



2025 INSC 1101

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE/ORIGINAL JURISDICTION**

**I.A. NO(S). 130117 OF 2018**

**IN**

**CIVIL APPEAL NO(S). 11938 OF 2016**

**REENA BANERJEE  
AND ANOTHER**

**....APPELLANT(S)**

**VERSUS**

**GOVERNMENT OF NCT  
OF DELHI AND OTHERS**

**.....RESPONDENT(S)**

**WITH**

**WRIT PETITION (CIVIL) NO(S). 116 OF 1998**

## **J U D G M E N T**

**MEHTA, J.**

**IA NO(S). 130117 OF 2018 IN CIVIL APPEAL NO(S).  
11938 OF 2016**

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## **A. Introduction**

**1.** Disability represents a fundamental aspect of human diversity that transcends medical definitions to encompass critical questions of constitutional democracy and social justice. The concept of disability exposes the gap between constitutional promises and lived reality. When legal systems treat disability as a medical problem requiring accommodation rather than a form of human diversity deserving equal participation, they expose their own weaknesses and limitations. Rather than viewing disability as a deficit requiring correction, the law must recognise it as a lens that reveals the true nature of legal, social, and institutional frameworks, illuminating whether they embrace human diversity or create barriers that exclude certain members of society, i.e., those who have been discriminated against by providence or those who have suffered the disability factor during their lifetime.

**2.** The experiences of persons with disabilities demonstrate whether democratic institutions genuinely serve all citizens or whether they are

designed around narrow assumptions about human capacity and participation. The principle of accessibility and reasonable accommodation emerges as a fundamental constitutional principle, not merely a technical requirement, but a measure of democratic inclusivity that determines whether all citizens can exercise their constitutional rights meaningfully. When physical spaces, digital platforms, information systems, procedural frameworks, and public hiring lack accessibility, they effectively deny constitutional guarantees of equal participation to persons with disabilities. The absence of accessible design in public institutions, judicial processes, educational systems, and civic spaces constitutes a systemic barrier that transforms constitutional rights into hollow promises. When systems fail to prioritise accessibility from their inception, they reveal fundamental flaws in their conception of citizenship and equality.

**3.** The jurisprudential understanding of disability rights in India and around the world has evolved beyond traditional medical models to the social model, encompassing broader questions of equality,

accessibility, and institutional design that strike at the heart of constitutional governance. The lived experiences of persons with disabilities within legal systems serve as a litmus test for constitutional democracy, raising questions if our institutions are structured to facilitate meaningful participation by all citizens or whether they maintain barriers that effectively deny constitutional rights to persons with disabilities.

**4.** The present litigation arises from two cases, one a Writ Petition instituted in 1998 and another a Special Leave Petition filed in 2012 [Later, Civil Appeal No. 11938 of 2016], seeking directions to ensure comprehensive implementation of the statutory framework by the Government of States and Union Territories under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995<sup>1</sup> and protection of the persons with cognitive disability<sup>2</sup> in a government-run care institution, respectively. On

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<sup>1</sup> Hereinafter referred to as '1995 Act.'

<sup>2</sup> "Cognitive disabilities" herein is used as an umbrella term that refers to a broad range of conditions that include intellectual disability, autism spectrum disorders, severe, persistent mental illness, brain injury, stroke, and Alzheimer's disease and other dementias.

26<sup>th</sup> March 2014, this Court rendered a judgment in the Writ Petition, issuing directions to all the States and Union Territories to ensure full implementation of the 1995 Act. Likewise, on 8<sup>th</sup> December, 2018, this Court, in the Civil Appeal, issued directions to all the States and Union Territories for the protection of persons with cognitive disability in State-run institutions all over the country. The Court appointed an Advisory Group Expert Panel and other Experts to assess the situation on the ground and recommend steps to ensure compliance with accessibility standards for PWDs. The States and Union Territories have filed their Compliance Reports. We shall consider the Report submitted by the Advisory Group Expert Panel and other Experts and delineate upon the next steps to be taken.

**5.** In the present matter, this Court is called upon not merely to adjudicate upon the rights of persons with disabilities, but to uphold and advance the constitutional vision of an inclusive society that recognizes every individual, regardless of their disability, as an equal participant in the nation's civic, cultural, economic, and constitutional

framework. This judicial responsibility extends beyond the immediate parties to encompass the broader constitutional obligation to ensure that the promise of equality and dignity reaches all citizens. We now proceed to examine the specific facts giving rise to the present proceedings, the contentions advanced by the parties, and the appropriate directions necessary to vindicate the constitutional guarantees and ensure compliance with statutory obligations.

## **B. Background**

**6.** The present litigation undertaken in the public interest, encompassing two petitions, was instituted to seek judicial intervention for addressing systemic barriers faced by persons with disabilities, ensuring enforcement of statutory safeguards, and facilitating the effective realization of constitutional guarantees such as equality, non-discrimination, and dignity. At the time of its institution, the applicable legal framework was the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, during the course

of the proceedings, the law underwent an overhaul with the enactment of the Rights of Persons with Disabilities Act, 2016<sup>3</sup>, which now governs the field.

## **I. Writ Petition**

7. The Petitioner, Justice Sunanda Bhandare Foundation, is a charitable trust and a non-governmental organisation working for the promotion of human rights, gender justice, and persons with disabilities. In 1998, the Foundation instituted a Writ Petition [W.P.(C) No.116/1998] before this Court seeking the implementation of the provisions of the 1995 Act. The prayers made in the petition included: (i) a direction for effective implementation of the 1995 Act; (ii) a mandate for reservation of 1% of the identified teaching posts in the faculties and colleges of various Universities in terms of Section 33 of the 1995 Act; and (iii) a declaration that the denial of appointment to persons with visual disability in such identified posts, violates their fundamental rights guaranteed under Articles 14 and 15, read with Article 41 of the Constitution of India.

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<sup>3</sup> Hereinafter referred to as 'RPwD Act.'

**8.** In its judgment dated 26<sup>th</sup> March 2014, delivered by Hon'ble Mr. Justice (*then*) R.M. Lodha, this Court unequivocally provided that the 1995 Act must not remain a mere paper enactment, but must be implemented in both letter and spirit. The Court criticised the continued inaction and lethargy in its implementation on the part of the Union, the State Governments, Union Territories, and other authorities, even 18 years (approximately) after the 1995 Act had been enacted. The judgment underlined that as a welfare state, our democracy must adopt a liberal and proactive approach in addressing the needs of persons with disability and ensure their equal opportunity and dignity. The Court mandated all concerned authorities of the Union of India and all the States and Union Territories, and other relevant authorities to fully implement the 1995 Act, including the reservation provisions under Section 33 of the 1995 Act, by the end of 2014. The Union of India, along with all States and Union Territories, was directed to file compliance affidavits, and the matter was deferred for receiving the compliance report. However, a majority of the States and Union Territories failed to furnish the

requisite data and did not submit their compliance affidavits within the stipulated timeframe.

