which have been interpreted broadly by the SC and various High Courts in order to uphold the rights and freedoms of different classes of citizens. For instance, the SC has broadly construed the right to life guaranteed under Article 21 of the Constitution to mean and include all varieties of rights which constitute the personal rights of an individual, over and above the freedoms set forth in Article 19 of the Constitution.

³⁰ *Vikash Kumar v. Union Public Service Commission*, AIR 2021 SC 2447

Question	Answer
	These include reproductive rights, the right to gender equality, rights against torture and cruelty, rights against exploitation, the right to know and rights against discrimination including discrimination against gender minorities and sexual minorities. It also includes positive rights such as the legalization of passive euthanasia by including the right to die a dignified death, within the ambit of the right to life with dignity.
2. What are the fundamental rights specified in Part III of the Constitution?	Some of the fundamental rights guaranteed under Part III of the Constitution are as follows: • Article 14: Equality before law • Article 15: Prohibition of discrimination on grounds of religion, race, caste, class or philosophy • Article 16: Equality of opportunity without discrimination in matters of public employment • Article 17: Abolition of untouchability • Article 19: Right to freedom of speech, assembly, association, movement, trade and occupation • Article 21: Protection of life and personal liberty • Article 22: Protection against arrest and detention • Article 23: Prohibition of traffic in human beings and forced labour • Article 24: Prohibition of employment of children in factories • Articles 25 and 26: Right to freedom of religion; and • Articles 29 and 30: Cultural and educational rights
3. What are the international conventions recognized by India relating to human rights?	India has ratified the following international conventions relevant to human rights: • Universal Declaration of Human Rights, 1948 • International Covenant on Civil and Political Rights, 1966 • International Covenant on Economic, Social and Cultural Rights, 1966 • Convention on the Elimination of All Forms of Discrimination Against Women, 1979 • International Convention on the Elimination of All Forms of Racial Discrimination, 1965 • Convention on the Rights of a Child, 1989 and • Convention on the Rights of Persons with Disabilities, 2006 In addition to the above, India is also a signatory to the Proclamation on the Full Participation and Equality of 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 at Beijing in December 1992.

Question	Answer
4. Are reproductive rights included within the concept of fundamental rights?	Yes. The SC has, in various judgments, interpreted Article 21 widely so as to encompass reproductive rights within the scope of the right to life and held that respecting reproductive autonomy is an integral part of women's welfare. Further, such autonomy should extend to the protection of the right to make choices in relation to all aspects involving personal intimacies of marriage, motherhood, procreation and child rearing which will include but not be limited to the right to carry a baby, give birth and raise children. The SC has also emphasized that such rights would be inclusive of the right to privacy and dignity in relation to the same. In <i>Suchita Srivastava v. Chandigarh Administration</i>³¹, the SC upheld the right of a woman with intellectual disabilities who had been admitted into a government welfare run institution to give birth, stating that the victim's choice and reproductive rights in respect of her child, in spite of other factors such as lack of understanding of the sexual act as well as apprehension regarding her ability to carry the pregnancy to its full term, is covered under her fundamental rights under Article 21. Additionally, Section 10 of the PWD Act expressly recognizes the reproductive rights of persons with disabilities, by casting a duty upon the State and Central Governments to ensure that persons with disabilities have access to appropriate information regarding reproductive rights and family planning.
5. Are there any duties upon the government to ensure access to appropriate information, family planning, medical procedures relating to infertility?	Yes. The SC, in <i>Ramakant Rai v. Union of India</i>³², issued directions to the Central and State Government(s) including in relation to: • Ensure uniformity across states with regards to regulation of sterilization procedures; • Introduce a system of having an approved panel of doctors entitled to carry on sterilization procedures in the state, prepare and circulate a checklist containing patient details to be filled out before carrying out sterilisation procedure, and set up a Quality Assurance Committee ("QAC") for the purpose of ensuring that the guidelines are followed in respect of preoperative measures, operational facilities and postoperative follow-ups, but also for maintaining statistics; • Bring into effect an insurance policy; and • To lay down uniform standards to be followed by the states with regard to the health of the proposed patients, the age, the norms for compensation, the format of the statistics, checklist and consent pro forma and insurance.

³¹ Suchita Srivastava v. Chandigarh Administration, (2009) 14 SCR 989

³² Ramakant Rai v. Union of India, (2009) 16 SCC 565

Question	Answer
	Subsequently, in <i>Devika Biswas v. Union of India</i>³³, the SC issued supplementary directions to those already issued in <i>Ramakant Rai v. Union of India</i>³⁴ to strengthen the regulatory process with respect to the fertility schemes implemented by the Government of India, which amongst other things required that: • The approved panel of doctors should be published on government websites, contents of the checklist prepared pursuant to the directions given in <i>Ramakant Rai v. Union of India</i>³⁵ should be explained to the proposed patient in a language that they understand, and the proposed patient should also be provided an explanation of the impact and consequences of the sterilisation procedure. • The QAC should publish an annual report containing non-statistical information in the form of a report card indicating the meetings held, decisions taken, work done and the achievements of the year, etc. With regard to the implementation of the Family Planning Indemnity Scheme, information regarding the number of claims filed, the claims accepted and in which category (death, failure, complication, etc.), claims pending (and since when) and claims rejected and the reasons for rejection, was to be included. • The Central and State Governments to ensure that sterilization targets are not fixed, to prevent forced or non-consensual sterilization merely to achieve the targets. Moreover, Section 10 of the PWD Act provides that no person with disability shall be subjected to any medical procedure that could result in infertility without their free and informed consent.
6. Does the right to dignity afforded under Article 21 entail any positive obligation upon the State towards ensuring human dignity?	Yes. The SC has, in several cases, construed positive obligations upon the state arising out of the right to dignity afforded to all under Article 21. The SC has held that India is a welfare state governed by a Constitution which lays special emphasis on the protection and well-being of the weaker sections of society and seeks to improve their economic and social status. In the discharge of its responsibilities, the state recognises the need for maintaining establishments for the care of weaker sections of society for whose protection and welfare, necessary provision must be made while ensuring the minimum conditions for human dignity. For instance, the SC, in furtherance of its recognition of the third gender has directed the Central and State Governments to take several steps for the advancement of the transgender community, including: • Providing for legal recognition of the third gender in all documents and recognise third gender persons as a "socially and educationally backward class of citizens", entitled to reservations in educational institutions and public employment; and

³³ *Devika Biswas v. Union of India*, (2016) 10 SCC 726.

³⁴ *Ramakant Rai v. Union of India*, (2009) 16 SCC 565.

³⁵ *Ramakant Rai v. Union of India*, (2009) 16 SCC 565.

Question	Answer
	• Taking steps to frame social welfare schemes for the community. The SC has further held that the state is obliged to provide monetary compensation for the violation of fundamental rights under Article 21 of the Constitution. In <i>Sri Suhas Vasant Karnik v. Bank of India</i>³⁶, where the petitioner with visual impairment was not permitted to participate in the process of promotion, the Bombay High Court categorically held that the state is under a constitutional obligation to encourage participation of persons with visual disabilities in activities on par with other members of staff, and consider the cases of persons with visual disabilities for promotion fairly and equitably. In <i>S v. State</i>,³⁷ which concerned a petition seeking transfer of an arrested person afflicted with mental illness to a government hospital for treatment, the Madras High Court emphasised that there is a positive obligation upon police officers and magistrates dealing with remand prisoners to apply their minds to the mental state of the arrestee and adopt the procedure under the MH Act, if there are indications of mental illness.
7. Is there any contradiction between the right to equality provided under the Constitution vis-à-vis the powers of the state to make special provisions for women, children or any other groups based on social, economic backwardness or marginalization?	Article 14 of the Constitution mandates that no person shall be denied equality before the law or equal protection of laws by the state. Article 15(1) prohibits discrimination against any citizen by the state on grounds of religion, race, caste, sex, place of birth or any of them. Article 16(1) mandates equality of opportunity for all citizens in matters relating to employment or appointment to any state office. Article 16(2) specifies that no citizen shall be ineligible for or be discriminated against in relation to holding public office on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Articles 15(3) and 15(4) of the Constitution also allow for special provisions for women, children, and socio-economically backward groups. Additionally, Article 16(4) of the Constitution provides the state with the power to make provisions for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the state. The SC has held that the right against discrimination as guaranteed in the Constitution should not be interpreted as a blanket ban on distinguishing between individuals on the basis of religion, sex, caste, etc. Therefore, there is no contradiction between the equality of all citizens before the law and the special powers of the state to make special provision for women, children or any other marginalized groups.

