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## Inclusion is a Right and not A Privilege: Reassessing the Right to Accessibility for the Disabled with Special Reference to Digital Accessibility

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*Inclusion is a fundamental right, not a privilege, especially for persons with disabilities. This paper critically examines the right to accessibility, both physical and digital, through a legal, social, and technological lens, with a special focus on the evolving concept of digital accessibility in India. Grounded in the principle of substantive equality, the study navigates through national and international legal frameworks, including the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Indian constitutional jurisprudence, and the Rights of Persons with Disabilities Act 2016. The research highlights the gradual but transformative shift in ideology from a charity-based model to a rights-based approach. It examines how accessibility has evolved from a benevolent provision to a legally enforceable and justiciable right. The study delves into landmark judicial pronouncements that have recognised digital accessibility as intrinsic to the right to life and dignity under Article 21 of the Indian Constitution.*

*Special attention is given to the challenges and limitations in implementing digital accessibility, particularly under initiatives such as Aadhaar and Digital India. The paper critiques the narrow and fragmented approach of policies such as the Accessible India Campaign and calls for a more holistic, inclusive, and design-sensitive digital infrastructure. The role of adaptive technologies, standard-setting frameworks like WCAG, and India's emerging digital accessibility standards is also examined. In conclusion, the paper advocates for robust institutional mechanisms, inclusive policy design, and attitudinal change among stakeholders. Accessibility must be embedded into governance, legal systems, and digital platforms, not merely as a formality,*

*but as a cornerstone of democratic justice. True inclusivity can only be achieved when technology, law, and society collectively strive to leave no one behind.*

**Keywords:** *inclusion, accessibility, rights of persons with disabilities, digital accessibility.*

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## INTRODUCTION

*“My disability exists not because I use a wheelchair, but because the broader environment isn’t accessible.”*

- Stella Young, journalist and activist.

Pursuant to the census of 2011, persons with disability comprise a substantial part of the total population in India. Approximately 2.21 per cent of the total population is reported to be disabled.<sup>1</sup> However, NITI Aayog and the World Bank represent a contrasting image. The former recognises the figure to be 5 per cent, whereas the estimates of the latter are 4 to 8 percent approximately. Considering the sheer size of the Indian population of 121.09 crores, even the small estimates of disabled persons could be misleading. From this perspective, the disabled population constitutes a minority group, or rather, I would say a marginalised group in the same way as others.<sup>2</sup>

By and large, due to a lack of adequate civic sense and sensitivity towards disabled persons, discrimination against them and their banishment are discerned to be the normal course. Disabled people are often overlooked and treated as outcasts of society. As evidenced above, a person with disabilities, by coherently attaining the status of a minority group, has undoubtedly become the subject of positive discrimination for the purpose of safeguarding their rights. Therefore, the rights of disabled persons to guarantee them ‘Justice’ and ‘Normality’ in society have been acknowledged globally as well as domestically.

On the other hand, reformative legislation without realising its significance, necessity, and adequate implementation corresponds to mere formality and no further than that.

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<sup>1</sup> ‘Government of India, C-30: Disabled population by type of disability, type of households and sex (India & States/UTs) – 2011’ (Ministry of Home Affairs) <<https://censusindia.gov.in/nada/index.php/catalog/43469>> accessed 12 May 2025

<sup>2</sup> ‘STATUS OF DISABILITY IN INDIA A Review of Policy, Schemes and Facts on Disability’ (National Institute of Urban Affairs, February 2020) <<https://niua.in/intranet/sites/default/files/2458.pdf>> accessed 13 May 2025

Nevertheless, however slow, there is a shift in the ideological approach towards disabled persons. They are now seen as the ‘subjects of rights’ rather than the ‘subjects of charity’. An approach of ‘leaving no one behind’ is encouraged.

PM Modi, in his speech on International Day of Persons with Disability, replaced the term *viklang* (disabled or handicapped in a more limiting or negative sense) with *divyang* (emphasising the strengths, abilities, and dignity of persons with disabilities) to exhibit the all-encompassing, progressive and sensitive approach adopted by the government.<sup>3</sup> The purpose is not to assist the disabled as the subjects of benevolence but to make them self-sufficient and an integral part of society.