**9.** This Court issued several orders, from time to time, directing the States and Union Territories to provide the requisite information with details of the status of implementation and compliance. This Court *vide* Order dated 6<sup>th</sup> March 2020, noted that some of the States had partially complied, whereas many others remained non-compliant with the provisions of the RPwD Act. This Court directed all the State Governments to file their respective compliance affidavit.

**10.** On 3<sup>rd</sup> December, 2024, when the matter was placed before the Court, it was noted that all the States and Union Territories had purportedly filed their affidavits. However, upon careful consideration of the summary chart, it emerged that several States and Union Territories in fact had failed to either file the requisite affidavits or were deficient. The Court took strong exception to this discrepancy and opined that such a lackadaisical approach towards compliance with statutory mandate and judicial directions was wholly unacceptable and

demonstrated a cavalier attitude towards the administration of justice. The relevant observations from the above order are reproduced hereinbelow: -

“In course of today’s deliberation, it is noted that there is no participation by the learned counsel from the States/Union Territories of Chandigarh, Himachal Pradesh and Jammu & Kashmir.

The chart indicates that Andaman & Nicobar Island, Andhra Pradesh, Bihar, Karnataka, Lakshadweep, Odisha, Puducherry, Tamil Nadu, Uttar Pradesh and Uttarakhand, have fully complied with the provisions of the Act. For those States which have failed to comply partly, the deficient measures are indicated in the chart section-wise. The learned counsel representing these States and Union Territories accordingly assure that necessary steps for full compliance of the provisions of the Act will be done and the process would be supervised.

In her turn, Ms. Manali Singhal, learned counsel for the petitioner submits that the States/Union Territories should have a designated Nodal Officer to be nominated by the Chief Secretary, to ensure complete compliance with the provisions of the Act.

**Having regard to the above, the deficient States/Union Territories are granted time until 17.02.2025 to file their respective response/affidavits, on the further steps that have been taken for complete compliance of the provisions of the Act. To ensure that the process is effective, the Chief Secretary of each State/Union Territory will designate a senior officer, to supervise the process of**

**compliance of the provisions of the Act,  
within their respective jurisdiction.”**

(Emphasis Supplied)

**11.** Manifestly, the States and Union Territories were granted a final opportunity to submit the complete information in the stipulated format within three weeks. This Court directed that the Chief Secretaries of States and Union Territories shall designate a senior officer to supervise the process of compliance with the provisions of the RPwD Act within their respective jurisdictions, and the lagging States/Union Territories were granted time until 17<sup>th</sup> February, 2025 to file their respective responses/affidavits detailing the further steps that have been taken for complete compliance with the provisions of the RPwD Act. This Court also recorded the prayers in an interlocutory application seeking *inter alia*, enforcement of mandatory reservation for persons with visual disabilities in teaching posts and compliance with the RPwD Act and directions issued by this Court by Central and State Universities; establishment of a monitoring committee for disability-inclusive recruitment; and mandatory

public disclosure of reservation rosters on university websites.

## **II. Special Leave Petition (Now Civil Appeal)**

**12.** The appellant, Reena Banerjee, filed an Intervention Application in a disposed of *suo moto* Writ Petition [W.P. (C) No. 5621 of 2012] before the High Court of Delhi, concerning the rights of children with cognitive disability in institutional care, seeking various reliefs including inquiries into deaths at observation homes, accountability of authorities, and improvements in conditions. However, the Delhi High Court directed that the Intervention Application be delinked and registered as a fresh Writ Petition [W.P.(C) No. 8229 of 2011]. The matter focused on the pitiable and pathetic condition at Asha Kiran, a state-run care institution in New Delhi, for persons with cognitive disability. The applicant therein, relying on media Reports, highlighted grave concerns, including overcrowding, inadequate medical care, and abuse, particularly of female residents in the Asha Kiran Home. The High Court treated the case non-adversarially and directed the Delhi Government to take reformative measures. In response, the

Government submitted an action plan including appointing a medically qualified administrator, setting up a Governing Council led by a noted social worker, and initiating infrastructural and policy reforms to address systemic failures and improve the welfare of Asha Kiran's residents. Aggrieved by the inadequate directions issued by the Delhi High Court to address the custodial deaths and abuse at Asha Kiran, the appellants filed a Special Leave Petition [now, Civil Appeal No. 11938 of 2016] before this Court, seeking independent oversight and effective remedies to ensure accountability and protection of the residents' rights.

**13.** By Order dated 10<sup>th</sup> February, 2015, this Court noted deficiencies at the Asha Kiran Home for persons with cognitive disability and directed urgent measures, including vocational training, inclusive education, and medical care. Recognizing that the deficiencies at Asha Kiran Home reflected a larger, systemic failure in the care and treatment of persons with cognitive disability across the country, this Court *vide* Order dated 26<sup>th</sup> March, 2015, took a significant step by impleading the Union of India, all

State Governments, and Union Territories in the matter. The Court emphasized that the provisions of the 1995 Act, must be uniformly and effectively implemented nationwide. It stressed that the responsibility to uphold the dignity, rights, and integration of persons with disabilities lies at all levels of government, not just the Government of NCT of Delhi. Accordingly, it directed the concerned authorities, including the Principal Secretaries of Health and Social Welfare Departments, to respond with concrete measures to be taken in their jurisdictions and to align with the broader objective of ensuring equal opportunities and protection for persons with disabilities throughout the country.

**14.** By a judgment dated 8<sup>th</sup> December, 2016, this Court, speaking through Hon'ble Justice A.M. Khanwilkar (*then*), noted the serious issues highlighted by the appellants, including inadequate medical care, overcrowding, poor hygiene, and abuse of residents in the state-run institutions for persons with cognitive disabilities. This Court, while affirming the directions of the High Court of Delhi regarding the Asha Kiran Home, implicitly endorsed a model that

States and Union Territories should consider for similar institutions. The Court issued certain directions to all States and Union Territories in the management and reform of state-run homes for persons with cognitive disabilities and other residents. These directions included the appointment of a competent administrator with a medical and administrative background to oversee such institutions, and the establishment of a robust Governing Council comprising experts in rehabilitation, gender studies, human rights, and social empowerment. The Governing Council was empowered to make binding decisions for the welfare, health, and protection of all the residents, and was assigned the task of decongesting these state-run institutions, facilitating rehabilitation and restoration of residents to their families or foster care, and promoting mainstreaming in society wherever possible. The Court also directed that staff of these state-run institutions be properly trained and sensitized, infrastructure be upgraded to national and international standards, and residents be segregated for better care according to the severity of their disabilities.