³⁶ Writ Petition Number 1368 of 1993

³⁷ S. v. State, 2021 SCC OnLine Mad 14423

Question	Answer
8. What are other facets of the right to life and dignity?	The fundamental rights to life, equality and liberty have also been construed broadly to include the following rights: • Right against discrimination: The SC has emphasized that the purport of elevating certain rights to the status of fundamental rights was to prevent discrimination as the same is violative of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution. In <i>Union of India v. Sanjay Kumar Jain</i>,³⁸ the SC quashed the order of denial of permission to appear in viva voce test in respect of a petitioner with visual disabilities, contending that the same was merely on the ground of his disability. This decision has also been followed by the Bombay and Madras High Courts. • Right to live in a community: In <i>Pankaj Sinha v. Union of India</i>,³⁹ the SC took cognizance of the fact that due to the disability that entails as a result of the disease, people affected by leprosy suffer additional discrimination in the form of denial of access to health services, education and livelihood options, and even human rights which results in violation of the fundamental right to equality and right to live with dignity. Accordingly, the SC issued directions to the Central Government including the need for massive awareness campaigns to spread the message that a person affected with leprosy can lead a normal married life, can have children, can take part in social events and go to work or school as normal. The court further emphasized that the acceptance of leprosy patients in the society would go a long way in reducing the stigma attached to the disease. • Right against exploitation: This right is already provided for in Articles 23 and 24 of the Constitution which proscribe forced labour and exploitative labour practices and have been upheld in various decisions of the SC. • Right against deprivation of personal liberty: This right was recognised by the SC in various judgments where the court has laid down detailed guidelines to be followed by all law enforcement authorities in cases of arrest and detention. The SC recognized that deprivation of personal liberty or any other forms of cruel and degrading treatment during interrogation or otherwise is violative of Article 21 of the Constitution.
9. Is there a right to access to justice?	Yes, the right to access to justice has been recognized as both a fundamental and a human right by the SC. It includes the right to a speedy trial, efficacious and inexpensive legal remedies. Further, the SC has also clearly held that that access to justice is both a fundamental and human right and that no aggrieved person can be left without a remedy.

³⁸ *Union of India v. Sanjay Kumar Jain*, (2004) 6 SCC 708.

³⁹ *Pankaj Sinha v. Union of India*, AIR 2018 SC 4297.

Question	Answer
	In <i>Hussainara Khatoon v. Home Secretary, State of Bihar</i>,⁴⁰ the SC held that the right to free legal services is an essential ingredient of 'reasonable, fair and just, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. The state must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities. In <i>Anita Kushwaha v. Pushap Sudan</i>,⁴¹ the SC while relying on the above judgment listed out 4 main facets of the right to access to justice, namely: • The state must provide an effective adjudicatory mechanism for citizens to avail justice • The mechanism so provided must be reasonably accessible (in terms of distance) • The process of adjudication must be speedy; and • The litigant's access to the adjudication process must be affordable In <i>State Bank of India v. Ajay Kumar Sood</i>,⁴² the SC has held that it is crucial to ensure accessibility of judgments and orders for persons with disabilities, particularly those with visual impairments who rely on screen readers. The SC held that it is imperative for all judicial institutions to ensure that the judgments and orders passed by them are accessible to all persons including persons with disabilities.
10. Do the fundamental rights set forth under Part III of the Constitution find place in the PWD Act?	Yes. The principles of fundamental rights of equality, non-discrimination, right to live in a community as well as protection from cruel and inhuman treatment and safety from abuse and violence have been recognized by the SC and various High Courts and have been codified into the PWD Act in the following manner: • The government is required to ensure that persons with disabilities are able to exercise their fundamental right of equality and life of dignity at par with others. The government must provide a suitable environment for persons with disabilities to utilize their potential to ensure that no person with disability is deprived of his or her personal liberty only on the ground of disability. • The government is required to ensure that women and children with disabilities are able to exercise their fundamental right of equality and life of dignity at par with others and provide adequate support to all children with disabilities. • In order to prevent any torture, cruel, inhuman or degrading treatment, the PWD Act states that no person with disability shall be a subject of any research without free

⁴⁰ *Hussainara Khatoon v. Home Secretary, State of Bihar* 1979 SCR (3) 532.

⁴¹ *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509.

⁴² *State Bank of India v. Ajay Kumar Sood*, 2022 SCC Online SC 1067.

Question	Answer
	and informed consent obtained through accessible modes, means and formats of communication; and prior permission of a Committee for Research on Disability constituted by the appropriate government. • The government is required to take cognisance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents; to take steps for avoiding such incidents and prescribe the procedure for its reporting; to rescue, protect and rehabilitate victims of such incidents; and to create awareness and make available information among the public. • The government is required to ensure equal protection and safety of persons with disabilities in situations of risk, armed conflict, humanitarian emergencies and natural disasters; and further directs the Disaster Management Authorities at the district, state and national levels to ensure safety of persons with disabilities. • The PWD Act states that no child with disability shall be separated from his or her parents on the grounds of disability, and further provides for a mechanism for care of a child with disability in the event that the parents are unable to take care of the child. • The PWD Act recognizes the reproductive rights of persons with disabilities encompassed under Article 21 and mandates the government to ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning. Further, it also expressly provides that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent. • The Election Commission of India and the State Election Commissions are required to ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them. • The government (both at the Central and at State levels) are required to make provisions to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally. Further, the government should ensure that (a) all public documents are in accessible formats, (b) ensure that the filing departments are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats, and (c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.

Question	Answer
11. Are fundamental human rights enforceable?	Article 32 guarantees the right to move the SC by appropriate proceedings for the enforcement of the rights conferred in Part III, that is, the fundamental rights. The SC has the power to issue directions or order or writs as appropriate, for this purpose. Further, it has been held in <i>MC Mehta v. Union of India</i>⁴³, that the power of SC under Article 32 is not confined only to the issuance of writs but may also extend to issue any directions or orders appropriate for the enforcement of any of the fundamental rights. The court's power is not merely to prevent the violation of a fundamental right, but also to provide relief against a breach of a fundamental right already committed. It has also been held in <i>People's Union for Democratic Rights v. Union of India</i>,⁴⁴ that where a fundamental right is also available against a private individual, such as under Articles 17, 23, and 24, the SC can also be approached for an appropriate remedy against the violation of such a right by private individuals. In addition to the remedy provided before the SC, a writ petition can also be filed before a High Court under Article 226 of the Constitution.



⁴³ *MC Mehta v. Union of India*, (1987) 1 SCC 395.

⁴⁴ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

Section B | Legal Capacity

This section broadly discusses the specific rights of persons with disabilities to enter into contracts. The PWD Act recognises that persons with disabilities have legal capacity with respect to financial matters, inheritance, succession, marriage etc. The MH Act also acknowledges the legal capacity of persons with disabilities. This section further provides knowledge about the interconnection between the mental incapacities of an individual and the Indian Contract Act 1872. These rights are essential to ensure that persons with disabilities have the right to equal recognition everywhere as any other person before the law.

Question	Answer
1. Who can enter into contracts?	As per the Indian Contract Act 1872, a person has the capacity to enter into contracts if that person has attained the age of majority and if he / she is of sound mind and not disqualified from contracting under any applicable law. The law further explains that a person is of sound mind if, at the time of entering into a contract, he / she is capable of understanding it and forming a rational judgment as regards the effect of the contract on his / her interests. Therefore, a disqualification from entering into a contract for inheriting or buying and selling of property would be "unsoundness of mind" and not "mental illness", as noted under Section 11 and Section 59 of the Indian Contract Act 1872 and Indian Succession Act 1925, respectively.
2. Will a person with disability be barred from entering into contracts?	It cannot be said that every disability would prevent a person from being legally capable of entering into contracts. For instance, a person's locomotor disability will not prevent him / her from executing a contract. In the case of a mental illness, the MH Act provides that such illness should not be automatically taken to mean that the person is of unsound mind and hence legally incapable to enter into contracts. A mental health condition does not make an individual of unsound mind. The MH Act states that 'determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been so declared as such by a competent court'.
3. What is the standard of proof courts take into consideration to prove unsoundness of mind?	In <i>Lalta Prasad (Deceased) v. Bhagwan Deen</i>⁴⁵, the Allahabad High Court held that the issue regarding the declaration of a person as of unsound mind is a serious issue which required a high standard of proof. The courts, in cases such as <i>Inder Singh v. Parmeshwardhari Singh</i>⁴⁶ have held that there is a presumption in favour of sanity, and the person who claims unsoundness of mind of an individual is required to prove it sufficiently before the court that the individual was incapable of understanding business and forming a rational judgment in this regard.

