

Reasonable Accommodation for Persons with Disabilities: A Need for Right-based and Disabled Centric Approach

*Dr. Neha**

*Chandresh Soni***

ABSTRACT

The Right to Persons with Disabilities Act of 2016 is considered a progressive measure for Persons with Disabilities, particularly for introducing the concept of Reasonable Accommodation. It aims to address societal inequalities and promote equal opportunities for persons with disabilities. Rooted in anti-discrimination policies, reasonable accommodation involves adapting societal systems, policies, and practices to ensure full participation. As a step beyond affirmative action, it requires incorporating the perspectives of persons with disabilities and their accommodators. It has to strike a balance between resource allocation and individual adjustments in customized settings. The challenge, however, is that uniform application of reasonable accommodation is not practical because it conflicts with standardization. This paper explores the conceptual foundations of reasonable accommodation, examining whether it is framed as a right, privilege, or duty. The article highlights the nuanced dimensions of reasonable accommodation, presenting it as a facilitator of substantive equality and a crucial component of disability rights.

Keywords: Reasonable Accommodation, Substantive Equality, Persons with Disabilities, Disability Rights, Inclusive approach, Affirmative Action.

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I. Introduction

BEFORE SERVING as a right-based concept for Persons with Disabilities (hereinafter PwDs), the expression “Reasonable Accommodation” was initially used in the context of religious and communal harmony. Originating in the United States (US) with The Equal Employment Opportunity Act of 1972, this concept concerned itself with religious discrimination, mandating that employers make accommodations for employees’ religious practices unless doing so would cause “undue hardship” for the business. A year later, the Rehabilitation Act of 1973 came in the US and without any explicit mention of “reasonable accommodation”, it prohibited discrimination against Qualified PwDs in government-funded programs and activities¹. It shifted the notion from religious harmony to one of the legal rights of PwDs.

During the same period in the 1970s, Canada was also dealing with its own “conservative discrimination case law” system, which focused on intentional and explicit forms of discrimination based on the evidence of unfair treatment of protected characteristics like race and gender, which also included disability. Although they may be the forerunners in developing the concept, they eventually adopted the US concept when the US introduced the Americans with Disabilities Act of 1990 (hereinafter ADA). It focused on employers’ obligations towards PwD employees to provide them with reasonable accommodations. The Canadian legal system adopted the concept and allowed it to develop further, making their decisions important sources of reference for the topic. ADA became the first legal document explicitly mentioning and defining the concept of reasonable accommodation under Title I². This definition concerned itself with employment, public services, and housing aspects of PwDs. The same conceptual understanding was later introduced in the Council Directive³ of the Council of the European Union in 2000. It establishes a comprehensive framework for equitable workplace treatment to eliminate discrimination, including disability-based ones⁴.

In 2006 there was a significant change in the understanding of the term “reasonable accommodation”. The United Nations’ decades-long work to ensure the rights of PwDs culminated in the development of the United Nations Convention on the Rights of Persons with

* Assistant Professor, Campus Law Centre, Faculty of Law, University of Delhi.

** Ph.D Research Scholar, Faculty of Law, University of Delhi.

¹ The Rehabilitation Act of 1973, s. 504.

² The Americans with Disabilities Act, 1990, s. 101(9).

³ 2000/78/EC of 27 November 2000, Establishing a General Framework for Equal Treatment in Employment and Occupation [2000] OJ L 303.

⁴ *Id.*, art. 5.

Disabilities⁵ (hereinafter UNCRPD), adopted on 13 December 2006. It brought a change of perspective on the initial conceptualization of Reasonable accommodation. Along with the earlier understanding of reasonable accommodation in employment, it now entails accommodating PwDs in areas of education, healthcare, accessible public infrastructure, civic life participation, and socio-cultural activities. It came as a form of realization, especially in providing the right of equity to PwDs through reasonable modifications and adjustments. This convention realized that there are diverse and specific needs of PwDs, and treating PwDs as the same and equal with everyone will fail the objective of granting them the substantive approach to equality. By considering the structural and practical barriers and addressing social, physical, and attitudinal barriers, UNCRPD advocates for an inclusive society, replacing formal non-discrimination.

The UNCRPD, being a forerunner of change in the form of right-based legislation for PwDs, eventually provided the blueprint for domestic legislation. Since India ratified UNCRPD on 1st October 2007, it came up with the Rights of Persons with Disabilities Act, 2016⁶ (hereinafter RPWD Act) to give effect to its principles and objectives. It considered the important necessities in the life of PwDs and provided provisions for accommodative adjustments. Be it in the education, employment, professional or health sectors, etc. These accommodations are provided under the RPWD Act, regardless of government or private institutions. Even in the private sector, such accommodations must be made so that they do not hinder progress and provide equal opportunities for people with disabilities to excel in their lives.

Historically, the evolution of society shows that abled-bodied people are preferred over persons who have any sort of disabilities. This societal understanding is termed Ableism⁷. Such understanding over time became the primary cause of attitudinal barriers for people with disabilities, which persist in various manifestations to this day. Thus, UNCRPD rightfully grasped the need to accommodate PwDs. The same is reflected in the RPWD Act which provides the necessity in the form of reasonable accommodation to combat ableist perspectives⁸ of society. The concept of reasonable accommodation thus became the basic idea

⁵ The United Nations Convention on the Rights of Persons with Disabilities, 2006.

⁶ The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).

⁷ Ashley Eisenmenger, Ableism 101 - What is Ableism? What Does it Look Like? Access Living, 2019, *available at*: <https://www.accessliving.org/newsroom/blog/ableism-101/> (last visited on August 31, 2023).

⁸ *Ibid.*

of disability studies. After the UNCRPD came into being, it contributed significantly to shifting the discourse of this principle as an enabling concept for PwDs⁹.

The principle of reasonable accommodation tries to address the circumstances and situations that prevent PwD from participating fully, effectively and equally in society. It makes way for a tolerant society that welcomes differences and respects their needs by providing them the reasonable accommodation. Reasonable accommodation simply means such accommodation which provides necessary arrangements or required settlements which justify the individual needs of PwDs.

II. The Concept of Reasonable Accommodation: Two Priority Voices

The term “reasonable accommodation” is a combination of two words that is “reasonable” and “accommodation”. Here, “reasonable” is in itself a subjective term. It does not carry any certainness or objectivity. It derives its meaning from the perspectives of PwD¹⁰. This “reasonable” isn’t that “reasonable” that a “prudent man¹¹ or any reasonable man¹² must think fit”, which we see in a lot of other important Indian Acts¹³. To provide a “reasonable” accommodation is thus interesting as the other expression “accommodation” justifies it. It justifies the “reasonable” subjectively. Such subjectivity implies that at least that much can be done to allow all PwDs to exercise their free will and participation.