**15.** Additionally, an Advisory Group Expert Panel was to be constituted for ongoing technical and academic support. The Union of India, along with all States and Union Territories, was directed to file compliance affidavits. However, the majority of the States and Union Territories failed to furnish the requisite information and did not submit their compliance affidavits within the stipulated timeframe.

**16.** This Court issued several orders, from time to time, directing the States and Union Territories to provide the requisite information with details of the status of completion and compliance Reports. On 13<sup>th</sup> August, 2018, when the matter was placed before a three-judge Bench, it was noted that only three states so far have furnished the compliance Reports, despite a year having passed. The Court directed the States/Union Territories to file the compliance Report with the Central Advisory Board, with a copy to the appellant's counsel. The relevant observations of the Order dated 13<sup>th</sup> August, 2018, are reproduced hereinbelow: -

“Rather than burdening the record of this case with compliance affidavits from every State and U.T. Administration, we direct the State Governments and U. T. Administrations to file a compliance Report with the Central Advisory Board else well as to the learn. counsel for the petitioners within three weeks from today as a last opportunity failing which heavy costs will be imposed.

An agreed statement in the form of a chart should be placed on record by learned counsel for the petitioners after going through the compliance Reports so that we can conveniently consider the issue of compliance of the order passed by this Court.”

Thereafter, *vide* Order dated 17<sup>th</sup> September, 2018, the matter was tagged with the above Writ Petition [W.P.(C) No.116 of 1998].

**17.** Pursuant to the directions of this Court in the Civil Appeal<sup>4</sup>, the Advisory Group Expert Panel and other Experts<sup>5</sup> submitted their Status Reports and Recommendations titled “*Asha Kiran as Microcosm of What Ails India’s Care Support Structure: Thematic Recommendations.*” The Report examines the *status*

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<sup>4</sup> Judgment/Order dated 2<sup>nd</sup> December, 2016 in Civil Appeal No. 11938 of 2016.

<sup>5</sup> Comprising, Poonam Natarajan (*Vidya Sagar, Tamil Nadu*), Radhika Alkazi (*Astha, Delhi*), Elizabeth Neuville & Geeta Modal (*Keystone Institute India, Delhi*), Shabnam Aggarwal (*Anandini, Delhi and Chandigarh*), Deepika Easwaran (*The Banyan, Tamil Nadu, Kerala & Maharashtra*), Sudha Ramamoorthy (*Special Educator*), and Rajive Raturi (*Consultant*).

*quo* and suggests time-bound, rights-based reforms grounded in both domestic and International Human Rights Law.

#### **D. Advisory Group Expert Panel Report and its Recommendations**

**18.** The Advisory Group Expert Panel Report ('Report'), firstly, outlines the legal framework governing the rights of persons with disabilities. It refers to Article 14 of the United Nations Convention on the Rights of Persons with Disabilities<sup>6</sup>, which guarantees liberty and security of persons and prohibits deprivation of liberty solely on the basis of disability. The Report refers to Section 3 of the RPwD Act, which ensures equality and life with dignity, and Section 5, which confers the right to live in the community. Reference is also made to Section 19 of the Mental Healthcare Act, 2017, which reiterates the right to community living and prohibits prolonged institutionalisation in the absence of family or community-based alternatives. The Report places these provisions as the normative basis for its assessment and recommendations.

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<sup>6</sup> Ratified by India in 2007.

**19.** The Report notices that residents of Asha Kiran Home often arrive at the institution with complex health and emotional needs. Many have experienced homelessness, abandonment, or trauma and display a range of impairments including, intellectual disabilities, cerebral palsy, hearing or vision impairments, and other cognitive disability conditions. A significant number require regular medication for epilepsy, psychiatric disorders, respiratory infections, or chronic illnesses like tuberculosis. The Report clarifies that Asha Kiran Home is not a hospital and recommends that healthcare must be framed within a comprehensive plan that includes promotive, preventive, therapeutic, and curative aspects. Preventive care is identified as including adequate nutrition, clean drinking water, hygiene, and appropriate bedding and clothing to protect from seasonal illnesses. The Report observes that overcrowding in the institution has contributed to the spread of infections and suggests decongestion as a key health intervention.

**20.** The comprehensive recommendations, submitted by the Advisory Group Expert Panel, are summarised below:

- a) State-run institutions like Asha Kiran Home, must conduct regular medical screenings and adopt early detection protocols. Staff should be trained to identify early signs of health deterioration or behavioural crises, and systems should be put in place for timely referral to hospitals and access to emergency care.
- b) Psychiatric prescriptions must be subject to periodic review and rationalisation. Caution is advised against the undue medicalisation of normative behaviours, and all medication should be supplemented with therapeutic and psychosocial support systems.
- c) Multidisciplinary teams comprising doctors, nurses, occupational and physical therapists, speech and language professionals, counsellors, and special educators should be constituted. Professional coordination must be ensured so that interventions are holistic,

structured, and avoid duplication, with particular emphasis on residents with high support needs.

d) Nutritionists and dieticians should prepare group-specific diet plans. A Diet Committee with active participation of residents must be constituted. Cooking facilities should be decentralised and meals personalised in accordance with individual needs, with residents encouraged to participate in food preparation as part of independent living and vocational skill-building.

e) All immobile residents must be assessed by physiotherapists, speech therapists, occupational therapists, and special educators. Individualised therapy plans should be drawn up, and appropriate assistive devices such as wheelchairs, walkers, and supportive seating must be provided. Staff should receive training to support persons with high support needs, while peer support and structured daily engagement should be promoted.

f) Children with cognitive disability should be enrolled in nearby government, private, or special schools wherever possible, and those unable to access such schools should be enrolled in the National Institute of Open Schooling with institutional support. Bridge courses, after-school support, and adapted teaching methodologies must be introduced, while institutions should also provide recreation rooms, learning corners, libraries, and art-based educational spaces.

g) Vocational or livelihood plans must be prepared for all adult residents. A Vocational Manager should be appointed, and staff trained to conduct skill-building programmes. Domestic chores should be used to build independence, while vocational units in areas such as pottery, packaging, data entry, or hospitality should be established. Community resource mapping and collaborations with employers should be undertaken, with training aligned to the interests and abilities of each resident.

h) All residents should be provided with requisite identity and disability documentation to access government welfare schemes. Social workers must be appointed to facilitate enrolment in pensions, health insurance, ration, and skill development programmes. Community-based models such as '*Nalam*' and '*Home Again*' should be considered for wider adoption.

i) The '*Home Again*' model of small group living in community homes with personalised support should be expanded. Admissions into large state-run institutions should be minimised, and priority should be accorded to community-based living arrangements.

j) Institutional reform must proceed on a three-pronged basis: first, comprehensive institutional mapping of every resident to develop individual care profiles and exit plans; second, prevention of new admissions by strengthening families through both counselling and material support; and third, structured exit pathways through family

reunification, foster or kinship care, or small group homes.

k) Institutions should adopt participatory governance models involving residents, caregivers, community members, and civil society. Participatory methods such as the Most Significant Change technique and the Open Dialogue model should be used for care planning and conflict resolution. Internal grievance mechanisms, regular visits by external monitoring agencies, compliance with the NALSA framework, and collaboration with local police for family tracing and safety of residents are also recommended.