⁴⁵ *Lalta Prasad (Deceased) v. Bhagwan Deen* AIR 2020 (NOC) 647 (Allahabad).

⁴⁶ *Inder Singh v. Parmeshwardhari Singh* AIR 1957 Pat 491.

Question	Answer
	For this purpose, as was held in <i>Sona Bala Bora v. Jyotirindra Bhattacharjee</i>,⁴⁷ courts will look not only at medical evidence but also at evidence of the general conduct of the concerned individual to ascertain whether such conduct can or cannot be explained on a reasonable basis. Under the Bharatiya Nagarik Suraksha Sanhita 2023, if the Magistrate has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate should investigate the same. The accused undergoes examination by a designated medical officer, and if deemed incapable of standing trial, proceedings are postponed, with resumption contingent on their mental state improving.
4. Are there any specific rights given to persons with disabilities who enter into contracts?	Yes. Under the PWD Act, specific rights concerning legal capacity have been recognised in favour of persons with disabilities. For instance, responsibility is placed on the appropriate government to ensure that persons with disabilities have the “right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit”. The appropriate governments must also ensure that persons with disabilities enjoy the same legal capacity and recognition before the law as is enjoyed by any other person.
5. If a person with disability cannot enter into contracts, who maintains such persons or takes the decisions for them?	The PWD Act provides that if a district court or any other competent authority has determined that a person with disability is unable to take legally binding decisions, the person may be provided with the support of a ‘limited guardian’ to take the prescribed decisions on his / her behalf in consultation with him / her. The statute explains the concept of ‘limited guardianship,’ a system that envisages a joint decision-making process, wherein there is mutual understanding and trust, between the guardian and the person with disability. The system will operate for a defined duration and decision and in accordance with the will of the person with disability. It may be noted that before the PWD Act was implemented, another statute was enacted by Parliament for specific kinds of disabilities, i.e., the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999. This statute envisages the appointment of a guardian for a person with disability falling in the protected category (i.e., a person suffering from autism, cerebral palsy, mental retardation, or a combination of two or more of such conditions) and provides that such a guardian would either have the care of such person with disability and his / her property; or be responsible for the maintenance of such person with disability.

⁴⁷ *Sona Bala Bora v. Jyotirindra Bhattacharjee*, (2005) 4 SCC 501.

Section C | Education

This section focuses on the rights of persons with disabilities in relation to education under both Indian law and international treaties. It also focuses on the duties cast upon governments, schools and other stakeholders with respect to providing an inclusive education system, which empowers persons with disabilities and on various schemes that have been put in place by the governments for the benefit of persons with disabilities.

Question	Answer
1. Do persons with disabilities have any rights in relation to education under Indian law?	Under Article 21-A of the Constitution, every child (including any child with disabilities) between the ages of 6 and 14 years has the right to free and compulsory education. This right is also enumerated in the Right of Children to Free and Compulsory Education Act 2009 ("RTE Act") Under the RTE Act, a child with disability shall have the same rights to pursue free and compulsory elementary education until such child is 18 years of age, access to books and other study materials and scholarships and other facilities. Additionally, a child with multiple disabilities also has the option to be home-schooled. In the context of the RTE Act, disability refers to: (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness; (viii) any conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability. "Severe disability" means disability with 80% or more of one or more multiple disabilities. "Multiple disability" means a combination of two or more of the disabilities set out under (i) to (vii) above.
2. Do persons with disabilities have any rights in relation to education under international treaties?	Yes. For instance, India is a signatory to the Convention which provides for the right to "inclusive education" in Article 24 in order to ensure full development of the potential, sense of dignity and self-worth, personality, talents and creativity, as well as mental and physical abilities of persons with disabilities to their fullest potential and to enable such persons to participate effectively in a free society. To this end, states have a duty to ensure that no person with disability is excluded from the education system, provide for access to an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live, and also provide for reasonable accommodation and support to such persons wherever required.
3. How has 'inclusive education' been defined?	Inclusive education means and includes any system in which (a) students with and without disability are able to learn together and (b) the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.

Question	Answer
	The United Nations, in its comments on Article 24 of the Convention, has described inclusive education as a fundamental human right, which caters to the well-being of all students, respects their inherent dignity and autonomy, acknowledges individual requirements and ability to effectively be included in and contribute to society. Indian courts have upheld inclusive practices in education centred on the well-being of persons with disabilities. In <i>Avni Prakash v. National Testing Agency</i>,⁴⁸ the SC held that a candidate affected by a person with a disability ought to be granted compensatory time to attempt a 3-hour exam as a part of the “reasonable accommodation” required under the PWD Act read with the Guidelines for Conducting Written Examination for Persons with Benchmark Disabilities issued by the Ministry of Social Justice and Empowerment.
4. What are the specific obligations of the government to promote ‘inclusive education’?	The Government has a duty to establish primary schools in every neighbourhood under the RTE Act. Additionally, the Government has a duty to undertake specific measures to promote inclusive education which includes the following: LOGISTICS AND FINANCIAL SUPPORT • Providing books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of 18 years • Providing scholarships to students with benchmark disabilities • Promoting the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language; and • Support educational institutions at all levels of school education CAPACITY BUILDING • Establishing teacher training institutions; and • Training teachers who are qualified in sign language, Braille and teaching children with intellectual disabilities SURVEYS AND RESEARCH • Conducting surveys every 5 years to (i) identify school going children; (ii) ascertaining special needs; and • Promoting research to improve learning

⁴⁸ *Avni Prakash v. National Testing Agency*, 2021 SCC OnLine SC 1112.

Question	Answer
5. Does legislation impose duties on private employers / private educational institutions to facilitate access for persons with disabilities?	While there are no specific duties imposed on educational institutions under the PWD Act, the Government has a duty to ensure that educational institutions funded or recognised by them: • Admit students with disabilities without discrimination and provide education and opportunities for sports and recreation activities equally with other students • Make building, campus and various facilities accessible • Provide reasonable accommodation according to the individual's requirements • Provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion • Ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication • Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them • Monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability; and • Provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs
6. Are there obligations on schools (kindergarten to Class XII) in respect of inclusive education?	Yes. Under the RTE Act, all schools are required to reserve 25% of seats available for admission in Class I for children belonging to disadvantaged groups, which includes children with disabilities. The Central Board of Secondary Education requires all schools affiliated with the board to undertake certain steps to ensure inclusive education, which can be categorised into the following: LOGISTICS • Modifying existing infrastructure to meet needs of children with disabilities • Ensuring physical facilities in schools (including hostels) to be barrier free and accessible for all students • Appointing special educators to ensure quality education of all children with special needs; and • Permitting adults to sit in class with children with disabilities if requested by a parent

Question	Answer
	ACADEMIC - Students with disabilities are exempted from learning a third language from classes VI to VIII - Students with disabilities may opt for only 1 compulsory language in Class X examinations - In Class XII, students with disabilities can be given a separate question paper in lieu of practical component - Scribe facility is permitted during examinations - Candidates in school examinations are eligible for additional time; and - Other accommodations; a full list can be accessed here.⁴⁹
7. What schemes has the government implemented to meet the goals of "inclusive education"?	A few examples of schemes implemented by the government have been set out below: Sarva Shiksha Abhiyan, now subsumed under the Samagra Shiksha Abhiyan: The objective was to focus on the needs of children with special needs to encourage them to take admission in primary schools. Under the scheme, the Government supports, through financial and other means, activities such as identification and assessment of children with special needs, provision of aids, appliances, corrective surgeries, Braille books, large print books and uniforms, therapeutic services, etc. The scheme also provides financial assistance towards the salaries of teachers working with children with special needs and provides stipends of INR 3,500 per student per annum. Inclusive Education for Disabled at Secondary Stage (IEDSS): This scheme has been set up to encourage children with special needs who have completed their primary schooling to take up secondary schooling. Under the scheme, assistance of INR 3,000 per child per annum for specified items such as identification and assessment of children with disabilities, provision of aid kits, ensuring access to learning material etc. is provided to states / union territories. The Higher Education for Persons with Special Needs Scheme (HEPSN): The HEPSN scheme aims to promote higher education learning experiences for persons with disabilities. To this end, the the University Grants Commission of India ("UGC") provides financial assistance of up to INR 10,00,000 per annum to universities and up to INR 5,00,000 per annum to colleges for improving accessibility, purchase of equipment to enrich learning, etc.
8. What scholarships are available for persons with disabilities?	The government has set up various scholarship schemes such as the umbrella scholarship scheme for persons with disabilities and the national overseas scholarship for students with disabilities. Further, the UGC has also framed national fellowships of up to INR 28,000 per month for persons with disabilities which are available for students with disabilities who are covered under the PWD Act, 1995. The All India Council for Technical Education (AICTE) has also implemented various scholarships for students with disabilities which can be accessed here.⁵⁰

⁴⁹ <https://www.cbse.gov.in/cbsenew/list-of-circulars-related-to-student/CWSN%20April%202019.pdf>.