On the other hand, “accommodation” means the assimilation of PwDs with the general populace. Be it in education, jobs, or any other significant sectors. The subjectivity in the “reasonableness” of any particular accommodation is capped by rational and logical reasons to shape the evolving capacities of the PwDs. Also, such accommodation should be done in a consummate manner keeping in mind the accommodator’s capacity. Since the concept entails reasonableness, it talks about “undue burden” taking into consideration the resource capacity of the accommodator(s)¹⁴. Accommodators can be educational institutions, authorities,

⁹ United Nations (ed.), *The Convention on the Rights of Persons with Disabilities: Training Guide* (United Nations, New York; Geneva, 2014).

¹⁰ What is the True Meaning of Reasonable Accommodation? – Center for Disability Rights, *available at*: <https://www.cdrnys.org/blog/advocacy/what-is-the-true-meaning-of-reasonable-accommodation/> (last visited on September 19, 2024).

¹¹ The Indian Evidence Act, 1872 (Act 1 of 1872), s.3. The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s.2(c) and (j).

¹² The Indian Penal Code, 1860 (Act 45 of 1860), s.94, 102, 105, 534D(1)(iii). The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss.32,40,43,78, 140(2).

¹³ The Consumer Protection Act, 2019 (Act 35 of 2019), s. 86(e). Note: Also, in the tort law framework the standard of a prudent man is applied to establish negligence and breach of duty is evaluated by comparing the contested action of a person with that of any reasonable man.

¹⁴ *Supra* note 10.

employers, and job providers. It can even include family members or any other people responsible for growth and prosperity in various facets of the life of PwDs. An undue burden simply means that the accommodation provided should not be more than necessary. It eventually justifies the reasonableness of any accommodation provided by the accommodators.

There are two voices in the world of disability studies. The most prominent voice is of PwDs and the rest is of the general populace. In the same way, in the concept of Reasonable Accommodation, two relevant voices are of PwD(s) and the accommodator(s). The concept of Reasonable Accommodation demands the independent voice of PwDs. It must be an individualized undertaking by affected PwDs. Such concerns have to be taken into consideration by their accommodators. Reasonable Accommodation is a right only when these two voices are taken into consideration. For that, there should be a dialogue between PwD and the concerned accommodator. Any PwD can initiate a conversation with their accommodator regarding reasonable accommodation. It should be heard and understood. The concerned accommodator then has to respond to the accommodation request of such PwD. In toto, the concept invites the prominent voice of PwD to attribute meaning to “reasonable” and the voice of the accommodator creates “accommodation” based on the capacity and resources of the concerned accommodating sector.

Reasonable accommodations will be made on a case-by-case basis. Using the education sector as an example, discussions need to ideally take place between the authorities of academic institutions with students with disabilities including their parents and carers. Likewise, employment sectors can conduct a dialogue between employers and affected workers with disabilities. This discussion should end with an accommodation that meets the needs and decisions of the person with a disability and can be implemented by the accommodator. Instances of reasonable accommodation can be modifying work sites, providing readers and interpreters, flexi-place, assistive devices, reassignment also known as accommodation of last resort, modifying work schedules, flexi-time and accessible facilities¹⁵.

More importantly, The Social Model¹⁶ of disability adds a component of decision-making involvement from the PwDs. In this way, it reinforces the social essence of humankind and the

¹⁵ Principle of Reasonable Accommodation, Drishti IAS, *available at*: <https://www.drishtiiias.com/daily-updates/daily-news-analysis/principle-of-reasonable-accommodation> (last visited on April 16, 2023).

¹⁶ Social model of disability, People with Disability Australia, 2022, *available at*: <https://pwd.org.au/resources/models-of-disability/> (last visited on June 26, 2024).

value of inclusion. The maxim “Nothing About Us Without Us”¹⁷ states that PwDs from all walks of life must be consulted and actively participate in all public decisions that impact them¹⁸. “Nothing About Us Without Us”¹⁹ was initially popularised by the South African disability rights movement in the nineties, and it quickly became the central message of activists striving to abolish the societal discrimination of PwDs while simultaneously granting them the power to make policies which influence their everyday lives”²⁰. It later changed to “Nothing without Us”²¹ in the recent 2022 Global Disability Summit keeping in mind the disproportionate impact of the COVID-19 pandemic²².

III. Evolution of Reasonable Accommodation in Indian Jurisprudence

Reasonable accommodation in India is a fairly new concept. This concept was not present in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995²³. Considering the mandate of UNCRPD, we subsequently formulated and enacted the RPWD Act. Along with the new law, reasonable accommodation as a concept was introduced, integrated, and specified under Section 2(y)²⁴ of the RPWD Act via Article 2²⁵ of the UNCRPD.

Before the concept emerged as a pivotal right in India, it eventually culminated in its prominent incorporation within the RPWD Act. Certain cases vividly illustrate the evolutionary path through which the accommodation had been provided to PwDs via Constitutional Laws and Principles. Some of the cases can be enunciated. In *Ranjit Kumar Ranjak v. State Bank of India*²⁶, reasonable accommodation was provided by utilising Articles 14, 16(1) and 21 of the Indian constitution. In this case, the petitioner requested reasonable accommodation because he was selected for the post but was denied employment due to a renal transplant. Petitioner claimed his medical fitness and supported the claims by providing the proper medical records to the court. Petitioner further contended that he is capable of doing all the duties that should

¹⁷ Paul Harpur and Michael Ashley Stein, The Convention on the Rights of Persons with Disabilities as a Global Tipping Point for the Participation of Persons with Disabilities, *Oxford Research Encyclopedia of Politics*, 2017.

¹⁸ Discussion Paper: A Rights-Based Approach to Disability in The Context of Mental Health, *UNICEF*.

¹⁹ Wmickail, from ‘Nothing About Us Without Us’ to ‘Nothing Without Us, 2022, available at: <https://www.ndi.org/our-stories/nothing-about-us-without-us-nothing-without-us> (last visited on September 13, 2023).

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act no 1 of 1996).

²⁴ *Supra* note 6, s.2(y).

²⁵ *Supra* note 5, art.2.

²⁶ MANU/MH/0452/2009.

be discharged by the selected concerned post. The Hon'ble Bombay High Court declared that the petitioner was fit to be employed. The same court held that reasonable accommodation should be provided and there is no ground for undue medical expenses to be borne out by the petitioner. Similarly, In the case of *Desh Deepak Dhamajia v. the Union Bank of India*²⁷, the Hon'ble High Court of Rajasthan clearly shows that in the absence of municipal law; the principles of reasonable accommodation can nevertheless be drawn from the very principles of our Constitution. This clearly shows that even before the enactment of the RPWD Act, the judicial system pursued the concept of reasonable accommodation utilizing our constitutional principles.