**21.** In conclusion, the Advisory Group Expert Panel underscores that the strategies suggested in the Report are intended as transitional mechanisms to move away from institutionalisation. It states that large-scale congregate facilities should gradually be replaced with community-based systems of care and support for persons with cognitive disability. The Report frames its recommendations as part of an ongoing shift towards an inclusive, rights-based

framework that enables persons with disabilities to live with dignity, autonomy, and support within the community.

**22.** Following their observations and recommendations, the Advisory Group Expert Panel, while drawing reference from directions issued by this Hon'ble Court in ***Rajive Raturi v. Union of India, Writ Petition (Civil) No. 243 of 2005***, seek reliefs in terms of a direction, concerning the monitoring and implementation of legal and policy mandates applicable to persons with intellectual and psychosocial disabilities residing in State-run care institutions. In ***Rajive Raturi (supra)***, this Court, *vide* order dated 29<sup>th</sup> November 2023, had noted with concern the continuing non-compliance by the concerned authorities of the Union of India as well as State(s), and Union Territories with the provisions of the RPwD Act, particularly Sections 44 and 45. This Court directed the Centre for Disability Studies at the National Academy of Legal Studies and Research, University of Law, Telangana, to undertake a comprehensive, independent assessment and prepare a report on the measures required to

operationalise the ‘Accessible India Campaign’ and render public infrastructure, including government buildings, transport systems, digital spaces, and documents, fully accessible to persons with disabilities. The Court further directed that such a report be submitted within a period of six months. The Ministry of Social Justice and Empowerment was directed to provide logistical support.

**23.** In light of the above, the applicants herein in the present proceedings seek similar directions. Specifically, they pray for the appointment of the National Law School of India University, Bengaluru, in conjunction with the Advisory Group Expert Panel and other experts associated with the present report, to jointly undertake a nationwide monitoring of all State-run care institutions housing persons with cognitive disabilities. The monitoring is proposed to be carried out with reference to nine specified parameters detailed in the Status Report filed before this Court, along with other relevant considerations. It is further prayed that the said team be directed to submit a consolidated report within nine months. Additionally, the applicants seek a direction to the

Union of India through the Ministry of Social Justice and Empowerment to allocate and release requisite financial and logistical resources to the appointed panel, and to grant the panel liberty to determine appropriate modalities for the execution of the monitoring exercise, including engagement of experts, field personnel, and coordination with States and Union Territories.

**24.** We are of the opinion that before we take up the prayers sought by the applicants, it would be appropriate to place on record the framework, both international and domestic, dealing with the rights of persons with disabilities, particularly in the context of institutional care, accessibility, and community living. The jurisprudence in this area, spanning international instruments and interpretation by Indian Courts, forms the foundational basis on which the proposed monitoring and recommendation exercise must proceed.

## **E. International Legal Framework on Disability Rights and Accessibility**

**25.** While early international human rights treaties did not explicitly mention persons with disabilities, their foundational principles have been subsequently interpreted to encompass the rights of all individuals, including those with disabilities.

I. The Universal Declaration of Human Rights (UDHR), adopted in 1948, enshrines the foundational principles of equality, dignity, and non-discrimination. Articles 1 and 2 categorically affirm that all human beings are born free and equal in dignity and rights. Article 25 recognises the right to an adequate standard of living, encompassing health, medical care, and necessary social services. These provisions, though general in nature, laid the normative groundwork for subsequent international instruments that specifically addressed the rights of persons with disabilities, including matters concerning institutional care and support.

II. The International Covenant on Civil and Political Rights (ICCPR) codifies civil liberties equally applicable to persons with disabilities. Among these are the right to life under Article 6, the right to freedom from torture or cruel, inhuman or degrading treatment under Article 7, and the right to liberty and security of a person under Article 9. In General Comment No. 35 on liberty and security of person, the Human Rights Committee underscored the necessity of ensuring that persons with psychosocial or intellectual disabilities are not subjected to arbitrary institutionalisation and that adequate procedural safeguards are provided.

III. The International Covenant on Economic, Social and Cultural Rights (ICESCR) further reinforces the rights of persons with disabilities by recognising, *inter alia*, the right to work under Article 6, the right to the highest attainable standard of health under Article 12, and the right to education under Article 13. The ICESCR has clarified that these rights impose an obligation on States to remove

physical, informational, and attitudinal barriers that impede the full enjoyment of such rights by persons with disabilities.

IV. Other core human rights treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have been interpreted to extend protection to women and girls with disabilities, particularly in relation to institutionalisation, autonomy, and freedom from abuse. Though not disability-specific, these treaties form an integral part of the international legal framework safeguarding the rights of persons with disabilities.

V. The most authoritative and specialised instrument in this regard is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in 2006 and ratified by India in 2007. The Convention marks a paradigm shift from the medical or charitable model of disability to the human rights and social model. It mandates that

persons with disabilities are entitled to the enjoyment of all human rights and fundamental freedoms on an equal basis with others.

VI. Article 9 of the UNCRPD obliges participating States to adopt measures ensuring accessibility in respect of the physical environment, transportation, information and communication technologies, and other facilities. Article 12 affirms equal recognition before the law, Article 14 prohibits the unlawful or arbitrary deprivation of liberty on the basis of disability, Article 17 protects personal integrity, while Article 19 guarantees the right to live independently and to be included in the community, and, thereby, reiterating the principles of autonomy, legal capacity, and informed consent, including within institutional settings.

VII. The Convention on the Rights of the Child (CRC) came into force in 1990 and was ratified by India in 1992, provides additional protections to children with disabilities. Article 23 specifically recognises their right to enjoy a

full and decent life in conditions that ensure dignity, promote self-reliance, and facilitate participation in the community. The Committee on the Rights of the Child has clarified that institutionalisation of children with disabilities must be treated only as a measure of last resort, with priority accorded to family-based and community alternatives.

VIII. Other provisions of the CRC, including Article 12 on the right of the child to freely express views in all matters affecting them, Article 19 on protection from neglect or negligent treatment, and Article 28 on the right to education, are equally applicable to children in institutional care.

IX. Taken together, the UNCRPD and CRC impose a clear and affirmative obligation upon State parties to progressively realise the rights of persons with disabilities, including children, to live with dignity, autonomy, and inclusion in society, while ensuring that institutional settings are not converted into spaces of neglect, exclusion, or denial of rights.

