



CDLA presents...

**Empowerment
through Law:
A Disability Rights
Newsletter**

Edition I



FOREWORD



Welcome to the inaugural edition of the Newsletter of Disability Law, a publication brought to you by the Centre for Disability Law and Advocacy at National Law University Odisha. As we embark on this journey of promoting awareness, understanding, and advocacy in the realm of disability law, we are guided by a steadfast commitment to championing the rights and dignity of persons with disabilities.

In today's world, where progress is often measured by technological advancements and economic growth, it is imperative that we do not overlook the rights of those who are marginalized and often forgotten. Persons with disabilities continue to face systemic barriers, discrimination, and exclusion in various aspects of life, including education, employment, healthcare, and access to justice. Our mission at the Centre for Disability Law and Advocacy is to challenge these barriers head-on and strive for a society that upholds the principles of equality, inclusion, and justice for all.

Through this newsletter, we aim to provide a platform for dialogue, sharing of knowledge, and dissemination of best practices in disability law. From highlighting landmark legal cases and legislative developments to showcasing the inspiring stories of individuals breaking barriers and making a difference, each issue will offer insights and perspectives that contribute to the advancement of disability rights.

Thank you for your support and commitment to the cause of disability rights. Let us march forward, united in our pursuit of a more just and inclusive NLUO and environment around us.

Warm regards,

Dr. Tanwi Shams
Director, Centre for Disability Law and Advocacy
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We also thank the significant jurists and writers who contributed to the readings mentioned in these write-ups for being vocal about their thoughts through their writings, which has helped us further our goal of spreading awareness of disability rights and laws among students, aspiring lawyers, and young legal professionals.

Further, a note of thanks towards our members Kajol Nayak, Aditi Krishna and special thanks to Samar Pratap Singh (Student) for contributing to the compilation of this newsletter.

Delhi High Court Supports the Right of Disabled Individuals to Engage in Business

A landmark Delhi High Court verdict stated that disability will not prohibit a person from practicing any profession or doing business. The court stressed that rejecting this right would violate Articles 14, 19, and 21 of the Constitution, which protect equality, freedom, and life.

Justice Sachin Datta made these remarks while dismissing two tenants' appeal of a Rent Controller's eviction judgment in favour of a landlord. The landlord requested eviction for her low-vision son Sushil Kumar. The tenants claimed that Section 14(1)(e) of the Delhi Rent Control Act applies solely to residential properties and that Kumar's poor vision prevented him from conducting a company.

The court disagreed, ruling that Section 14(1)(e) extends to commercial buildings. Justice Datta said criticizing Kumar's entrepreneurial abilities due to his sight impairment was illogical and immoral. He said this breaches constitutional norms and the 2016 Rights of Persons with Disabilities Act.

The ruling stressed that individuals with disabilities should have access to commerce and enterprise. The court confirmed the eviction decision, finding no validity in the tenants' appeal, so strengthening the idea that disability cannot be a justification for denying fundamental rights and opportunities. The case, titled "Santosh Bhutani & Anr v. Savitri Devi Through LRs", provides a precedent for preserving the rights of handicapped persons in professional and corporate spheres.

Enhancing Accessibility at the Supreme Court: A Path Towards Inclusion

In paving the way towards inclusion, the Supreme Court of India has launched on a revolutionary journey to promote accessibility for persons with disabilities (PwDs) within its grounds. Conducted under the leadership of Hon'ble Justice S. Ravindra Bhat, the Accessibility Committee's activities have resulted in a comprehensive audit aimed at identifying and resolving impediments to access across both the Main Building and New Building grounds.

Led by disability rights activists and legal specialists, the audit carefully assessed many areas of accessibility, concentrating on the requirements of visually impaired, wheelchair-bound, and hearing-impaired persons, among others. Key findings underlined the need for smoother, obstruction-free routes, equipped with tactile indicators for the visually impaired. The paper also called for the placement of dynamic QR codes to help navigation, a pioneering measure previously taken by educational institutions in Delhi to improve travel for visually impaired students.

Central to the audit's recommendations is the development of refuge zones in every building, equipped with crucial evacuation aids such as evacuation seats. These locations are vital for facilitating rapid and safe evacuation during catastrophes, addressing a significant gap in existing emergency protocols. Moreover, the audit identified problems in present facilities such as washrooms and public spaces like cafeterias, which often lack wheelchair accessibility and suitable amenities for PwDs. Recommendations for gender-neutral and disability-specific washrooms strive to remedy these gaps, permitting fair access for all. The project also highlights the need for staff training and sensitization, suggesting a greater knowledge of disability issues among court professionals. This includes training on aiding PwDs and building a more inclusive atmosphere within the Supreme Court grounds.