After the enactment of the RPWD Act, the landmark ruling came in the *Vikash Kumar v. UPSC*²⁸ (hereinafter Vikash Kumar case). In this case, Vikash Kumar is the appellant who suffered from dysgraphia, a.k.a. writer's cramp. Academically, he had a medical background but wanted to pass the Union Public Service Commission (hereinafter UPSC) exam. While filling up his UPSC exam form in 2017, he declared his locomotor disability and a scribe was provided.

The matter came to light in his later attempts when new rules for the Civil Services Examination (hereinafter CSE) were published in 2018. It stated that only the visually handicapped, cerebral palsy, and locomotor disability candidates can avail the facility of the scribe. In his CSE 2018 form, he declared himself a person with the benchmark disability²⁹ and requested a scribe. UPSC rejected that request. He tried to get a medical certificate from the evaluation board of Ram Manohar Lohia Hospital (RMLH), but the same was denied. He challenged this denial before the Central Administrative Tribunal. The tribunal gave interim orders to furnish him with a scribe to attend for the initial test. Interestingly, the same preliminary exam results were withheld because the tribunal, in its judgement, dismissed the application. The tribunal gave reasoning on the fact that since RMLH did not provide the disability certificate, and the appellant cannot claim the required facility. Meanwhile, the appellant presented another certificate furnished by the National Institute of Mental Health and Neurosciences (NIMHANS) to claim the relief. The tribunal also rejected this certificate presented, on the ground that it failed to mention the extent of disability. At last, prayer by the appellant was intended to amend the CSE Rules, and the tribunal kept itself away from policy matters.

²⁷ MANU/RH/0063/2015.

²⁸ MANU/SC/0067/2021.

²⁹ *Supra* note 6, s.2(r).

The appellant then moved to the Hon'ble Delhi High Court to challenge the CSE Rules. During the proceedings of the matter, he received another certificate from the NIMHANS. The certificate declared that the appellant suffers from writer's cramps and will require a scribe facility. The Delhi High Court division bench refused to intervene with the tribunal's order. It stated that the appellant failed to qualify for preliminary examinations in 2018 for the civil service examinations. Therefore, the relief asked is rendered frustrated. The appellant challenged this very order of the Delhi High Court in an appeal to the Hon'ble Apex Court.

The Apex Court directed the establishment of a medical board in AIIMS to evaluate the appellant's condition. It was formed with certain objectives. It has to give an expert opinion on whether the appellant falls within the definition of Section 2(s)³⁰. What is the extent of the appellant's disability, and does the appellant fall in the category of benchmark disability? The AIIMS medical board provided that the appellant has a chronic neurological condition which is known as bilateral writer's cramp. Though he is not under benchmark disability³¹ he can be termed as a PwD under Section 2(s)³² because the extent of disability is 6%. It also highlighted that the appellant sufferer from a specified disability³³ which is mentioned in entry fourth of the schedule³⁴ of the RPWD Act. Considering the expert opinion of the medical board, the Apex Court allowed the appeal and quashed the High Court division bench order. Since the appellant didn't qualify for preliminary exams, the appellant was allowed to have the facility of the scribe to appear in any examination he wished for in the future, be it civil service examination preliminary or mains.

In this judgment, the court dedicated Part H³⁵ to discuss the reasonable accommodation in detail. It presented an understanding of the concept of reasonable accommodation and made it applicable generally for every PwD if the same is denied. According to the Apex Court, reasonable accommodation entails a duty to take steps to foster the development and fulfilment of the disabled in all spheres of their lives. It also stated that legally, such accommodation is reasonable when it is adjusted to the conditional needs of any particular disability because of differences in expectations and the nature of disabilities. It thus reiterated that Reasonable Accommodation is a "Rights-based and Disabled-Centric Conceptualization"³⁶. The Apex

³⁰ *Supra* note 6, s. 2(s).

³¹ *Supra* note 29.

³² *Supra* note 30.

³³ *Supra* note 6, s. 2 (zc).

³⁴ *Supra* note 6, The Schedule, Entry 4.

³⁵ *Supra* note 28, Para 43-60.

³⁶ *Id.* at para 49.

Court also highlighted that “Reasonable accommodation is the instrumentality-are an obligation as a society-to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination³⁷”. The same court noted that this case has some serious issues relating to the actual realisation of equal opportunity and accessibility in the quest for their dignity. The denial of such reasonable accommodation constitutes discrimination. Thus, the concept of reasonable accommodation is an anti-discrimination policy that should be implemented right away. It stated that the Minister of Social Justice and Empowerment should frame the proper guidelines in consultation with organisations representing PwDs within a provided timeframe of up to three months of this judgment.

IV. Reasonable Accommodation *vis-à-vis* Disability Rights: Foreign Jurisprudence Perspective

From time to time, the Courts of the United States, Canada, and the European Union, through their various judgments, highlighted the importance of recognizing and enforcing reasonable accommodation. These judgments enumerate how the concept safeguards the rights of PwDs and ensures equal participation in various spheres, including employment, public services, and fundamental rights. They also highlight different aspects of reasonable accommodation, like individualized assessment, balancing rights and responsibilities, undue hardship, fundamental rights, non-discriminatory practices, and the duty of employers and public bodies. Together, these cases affirm that the concept of reasonable accommodation is both legal as well as ethical obligation, which helps promote equality and dignity for PwDs.

United States (US)

The case of *US Airways, Inc. v. Barnett*³⁸ is a landmark ruling highlighting that reasonable accommodation must be considered case-by-case. In this case, Robert Barnett, a US Airways employee, suffered a back injury that hindered him from participating in his job of cargo handling. Considering this injury, he was assigned to a reduced physically intensive position in the postal office. For this job, the other senior members were also interested, which led to Barret’s request for reasonable accommodation being denied. It led him to file a suit under the ADA, to grant him an exception from the seniority rule and reasonable accommodation to perform his job. The US Apex court held that employees like Barnett can present evidence of

³⁷ *Id.* at para 35.

³⁸ 535 U.S. 391 (2002)

special circumstances that will become a reasonable exception to the seniority rule. It held that while the seniority rules are important, they cannot determine the reasonableness of accommodation, thereby observing that each request must be evaluated on its own merits considering its special circumstances and establishing the individualized approach to granting accommodations.