⁵⁰ <https://www.aicte-india.org/schemes/students-development-schemes>.

Question	Answer
9. Is there a requirement for reservation for persons with disabilities in higher education?	Yes, all government institutions of higher education and other higher education institutions receiving aid from the government are required to reserve at least 5% seats for persons with benchmark disabilities and such persons should also be given an upper age relaxation of 5 years for admission in such institutions. In the case of <i>Purswani Ashutosh v. Union of India</i>⁵¹, the SC clarified that the scope of “higher education institutions” also includes technical institutions (such as medical institutions, engineering colleges etc) which are governed by specialist regulatory bodies.
10. What accessibility measures have been provided for students with disabilities to write competitive examinations?	The Central Government has laid down guidelines for conducting written examinations for persons with benchmark disabilities which states the following: • A scribe, reader, or lab assistant should be allowed for a person with disability who has a limitation in handwriting speed, or who has locomotor disability or suffers from cerebral palsy or blindness, if so desired by the person. For persons with disabilities not mentioned above, scribe, reader, or lab assistant can be allowed upon submission of a certificate. A person with disability should also have the right to bring their own scribe, reader, or lab assistant. • Persons with disabilities should have the flexibility to choose the mode of examination (for example, via Braille, on a computer, having large prints, by recording answers etc.). They should have the right to inspect any computer systems where the answers are to be submitted. • A disability certificate issued by a competent medical authority should be accepted across the country. • If requested, extra time of minimum 20 minutes per hour for candidates availing the scribe facility; or 1 hour for a 3-hour examination (proportionately reduced if less than 3 hours) for persons not availing the scribe facility should be granted. • Use of assistive devices should be permitted. Alternative options for visually impaired persons and proper seating arrangements (such as ground floor seating if required) should be provided.
11. What provisions have been made for promoting education for adults with disabilities?	The UGC and the AICTE have implemented various schemes to promote the education of persons with disabilities in higher education institutions and technical institutions across India. These include the HEPSN; providing financial assistance to universities for teacher training in B.Ed and M.Ed degree programmes; and assisting universities in setting up special units for persons with disabilities in universities / colleges. Additionally, various scholarships are available for persons with disabilities in higher education. For further details please refer to Question 8.

⁵¹ Purswani Ashutosh v. Union of India, AIR 2018 SC 3999.

Section D | Livelihood and Employment

This Section broadly discusses the rights of persons with disabilities in the areas of livelihood and employment. The section emphasizes on the obligations set out in the PWD Act, as well as those established and reinforced by the courts, requiring both the government and private employers to reasonably accommodate persons with disabilities within the workforce.

Question	Answer
1. What are the main legislations that crystallize the rights of persons with disabilities in respect of employment?	The National Policy⁵² and the PWD Act aim at providing equal opportunities to the persons with disabilities in terms of employment and social security. Specifically, the National Policy lays down schemes for employment of persons with disabilities in government institutions, private sectors and for self-employment and lays down steps to be taken for employment of persons with disabilities. The PWD Act retains job reservations both in the public and private sectors. It also provides for the following: • The Central and State government authorities are required to provide schemes to ensure that at least 5% of the total workforce of all private establishments comprises persons with disabilities. A private establishment includes any company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate government may, by notification, specify • Discrimination in employment by the government is prohibited • All establishments (including private establishments) are required to frame an Equal Opportunity Policy (“EOP”) and appoint a liaison officer to address issues in this area • Termination or reduction of rank of an employee who has acquired a disability is not permissible • There is horizontal reservation (i.e., that across each different ranks/categories/post, there would be a reservation for employment of persons with disabilities) of 4% in government jobs; and • To bolster employment of persons with disabilities in rural areas, 5% of the budget in the poverty reduction schemes should be earmarked for this purpose, with priority given to women with benchmark disabilities
2. Do Indian labour laws provide for specific welfare provisions for persons with disabilities?	Yes. In brief: • Employees’ State Insurance Act 1948: Periodical payment is required to be made to an insured person with a disability because of a personal injury sustained in the course of employment. Further, payment of insurance is required to be made to an insured employee in the event of his or her temporary or permanent disablement due to injury caused in the course of employment.

⁵² <https://cdnbbsr.s3waas.gov.in/s3e58aea67b01fa747687f038dfde066f6/uploads/2023/10/20231013248779923.pdf>.

Question	Answer
	• Payment of Gratuity Act 1972: Gratuity shall be payable to an employee on the termination of his or her employment, on his death or disablement, even if he or she has not rendered continuous service of 5 years • All-India Services (Special Disability Leave) Regulations 1957: Special disability leave may be granted to a member of a government service who suffers (a disability) as a result of risk of office or special risk of office. • The Central Civil Services (Pension) Rules 1972, Central Civil Services (Extraordinary Pension) Rules 1939, Railway Services (Extraordinary Pension) Rules 1993: These legislations provide for disability pension on account of disablement of a government servant.
3. Does legislation impose duties on private employers / private educational institutions to facilitate access for persons with disabilities?	While there are no obligations on private establishments to reserve any jobs for persons with disabilities, they are required to fulfil certain other obligations. The PWD Act makes it illegal for any establishment to discriminate against a person on the grounds of disability unless it can be proved that the discriminating act in question is a proportionate means to a legitimate objective. For any such act of discrimination, the “head” of the establishment would be made responsible, and it is the duty of this “head” to ensure that the provisions are not misused to the detriment of persons with disabilities. Private establishments should also appoint a liaison officer to look after recruitment of persons with disabilities, including the provisions and amenities for employees with disabilities and are also required to frame an EOP.
4. Has the Indian judiciary pronounced any judgment on principles of reasonable accommodation for persons with disabilities vis-à-vis private employers?	Yes. In <i>Vikash Kumar v. Union Public Service Commission</i>⁵³, the SC reiterated that the PWD Act vests certain obligations on employers in the private sector. The PWD Act defines reasonable accommodation as a necessary and appropriate modification or adjustment to ensure that persons with disabilities are able to enjoy or exercise their rights equally with others. Relying on the same, the court highlighted that the PWD Act casts active responsibility on employers in the private sector to create an inclusive workforce by providing persons with disabilities equal opportunities in the job market. This guarantee of equal opportunity must be accompanied with provisions of reasonable accommodation. The principle of reasonable accommodation is founded on the norm of inclusion and reaffirms that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of persons with disabilities. The obligation to take proactive measures for implementation of the PWD Act vests not just with the government but also with the private sector.

⁵³ Vikash Kumar v. Union Public Service Commission AIR 2021 SC 2447.

Question	Answer
	Further, the SC in <i>Ravinder Kumar Dhariwal v. Union of India</i>,⁵⁴ dealt with an instance of an appellant facing obsessive compulsive disorder being subjected to disciplinary proceedings under Reserve Police Force rules.
5. What should an EOP include?	An EOP must, amongst other things, include: • Details regarding amenities and facilities put in place for persons with disabilities • Lists of posts identified for such persons • Details of training, promotion, allotment of accommodation and provision of assistive devices and barrier free accessibility for such persons; and • Details of the liaison officer or grievance redressal officer
6. What schemes have been implemented by the government for promoting employment opportunities for the persons with disabilities in public and private sector enterprises?	The government has implemented various schemes to promote employment of persons with disabilities. These include: • Scheme for Implementation of Rights of Persons with Disabilities (SIPDA): This provides for financial assistance for undertaking various activities outlined in the PWD Act. The various components of this scheme include creation of barrier-free environments, the national action plan for skill training, the Accessible India campaign, etc. • Employee Provident Fund Organisation and Employee State Insurance Corporation Schemes: These were launched to encourage employment of persons with disabilities in the private sector. • National Action Plan: This provides for skill development of persons with disabilities under the SIPDA of the Department of Empowerment of Persons with Disabilities. Vocational training courses are offered by the government under this scheme to provide skill development training for persons with benchmark disabilities. 30% of total intake is to be reserved for women. Skill training programmes under this scheme are provided by a network of training partners empanelled by the government and may include NGOs, private institutes and public / government sector organisations. The scheme also provides for financial assistance to the trainees with disabilities at the start of the programme, and also towards the cost for personal assistive devices for or during the training programme and after the conclusion of the training programme. There are also various non-governmental organisations that engage in promotion of employment opportunities, such as: • National Centre for the Promotion of Employment of Disabled People (NCPEDP): The NCPEDP promotes equality for persons with disabilities, through education, communication, appropriate training and a barrier-free environment for gainful employment. The objective of this organisation is the promotion of employment in organised and unorganised sectors.