**26.** While the Advisory Group Expert Panel Report primarily relies on the UNCRPD as its normative anchor, it is imperative that the Advisory Group Expert Panel and the Universities assigned to the project adopt a more comprehensive approach. In undertaking the monitoring and recommendation exercise, the panel should consider the full spectrum of international human rights instruments, such as the UDHR, ICCPR, ICESCR, CRC, and CEDAW, which, when read collectively, affirm the interrelated civil, political, economic, social, and cultural rights of persons with disabilities. A holistic interpretation of these treaties is essential to ensure that the assessment captures not only accessibility and institutional conditions but also the broader guarantees of dignity, autonomy, equality, and inclusion.

#### **F. Indian Framework on Disability Rights and Accessibility**

**27.** India's approach to disability rights has evolved significantly from a charity-based and medical model to a rights-based framework. This transformation has

been shaped by statutory enactments, constitutional mandates, and progressive judicial interpretation.

- I. The RPwD Act, enacted pursuant to India's obligations under the UNCRPD, constitutes the primary legislation in this regard. It guarantees substantive rights, including equality, non-discrimination, community living, protection from abuse, and access to education, employment, and public services.
- II. Section 3 of the RPwD Act affirms the principles of equality and dignity for persons with disabilities, mandating the State to take proactive measures to eliminate discrimination.
- III. Section 5 recognises the right of persons with disabilities to live in the community and prohibits any compulsion to reside in a particular arrangement against their will.
- IV. Section 34 stipulates provisions concerning the reservation for persons with disabilities.
- V. Chapter V of the RPWD Act, comprising Sections 40 to 46, lays down detailed accessibility standards to be implemented by the appropriate governments in respect of the

built environment, transport, information and communication technology, and public services.

- VI. In parallel, the Mental Healthcare Act, 2017, under Section 19, recognises the right to community living for persons with mental illness, prohibits prolonged institutionalisation without medical justification, and casts a duty upon the State to create alternative residential and community-based support structures.

While the aforesaid statutory enactments provide the legislative foundation for disability rights, the Indian judiciary has played a pivotal role in their interpretation, consistently invoking the constitutional guarantees under Articles 14, 19, and 21 of the Constitution of India. Through such interpretation, the judiciary has reframed disability not merely as a medical condition but as a type of structural disadvantage, thereby requiring active redressal, protection, and inclusion within the constitutional framework.

**28.** In *Jeeja Ghosh v. Union of India*<sup>7</sup>, this Court held that discrimination against persons with disabilities violates Article 14 and Article 21 of the Constitution of India, and affirmed that the right to dignity is intrinsic to the right to life. The Court underscored that the duty to accommodate the needs of persons with disabilities flows from the constitutional mandate of substantive equality and non-discrimination.

**29.** In *Rajive Raturi* (*supra*), this Court considered the inaccessibility of public infrastructure, transport systems, and information platforms, and issued binding directions to the Union and State Governments to make buildings, transport system, and websites accessible in conformity with Sections 44 and 45 of the RPwD Act, 2016. The Court noted that the failure to ensure accessibility constitutes systemic exclusion and infringes the equal protection clause under Article 14 of the Constitution of India. The relevant paragraphs are extracted below:

**“12.** Accessibility refers to the design of products, services, environments, and systems to ensure that all individuals, including those

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<sup>7</sup> (2016) 7 SCC 761.

with disabilities, can access, use, and benefit from them fully and independently. This encompasses physical access, such as entry to buildings and transport, as well as access to information, communication, and digital platforms. It is essential for promoting inclusion and enabling participation in all aspects of public life.

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**19.** The right to accessibility is not a new or separate human right, but rather an integral part of existing human rights frameworks. Accessibility is embedded within several international human rights treaties, reinforcing its foundational role in ensuring equality and dignity for all individuals, including those with disabilities. For example, access to the physical environment and public transportation is essential for the realisation of freedom of movement, which is guaranteed under Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights. Similarly, access to information and communication is crucial for exercising the right to freedom of opinion and expression, as articulated in Article 19 of the UDHR. These rights are foundational for enabling PWDs to live independently, participate in society, and enjoy their rights on an equal basis with others.

**22.** Accessibility is not merely a convenience, but a fundamental requirement for enabling individuals, particularly those with disabilities, to exercise their rights fully and equally. Without accessibility, individuals are effectively excluded from many aspects of society, whether that be education, employment, healthcare, or participation in cultural and civic activities.

Accessibility ensures that persons with disabilities are not marginalised but are instead able to enjoy the same opportunities as everyone else, making it an integral part of ensuring equality, freedom, and human dignity. By embedding accessibility as a human right within existing legal frameworks, it becomes clear that it is an essential prerequisite for the exercise of other rights.”

**30. In *Vikas Kumar v. Union Public Service Commission*<sup>8</sup>**, this Court made an important contribution to Indian equality jurisprudence by recognising that the principle of reasonable accommodation must be responsive to the individualised needs of persons with disabilities rather than being confined to fixed or standardised benchmarks. This Court held that equal opportunity in employment processes cannot be achieved by applying uniform rules without having regard to the structural disadvantages that persons with disabilities may face and emphasised that reasonable accommodation is intrinsic to substantive equality under Article 14 of the Constitution of India. The relevant paragraphs of the judgment are reproduced hereinbelow:

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<sup>8</sup> (2021) 5 SCC 370.

**“39. The RPwD Act 2016 is fundamentally premised on the recognition that there are many ways to be, none more ‘normal’ or ‘better’ than the other. It seeks to provide the disabled a sense of comfort and empowerment in their difference.**

Recognizing the state of affairs created by centuries of sequestering and discrimination that this discrete and insular minority has faced for no fault on its aims to provide them an even platform to thrive, to flourish and offer their unique contribution to the world. It is based on the simple idea with profound implications that each of us has: “unique powers to share with the world and make it interesting and richer.” By opening doors for them and attenuating the barriers thwarting the realization of their full potential, it seeks to ensure that they are no longer treated as second class citizens.

**40.** It gives a powerful voice to the disabled people who, by dint of the way their impairment interacts with society, hitherto felt muted and silenced. **The Act tells them that they belong, that they matter, that they are assets, not liabilities and that they make us stronger, not weaker....”**

[Emphasis Supplied]

**31.** However, while **Vikas Kumar** (*supra*) aptly foregrounds the need to remove systemic barriers and affirms the constitutional commitment to non-discrimination, certain conceptual framings within the judgment require further reflection. The Court's description of persons with disabilities as a “discrete and insular minority”, though likely drawn from

equal protection jurisprudence, has the effect of reinforcing a view of disability as exceptional or peripheral. This formulation, while legally protective in intent, risks positioning disability as an aberration from the normative centre, thereby sustaining the logic of segregation rather than normalisation. The judgment in **Vikas Kumar** (*supra*) employs the metaphor of persons with disability being “assets, not liabilities.” While intended to combat stereotypes of incapacity and dependence, such a framework inadvertently re-inscribes ableist hierarchies by framing value in terms of productivity or performance. It implicitly affirms a binary wherein disability must be redeemed through functionality, rather than affirming inherent worth and dignity regardless of ability or economic utility. In doing so, it risks subordinating constitutional values of personhood and autonomy to market-based metrics of usefulness.