In a similar case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*³⁹, the apex court clarified standards for determining, whether a person be considered disabled under the ADA. It focused on interpreting the expression “substantially limits” concerning life activities and manual works. In this case, Ella Williams, while working in a motor plant, eventually developed bilateral carpal tunnel syndrome, which limited her ability to perform tasks. Her accommodator even accommodated her limited capabilities through work reassignments but she contested it as failure to provide reasonable accommodation. The Supreme Court, led by Justice O’Connor, held that determining disability must consider whether an impairment limits an individual from accomplish tasks vital to daily life, not job-specific tasks. Thus, by applying a broad interpretation of “substantial limits,” the prayer of Williams was denied, and the court reinforced the individualized assessment and case-to-case basis determination.

Another significant case, *Tennessee v. Lane*⁴⁰, highlights that reasonable accommodation of PwDs can aid in utilizing their fundamental rights. George Lane and Beverly Jones, the two paraplegic respondents in this case, both relied on wheelchairs for mobility and had personal experiences that contributed to the subject matter of this case. Lane had a court hearing and had to crawl up two flight stairs as no elevators were on the court premises. When the subsequent hearing came, he refused to crawl and be carried on stairs, this led to him being arrested on grounds of failure to appear before the court. Jones, on the other hand, is a court-certified reporter. She lost her job opportunity due to several inaccessible court buildings. They filed a case against Tennessee State for violations of Title II⁴¹ of ADA and sought damages and equitable reliefs. The state argued that the Eleventh Amendment bars this case⁴². The district court and the Sixth Circuit Court of Appeal favoured the respondents. This led to the case reaching to United States Supreme Court via Tennessee state’s appeal. The Apex Court

³⁹ 534 U.S. 184 (2002)

⁴⁰ 541 U.S. 509 (2004), MANU/USSC/0039/2004

⁴¹ Note: It forbids discrimination and requires suitable adjustments for qualified individuals in nearly all facets of public life. It includes initiatives and events run by state and local governments, such as educational institutions, public transit, leisure time, medical care, social assistance, the judiciary, participating in elections, and council meetings.

⁴² Note: It grants sovereign immunity to the state from lawsuits filed by private individuals in federal courts.

held that the legislative intent behind the formation of Title II of ADA is appropriately tailored to address unconstitutional discrimination against PwDs in their access to public services, including judicial proceedings. The court noted the historical legacy and substantial record of inaccessible public services to PwDs. It stated that reasonable accommodation is a vital principle that can be a proportional solution to this type of discrimination. Since court accessibility is a fundamental right, the aspect was stated in the majority opinion written by Justice Stevens. He emphasized while considering PwDs that access to court is a fundamental right protected by the due process clause of the Fourteenth Amendment; if a reasonable accommodation is not provided, it will negate their fundamental rights. Thus, reasonable accommodation is essential to ensure PwDs exercise their fundamental constitutional right to access to justice. Also, Title II of the ADA calls for “reasonable modifications”⁴³, and mandating public service accessibility does not impose an undue burden. This court concluded that the ADA’s requirement of reasonable accommodation is “proportional and congruent” to the injury of the respondents of inaccessible public service, thereby striking a balance to justify the interests of both parties without any discrimination. The Court noted that the state isn’t required to take steps that impose undue burden. Rather, measures should be reasonable, or maybe they can even be non-structural adjustments. Title II of the ADA allowed states to comply by taking less costly measures if structural changes are impractical such as relocating services to accessible areas and providing helping aid for accessing the public services. Thus, neither a fundamental overhaul in services nor a high financial investment is required.

Canada

The cases discussed below collectively focused on balancing occupational standards with individual reasonable accommodation rights. It Emphasizes the legal need to avoid discrimination, ensure equal opportunities in the workplace, and determine if employment standards are necessary for job performance or if accommodations can be made.

In *Meiorin case*⁴⁴, Twaney Meiorin was employed as a firefighter. After three years, the government introduced a new fitness test in which Meiorin was dismissed after she failed to meet his aerobic standard, which included neglecting her past job performance and capabilities.

⁴³ Note: It means changes in their policies, practices, or procedures to avoid discriminating against individuals with disabilities. states are required to make reasonable accommodations, such as architectural modifications or alternative arrangements (e.g., relocating services to accessible facilities), to remove barriers preventing disabled individuals from accessing public services like courts. The law does not demand accommodations that would fundamentally alter the nature of the service provided.

⁴⁴ *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government Service Employees' Union*, [1999] 3 SCR 3, 1999 SCC 48

The court found that the standards relied upon have a legitimate purpose for safety but are inadequate as it failed to consider the inherent physiological differences between genders.

*Grismer case*⁴⁵ is another landmark case. It involved the claimant Grismer suffering from homonymous hemianopsia, harming his field of view. The Department of Motor Vehicles denied Grismer's driver's license based on the standard visual requirements of a 120-degree field of vision. Grismer was thus denied the opportunity to show that he could drive safely. The case was filed on discrimination by authorities. The Apex court, thus, provided a three-part assessment to establish whether a standard can be justified as a genuine occupational necessity. Firstly, standards must be Rationally connected to job performance. secondly, employers must adopt bona fide standards and lastly, the employer should show that it cannot accommodate the needs of employees without incurring undue hardship. This case established that even if particular standards are laid down in place, individualised assessment of specific abilities can be done in a justified manner.

In *McGill University Health Centre Case*⁴⁶ (2007), the Supreme Court held that, unless undue hardship to employers, the duty to accommodate is not about meeting minimum standards but involves a comprehensive evaluation of employee's needs and circumstances. This case highlighted the collaborative process of reasonable accommodation. The court stated that aspects like the employer's finances and the characteristics of the position should be considered to assess their undue hardship.

Court of Justice of the European Union (CJEU)

A recent noteworthy advancement in CJEU doctrine concerning reasonable accommodations for people with disabilities may be seen in the *HR Rail Case*⁴⁷ of 2022. In this case, a trainee was deemed unfit due to a heart condition after being employed for a specific function. He was fired after being reassigned and was not allowed to be hired again for the same position. The CJEU decided that, as required by the Employment Equality Directive, the need to make a reasonable accommodation should take precedence over conventional discrimination determinations. This key ruling emphasized a change toward the obligation of employers to

⁴⁵ *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868

⁴⁶ *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, 1 S.C.R. 161, 2007 SCC 4.

⁴⁷ *XXXX v. HR Rail SA*, C-485/20, ECLI:EU:C:2022:85.

provide accommodations for disabled workers, encouraging equality and inclusivity in the workplace throughout the European Union.