The approach is certainly productive, but how far it is rewarding entirely depends upon the extent of **inclusivity** and **accessibility** granted to the *divyang* through legislation. The inclusive and accessible societal structures for people with disability have already ripened to attain the status of Human Rights and Fundamental Rights.

Internationally, the United Nations Convention on the Rights of Persons with Disability forms the backbone for the rights of disabled persons. Nationally, the Indian Constitution, along with legislations and policies, forms the legal framework for the disabled in the country. Hence, my paper is entirely focused on the achievements, if any, at international as well as national levels in assuring the rights of accessibility and inclusivity to persons with disability. Therefore, my paper is divided into two sections. Firstly, Section I unfolds the principles of accessibility and inclusivity and examines the progress of the right to accessibility in India. Secondly, Section II provides a bird’s-eye- eye view of the budding concept of Digital Accessibility for disabled persons.

## MATERIAL AND METHODS

The current report is descriptive or doctrinal in nature, which entirely relies upon the deep and detailed analysis of some primary as well as secondary sources. The methods used are deductive in order to reach the present conclusions. It is a doctrinal research based on qualitative data, wherein systematic steps are followed. Firstly, all the available literature

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<sup>3</sup> ‘International Day of Persons with Disabilities: PM Modi says his government focused on accessibility’ *The Hindu* (03 December 2024) <<https://www.thehindu.com/news/national/international-day-of-persons-with-disabilities-pm-modi-says-his-government-focused-on-accessibility/article68943099.ece>> accessed 13 May 2025

was searched using various media. Secondly, the selected literature was analysed and reviewed. Thirdly, this report was documented. The report aims to describe the progress of 'Right to Accessibility' and suggest the loopholes, if any.

## RIGHT OF ACCESSIBILITY

**Principle of Accessibility:** The concept of accessibility pertains to the degree of availability of various services and products to persons with disability. It examines the extent to which the environment is navigable for persons with disabilities and for persons with special needs. Over the years, accessibility has acquired various colours. It has evolved as a justiciable right for persons with disabilities, an obligation on the state, and a panoramic principle in the scholarly sense.

The right of accessibility obtains its jurisprudential essence from the aspirations of the egalitarian and utilitarian society as pictured by Bentham. The advocates for the equal availability and access of resources to all citizens, irrespective of their ability or disability. Hence, the notions of accessibility are also backed by the Theory of Social Engineering by Roscoe Pound.

While comprehending the idea of accessibility, the concept of embodied access developed by Titchkosky is worthy of mention here. Widening the concept of access, she elucidated that the question of access can arise for anyone, at any time, and anywhere, for several reasons.<sup>4</sup> She explained that accessibility is the way to the people through which they embody themselves as beings in a particular society. Accordingly, the emphasis is on the transformative approach of the society to achieve spaces that are designed inclusively. Put simply, the stress must be on the transformation of the societal structures in order to make them reachable to all the citizens, rather than providing assistive support to persons with disabilities. This will not only encourage the feeling of being part of society as equals but also implant the perception that disabled persons are as able contributors to society as any other person. For instance, accessible structures at educational places would enable the disabled person to gain education and add to the human resources of the country. As noted by Goffman, a positive and transformative approach towards the creation of an inclusive

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<sup>4</sup> Tanya Titchkosky, *The Question of Access: Disability, Space and Meaning* (University of Toronto Press 2011) 3

egalitarian environment of navigation has the potential to increase the productivity of all members of the society as co-members.<sup>5</sup>

Two views of accessibility are possible, Viz, the Progressive view and the Classical view. The latter is rehabilitative in nature, which does not recognise accessibility as a right but instead as a privilege or favour. This approach supports the view wherein persons with disabilities are pushed towards “Normality” by granting them a few benefits as a part of therapeutic programmes. The approach is no doubt defective, which clarifies that, along with physical, attitudinal barriers exist in society that need to be eliminated. The former approach signifies more rational ideals wherein the disabled persons are allowed to exercise the freedom of choice. Accessibility is seen as a prerequisite of substantial development, and thereby more weight is given to the active participation of the Divyang Jan. It provides for inclusion to facilitate independence and participation of ‘all’ in the society.