As the Supreme Court continues its journey towards greater accessibility, these initiatives not only meet legal responsibilities but also reinforce its commitment to defending the rights and dignity of all citizens, regardless of their ability. By creating a precedent in governmental institutions, the Supreme Court opens the path for a more inclusive society where obstacles to entry are destroyed, and chances for involvement are enlarged for everyone.

Supreme Court Notice on Aftercare Guidelines for Children with Special Needs

In a historic decision addressing the rights of children with special needs, the Supreme Court of India has issued a notice in response to a Public Interest Litigation (PIL) seeking guidelines for aftercare under the Juvenile Justice (Care and Protection of Children) Act, 2015. The PIL, filed under Article 32 of the Constitution, underlines the absence of explicit provisions for aftercare for children falling under Section 2(14)(iv) of the JJ Act, 2015.

Section 2(14)(iv) of the JJ Act describes "Children in need of care and protection" to include those who are mentally ill, mentally or physically challenged, or suffering from terminal diseases, who lack proper assistance or have guardians unable to care for them.

The bench comprising Chief Justice DY Chandrachud and Justices JB Pardiwala and Manoj Misra acknowledged the issues raised in the petition, noting the gap in the existing legal framework concerning aftercare services for those with special needs once they attain the age of majority, flexible up to 21 years.

The petitioner's attorney contended that the existing statute lacks clear rules and procedures to provide continuity of care and assistance for such children beyond the age of 18. The issuing of notice by the Supreme Court highlights the significance of rectifying this crucial gap in the execution of child protection legislation in India.

Moving on, the Supreme Court has given liberty to serve notices to Central Agencies and scheduled the issue for further hearing after four weeks. The case, named KSR Menon vs. Union of India (W.P.(C) No. 001403 - / 2023), carries major ramifications for the rights and welfare of children with special needs across the country.

This court intervention is poised to create a precedent in assuring holistic protection and assistance for children with disabilities and fatal diseases, reinforcing the judiciary's commitment to safeguarding the rights and dignity of every child, especially those most vulnerable in society.

Delhi High Court orders MIB to finish cinema accessibility guidelines by July 15

The Delhi High Court ordered the Union Ministry of Information and Broadcasting (MIB) to publish guidelines to make movies more accessible to visually and hearing-impaired people by July 15. Justice Prathiba M Singh stressed that these rules will require accessibility elements in feature films and give stakeholders a sufficient compliance period.

MIB is finalizing the “Draft Guidelines of Accessibility Standards in the Public Exhibition of Feature Films in Cinema Theatres for Persons with Hearing and Visual Impairment.” These rules will apply to feature films publicly screened in cinema halls or movie theaters for commercial purposes.

In the meanwhile, the court has designated a MIB Under Secretary to advocate film accessibility features. These submissions will be addressed in three working days, and videos, even OTT ones, will be made accessible. Contact information for the appointed officer must be posted on the MIB website by April 10, 2024.

This instruction follows an appeal filed last year pushing for subtitles and audio explanations in the Shah Rukh Khan movie *Jawan*. The appeal, submitted by numerous PwDs, stressed the necessity for audio descriptions, closed captioning, and subtitles in films, as mandated by the Rights of Persons with Disabilities Act, 2016. Justice Singh emphasized that accessibility is a legal right and private businesses must take 'reasonable accommodation' efforts to promote improved accessibility for hearing and visually impaired persons.

Under the Rights of Persons with Disabilities Act, violating these accessibility elements is illegal. The petitioners, including a law student, attorneys, and the Executive Director of the National Association for the Deaf, contended that despite the acknowledgment of several rights under the 2016 Act, films in India do not appropriately accommodate to the requirements of handicapped persons.

Last year, the court ordered the Union Government to organize stakeholder talks to make films disabled-friendly and implement the 2016 Rights of Persons with Disabilities Act. This is a major step for inclusive entertainment and disability rights in India.

Case Title: Akshat Baldwa & Ors. V. Yash Raj Films & Ors.

<https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-mib-notify-guidelines-cinema-accessible-visually-hearing-impaired-persons-253561>

Gauhati High Court Implements Comprehensive “Equal Opportunity Policy for Persons with Disabilities”

The Gauhati High Court has made a big step towards inclusion by formulating and declaring the 'Equal Opportunity Policy for Persons with Disabilities' for every court within its jurisdiction. This policy, starting from February 27, 2024, intends to abolish all types of discrimination, harassment, and denial of reasonable accommodation to persons with disabilities (PwDs).