⁵⁴ *Ravinder Kumar Dhariwal v. Union of India* 2021 INSC 916.

Question	Answer
	• The Ability Foundation: This foundation offers a range of services to employers and jobseekers and works with qualified persons with disabilities to enhance their employment opportunities in accordance with the current market needs. It also offers employment oriented soft skills through the National Centre for Information & Communication Technology which imparts computer education and offers holistic and comprehensive job-oriented training to graduates with disabilities in spoken English, mathematics and aptitude tests, personality development, techniques of communication and facing interviews. • Enable India: This organisation works towards making persons with disabilities a part of every corporate hiring plan thereby building awareness for the creation of a supportive environment.
7. Are there any schemes in operation that encourage self-employment for persons with disabilities?	There are several schemes that have been floated by the Government of India to support and encourage building an ecosystem that nurtures self-employed person with disabilities: • National Divyangjan Finance and Development Corporation: This has been set up by the Ministry of Social Justice and Empowerment to promote self-employment opportunities for the persons with disabilities. It provides loans at low rates (at simple interest) to persons with disabilities for pursuing general / professional / technical education for training at graduate and higher levels as well as assistance in upgrading the skills of such persons. • Divyangjan Swavalamban Yojana: This scheme is aimed at providing concessional credit for the benefit of persons with disabilities in order to facilitate education, vocational or skill development training or any economic activity started for the purpose of generating income. Any Indian above the age of 18 years, or 14 years in case of mental retardation, having 40 % or more disability can take advantage of the benefits of this scheme. • Vishesh Microfinance Yojana: The objective of this is to provide prompt and need based finance at reasonable rate of interest to pursue small/micro business, developmental activities, other such projects, not exceeding unit cost of INR 60,000. • Association of Rehabilitation under National Trust Initiative of Marketing: This is a marketing federation set up by the National Trust to market products made by persons with disabilities. Its mission is to facilitate enterprises that can offer products and services to cater to the domestic and overseas markets while ensuring self-sustenance and equality especially for persons with developmental disabilities.

Section E | Social Security and Healthcare

This section highlights the schemes and initiatives that the government has formulated to ensure that persons with disabilities have access to healthcare with an aim to promote equitable healthcare access for all persons.

Question	Answer
1. Does the government have any obligations in relation to ensuring social security for persons with disabilities?	Yes. The government is obligated to formulate 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. The quantum of assistance which persons with disabilities are entitled to under such schemes is 25% higher than what should be available to other persons under such schemes.
2. What are the obligations of the government in relation to healthcare facilities for persons with disabilities?	The obligations of the government in relation to providing healthcare facilities to persons with disabilities can be classified as follows: ENSURING ACCESS TO HEALTHCARE • Providing free healthcare, especially in rural areas • Ensuring barrier-free access in all parts of government and private hospitals and other healthcare institutions and centres • Ensuring priority in treatment • Providing essential medical facilities; and • Ensuring sexual and reproductive healthcare for women with disabilities AWARENESS CAMPAIGNS • Educating the public through the pre-schools, schools, primary health centres, village level workers etc; and • Creating awareness through television and media campaigns RESEARCH AND PREVENTION • Undertaking surveys, investigations and research concerning the cause of occurrence of disabilities • Promoting methods for prevention of disabilities • Screening children for identifying 'at-risk' cases; and • Taking measures for pre-natal, perinatal and post-natal care of mother and child REHABILITATION • Undertaking or causing to be undertaken, services and programmes of rehabilitation

Question	Answer
3. What schemes has the government established to this end?	Examples of schemes implemented by the government to this end are as follows: • Niramaya Health Insurance: This scheme aims at providing affordable healthcare insurance to persons with disabilities. The maximum health insurance cover provided is INR 1,00,000. • Deendayal Disabled Rehabilitation Scheme: The objective of this scheme is to create an enabling environment to ensure equal opportunities, equity, social justice and empowerment of persons with disabilities. Under this scheme, financial assistance is provided to voluntary organisations which provide rehabilitation of persons with disabilities, including early intervention, development of daily living skills, education and training. • District Rehabilitation Centres: The government has also established 325 district rehabilitation centres for persons with disabilities across the country. • Scheme of Assistance to Persons with Disabilities for Purchase / Fitting of Aids / Appliances: The objective of the scheme is to support economically disadvantaged persons with disabilities by providing durable, scientifically designed, and high-quality aids and appliances. These modern devices aim to promote physical, social, and psychological rehabilitation, mitigate the impacts of disabilities, and enhance economic opportunities and independence.



Section F |Transport and Movement

This section provides an overview of the measures taken by the government to create accessible environment for persons with disabilities. This section briefly summarises the steps taken by the government and directions of the Indian judiciary in creating a barrier free environment for individuals with disabilities, which includes making public places such as bus stops, government buildings, airports, parking spaces, toilets and railway stations more accessible to them.

Question	Answer
1. Does the domestic legislation of India impose duties on the government to ensure access of persons with disabilities to transportation?	Yes. The PWD Act mandates that the appropriate government must take suitable measures to provide facilities for persons with disabilities to provide greater access to transport. Such facilities should be present in all bus stops, railway stations and airports. The appropriate government should also develop schemes and programmes promoting mobility of persons with disabilities at affordable costs. Additionally, standards for accessibility must be met in all parking spaces, toilets, ticketing counters and ticketing machines.
2. Would movement on roads be made more accessible for persons with disabilities?	Yes. The PWD Act mandates that the appropriate government must make roads accessible to improve mobility of persons with disabilities.
3. Would the government develop schemes and programs to promote transport and mobility of persons with disabilities?	Yes. The PWD Act mandates that the appropriate government must develop schemes to promote the personal mobility of persons with disabilities at an affordable cost to provide for incentives and concessions, retrofitting of vehicles and personal mobility assistance.
4. Are there any special incentives for children with disabilities?	Yes. The PWD Act mandates that the appropriate government and local authorities must endeavour that all educational institutions funded or recognized by them must provide transportation facilities to both children with disabilities and the attendants of children of disabilities in case the child has high support needs.
5. Does any international instrument speak regarding facilitating personal mobility and transport?	Yes. Article 20 of the Convention expressly mandates that signatory states must take effective measures to ensure personal liberty with the greatest possible independence for persons with disabilities.

Question	Answer
6. Has the government framed any scheme as mandated by the PWD Act to ensure access of persons with disabilities to transportation?	Under the Rights of Persons with Disabilities Rules 2017 ("PWD Rules"), the bus body code for transportation system must be complied with. Further, the Ministry of Urban Development has published the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons 2016. Under the said guidelines, detailed guidance is provided regarding building premises (doors, windows, handrail, toilets, signage, parking etc), level changes (ramps, stairs, lifts etc), alighting and boarding areas (car parks, bus stops, railway stations etc), transport and road planning etc.
7. Has the Indian judiciary pronounced any judgment in regard to transport and movement of persons with disabilities?	The SC in <i>Javed Abidi v. Union of India</i>,⁵⁵ heard the plea seeking 'ambulifts' to take orthopaedic persons with disabilities from the ground level onto the aircraft. While providing the sought relief, the SC emphatically stated that "to create a barrier free environment for persons with disabilities and to make special provision for the integration of persons with disabilities into the social mainstream apart from the protection of rights, provisions of medical care, education, training, employment and rehabilitation are some of the prime objectives of the Act." In <i>Deaf Employees Welfare Association v. Union of India</i>,⁵⁶ the SC granted transport allowance to speech and hearing-impaired persons at par with visual and orthopaedic impairments. The SC held that there could be no discrimination between a blind person and a deaf person. In <i>Jeeja Ghosh v. Union of India</i>,⁵⁷ a disability rights activist affected with cerebral palsy was deboarded from her flight due to her disability. The SC observed that the airline violated the erstwhile Civil Aviation Requirements 2008 with regard to Carriage by Air of Persons with Disabilities and/or Persons with Reduced Mobility issued by the Directorate General of Civil Aviation and directed that recommendations of the Ashok Kumar Committee which highlighted international best practices on interaction with persons with disabilities, be incorporated in the Civil Aviation Requirements 2014. The Delhi High Court in <i>Court in its Own Motion v. Union of India</i>⁵⁸ heard the plea of a person with visual disability could not board the train at Unnao station in Uttar Pradesh, even though he reserved a berth in a coach meant for persons with disability, as the coach was bolted from inside when he tried to board the train. The High Court emphasised the importance of the PWD Act and the need to ensure compliance with the provisions. In a public interest litigation filed on behalf of persons with disabilities, the SC in <i>Rajive Raturi v. Union of India</i>,⁵⁹ considered the accessibility requirements to meet the needs of persons with visual impairments with respect to safe access to roads and transport facilities. The SC has set out various directions

⁵⁵ Javed Abidi v. Union of India, AIR 1999 SC 512. | ⁵⁶ Deaf Employees Welfare Association v. Union of India, 2014 (3) SCC 173. | ⁵⁷ Jeeja Ghosh v. Union of India, AIR 2016 SC 2393. | ⁵⁸ Own Motion v. Union of India, Writ Petition (Civil) 4035/2020. | ⁵⁹ Rajive Raturi v. Union of India, (2018) 2 SCC 413.