V. Legal Framework for Reasonable Accommodation in the RPWD Act: A Right or Not?

The term “Reasonable Accommodation⁴⁸” is stated *eight times* in the RPWD Act. Starting from Chapter One, the Definitions clause, that is Section 2(h)⁴⁹ defines “discrimination as denial of reasonable accommodation” and Section 2(y)⁵⁰ defines it. A comparison of this definition with that of UNCRPD, Article 2⁵¹; in place of the expression “not imposing” expression “without imposing” is used. Similarly in place of “enjoyment and exercise on an equal basis with others of all human rights and fundamental freedoms” the expression “enjoyment or exercise of rights equally with others” is stated.

In the *Rights and Entitlements* chapter, Section 3⁵², clauses (1)⁵³ and (2)⁵⁴ are also very important to understand accommodation. Both these clauses are compulsory duties of the government. It will mean providing an enabling setup by adherence to the “steps to utilize the capacity of the person with disabilities” in light of “providing an appropriate environment”. It automatically ensures the objectives of clause (1)⁵⁵ providing equality and a dignified life with respect and integrity. Overall, this constitutes the “necessary steps” as enumerated in clause (5)⁵⁶. Here the important concern area is clause (3)⁵⁷ where the expression states that “unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim”. It gives a loophole to the government to use it as a tool of discrimination. To see the proportionality of legitimate aim is to classify, which is already permissible as reasonable classification via Article 14 of the Indian constitution. It provides implementation agencies unfettered power to discriminate against PwDs. As what constitutes a legitimate aim isn’t

⁴⁸ *Supra* note 24.

⁴⁹ *Supra* note 6, s. 2(h).

⁵⁰ *Supra* note 24.

⁵¹ *Supra* note 25.

⁵² *Supra* note 6, s.3.

⁵³ *Id.*, cl.1.

⁵⁴ *Id.*, cl.2.

⁵⁵ *Supra* note 53.

⁵⁶ *Id.*, cl.5.

⁵⁷ *Id.*, cl.3.

defined, it leaves the interpretational aspect of law in the hands of the bureaucracy open. This expression therefore acts as a rider and seems completely unnecessary⁵⁸.

Justice is an important facet of life. In “*Access to Justice*”, the whole of Section 12⁵⁹ is mandated by the expression *Shall*. The nature of this Section is, therefore, a duty for the appropriate government. They must ensure access to judicial/quasi-judicial or investigative bodies, including any court, tribunal, authority, or commission as stated in clause (1)⁶⁰. Clause (2)⁶¹ enumerates the reasonable accommodation without stating explicitly that “appropriate government shall take steps to put in place suitable support measures for PwDs especially those living outside the family and those disabled requiring high support for exercising legal rights”. Here, government is required to provide “suitable support measure”, but in clause (3)⁶², authorities constituted under the Legal Services Authorities Act, 1987 are mandated “to ensure access to the scheme, programme, facility or service offered by them equally with others. Similarly, clause (4)⁶³ clarifies that reasonable accommodation should be provided. It enumerates that public documents should be provided in accessible formats, storing documents in accessible formats. That is making available the necessary facilities/equipment to facilitate recorded testimonies, arguments, or opinions in the preferred language or means of communication by the PwD.

In *Education*, Chapter 3; Section 16⁶⁴ deals with the *Duty of Educational Institutions*. Here, too, the expression *Shall* is there. It mandates the appropriate government and local authorities to endeavour to ensure that all educational institutions that are funded or recognised provide inclusive education to children with disabilities. For that goal, there are eight enumerations most of which fall under the accessibility part. Among these, two enumerations hold significance in the context of reasonable accommodation. It provided individualized reasonable accommodation as stated in clause (iii)⁶⁵. Clause (iv)⁶⁶ grants such individualised support

⁵⁸ Disability Activists Slam Regressive Clause in New Act That Allows Discrimination, The Wire, available at: <https://thewire.in/health/disability-sector-aghast-silence-draft-rules-controversial-clause-rights-pwds-act-2016> (last visited on June 26, 2023).

⁵⁹ *Supra* note 6, s.12

⁶⁰ *Id.*, cl.1.

⁶¹ *Id.*, cl.2.

⁶² *Id.*, cl.3.

⁶³ *Id.*, cl.4.

⁶⁴ *Supra* note 6, s. 16.

⁶⁵ *Id.*, cl.(iii).

⁶⁶ *Id.*, cl.(iv).

necessary for an environment of academic and social development to achieve the goal of full inclusion.

Chapter four deals with *Skill Development and Employment*. Here, Section 20⁶⁷, clause 2⁶⁸ states that reasonable accommodation shall be provided along with an accessible environment subject to the consideration of the type of work carried on in any establishment. Section 20⁶⁹ is seen from critical eyes and contested heavily by disability rights activists and scholars. They wanted the creation of more employment options to make and achieve an inclusive society.

Other than that, the last two mentions of the term reasonable accommodation are in *Chapter 11- Central and State Advisory Boards on Disability and District Level Committee*. Section 65(2)(e)⁷⁰ states that the central advisory board on disability, mandated by *Shall*; must perform the function to “recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for PwDs vis-à-vis information, services and the built environment and their participation in social life”. Section 71(2)(e)⁷¹ states the similar stipulation for state advisory boards. It has to “recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for PwDs, services and the built environment and their participation in the social life on an equal basis with others”. Here, an interesting difference to note is that the central advisory board is provided with term “information”. In contrast, state advisory board emphasised more on the expression “on an equal basis with others”. An important thing to note is that reasonable accommodation is always accompanied by the term *Shall*. This clearly shows the legislative intent. It makes reasonable accommodation a legally protected and guaranteed right of PwDs.

VI. Reasonable Accommodation and the Issue of Standardisation

In the case of *V Surendra Mohan v. State of Tamil Nadu*⁷², the Tamil Nadu Public Service Commission imposed a ceiling of disability percentage for the post of a junior civil judge. It should not be more than 50%. This rule was applied as a bar, citing procedural requirements of the post of a junior civil judge to categories of hearing and visual disabilities. This bar was later challenged, where the Apex Court upheld the ceiling norm of the Tamil Nadu Public Service Commission. Meanwhile, the concept of reasonable accommodation gradually

⁶⁷ *Supra* note 6, s.20.

⁶⁸ *Id.*, cl.2.

⁶⁹ *Supra* note 65.

⁷⁰ *Supra* note 6, s.65(2).

⁷¹ *Id.*, at s.71(2).