Accessibility as a right is much flexible and adaptive in nature. It is backed by or converges with other human rights as well, for instance, the Right to Equality, Right to Life and Right to Freedom, etc.<sup>6</sup>

**Notions of Inclusivity:** The slogan ‘leave no one behind’ represents inclusivity in a nutshell. Cambridge Dictionary of Social Sciences defines inclusion as ‘the idea that everyone should be able to use the same facilities, take part in the same activities, and enjoy the same experiences, including people who have a disability or other disadvantage.’ Put in other words, it mandates that everyone, irrespective of their ability or disability, must be accorded equal opportunities to enable them to take active participation in all available activities or services, such as work at jobs, attend conventional school, and have careers.

An ideal society must retain an inclusionary structure and ensure that it is free from exclusionary practices. Exclusion is the direct result of the insensitivity towards disabled persons. Their ‘disability’ is often regarded as ‘inability’, which leads to discrimination and oppression. Exclusionary practices are not only detrimental to the rights of the disabled but might also prove costly to the overall development of the country. Theory of change dictates

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<sup>5</sup> Erving Goffman, *Stigma: Notes on Management of Spoiled Identity* (first published 1963, Penguin Modern Classics 2022) 3

<sup>6</sup> Sanjay Jain and Malika Jain, ‘Revisiting the Conceptual Terrains of the Right to Accessibility in India: The Role of Judicial Enforcement’ (2024) 13(4) Laws <<https://doi.org/10.3390/laws13040054>> accessed 14 May 2025

that an inclusive society must aim to move away from the charity-based ideology to a more objective and substantial rights-based approach.<sup>7</sup> With this basic interpretation of inclusion, it is evident that inclusion cannot be achieved using an assistive approach. Deprived people need adaptive practices to avail the provided services standalone. Therefore, accessibility is the means to the ends of an inclusive society. Accessibility and inclusivity go hand in hand.

## LEGAL FRAMEWORK

**International Recognition:** The United Nations adopted the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on 12 December 2006 in the Sixty-first session of the General Assembly by resolution A/RES/61/106.<sup>8</sup> The convention came into force in May 2008. By now, it has been ratified by 192 countries and the European Union. Owing to its great popularity among nations, the convention has established the foundational stone for the rights of persons with disability worldwide.

Unquestionably, the present convention is the by-product of pre-existing general and universal conventions. In particular, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, which declare and affirm that ‘everyone’ is born with a few inherent rights and freedoms without any distinction, are the mainstay for the existing convention for the disabled.

From the accessibility standpoint, the Preamble attached to the convention puts emphasis on the significance of accessibility in diverse domains. The relevant part is supplied as under: **‘Recognising the importance of accessibility** to physical, social, economic and cultural environment, to health and education and to information and communication....’

Article 3 of the Convention outlines the general principles which encompass the respect for inherent dignity, individual autonomy, including freedom to make choices; full and effective participation and inclusion in society; equality of opportunity; and accessibility.<sup>9</sup> The state

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<sup>7</sup> STATUS OF DISABILITY IN INDIA A Review of Policy, Schemes and Facts on Disability (n 2)

<sup>8</sup> Convention on Rights of Persons with Disability 2006

<sup>9</sup> United Nations Convention on the Rights of Persons with Disabilities 2006, arts 3(a), 3(c), 3(e) & 3(f)

parties are obliged to furnish accessible information about the diverse forms of assistance as stipulated by Article 4.<sup>10</sup>

Article 9 of UNCRPD outlines the principle of accessibility and assigns the responsibility of providing an accessible environment to the State Parties. Consequently, fabricating it as a welfare directive on the states. The relevant part is produced as follows: “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public...”

Apart from that, even the Sustainable Development Goals follow the holistic approach of sustainably achieving development for ‘all’. It specifically alludes to disability and persons with disabilities a total of eleven times, with the aspirations of not leaving them behind during the process of development.

The International framework, in my perspective, has afforded confidence, cognition, and a spot-on trajectory to the state parties to incorporate such an exquisite right of accessibility and accomplish the objective of an inclusive society for disabled persons.