Question	Answer
	for making public places (government buildings, airports and railway stations) and facilities more accessible for individuals with disabilities. These requirements include: • Making gates to public places accessible by incorporating necessary accessible standards. More specifically, they must be made wide enough to allow wheelchairs to pass easily and must provide enough space for the wheelchair to turn around after entering inside • Stairs must be marked with a broad yellow line to allow the visually impaired to understand the difference in gradient • At places like airports, railway stations, etc, passengers must be clearly informed about the details of their flight/train such as the gate number for boarding, etc via public announcement systems • A minimum of 3-5 parking spaces near the entrance must be reserved for persons with disabilities. This must be clearly indicated by showing the international symbol for disability i.e. the wheelchair symbol • All unnecessary obstructions must be removed, and all access ways must be well lit. Moreover, clear signposts, along with their Braille equivalents should be put up • Elevators must have clear Braille signs and auditory feedback. The buttons of elevators must be accessible from a wheelchair. Pictograms must be put up near elevators and other important places such as toilets • Employees working at public places must be provided necessary training to enable them to understand the unique set of challenges that persons with disabilities face. They should be informed about the best practices for dealing with these challenges • Wheelchairs and mobility scooters should be available at every public place In <i>Nipun Malhotra v. Government of NCT of Delhi</i>,⁶⁰ the Delhi High Court considered the issue of procuring low-floor buses. The High Court observed that the Government of Delhi is precluded from procuring standard floor buses to make it fully accessible to persons with disabilities as well as elderly persons. In <i>Vaishnavi Jaykumar v. State of Tamil Nadu</i>,⁶¹ the Madras High Court considered the need for low-floor buses for persons with disabilities. Specific directions were issued to the Institute of Road Transport, which include procurement of low floor buses, development of mobile applications to indicate movement of such low floor buses for persons with disabilities to access the bus stops, and the design of accessible bus stops for persons with disabilities.

⁶⁰ Nipun Malhotra v. Government of NCT of Delhi, 2016 SCC Online Delhi 6145.

⁶¹ Vaishnavi Jaykumar v. The State of Tamil Nadu, 2023 SCC Online Madras 3166.

Section G | Culture and Recreation

This section highlights the accessibility measures as prescribed under the PWD Act to ensure that persons with disabilities can fully and equally participate in recreational activities and enjoy access to a broad spectrum of cultural experiences.

Question	Answer
1. Does the domestic legislation of India impose duties on the government to ensure facilitation of recreational activities, and preserving culture for persons with disabilities?	The PWD Act mandates that the appropriate government and the local authorities must take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others. In this regard, the measures to be taken include the following: LOGISTICS • Making art accessible to persons with disabilities • Facilitating, supporting and sponsoring artists and writers with disability to pursue their interests and talents • Redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities • Developing technology, assistive devices and equipment to facilitate access and inclusion for persons with disabilities in recreational activities • Facilitating participation in scouting, dancing, art classes, outdoor camps and adventure activities; and • Ensuring that persons with hearing impairment can have access to television programmes with sign language interpretation or subtitles AWARENESS • Establishing a disability history museum which chronicles and interprets the historical experience of persons with disabilities
2. Has the Indian judiciary pronounced any judgment with regard to accessibility of persons with disabilities to art (literary texts, films, etc;)?	Yes. The Delhi High Court in <i>Akshat Baldwa v. Yash Raj Films</i>⁶³ relied on the principle of reasonable accommodation, highlighting the need for greater accessibility to films for persons with visual and hearing impairments. The court noted that the PWD Act had been in effect for eight years at the time of hearing, and not accounting for any accessibility features, would be in violation of the PWD Act. With a view to provide for such accessibility features within the realm of films, the court directed the Ministry of Information and Broadcasting to issue guidelines on mandatory inclusion of accessibility features in public exhibition of feature films. These guidelines would in turn be circulated to the relevant stakeholders such as producers, theatre managers, and OTT platforms.

⁶³ Akshat Baldwa v. Yash Raj Films, Writ Petition (Civil) Number 445 of 2023.

Question	Answer
	Pursuant to the same, the Ministry of Information and Broadcasting have come out with guidelines⁶⁴ in March 2024, setting guidelines for accessibility standards in the exhibition of feature films in cinema theatres for persons with disabilities. Further, the Madras High Court in <i>P Ramkumar v. State of Tamil Nadu</i>⁶⁵, held that inaccessibility to a renowned piece of literature to persons with visual disabilities would amount to discrimination. The non-dissemination of such literature in accessible formats impairs the enjoyment of cultural life and inclusive education of the visually challenged on an equal footing with others.
3. Has the Indian judiciary pronounced any judgment with regard to representation of persons with disabilities in media?	Yes. The SC, in the <i>Nipun Malhotra v. Sony Pictures Films India Private Limited</i>,⁶⁶ discussed portrayal of disability in media and distinguishes between 'disability humour' and 'disabling humour'. The judgment balances the right of freedom of expression with the right to dignity and non-discrimination, highlighting that creative freedom cannot include the freedom to lampoon, stereotype, misrepresent or disparage already marginalized groups. Further, in differentiating between 'disability humour' and 'disabling humour', the court highlighted that the former uses humour as a tool to better understand and express a disability, and the latter denigrates it. The SC, while striking a balance, also held that so long as the overall message of the film justifies the depiction of disparaging language being used against persons with disabilities, the film cannot be subject to restrictions. However, where such disparaging language is used to further marginalize, stereotype and reinforce disabling barriers, the same shall be deemed offensive and may be subject to restrictions. In furtherance to the rationale above, the SC also took to the task of specifying general guidelines for portrayal of persons with disabilities.
4. Does the domestic legislation of India impose duties on the government to ensure promotion of sports for persons with disabilities?	The PWD Act mandates that the appropriate government and the local authorities must take measures to ensure effective participation in sporting activities of the persons with disabilities. Further, sports authorities must accord due recognition to the right of persons with disabilities. Sports authorities must create schemes and programmes for promotion and development of sporting talents.

⁶⁴ <https://www.cbfcindia.gov.in/cbfcAdmin/assets/pdf/Accessible.pdf>.

⁶⁵ *P Ramkumar v. State of Tamil Nadu*, Writ Petition (MD) Number 5769 of 2018.

⁶⁶ *Nipun Malhotra v. Sony Pictures Films India Private Limited*, 2024 SCC OnLine SC 305.

Question	Answer
5. What measures does the PWD Act mandate the government to undertake for promoting sporting activities for the persons with disabilities?	The PWD Act mandates that both the appropriate government and the local authorities must undertake measures such as: LOGISTICS • Redesign and support infrastructure facilities • Develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities; and • Provide multi-sensory essentials and features in all sporting activities to ensure effective participation ACADEMIC DEVELOPMENT • Restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities FINANCIAL SUPPORT • Allocate funds for development of state of the art sport facilities for training of persons with disabilities
6. Has the government framed any scheme as mandated by the PWD Act to ensure accessible tourism for persons with disabilities?	The PWD Act mandates that the Central Government shall, in consultation with the Chief Commissioner (authority tasked with ensuring compliance on a Central level with requirements and objectives of the PWD Act), formulate rules for persons with disabilities for laying down standards of accessibility for the physical environment, transportation, appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas. The Central Government in 2015 introduced the Swadesh Darshan 2.0 scheme, which mentions under its provisions for “sustainable tourism” that all structures developed should be universally accessible. Subsequently, the Ministry of Tourism published draft guidelines on ‘accessible tourism’ in 2022⁶⁷ that specifically highlight accommodations vis-à-vis different disabilities. The guidelines recommend having in place accessible information portals, wayfinding and signage systems, accessible restaurants, pubs, lounges and guesthouses. States such as Kerala have introduced ‘barrier-free tourism’ projects with a view to making infrastructure in tourist destinations more accessible and introducing accessibility friendly tour packages. Further, High Courts in cases such as <i>K R Raja v. State of Tamil Nadu</i>⁶⁸, referring to the principle of reasonable accommodation, have highlighted that tourism is integral for equal participation

⁶⁷ <https://tourism.gov.in/sites/default/files/2022-07/Notice%20Draft%20version%20of%20Accessible%20Tourism%20Guidelines%20281%29%20281%29.pdf>.