⁷² MANU/SC/0055/2019.

evolved. The reasoning behind this judgment was revisited in the Vikash Kumar case. Hon'ble Apex Court corrected its reasoning after five years. It stated that earlier, it failed to consider reasonable accommodation along with its consequential capacity enhancement after such adjustments. Thus, the earlier judgment that upheld the bar of disability percentage of 50% or more lacked complete consideration. Its ratio failed and stood on "legally vulnerable footing"⁷³. This understanding addressed a crucial aspect of the concept. It makes it very clear that the after-effects and impact of reasonable accommodation are the correct considerations for the discharge of the duties of any signified post.

While reasoning, the Apex Court stated two important issues. It arises due to the conceptual requirements of reasonable accommodation, which necessitates a change from the existing system. Both these issues have their independent tests. These two issues are disproportionate or undue burdens on the accommodator and making adjustments to counter the barriers. The latter issue is a part of the former issue due to the concept's rejection of standardization. Since the concept relies upon what those two important voices discussed, its reliance on that discussion is important because all disabilities cannot be seen on the same parameter. There is an issue of varying degrees within various categories of disabilities that repels the standardization. The conceptual requirement is to accommodate in such a way that it does not become an undue burden on the part of any institution or authority. At the same time, it should create an enabling environment and the condition of productivity. Also, such accommodation should take away the barriers/ hurdles in doing or engaging in any particular work. The reasonable accommodation that can be provided is material (assistive aids or devices) and non-material (providing extra time during examinations). Thus, the accommodation provided will depend on PwDs. As per the issues highlighted, its consequential assessment will also be unique.

We can understand the accommodation and the issue of degrees within disabilities, keeping in mind that "the provision of reasonable accommodations should be based on the analysis of social barriers rather than just a medical diagnosis of a disability"⁷⁴. For instance, a hard-of-hearing student will face issues in places having echoes. In such cases, reasonable accommodation is provided by providing class notes, using writing boards, displaying PPTs with class presentations, or investing in sound-absorbing pads. The best-case scenario to

⁷³ *Supra* note 28, at para 56.

⁷⁴ Persons with Disabilities, Right to Education Initiative, *available at*: <https://www.right-to-education.org/issue-page/marginalised-groups/persons-disabilities> (last visited on April 12, 2023). Note: Also, the concerned persons with disabilities should not incur any additional fees to receive reasonable accommodations.

reasonably accommodate will depend on the opinion of a hard-of-hearing student. Thus, it is not necessary to take all these cost-intensive measures. Also, providing all this won't solve the issues because reasonable accommodation and standardization do not work parallelly. Likewise, visually impaired persons may need, as per their requirements, a voice recorder, a fixed class location where they can reach without many infrastructural issues, and braille descriptions outside each room. There are multiple measures and solutions to accommodate any single PwD let alone several disabilities and their accommodations. For instance, for students with locomotor disabilities, the accessibility to important places inside any campus is a challenge. Therefore, they should be provided infrastructural-based reasonable accommodation like lifts and wheelchairs along with disabled-friendly toilets. This one-time, expensive structural adjustment can allow PwDs to function as contributing members of society. As a result, everyone in those vulnerable groups is included, and they will no longer have to wonder if they can match normal people's productivity.

The Hon'ble Supreme Court in the Vikash Kumar case further explained and provided an understanding of this concept. "Principle of reasonable accommodation must also account for the fact that disability-based discrimination is intersectional in nature"⁷⁵. It is very much true that intersectionality in terms of class, caste, gender, race, religion, and linguistics prohibits the disability as a singular understanding. The judgment also highlights multiple disabilities and the multiple consequences coming out of such disabilities. This fact thereby rejects the uniform application of the concept of reasonable accommodation. Reasonable accommodation thus requires consideration and a comprehensive understanding of all the dimensions of any disability, which is then used to formulate the accommodative solutions. Reasonable accommodation should be in proportion to needs and customization, respecting differences and aspirations. In addition, a practice of making similar reasonable accommodations for PwDs in similar categories, along with the level of disability, while still respecting and prioritizing their voices should be considered. Therefore, the Apex Court noted that the RPWD Act being an anti-discriminatory statute, will ensure equity by utilising the concept of Reasonable accommodation. Also, the concept falls under the principle of inclusive equality and therefore "it is a substantive equality facilitator"⁷⁶.

VII. Reasonable Accommodation: Navigating the Constraints of Limited Resources

⁷⁵ *Supra* note 28, at para 48.

⁷⁶ *Id.*, at para 49.

It is a fact that the resources of all the nations are not the same. Resource inequality is based on geographical boundaries and the functioning of the economic system of any state. Thus, nations do not possess equal resources for the welfare of their citizens, and resource limitations become a constant impeding factor. That is why the concept of reasonable accommodation replaces the concept of procedural accommodation. There is a difference in both these concepts. Unlike procedural accommodation, where resources aren't considered, reasonable accommodation incorporates resource factors while objectively justifying its application. As highlighted in the UNCRPD, even when resource constraints exist, the principle of reasonable accommodation emphasizes the need to make necessary adjustments to ensure inclusivity.

Article 4(2)⁷⁷ of UNCRPD considered the limitations of resources of each country and recognized the principle of progressive realization of the rights of PwDs. Progressive realization means providing flexibility to the state in the fulfilment of obligations. It recognizes that complete socio-economic rights and their fulfilment is typically a gradual process⁷⁸. This means that while countries are obligated to work towards the full realization of the rights outlined in the convention, they are also allowed to take into account their available resources and the feasibility of implementation. The RPWD Act, on the other hand, does not explicitly mention the limitation of resources. Rather Section 3(2)⁷⁹ of the RPWD Act recognizes the challenges posed by resource constraints and the government's requirement to provide PwDs with opportunities. It should be of the same range, quality, and standard of opportunities as provided to others. Therefore, it emphasizes the progressive realization of rights. In this way, it acknowledges the need for continuous efforts and improvements to ensure equal rights and opportunities for PwDs while taking into account the practical realities of the available resources.

The legislature's intent is reflected in Section 2(y)⁸⁰ of the RPWD Act by incorporating terms like "disproportionate" or "undue burden" from Article 2⁸¹ of UNCRPD. The relevance of these terms is also crucial to the limitation of resources, which is held from the perspective of accommodators. The accommodators determine whether providing the requested accommodation will put an undue strain. Therefore, the concept acknowledged the resources

⁷⁷ *Supra* note 5, art. 4(2).

⁷⁸ Lillian Chenwi, Unpacking 'progressive realisation', its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance, 46 *De Jure Law Journal* 742–69 (2013).

⁷⁹ *Supra* note 6, s.3(2).

⁸⁰ *Supra* note 24.