**32.** This concern is particularly salient in the present context, when applied to the lived realities of persons in State-run care institutions such as Asha Kiran Home. The majority of the residents are

persons with support needs, whose disabilities are profound and long-term. They may not fit neatly into productivity-centric paradigms, and their rights must not be measured by benchmarks of economic contribution or rehabilitation “success.” The dignity of persons with disability, especially those institutionalised and forgotten, cannot be made contingent upon their perceived ability to integrate, perform, or comply with dominant norms of independence. An equality framework premised on contribution or performance may be inadequate to secure their rights, especially when their exclusion is not incidental but embedded within institutional design. ***The danger lies in articulating inclusion only through the language of exception or achievement, rather than through structural reconstitution of public spaces, services, and norms to affirm disability as a legitimate and constitutive part of human diversity. A truly inclusive constitutional vision must move beyond these binaries and recognise that the right to equality is not contingent on capacity but anchored in dignity, autonomy, and the right to belong, on equal terms, in every domain of life.***

**33.** In a recent pronouncement in *Kabir Paharia v. National Medical Commission & Ors.*<sup>9</sup>, this Court reiterated the constitutional and statutory mandate to dismantle arbitrary barriers imposed on persons with disabilities, particularly in access to higher education and professional opportunities. The petitioner therein, being a person with a benchmark disability, challenged the denial of admission to the MBBS course on the ground that the statutory regulations failed to reasonably accommodate his disability. This Court held that administrative authorities had applied the eligibility criteria in a rigid and exclusionary manner, and in doing so, had failed to uphold the letter and spirit of the RPwD Act. This Court disregarded the formalistic and medically reductionist approaches to disability and emphasised that institutions cannot rely on outdated or non-individualised assessments to deny access to fundamental rights. The relevant paragraphs of the judgment are reproduced below:

**“15.** The constitutional promise of equality is not merely formal but substantive, requiring the State to take affirmative measures to ensure that PwD and PwBD can meaningfully participate in

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<sup>9</sup> 2025 SCC OnLine SC 1025.

all spheres of life, including professional education. We emphasize that reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16, and 21 of our Constitution. When administrative authorities create arbitrary barriers that exclude qualified PwBD candidates, they not only violate statutory provisions but also perpetuate the historical injustice and stigmatisation. The fundamental rights and the dignity of PwD and PwBD candidates must be protected by ensuring that assessment of their capabilities is individualised, evidence-based, and free from stereotypical assumptions that have no scientific foundation.”

**34.** The above case stands as a reminder that inclusive education requires administrative flexibility, empathetic assessment, and legal sensitivity to the evolving concept of equality for persons with disabilities. It highlights how systemic barriers, when codified through administrative regulations or institutional inertia, can deny full participation and constitutional personhood to individuals with disabilities. In State-run care institution settings such as Asha Kiran Home, the absence of individualised care plans, educational assessments, and therapeutic support replicates this very exclusion in a more severe and structural form. ***Kabir Paharia*** (*supra*) affirms that such denials are

not merely administrative lapses but constitutional wrongs demanding active redress.

**35.** Taking into consideration the above-discussed framework and rights-based jurisprudence of this Court, it is clear that our constitutional courts have consistently read the rights of persons with disabilities into the broader constitutional guarantees under Articles 14, 19, and 21 of the Constitution of India. Article 14 has been expanded to include substantive equality, requiring not only equal treatment but also reasonable accommodation and removal of systemic barriers. Article 19, particularly the right to freedom of expression and movement, has been interpreted to mandate accessible formats, transport, and communication. Article 21 anchors the right to life with dignity, recognising that dignity is not a privilege but an entitlement, especially for those who are institutionally marginalised. The present case, concerning the implementation of the RPwD Act along with the prolonged institutionalisation and lack of access to education, health, and community life for persons residing in State-run care

institution/homes, must therefore be viewed through this expansive constitutional lens. The proposed monitoring and assessment must not be limited to administrative compliance but must engage with the question of whether institutional structures respect the autonomy, equality, and dignity of persons with disabilities as guaranteed under the Indian Constitution.

**G. Direction(s) and Conclusion: -**

**36.** During the course of arguments, learned counsel for the applicant/s sought the appointment of the National Law School of India University, Bengaluru, to undertake a nationwide monitoring of all State-run care institutions housing persons with cognitive disabilities. We are of the firm opinion that the task of nationwide monitoring ought to be distributed across different regions of the country for greater reach and oversight so as to be effective. Accordingly, we hereby direct that the monitoring be undertaken under the name and style of the “**Project Ability Empowerment**” and shall be undertaken by

eight National Law Universities each covering specific States and/or Union Territories, as under:

1. **National Law School of India University, Bengaluru**, covering the States of Karnataka, Kerala, Tamil Nadu, and Andhra Pradesh and Union Territories of Puducherry and Lakshadweep Islands.
2. **National Law University, Delhi**, covering the Union Territories of Delhi and Chandigarh.
3. **Rajiv Gandhi National University of Law, Punjab**, covering the States of Punjab, Haryana, Uttarakhand, Himachal Pradesh, and Union Territories of Jammu & Kashmir and Ladakh.
4. **National Law University, Jodhpur**, covering the States of Rajasthan and Gujarat and Union Territory of Dadra and Nagar Haveli and Daman and Diu.
5. **National Law University and Judicial Academy, Assam**, covering the States of Assam, Tripura, Meghalaya, Arunachal Pradesh, Nagaland, Manipur, and Mizoram.

6. **Dr. Ram Manohar Lohiya National Law University, Lucknow**, covering the States of Uttar Pradesh, Madhya Pradesh and Chhattisgarh.

7. **West Bengal National University of Juridical Sciences, Kolkata**, covering the States of West Bengal, Sikkim, Bihar, Jharkhand and Odisha and Union Territory of Andaman and Nicobar Islands,

8. **Maharashtra National Law University, Mumbai**, covering the States of Maharashtra, Goa and Telangana.

These institutions, in conjunction with the Advisory Group Expert Panel and other experts associated with the present report, shall undertake extensive monitoring of all care institutions, whether state-run or private, housing persons with cognitive disabilities. The monitoring shall also extend to examining the implementation of the RPwD Act.