**Constitutional Mandate:** The Indian Constitution, the Grundnorm, while embodying a broad vision of justice and equality, lacks an explicit provision dedicated to safeguarding the rights of persons with disabilities. This paved the way for responsive constitutionalism, wherein the Indian courts shouldered the burden to carry out a more creative and activist role for shielding the rights of persons with disabilities. The Hon’ble Supreme Court discerned the significance of the right to accessibility as early as 1986. In the *State of Himachal Pradesh v Umed Ram Sharma*<sup>11</sup>, the court, in its dicta, called accessibility one of the manifestations of the right to life under Article 21. But the right did not materialise to become a fundamental right due to a lack of consciousness.

In a nutshell, the golden triangle (Articles 14, 19 and 21), specified under part III of the Constitution, is the bedrock for the crystallisation of the right to accessibility for persons with

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<sup>10</sup> United Nations Convention on the Rights of Persons with Disabilities 2006, art 4(h)

<sup>11</sup> *State of Himachal Pradesh v Umed Ram Sharma* AIR 1986 SC 847

disabilities. The right to equality before law and equal protection of law mandatorily envelops the concept of access for all without any distinction.<sup>12</sup> Hence, it covers access for disabled people on an equal basis with others. The right to move freely throughout India veils within its scope the right of disabled persons to access public places, public offices, and roads, etc.<sup>13</sup> Other freedoms under Article 19, such as freedom of speech and expression, freedom to practice or carry out any profession, and freedom to reside in any part of India, are also infused within the bounds of the principle of accessibility. The basic human Right to life and liberty is consanguineous to the right to accessibility. If the former is a genus, then the latter forms its part as a species. It also mandates a dignified life for persons with disabilities.<sup>14</sup> Consequently, the blend of the three basic rights, that is, equality, freedom, and liberty, with the facets of accessibility leads to the creation of a more welfare and egalitarian society.

Exerting the above legal architecture, the Supreme Court evolved the right of accessibility as a basic fundamental right through a series of precedents. In *Rajive Raturi v Union of India*<sup>15</sup>, the Court introduced the right to accessibility for Disabled persons in the realm of fundamental rights under Article 21 of the Constitution of India. Bombay High Court, in its short order in a case concerning inaccessible footpaths, recognised accessibility interest as part of public interest.<sup>16</sup> Recently, in *Pragya Prasun v Union of India*, the apex court has expanded the scope of accessibility and held that an inclusive digital access for persons with disability is a fundamental right under Article 21 of the Constitution.<sup>17</sup>

From my perspective, it is reasonable to say that the Judiciary has commendably achieved the reforms in favour of disabled persons. Right to accessibility is now a standalone, enforceable, and fundamental right under the umbrella of Article 21 of the Constitution of India.

**Various Legislations:** One can rightly assert that persons with disabilities are the most ignored, or rather scarcely visible, fragments of society. Therefore, it is extremely strenuous

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<sup>12</sup> Constitution of India 1950, art 14

<sup>13</sup> Constitution of India 1950, art 19(1)(d)

<sup>14</sup> Constitution of India 1950, art 21

<sup>15</sup> *Rajive Raturi v Union of India* WP (C) No 243/2005

<sup>16</sup> *High Court of Judicature at Bombay on its Own motion v Municipal Corporation of Greater Mumbai* Suo Motu PIL No 3/2023

<sup>17</sup> *Pragya Prasun v Union of India* WP (C) No 289/2024



for the legislature to provide adequate attention, let alone to anticipate the laws that could efficiently settle the constitutional directives. Therefore, before 1995, there was no legislation protecting the rights of disabled persons. To implement the “Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region”, the Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The theme of the act was influenced by the medical model of disability (disabilities fixed by medical or other treatment), and the approach was entirely classical. Therefore, the law was not efficient enough when it comes to a modern outlook, such as oneness, inclusion, independence, and active participation for persons with disabilities.

India ratified the United Nations Convention on the Rights of Persons with Disability in 2007. Accordingly, the Government incorporated an international treaty into domestic law through legislation, Viz, Rights of Persons with Disability Act 2016, thereby replacing the Act 1956. The new law was based on the social model of disability (change in the attitudinal barriers and society).