⁸¹ *Supra* note 25.

and financial ramifications as reasonable factors and should be taken into account. However, given the overall requirement of the government to develop an inclusive system by making use of currently existing resources and developing new ones, the expense of reasonable accommodations must be considered.

With the limitation of resources comes a simple but significant problem i.e. disability discrimination. Section 3(3)⁸² of the RPWD Act states that unless there's a fair reason and a reasonable way to do so, discrimination based on disability is not allowed. This is an issue as the RPWD Act itself is an anti-discrimination measure; Section 3(3)⁸³ states that discrimination is allowed, especially to achieve a legitimate aim. It provides a loophole, especially when considering the government's resource allocation. Considering the discretion in Section 3(3)⁸⁴, it might create uncertainty and can conflict with the concept of reasonable accommodation.

Hon'ble Apex court in the Vikash Kumar case provided guidelines for reasonable accommodation that should be provided, keeping in mind the allocation of resources through these important steps. The appropriate entity which is tasked with the duty of making reasonable accommodations must use a case-by-case approach. To do this, communication with the concerned PwD is necessary. When determining the economic expense and required assets for the accommodation, all organizational resources must be taken into consideration. Not just those of the unit or department in question. It should be made sure that PwDs are not expected to pay for their reasonable accommodation. That is the reason why any statement or reasoning that reasonable accommodation can't be given due to the lack of resources can't be sustained as any justification. It would lead to discrimination under Section 2(h)⁸⁵ of the RPWD Act and violate the key principles of the Golden Triangle⁸⁶ of the Indian Constitution.

VIII. Reasonable Accommodation and Affirmative Action

Reasonable accommodation is a form of affirmative action and both these terms have similarities as well as differences⁸⁷. Affirmative action means "a set of programs framed to create a justifiable society for those who are seen to have historically been discriminated

⁸²*Supra* note 6, s.3(3).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Supra* note 49.

⁸⁶ The Constitution of India, art. 14,19,21.

⁸⁷ Stephen F Befort and Tracey Holmes Donesky, "Reassignment Under the Americans with Disabilities Act: Reasonable Accommodation, Affirmative Action, or Both?" *Minnesota Law School*. Note: The author highlighted Reasonable accommodation and affirmative action. The author's context concerns the Americans with Disabilities Act of 1990. For the generalized understanding, the author provided a separate segment.

against by providing preferential access to education, employment, healthcare, social welfare, etc⁸⁸”. Reasonable accommodation is one step ahead of affirmative action as it requires doing an extra step as assistance. Both the terms that is an affirmative action and reasonable accommodation act as a remedy for past discrimination.

The difference lies in the statutory mandate (reasonable accommodation being statutorily recognized in the RPWD Act) and that makes it different from conventional affirmative action. Reasonable accommodation compels the accommodator to first provide accommodation, irrespective of assessing the required capabilities of any PwDs. The ableist perspective⁸⁹ usually seeks to do prior capability assessment or even relies on societal notions or perceptions that abled-bodied are more suitable. The concept of reasonable accommodation requires the capability assessment only after providing the reasonable accommodation. Affirmative action aims to uplift a certain vulnerable category of people at a time. Even if they qualify in the eyes of the accommodator, they will not be addressed or provided with a working solution by granting reasonable accommodation. In reasonable accommodation, the challenge is to accommodate PwDs on a case-to-case basis without causing undue burden and in such a way that enables the qualification of the concerned PwD in the eyes of the accommodator. The biggest catch here is “individualization” which happens to be the core of reasonable accommodation. Affirmative action lacks such one-person initiatives. Reasonable accommodation works when dialogue happens and in contrast, affirmative action is pre-determined taking into consideration relevant factors for a class/group. Reasonable accommodation also does not guarantee favourable accommodation as two criteria remain to be fulfilled; one is capability after accommodating and the other one is the accommodator having no undue hardships. Therefore, it is best to judge the legitimacy of a reasonable accommodation on its own merits, free from the significant baggage of the affirmative action debate⁹⁰.

The concern with Section 3(3)⁹¹ of the RPWD Act is also relevant to the concept of affirmative action. Section 3(3)⁹² deals with taking positive steps to ensure fairness for PwDs. However, the problem lies in the fact that it doesn’t clearly outline what specific actions would be

⁸⁸ Neeraj Pant and Dr Chandrima Chaudhuri, “Affirmative Action Policy in India: An Analysis” *Journal of Positive School Psychology* 2601–12 (2022).

⁸⁹ *Supra* note 7.

⁹⁰ *Supra* note 87.

⁹¹ *Supra* note 82.

⁹² *Ibid.*

considered fair and necessary under affirmative action. There's a lack of clear definition or description of the actions that are considered legitimate in this context. This ambiguity creates a challenge in understanding what exactly should be done to promote fairness and inclusivity for PwDs. Without proper guidelines, it's unclear how regulatory authorities should determine whether their actions, which might involve treating PwDs differently, are justified or not. Clarity in defining what constitutes fair and justifiable affirmative action is crucial to ensure that, such efforts genuinely create a more inclusive and equitable society for everyone.

IX. Reasonable Accommodation: Duty or Privilege?

The Hon'ble Supreme Court's observations in the Vikash Kumar case addressed this question aptly. It stated that the legally guaranteed entitlement is not a privilege but a duty component. That is why the state is duty-bound and required to give access to amenities to PwDs. The same court stated that reasonable accommodation is not reserved for benchmark disability⁹³. CRPD Committee notes it is wrong to expect a PwD to be 'disabled enough'⁹⁴ concerning the degree or percentage of disability to claim the accommodations necessitated by their disability. The Apex Court said that an approach that benefits only those who are benchmark disabled will eventually frustrate the objectives of the RPWD Act.

If any accommodator denies reasonable accommodation owing to "undue burden", the Hon'ble Supreme Court said that the onus of proving particular accommodation lies on that very party denying it. Such a party has to provide objective reasons for the "undue burden". As the court said, "a justification to provide a reasonable accommodation must be based on objective Criteria"⁹⁵. This reasoning came because, in the Vikash Kumar case the UPSC argued that the same facility of providing a scribe can be misused if granted to those who do not fall in benchmark disabilities. The Apex Court said that mere suspicion of misusing assistance cannot be a ground for denying reasonable accommodation⁹⁶. Apex Court then stated that it shows a presumption that PwDs are seen as "incompetent and incapable of success in the absence of access to untoward assistance"⁹⁷. The court challenged the ableist narratives⁹⁸ by stating clearly that those who fall short of the benchmark disability⁹⁹ cannot be seen as playing the system by utilizing assistance in the form of reasonable accommodation. They cannot be termed as

⁹³ *Supra* note 29.