**37.** We are of the firm view that the proposed monitoring and data collation exercise of the “**Project Ability Empowerment**” must not only limit itself to the 9 parameters identified in the Report, concerning

the physical and infrastructural conditions of state-run institutions housing persons with disabilities, but also assess the extent to which such state-run institutions adhere to the broader legal commitments of autonomy, inclusion, and dignity. In this regard, the Advisory Group Expert Panel and National Law Universities (*supra*), conducting the exercise, shall pay particular attention to certain key areas, which are hereinafter indicated to guide the scope of their compilation(s) and recommendation(s).

### **Part I. Resident Profiling, Care and Rehabilitation**

- I. A comprehensive mapping of residents should be undertaken, covering each individual residing in institutions for persons with cognitive disabilities. This mapping must include, but not be limited to, information on the resident's age, gender, disability profile, medical and psychiatric history, length of stay, family background, language spoken, education level, vocational skills, and psychosocial needs. The purpose of this individualised profiling is to facilitate better

care planning, identify residents who no longer require institutional care, and develop feasible exit or reintegration strategies wherever appropriate. In this context, the preparation of an Individual Care Plan, on the lines contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2015, may be considered for the **‘Project Ability Empowerment’** to ensure that care and rehabilitation are tailored to the unique needs of each resident.

- II. Due consideration must be paid to the availability, adequacy, and regularity of healthcare and therapeutic services provided/available within these institutions. The monitoring group should document whether residents have access to general health check-ups, emergency medical services, psychiatric consultations, and therapeutic interventions, including physiotherapy, occupational therapy, and speech therapy. Special consideration should be given to the use and review of psychiatric medications, and

whether treatment plans are personalised and subject to periodic professional review.

- III. The monitoring shall study exit pathways and mechanisms for community integration. This includes efforts made by the institution to trace families of residents, assess the possibility of family reunification, prepare aftercare plans, and facilitate transfer to community-based alternatives such as group homes, supported living arrangements, or foster care. The data must reflect how many residents have exited the institution in recent years, and the follow-up, if any, undertaken to ensure successful reintegration.

## **Part II. Accessibility, Infrastructure and Education**

- IV. The exercise must include a detailed accessibility and infrastructure audit. This shall involve evaluating the physical environment of the institutions, including living quarters, bathrooms, recreational areas, kitchens, and corridors, in light of the Harmonised Guidelines and Standards for

Universal Accessibility. This audit should also examine accessibility of transport to and from the institution, and whether appropriate assistive technologies and mobility aids are available and in working condition. In addition, the accessibility of communication channels, such as sign language, pictorial instructions, and accessible formats for persons with visual or cognitive impairments, should also be assessed.

- V. The monitoring should assess the educational and vocational opportunities available to residents, including children and adults. The exercise must record whether school-aged children are enrolled in nearby schools, be it mainstream, special, or National Institute of Open Schooling with institutional support, and whether adults have access to skill training or life skills education. The availability of teaching staff, curriculum delivery methods, accessibility of learning materials, and integration of recreational or creative learning opportunities must be evaluated. State-run Institutions should be asked to demonstrate

how they are implementing the right to education, functional literacy, and vocational rehabilitation under the RPwD Act and the National Education Policy, 2020.

### **Part III. Rights, Protection and Compliance**

- VI. The concerned team members of the **‘Project Ability Empowerment’** shall examine institutional policies and grievance redressal mechanisms, including whether residents are aware of and able to exercise their rights, and whether there are systems in place for receiving, addressing, and following up on complaints of abuse, neglect, or rights violations. This should include a review of the policy on use of restraints, behaviour management strategies, and access to legal aid. The existence and functioning of internal complaints committees, residents' councils, or any form of participatory governance should be documented.
- VII. The monitoring exercise must include a review of compliance with legal and policy mandates, including past directions of this Court and

provisions of the RPwD Act and the Mental Healthcare Act, 2017. This should cover aspects such as appointment of protection officers, registration of institutions under the RPwD Act, and adherence to inspection protocols.

#### **Part IV: Staffing, Resources and Institutional Accountability**

- VIII. Due Attention must be given to resource availability, particularly the strength, training, and qualifications of caregiving and professional staff. The concerned team of the **'Project Ability Empowerment'** shall examine the staffing ratios, working hours, payment structures, and professional support provided to doctors, nurses, therapists, and other personnel. Recommendations on staff enhancement, training modules, and financial allocations may also be drawn from this data.
- IX. The report must review the institution's data systems, transparency mechanisms, and public accountability. This includes examining the systems for resident record-keeping, maintaining of medical files, publication of

inspection reports, and compliance with obligations to report to statutory authorities. The availability of public information and responsiveness to RTI applications, or other information requests, should also be noted.

#### **Part V. Documentation and Welfare Access**

- X. The **'Project Ability Empowerment'** team, after assessing the feasibility and rationale, may consider recommending that all State-run institutions housing persons with disabilities maintain an official online presence, including a dedicated website with an institutional dashboard. Such a dashboard shall provide essential information regarding the institution's functioning, facilities, staffing, and compliance with applicable legal standards, while strictly upholding the privacy and confidentiality rights of all residents. The dashboard and website shall be regularly updated and may be monitored either by the Secretary of the District Legal Services Authority or the District Magistrate concerned, and a periodic report shall be prepared and

submitted by the monitoring authority in respect of the State-run institutions within their jurisdiction.

- XI. While undertaking the monitoring and assessment exercise, the concerned team members of the **‘Project Ability Empowerment’** shall also examine the feasibility and steps required to ensure that all persons with disabilities residing in State-run care institutions, such as Asha Kiran Home and similar facilities, are duly enrolled under the Aadhaar scheme. Many residents continue to lack *Aadhaar* Card and other essential identity documentation, resulting in exclusion from welfare schemes and social security benefits. The monitoring team may assess the institutional mechanisms necessary for on-site enrolment, coordination with the Unique Identification Authority of India (UIDAI), and the appointment of nodal officers to facilitate documentation. Where found viable, appropriate recommendations shall be made so that every resident obtains an *Aadhaar* Card and related identity documents, strictly

adhering to privacy safeguards and the consent requirements prescribed by law.

**38.** The above key areas are not exhaustive but indicative of the minimum areas of inquiry required. The concerned members of the **'Project Ability Empowerment'** and Advisory Group Expert Panel, shall be at liberty to identify additional focal points that are considered necessary for the purpose of producing a comprehensive and evidence-based report. The compilation and findings should be presented in a structured manner, along with actionable recommendations for institutional improvement, legal compliance, and gradual transition toward community-based alternatives.

**39.** All District Magistrates/Collectors and Secretaries of the District Legal Services Authority shall extend full cooperation to the monitoring teams and ensure access to institutions within their jurisdiction.