⁶⁸ *K R Raja v. State of Tamil Nadu* 2022 SCC OnLine Mad 5473.

Question	Answer
	of persons with disabilities in recreation and cultural life. They referred to the 2022 draft guidelines and directed the Tamil Nadu government to devise, in consultation with expert bodies, a programme for accessible tourism in Tamil Nadu in line with the requirements of Section 40 of the PWD Act. Pursuant to the same, the Tamil Nadu Tourism Policy for 2023⁶⁹ has incorporated clauses on making transportation and tourist infrastructure accessible to all persons.



⁶⁹ [https://www.tamilnadutourism.tn.gov.in/img/Tamil Nadu Tourism Policy 2023.pdf](https://www.tamilnadutourism.tn.gov.in/img/Tamil%20Nadu%20Tourism%20Policy%202023.pdf).

Section H | Access To Technology and Communicative Technology

This section emphasises the mandates provided under the PWD Act to meet the accessibility requirements of the persons with disabilities in terms of communicative technology and assistive technology for mobility for persons with disabilities. Section 29 of the PWD Act also requires the development of technology, assistive devices and equipment to facilitate access and inclusion for persons with disabilities in recreational activities, and to also ensure that persons with hearing impairment can access television programmes with sign language interpretation or subtitles. This section highlights the provisions of PWD Act and Copyright Act 1957 that protect the interests of individuals with disabilities.

Question	Answer
1. Does the domestic legislation of India impose duties on the government to ensure access to technology and communicative technology for persons with disabilities?	The PWD Act mandates that the appropriate government must take measures to ensure that • All content available in audio, print and electronic media are in accessible formats • Access to electronic media is enabled through provision of audio description, sign interpretation and closed captioning; and • Electronic goods and equipment meant for everyday use are available in universal design Additionally, standards of accessibility for the physical environment, transportation, information, and communications, including appropriate technologies and systems and other facilities and services provided to the public in urban and rural areas are enumerated in the PWD Rules. A compulsory license allows the use of copyrighted material without obtaining the owner's consent beforehand. This license enables any person to republish, broadcast or communicate any work it to the public even though that person is not the owner of the original work. The Copyright Act 1957 enables compulsory licensing for the benefit of persons with disabilities and also provides fair dealing exemptions for adaption, reproduction, issue of copies or communication to the public of works in accessible formats by any person or any organization working for the benefit of any person with disability. The purpose of this provision is to publish any work that is protected by copyright, but with an intention of serving the needs and interests of individuals with disabilities.
2. Has the government framed any scheme as mandated by any law to ensure access to technology and communicative technology for persons with disabilities?	Under the PWD Rules, website standards must comply with the guidelines for Indian government websites as adopted by the Department of Administrative Reforms and Public Grievances. Further, documents present on the website must implement Electronic Publication (ePUB) or Optical Character Reader (OCR) based PDF format.

Question	Answer
3. Does any international instrument speak regarding access to technology and communicative technology for persons with disabilities?	The Convention expressly mandates that signatory states must take effective measures to ensure access to technology, communicative technology, and assistive technology for mobility for persons with disabilities.
4. Has the Indian judiciary pronounced any judgment to ensure access to technology and communicative technology for persons with disabilities?	The SC has released a report in October 2023 on the accessibility issues faced by persons with disabilities, women (particularly during pregnancy), and senior citizens in the SC. The report has provided certain suggestions such as: • Introduction of accessible route maps, accessible pathways, designated parking and refurbishment of courtrooms • Provision of sign language interpretation • Augmentation of IT services, website enhancements for broad accessibility, development of a separate webpage dedicated to accessibility and integrate assistive technologies; and • Encouraging accessibility improvements in the SC



Section I | Mental Health

This section sets out a brief on key provisions from the MH Act, including rights and remedies available to persons with mental illness under the act, the ability to appoint nominated representatives and issue advance directives, decriminalisation of suicide, procedures that are prohibited for treatment of persons with mental illness, to name a few.

Question	Answer
1. What are the rights of persons with mental illness under the MH Act?	The MH Act has statutorily recognised following rights for persons with mental illness: • Right to access mental health care • Right to community living • Right to protection from cruel, inhuman and degrading treatment • Right to equality and non - discrimination • Right to information in relation to their mental illness and to receive the information in a language and form that they can comprehend • Right to confidentiality regarding their mental illness and mental healthcare treatment • Restriction on release of information in respect of mental illness • Right to access medical records • Right to personal contacts and communication • Right to legal aid • Right to make complaints about deficiencies in provision of services • Right to make an advance directive; and • Right to not be treated under prohibited procedures
2. What does right to access to healthcare entail?	Right to access healthcare means the ability of a person with mental illness to be able to access and avail mental health services at an affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers. Persons with mental illness living below the poverty line or persons with mental illness who are homeless or destitute shall have the right to avail the mental health care services and facilities free of cost and no financial cost, whatsoever, in government-run or government-funded establishments.
3. What are prohibited procedures the MH Act?	The following are prohibited procedures: • Electroconvulsive therapy is prohibited for children, and even otherwise performance of electroconvulsive therapy is prohibited without administration of precautions such as using muscle relaxants and anesthesia

Question	Answer
	• Sterilisation of men or women, when such sterilisation is intended as a treatment for mental illness; and • Chained in any manner or form whatever
4. Is mental illness the same as mental retardation?	No. The MH Act draws a distinction between mental illness and mental retardation, and does not regard mental retardation as mental illness. Mental illness is defined as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or the ability to meet the ordinary demands of life, or mental conditions associated with the abuse of alcohol and drugs. Mental retardation, on the other hand, is defined to be a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence. The MH Act categorically states that determination of a person's mental illness shall not imply or be taken to mean that such person is of unsound mind, unless a competent court has declared such person to be of unsound mind. It also recognises their right to make mental healthcare and treatment decisions. The key element enabling persons with mental illness to make such decisions is 'mental capacity'. As per the MH Act, this key element is present in persons with mental illness which allows them to take decisions, and they are considered as not being incapacitated in any form and manner. Mental capacity is defined as a person's ability to understand, retain, and weigh up information relevant to a decision to arrive at a choice, and then to communicate that choice.
5. What are the key elements of the MH Act?	The ability to pass advanced directives and nominate representatives is one of the most empowering provisions under the MH Act, which recognises the autonomy of the persons with mental illness. • Advanced directive empowers a person with mental illnesses to make a written statement on the kind of treatment they would prefer for their mental illness. It may be both a positive directive stating the way the person wishes to be cared and treated for during a mental illness, as well as a negative directive stating the way the person wishes not to be cared and treated for in the course of a mental illness. Such directive shall be vetted by a medical practitioner • Under the MH Act, every person with mental illness can nominate a representative who is tasked with the primary duty of taking decisions which are in the best interests of such person. Such representative may assert the rights of the person with mental illness and seek information on diagnosis

Question	Answer
	and treatment to provide adequate support to the person with mental illness, give or withhold consent on behalf of the person with mental illness, etc.
6. What are the provisions relating to attempt to suicide by persons with mental illness under the MH Act?	The MH Act decriminalised the attempt to die by suicide by persons with mental illness, which was a criminal act under the Indian Penal Code 1860 (now replaced with Bharatiya Nyaya Sanhita 2023 which also has not recognised attempt to die by suicide as an offence). Further, a duty is imposed on the government to rehabilitate such persons with mental illness who have attempted suicide to ensure that there is no recurrence of such attempts. The MH Act also outlines the procedure and process for the admission, treatment, and subsequent discharge of persons with mental illness in mental health establishments where they are admitted for care, treatment, convalescence or rehabilitation.
7. What is the approach adopted by Courts with respect to the protection of rights of persons with mental illness under the MH Act?	The Courts have adopted a proactive, and beneficial approach towards the interpretation of the MH Act while dealing with the rights of persons with mental illness. In <i>Ravinder Kumar Dhariwal v. Union of India</i>⁷⁰, the SC emphasized that the MH Act contemplates a rights-based framework which prioritizes the ability of a person affected with mental illness to make their own decisions, and be provided with requisite support for the same, instead of the approach of substituted decision making that was the practice under the previous legal regime under the premise that mentally ill persons lacked the capacity to make their own decisions. In this judgment, the SC protected the right of employment of a person diagnosed with a mental illness under the PWD Act, in the context of disciplinary proceedings that had been initiated against the person due to their mental illness. The SC held that the disproportionate disadvantage faced by the person due to the illness should not invite disciplinary proceedings as that would be a facet of indirect discrimination. It was emphasized that even if the candidate was found to be unsuitable for their current duty, they could be reassigned to an alternate post, with their pay, emoluments and conditions of service protected. In <i>Accused 'X' v. State of Maharashtra</i>⁷¹, the SC has held that Section 103 of the MH Act requires State Governments to establish mental health establishments in the medical wing of at least one prison in each State and Union Territory to care for prisoners suffering from mental illness.