⁹⁴ *Supra* note 28, at para 59.

⁹⁵ *Id.* at para 61.

⁹⁶ *Id.* At para 63.

⁹⁷ *Ibid.*

⁹⁸ *Supra* note 7.

⁹⁹ *Supra* note 29.

cheaters as it will become a case of stereotyping PwDs. The ableist approach¹⁰⁰ has no place within the UNCRPD and RPWD Act discourse. Thus, the following definition of Ableism presents an understanding of stereotypes and perspectives. Ableism involves discriminating against and prejudicing PwDs by valuing typical abilities as superior, assuming disabled individuals need to be “fixed”, and perpetuating harmful stereotypes akin to racism and sexism¹⁰¹. This type of stereotyping will be detrimental to the legally guaranteed goals of the RPWD Act which includes reasonable accommodation. The argument is thus faulty on the lines of discrimination as able-bodied also cheat. On that basis, the legal entitlements cannot be taken away by mere suspicion of misuse. The Apex Court thus said “duty to provide reasonable accommodation is an individualized duty¹⁰²” that is a duty on the part of the state on a case-to-case basis.

X. Conclusion

The concept of reasonable accommodation has evolved over time and has become a fundamental principle in the context of promoting equal opportunities and inclusion for PwDs. This principle, rooted in anti-discrimination policies, is essential in ensuring that PwDs can fully participate in society on an equal basis with others. The UNCRPD played a pivotal role in shaping the discourse around reasonable accommodation, emphasizing the need for necessary and appropriate modifications and adjustments to remove barriers that prevent PwDs from enjoying their human rights and fundamental freedoms. This concept was subsequently incorporated into the RPWD Act in India.

Reasonable accommodation is not merely a privilege but a legally protected right. It is explicitly mentioned multiple times in the RPWD Act, with a clear legislative intent that it should be enforced as a duty of the appropriate government and institutions. This duty encompasses various sectors, including education, employment, and access to justice. It obliges authorities to provide individualized support measures, create accessible environments, and make public documents available in accessible formats, among other provisions. The landmark Vikash Kumar case highlighted the significance of reasonable accommodation, stating that society must embrace a rights-based and disabled-centric concept. Hon’ble Supreme Court’s

¹⁰⁰ *Supra* note 7.

¹⁰¹ *Ibid.*

¹⁰² *Supra* note 28, at para 76.

ruling in this case emphasized that reasonable accommodation is instrumental in ensuring the constitutional guarantee of equality and non-discrimination for PwDs

However, there are challenges and areas of contention, such as the ambiguity in defining what constitutes a “legitimate aim” and the need for clarity in the application of reasonable accommodation. Disability rights scholars and activists continue to push for the removal of exceptions and the expansion of employment opportunities concerning section 3(3) to create a truly inclusive society. The concept of reasonable accommodation is a critical aspect of ensuring equal opportunities and inclusion for PwDs. It revolves around the essential dialogue between two priority voices: the PwD and the accommodator. This dialogue is crucial for the effective implementation of reasonable accommodation and to ensure that the accommodation meets the individual needs and choices of the PwD. The “Nothing About Us Without Us” principle underscores the importance of actively involving PwDs in decision-making processes affecting their lives. It highlights the need for their independent voices to be heard and respected in all matters, particularly when it comes to reasonable accommodation. Both perspectives, that of the PwD and the accommodator, should be considered in finding practical and effective solutions.

Reasonable accommodation is not a one-size-fits-all concept; it requires individualized solutions tailored to the specific needs of each PwD. This individualization is at the core of reasonable accommodation, ensuring that the accommodations provided are appropriate and not an undue burden on the accommodator. The concept of reasonable accommodation also addresses issues of standardization, recognizing that disabilities vary in degree and nature. What may be a reasonable accommodation for one PwD may not be suitable for another. Therefore, each case requires a unique assessment and solution that removes barriers and enables the PwDs to participate fully. While resource limitations are a reality in many countries, the principle of reasonable accommodation emphasizes the need to make necessary adjustments within the constraints of available resources. This concept aligns with the idea of progressive realization of rights, recognizing that achieving full inclusion may be a gradual process but should not be compromised due to resource limitations. Reasonable accommodation differs from affirmative action in that it goes beyond pre-determined actions and requires a case-by-case approach, considering the specific needs and circumstances of each PwD. It challenges the ableist perspective and stereotypes that PwDs face, emphasizing their right to equal treatment and opportunity. In the legal context of India, reasonable accommodation is not a privilege but a legally protected right. It requires thoughtful

consideration of the unique needs and circumstances of each PwD. The Hon'ble Supreme Court's ruling in the Vikash Kumar case reinforces the duty of the state and accommodators to provide reasonable accommodation and ensure that PwDs are not denied access to essential amenities based on arbitrary criteria or stereotypes.

There is a need to frame disability-inclusive policies aligned with reasonable accommodation. It is essential for fostering an equitable and supportive environment. Authorities should establish legible, reasonable accommodation policies regulating their domain. As an inclusive measure, it should also provide training to raise employee awareness. Any public authorities, especially those in the employment and education sectors, should offer tailored accommodations, starting with onboarding. The government should focus on creating a centralized system for accommodation requests, inclusive recruitment, and performance evaluation practices. Additionally, the authority can do regular audits to assess accessibility while protecting the confidentiality of disability-related information and involving employees with disabilities in policy design. It's vital to provide equal opportunities for career growth, ensure accessible communication, and have mechanisms to monitor and improve accommodations. Most importantly, proper compliance with legal frameworks and monitoring reports should reflect it. Alongside this, any investment in accessible technology is always a fruitful step to promote it under the concept of universal design. More collaborations should be conducted with disability-focused organizations to enhance inclusivity. By promoting a culture of support and celebrating diversity, organizations can create an environment where PwDs feel valued and empowered.

In summation, Reasonable accommodation is a crucial tool in breaking down barriers and fostering inclusivity for PwDs and its proper implementation is essential for building a more equitable and accessible society for all. Since reasonable accommodation is a concept intended to benefit PwDs, PwDs must understand it well to ensure its success. Without the input of PwDs, the concept of reasonable accommodation remains just an idea and not a right. Unfortunately, accommodators do not voluntarily provide reasonable accommodations, which is why awareness and the voluntary adoption of this concept by accommodators are essential for the welfare of PwDs and their integration into society as contributing members. By promoting dialogue, individualization, and the removal of barriers, reasonable accommodation contributes to the realization of the rights and dignity of PwDs. The journey to full inclusion continues, driven by the principles of equality, dignity, and respect for the rights of PwDs.