**40.** All State Governments and Union Territories, through their respective Departments of Social Justice/Disability Welfare/Women and Child

Development/Health & Family Welfare, shall provide logistical and administrative support, including access to records, facilities, and staff of the institutions.

**41.** The State Commissioners for Persons with Disabilities shall coordinate with the monitoring teams to facilitate compliance with statutory mandates and assist in data collation.

**42.** The Chief Secretaries of all States/Union Territories shall designate a Nodal Officer, not below the rank of Secretary in the concerned Department, to liaise with the monitoring institutions and Advisory Group Expert Panel.

**43.** The Ministry of Social Justice and Empowerment, Government of India, shall extend central coordination support, particularly in respect of data consolidation and policy-level facilitation.

**44.** We are conscious that the resources ordinarily available with the National Law Universities (*supra*) may not be commensurate with the scale of the monitoring exercise entrusted to them. Accordingly, it is directed that all expenses incurred by the

monitoring teams of the NLUs (*supra*) in the course of preparing and submitting their reports shall be borne in equal proportion by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, and the Social Justice Department of the concerned States/Union Territories.

**45.** For the said purpose, the Union of India shall provide an interim project fund to the tune of Rs. 25 lakhs each to the eight designated National Law Universities (*supra*). The said amount shall be remitted to the NLU concerned and will be marked in a separate Head “**Project Ability Empowerment**”

**46.** The monitoring institutions shall commence their work within four weeks from the date of receipt of this order.

**47.** A detailed consolidated report of the “**Project Ability Empowerment**” shall be submitted within six months, with actionable recommendations for systemic reforms and transition toward community-based alternatives.

## **Part VI. Reservation**

**48.** Considering the fact that, in the present matter, we are also concerned with the aspect of the reservation to persons with disabilities under the RPwD Act, it is imperative to make a positive interpretation of ‘reservation’ as provided under Section 34 of the RPwD Act.

**49.** Disability is not a homogenous or monolithic condition that can be compartmentalised into rigid or uniform categories. The lived experiences, functional limitations, and support needs of persons with disabilities vary significantly depending upon the nature, degree, and impact of the impairment, as well as the environmental and social barriers they face. The constitutional mandate of substantive equality, as embodied in Articles 14, 19 and 21, requires a nuanced and context-sensitive approach which not only removes systemic barriers but also ensures that affirmative action measures are applied in a manner that truly benefits those for whom they are actually intended. It must be recognised that a considerable segment of persons with disabilities remains historically and structurally deprived of

opportunities, trapped behind layers of social, economic, and institutional barriers, and it is they who must be placed at the centre of the constitutional promise. The aim of state-driven welfare measures is not simply to ensure formal equality, but to dismantle barriers so that the most vulnerable and genuinely disadvantaged can fully access the support intended for them. Against this backdrop, provisions such as Section 34 of the RPwD Act, which mandates reservation in employment for persons with disabilities, assume crucial importance in translating constitutional commitments and welfare objectives into actionable opportunities.

**50.** In furtherance of this objective, and in order to ensure that the mandate of Section 34 is implemented in its true spirit, we feel it is essential to address a very important facet of reservation to the persons with disabilities and the grave discrimination being faced by them, as they are the ones who have been deprived by providence, as against the persons who, face discrimination arising from the societal set-up. The latter category of persons is entitled to social reservation under Article 16(4) of the Constitution of

India, which provides an upward movement in case the person belonging to such reserved category performs well in the evaluation process and stands higher in merit above the cut-off for the unreserved category. Such a meritorious candidate would automatically move up to the unreserved category, thereby leaving the reserved seat vacant to be occupied by a candidate from the reserved category who scored less in the evaluation process.

**51.** However, we are informed and it is a matter of grave concern that the same treatment is not provided to persons with disabilities protected under the RPwD Act, who, in spite of standing higher in merit, are denied such upward movement. The direct consequence of not providing upward movement to the meritorious candidate(s) applying under the category of persons with disabilities would be that even when a candidate with disability scores higher than the cut-off for the unreserved category, such a candidate would invariably occupy the reserved seat, thereby denying the opportunity to a lower scoring candidate with disability to make a claim on the seat/post. In our view, this defeats the very purpose

of reservation under Section 34 of the RPwD Act and constitutes a glaring example of hostile discrimination against persons with disabilities and requires urgent rectification. Such an interpretation would ensure that the genuinely deserving candidates with disability for whose benefit the reservation was actually structured, i.e., those who, owing to the compounded effect of disability and deprivation, face the greatest obstacles, are not deprived of their rightful opportunities. It safeguards the purpose of reservation by ensuring that the seats or posts earmarked for persons with disabilities remain available to those whose degree of disability and attendant barriers place them at a comparative disadvantage and, therefore, entitle them to take a better claim of benefits from affirmative action measures.

**52.** This Court in *Indra Sawhney v. Union of India*<sup>10</sup> held that reservation, as the measure of affirmative action, operates not as a concession but as a means of ensuring substantive equality. Further, in *M. Nagaraj v. Union of India*<sup>11</sup>, it was affirmed

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<sup>10</sup> 1992 Supp (3) SCC 217.

<sup>11</sup> (2006) 8 SCC 212.

that the principle of upward movement, whereby a meritorious reserved category candidate securing marks above the general cut-off is migrated to the unreserved list, ensures both fairness and the effective utilisation of reservations. Unfortunately, persons with disabilities are presently not given the benefit of upward movement.

**53.** Having regard to the above, we consider it appropriate to require the Union of India to explain whether appropriate measures have been taken to provide the upward movement of meritorious candidates applying against the post/s reserved for persons with disabilities, in case such candidate secures more than the cut-off for the unreserved category. The same principle must also be applied to promotions. Such consideration must be guided by the overarching aim that the true and substantive benefit of reservations reaches those most in need, ensuring that no person with disability is ignored from his rightful claim to the post, merely due to the compounded barriers of poverty, stigma, and lack of access. Such an exercise must be undertaken keeping in view the constitutional promise of

equality, dignity, and inclusion, and ensuring that the benefits of reservation are neither diluted nor denied to those who genuinely require them.

**54.** Response to the above query shall be placed on record by the Union of India on 14<sup>th</sup> October, 2025.

**55.** A copy of this order shall be transmitted to the Registrar of each of the above eight National Law Universities, as well as to the Secretary, Department of Social Justice and Empowerment, Union of India and Chief Secretaries of all States/Union Territories, for immediate compliance.

**56.** Accordingly, IA No. 130117 of 2018 (Application for Directions) is disposed of, in the above terms.

**57.** List the matters on 13<sup>th</sup> March, 2026, for receiving the detailed Consolidated Report.

.....**J.**  
**(VIKRAM NATH)**

.....**J.**  
**(SANDEEP MEHTA)**

**NEW DELHI;**  
**SEPTEMBER 12, 2025.**