⁷⁰ Ravinder Kumar Dhariwal v. Union of India, (2023) 2 SCC 209.

⁷¹ Accused 'X' v. State of Maharashtra, 2019 INSC 518.



A Note on Best Workplace Practices for Persons with Disabilities

As the legal enforcement of the principle of reasonable accommodation at the workplace is picking up – both through judicial precedents and executive instructions on accessibility standards – employers are also actively engaging in conversations and measures to make the workplace truly inclusive. Not only is this a step towards the empowerment of persons with disabilities, but this also has a business case. The 2014 report of International Labour Organisation titled **Inclusion of Youth with Disabilities: The Business Case** recognises that workplaces have benefitted from the inclusion of persons with disabilities, who have outperformed their non-disabled counterparts, shown relatively less absenteeism, and reduced the turnover rate of the organisation.

In this context, set out below are some best practices that organisations can consider as part of their efforts to making their workplaces more inclusive:

Inclusive Hiring Practices

Inclusive hiring does not limit itself to the commitment to keep positions open for persons with disabilities or focusing on merit-based hiring. Inclusivity necessitates an organisation to be an enabler. For instance, the career website (alongside the official company website) should deploy assistive technologies such as screen readers, screen magnifiers, high contrast colour filters and voice assistants, to help, say, persons with low vision or photosensitive epilepsy.

Similarly, the job descriptions can make the expectations around “must have” requirements clearer for applicants. For example, when communication skills are a key component of the job, it must be clarified as to whether verbal communication skills are imperative, or whether written communication skills would suffice. Job advertisements should also suggest how actively the company has taken measures to ensure inclusive hiring and an accommodative working environment over the years.

During the selection process, it helps to proactively enquire about the need for workplace adjustments upon recruitment.

Needless to mention, each of these measures can effectively operate only when the people implementing the recruitment processes – human resources teams as well as external advisors – can embody the company’s vision through appropriate sensitisation.

Workplace Accommodation

Accommodation in office spaces

Starting from the most fundamental facilities such as installation of ramps and elevators, wide doorways and hallways for wheelchair users in accordance with the community's standards, and accessible restrooms, physical adjustments may also entail adjustable workstations (where desks can be positioned as per the needs of the employee) and mechanisms; alternative keyboards (such as large print keyboard or Braille keyboards); Braille signage; Braille-friendly and voice-enabled lifts; adjustable lights (with controls that are accessible to the employee); vibrating pads and flashing lights for fire alarms (for employees with hearing impairments), and more.

Accommodation in other workplaces (such as manufacturing setups and warehouses)

In addition to some of the measures discussed above (such as installing ramps and elevators and maintaining wide aisles), organisations must, in respect of their manufacturing setups and warehouses, invest in automation and inclusive technology wherever possible. For instance, use of automated guided vehicles for transportation of items throughout the site, or pick-to-light or voice picking systems to help employees fulfil orders through visual or voice guides that help them locate the relevant shelves where the products are stored, can not only promote inclusivity but also increase worker productivity.

Sensitisation

No workplace can be truly inclusive if its work populace does not resonate with the spirit of accessibility. Organisations should, therefore, conduct regular sensitisation trainings to make their employees sensitive to and comfortable with disability inclusion. For instance, employers may consider conducting sessions led by experts that help employees understand and adapt to acceptable language for referring to persons with disabilities, such as using the expression 'person with disability' as opposed to 'handicapped person,' and broadly understanding the importance of person-centred language, as well as of supporting persons with disabilities by using terms they choose as part of their self-description.

Other practices may include helping employees learn sign language as part of external trainings, a skill learning exercise that enables better communication with employees with speech and hearing disabilities.

The middle management along with other accountability touchpoints such as the human resources team should be sensitised about the provisions of the PWD Act and the key executive and judicial developments emanating from the same, including in relation to accessibility standards for different sectors, the ambit of disability, and the principles of reasonable accommodation.

More broadly, the understanding that disability is a social condition, and that accessibility helps make workplaces more usable and friendly for everyone who may or may not live with a disability, helps cultivate a culture of inclusion.

Resource Groups

In the longer run, a culture of transparency, open communication, learnings, and consciousness may be enabled by the existence of a resource group consisting of both employees with disabilities and their allies as members. Such resource groups can bridge the gap between employees with disabilities and the larger organisation. They may advocate for suitable changes in the workplace to improve accessibility. These groups can also serve as a support group amongst employees with disabilities who can share information about their lived experience, use of assistive technology, and personal and professional milestones. Further, these resource groups can initiate nuanced discussions on disability, such as promoting a neurodiverse workplace, explaining the interplay of mental health and disability, or debunking myths around less-understood medical conditions such as autism and Down syndrome, and encourage the larger workplace in partaking in these sessions.

Robust Policies and their Implementation

Equally important as the above measures is the existence, dissemination and implementation of robust policies that educate employees about the accessible practices adopted by the organisation, the organisation's vision towards accessibility, the organisation's zero tolerance towards discrimination and retaliation against employees with disabilities, and the implications of violations of the policy. Similarly, incorporation of inclusion-related goals (objective and subjective) in the key performance indicators for the middle and the senior management can serve as accelerators in the organisation's mission for an accessible workplace.

Continuing with the previous point, the leadership can play a pivotal role in giving an extra push to an organisation's efforts towards accessibility. The senior management can lead by example by initiating an open dialogue about accessibility, encouraging function heads and ultimately reporting managers to (a) invite feedback from employees on accommodation at the workplace and any day-to-day challenges faced by them, and (b) identify roles that would be suitable across various categories of persons with disabilities and make accessibility an integral part of the recruitment process. Learning about and using inclusive language and nudging employees with disabilities to participate in upskilling programmes within and outside the organisation and career advancement opportunities can be small yet effective measures to convey strong focus on accessibility.

Self-care and Wellbeing Initiatives

Apart from policies around equal opportunity and accessibility, employers should promote self-care among employees with disabilities, allowing for flexible work arrangements for the larger workforce and obtaining or facilitating insurance policies that can cover the risks associated with disabilities in alignment with the PWD Act. Conducting employee engagement programmes that can be both educational and creative (such as disability simulation games or performing arts programmes) can also ensure that employees across diverse backgrounds can break internal barriers and bond at the workplace.

Accessibility Audit

In order to ensure that the systems put in place in terms of both policies and infrastructure are truly benefitting employees and other service providers, there should be a system of accountability. For instance, organisations should invest in third-party accessibility audits that conduct end-to-end checks on accessibility standards – starting from information and communication steps (web accessibility standards, availability of documents in accessible formats, etc.) and awareness (whether the staff is trained to assist persons with disabilities and whether persons with disabilities are aware as to how they can raise their grievances), to evaluation of assistive technologies and physical infrastructure. These audits also help organisations develop action plans to bridge the gap between their accessibility mission and its implementation in the most cost-effective manner.



Glossary

Term	Definition
AICTE	All India Council for Technical Education
Constitution	Constitution of India 1950
Convention	Convention on Rights of Persons with Disabilities 2006
EOP	Equal Opportunity Policy
HEPSN	The Higher Education for Persons with Special Needs Scheme
INR	Indian Rupee
MH Act	Mental Healthcare Act 2017
National Policy	National Policy for Persons with Disabilities 2006
NCPEDP	National Centre for the Promotion of Employment of Disabled People
PWD Act, 1995	Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
PWD Act	The Rights of Persons with Disabilities Act 2016
PWD Rules	The Rights of Persons with Disabilities Rules 2017
QAC	Quality Assurance Committee
RTE Act	Right of Children to Free and Compulsory Education Act 2009
SC	The Supreme Court of India
SIPDA	Scheme for Implementation of Right of Persons with Disabilities
UGC	The University Grants Commission of India
UN	The United Nations

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For further reading, please consult the Godrej DEI Lab's resources on disability inclusion in the workplace by accessing the link here or by scanning the QR code below.

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