Important Highlights of the Policy

1. *Infrastructure and Amenities:*

- The physical infrastructure, including buildings, furniture, and other amenities inside court premises, will be redesigned to conform closely with the Rights of Persons with Disabilities Act, 2016 (RPWD Act).
- Provisions for elevators, wheelchairs, tactile walks, ramps, grab bars, larger entrances, assistive gadgets, disabled-friendly bathrooms, Braille signage, and reserved seats will be created, subject to state government permission.
- Communication requirements of visually, hearing, and speech-impaired personnel shall be fulfilled through interpreters, sign language specialists, Braille, big print, tape services, and other assistive equipment, either free of cost or at government-prescribed rates.
- Digital infrastructure will be made disabled-friendly, and all e-Court services will be easily accessible.
- A dedicated help desk manned by paralegal volunteers and a specialist medical unit will be set up to assist PwDs, with specific care for women and children accompanying litigants.

2. *Employment Opportunities:*

- A list of occupations suited for PwDs in all categories will be produced, guaranteeing no discrimination in employment concerns.
- A 4% reserve will be allocated for PwDs in all categories of positions.
- Promotion shall not be rejected merely on the premise of handicap.
- Vocational training and self-employment initiatives will be developed for all employees, with a concentration on differently-abled personnel.

3. Work Environment and Benefits

- PwDs may be spared from rotational transfers and permitted to stay in their existing jobs for best performance.
- Special leave will be offered to PwDs as per state government norms.
- Preference will be given to PwDs in the assignment of residential quarters, subject to availability.

4. Liaison Officers and Grievance Redressal

- Gazetted Officers shall be appointed as Liaison Officers in Assam, Nagaland, Mizoram, and Arunachal Pradesh to facilitate PwDs in creating an inclusive workplace.
- A Grievance Redressal Committee, consisting a Grievance Redressal Officer and two or three members, would be created at the Principal Seat, Outlying Benches, and District Courts to examine allegations of discrimination and harassment against PwDs.

This policy highlights the Gauhati High Court's commitment to providing an inclusive and equal work environment for all workers, ensuring that PwDs have the assistance and accommodations they need to excel in their professional responsibilities.

Supreme Court Expresses Disappointment Over Poor Implementation of Disabilities Act, Issues Directives to States

- On April 22, the Supreme Court stated its unhappiness with the insufficient implementation of the Rights of Persons with Disabilities Act, 2016 (RPwD Act), across multiple states. The bench, led by Chief Justice DY Chandrachud and Justice JB Pardiwala, characterized the execution of the Act as 'dismal' and ordered prompt corrective efforts.

Key Directives Issued

- The court asked the Ministry of Social Justice and Empowerment to address the larger concerns and submit a status update at the next hearing. Additionally, Chief Secretaries of Andhra Pradesh, Chhattisgarh, Uttar Pradesh, Punjab, Tripura, and the Union Territory of Chandigarh were required to designate State Commissioners for Persons with Disabilities under Section 79 of the RPwD Act by June 30, 2024. Compliance affidavits need to be filed by July 8.
- Section 79 authorizes the nomination of State Commissioners, while Section 80 describes their tasks, including identifying concerns concerning individuals with disabilities and offering remedies.

Petition Background

- The petition, submitted by a member of "Together We Can," a forum advocating for children with disabilities, emphasized the absence of state compliance with the RPwD Act, considering it a 'Constitutional Tort.' Advocate K. Parameshwar, representing the petitioners, stressed the non-compliance during the previous 7-8 years since the Act's establishment. The court acknowledged the importance to remedy the states' apathetic attitude, noting that five years post-enactment, implementation remains poor.

Compliance Report Highlights

- In a thorough compliance assessment presented by Advocate Parameshwar, various deficiencies in the application of the RPwD Act were highlighted:
 1. Appointment of State Commissioners: Missing in Andhra Pradesh, Chhattisgarh, Jharkhand, Punjab, Tripura, Uttar Pradesh, and UTs of Andaman & Nicobar, Lakshadweep, and Chandigarh.
 2. State Fund for Persons with Disabilities (Section 88): Absent in Gujarat, Himachal Pradesh, Kerala, Mizoram, West Bengal, and UTs of Delhi, Daman and Diu, Jammu & Kashmir, and Ladakh.
 3. Special Courts and Public Prosecutors (Sections 84 & 85): Not formed in Arunachal Pradesh, West Bengal, Chhattisgarh, and UT of Daman and Diu.
 4. Assessment Boards for Disability Certificates: Missing in Chhattisgarh.
 5. Assessment Boards for High Support: Absent in Jammu & Kashmir, Ladakh, and Andaman and Nicobar Islands.