The Act imposes the responsibility of providing the right to life with dignity, an appropriate environment, and reasonable accommodation to achieve a universal design on the State.<sup>18</sup> Reasonable accommodation, as defined under the act, means necessary modifications or adjustments in the societal structures to enable persons with disabilities to enjoy their rights to the full extent.<sup>19</sup> The Statute strives for universal design, a design which makes the services usable to the greatest extent possible.<sup>20</sup> Thus, incorporates the idea of accessibility and inclusivity. Section 5 of the Act offers the right to live in the community to disabled persons. Furthermore, the Statute makes it obligatory for the appropriate government to grant accessibility in voting and Justice.<sup>21</sup>

Section 40 of the Act established the concept of accessibility for the physical environment, transportation, information, and communication, etc. The emphasis is supplied as under: 40. Accessibility. – The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities **laying** down the standards of accessibility for

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<sup>18</sup> The Rights of Persons with Disabilities 2016, s 3

<sup>19</sup> The Rights of Persons with Disabilities Act 2016, s 2(y)

<sup>20</sup> The Rights of Persons with Disabilities Act 2016, s 2(ze)

<sup>21</sup> The Rights of Persons with disabilities Act 2016, ss 11 & 12

the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

Sections 42 and 41 of the Act mandate the appropriate government to take measures to provide access to transport and access to information and communication technology, respectively. There are provisions for the establishment of a Grievance Redressal Mechanism and the setting up of special courts for the efficient and speedy adjudication of matters without any hardships.

In this context, reference may also be made to Rule 15 on The Rights of Persons with Disabilities Rules 2017 as amended in 2023<sup>22</sup>, which Mandates adherence to standards concerning the physical environment and information and communication technology, as outlined in the Harmonised Guidelines and Standards for Universal Accessibility in India 2021, issued by the Ministry of Housing and Urban Affairs, Government of India.

After the brief outline of the PwD Act 2016, it is apparent that the law assimilates, though not directly, the principles of accessibility. The statute incorporates the progressive approach, which steers towards a more inclusive, fair, and just society.

Some other legislations are:

Legislations	Objective
The Rehabilitation Council of India Act, 1992	The statute is aimed to facilitate research, training, and distinctive education. It also adds a curriculum in the Universities to create rehabilitation professionals. It is done to cater to the needs of disabled persons and enable them to access education.
The National Trust Act, 1999	This act is aims to empower disabled persons by making them self-sufficient. It

<sup>22</sup> Rights of Persons with Disabilities (Amendment) Rules 2023

	is enacted to provide vocational training and financial support to disabled persons.
Mental Health Act, 2017	Enacted to give support, treatment, and care to mentally ill persons.
These legislations cater to accessibility for persons with disabilities in some way or another.	

**Accessible India Campaign (Sugamya Bharat Abhiyan):**<sup>23</sup> Launched in 2015 by the Department of Empowerment of Persons with Disabilities, the campaign was a direct response to Goal 3 of the Incheon Strategy for the Asia-Pacific Decade of Persons with Disabilities (2013–2022). Its core objective was to promote universal accessibility for persons with disabilities. The initiative focused on upgrading the infrastructure of government buildings, with a specific target of conducting accessibility audits in Tier 1 and Tier 2 cities and converting these buildings into fully accessible spaces by 2016.

The initiative was admirable, but it was a narrow approach to achieve accessibility. It aimed at procuring a barrier-free environment but only undertook selective accessibility initiatives such as installing ramps, disabled- friendly toilets, accessible elevators, etc. Therefore, the approach was less progressive and was not inclusive. There was a complete silence regarding other elements affecting accessibility, such as communicational, agricultural, institutional, political, social and attitudinal factors.<sup>24</sup> Hence, a more holistic approach to achieving a barrier-free environment is the need of the hour.