<https://livelaw-nluo.refread.com/top-stories/supreme-court-laments-dismal-implementation-of-rights-of-persons-with-disabilities-act-issues-directions-to-states-255825?infinitescroll=1>

6. Research Committees (Section 6(2)(ii)): Lacking in Kerala, West Bengal, Punjab, Himachal Pradesh, and UTs of Jammu & Kashmir, Ladakh, and Daman-Diu.

7. Authority for Limited Guardianship (Section 14): Not created in Arunachal Pradesh, Sikkim, West Bengal, and UT of Jammu & Kashmir and Ladakh.

Next Steps

- The court has scheduled the next hearing for the second week of July 2024. The Ministry of Social Justice and Empowerment is likely to file a rebuttal affidavit describing state-wise implementation of the RPwD Act. The petition also stresses the poor implementation of Section 72, which requires district-level committees to ensure the requirements of individuals with disabilities are addressed, and the necessity for particular guidelines under Section 101(2) (a) to making these committees functional.
- This decision by the Supreme Court highlights the essential need to defend the rights of persons with impairments and ensure governments meet their legal commitments under the RPwD Act.

Case Title: Seema Giriya And Anr. v. UOI And Ors. Diary No. 29329/2021

Karnataka High Court Declares Legal Obligation for Better Working Conditions for Disabled Employees

- In a landmark ruling, the Karnataka High Court overturned the Indian Statistical Institute (ISI) Bangalore Centre's decision to withhold the house rent allowance (HRA) from a disabled professor, pointing out that offering better working conditions for specially-abled persons is not just an ethical duty but a legal obligation.

Case Overview

- Justice Sachin Shankar Magadum's single-judge panel approved the appeal brought by Prof. Dr. Kaushik Majumdar, citing the institute's inability to satisfy accessibility and accommodation criteria as specified by the Rights of Persons with Disabilities Act, 2016. Dr. Majumdar, who suffers from an 85% orthopedic handicap owing to polio, joined ISI Bangalore in 2008 after being recruited as an Assistant Professor.

Key Findings

- Despite indicating his precise lodging needs before his appointment, Dr. Majumdar was placed in a single-room guest home, meant as a temporary solution but lasting since 2009. The court determined that the guest home lacked needed services for a person with physical disability, such as an accessible kitchen and regular dining facilities. Dr. Majumdar was compelled to make meals in the lavatory area owing to the unavailability of a proper kitchen, sacrificing his dignity and causing major health and safety dangers.

Court's Observations

- Justice Magadum highlighted the institute's obligation to offer reasonable accommodation, stating, "The duty of an institute to provide better working conditions to specially-abled persons is not just a moral imperative but also a legal obligation under various disability rights legislations and international conventions."
- The court acknowledged Dr. Majumdar's substantial contributions to the field of Human Electroencephalogram (EEG) and Electrocorticogram (ECoG) signal processing, stressing the mismatch between his professional status and the insufficient living circumstances supplied by the institute.

Directives Issued

- **Accommodation Compliance:** The court urged ISI Bangalore to hasten the development of new quarters for Dr. Majumdar, providing they satisfy all accessibility standards as per the RPwD Act.
- **Restoration of HRA:** The discontinuation of HRA, judged unreasonable by the court, was overturned, admitting Dr. Majumdar's claim to reasonable accommodation and the institute's inability to meet its legal responsibilities.

<https://livelaw-nluo.refread.com/high-court/karnataka-high-court/karnataka-high-court-quashes-order-withholding-hra-disabled-professor-indian-statistical-institute-255373>

Conclusion

- This verdict serves as an important reminder of the legal duties institutions have towards their specially-abled employees, underlining the necessity for proactive efforts to promote their participation and well-being. The Karnataka High Court's ruling not only solves Dr. Majumdar's predicament but also creates a precedent for stronger enforcement of disability rights throughout educational and professional organisations.

Case Title: Prof. Dr. Kaushik Majumdar vs. Indian Statistical Institute & Others

Case No.: Writ Petition No. 264 of 2024



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