## DIMENSIONS OF DIGITAL ACCESSIBILITY IN INDIA

The visible advancements in technological developments have transformed the governance structures in India. E-Governance is introduced as a result of the initiative of Digital India, whose objective was to attain a speedier, transparent, and efficient system of governance through digital means such as websites or mobile applications. The direct result was the creation of a robust digital infrastructure with the introduction of the Aadhar Programme. However, this wave of digital advancement often appears to be questionable when it comes

<sup>23</sup> 'Accessible India Campaign' (National Portal of India) <<https://www.india.gov.in/spotlight/accessible-india-campaign#tab=tab-1>> accessed 18 may 2025

<sup>24</sup> Jain (n 6)

to inclusivity and accessibility of such digital structures to persons with Disability. Inclusion in the true sense demands the accessibility of digital services to all and fosters a society where no individuals are ignored.

**Transformation of Indian Society through Aadhar:** Digital India was the aftermath of the Aadhar programme launched back in 2008 in India. The programme was aimed at securing more inclusive social infrastructure with universal public and private service delivery. It pursues a digitised government-to-person (G2P) model for services such as subsidies, financial or banking services, issuance of passports, voter ID cards, PAN cards, etc. Under the program, each citizen was assigned a unique identification number (UID), aiming to unify all Indian residents within a single, electronically stored ID system. This huge repository of data enabled a smooth digital transaction. This system provided a more transparent picture of Indian Residents and their effective access to all public services.<sup>25</sup>

Subsequently, Aadhaar became firmly integrated into nearly every public service. Conversely, whether the digitised products and services are accessible to all the fragments of society, in particular the persons with disabilities, is a matter of debate. The methods of digital authentication under the Aadhar Programme, such as e-KYC, Biometric, and image capturing, etc, are restricted in nature. It is, to some extent, evident that this transformation is not substantiated by proficient and well-organised machinery to develop digitally, while making online services accessible even to persons with disabilities. In a writ petition filed by Justice K.S. Puttaswamy against the decision of the government to make Aadhar mandatory for public services.<sup>26</sup> The Supreme Court, in its interim order, directed that no service provider can make Aadhaar mandatory. Even if the beneficiary does not possess an Aadhar card, possibly owing to a disability, he or she must be able to avail the particular service. Therefore, UIDAI has no doubt adopted a robust approach to be as inclusive as possible for almost every marginal fragment, yet the disabled persons are obscured in the digital developmental blueprints.

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<sup>25</sup> Shweta S. Banerjee, 'Aadhaar: Digital Inclusion and Public Services in India' (*World Bank*, December 2015) <<https://thedocs.worldbank.org/en/doc/655801461250682317-0050022016/original/WDR16BPAadhaarPaperBanerjee.pdf>> accessed 16 May 2025

<sup>26</sup> *Justice K.S. Puttaswamy (Retd) v Union of India* (2019) (1) SCC 1

## LEGAL FRAMEWORK FOR DIGITAL ACCESSIBILITY INTERNATIONALLY

At present, the Web Content Accessibility Guidelines (WCAG) stand as the sole authoritative framework guiding the accessibility of web services to people with disabilities. These guidelines are a component of a series adopted and published by the Web Accessibility Initiative of the World Wide Web Consortium (W3C).

The guidelines are extensively based on four principles: perceivable, operable, understandable, and robust.<sup>27</sup> Firstly, the design of the web content and mobile application must be comprehensible with the senses available to the users. Secondly, the users must be able to locate and utilise the contents. To enhance content operability, the following approaches may be applied: providing text alternatives, captioning options, voice recognition, keyboard accessibility, gestures, providing enough time to complete a task, etc. Thirdly, the content or services must be such that the users can grasp or understand them conveniently, and the content must be free from errors. Fourthly, the content must be interpretable by the users in its full extent. It must also be compatible with all types of assistive technologies, such as screen readers or screen magnification. WCAG includes considerations such as zoom/ magnification, contrast, consistent layout, providing easy methods of data entry and a handful of options for easy authentication methods, etc.

## ROAD TO EFFECTIVE E-GOVERNANCE

To embrace a growth mindset where under no circumstances bias exists, three guiding principles could be considered-balancing of bias, considering the opposite, and embracing a growth mindset.<sup>28</sup>

Balance of bias indicates the lenses how which you see the world. It influences the way one sees or perceives the world and obstacles therein. The lenses refer to the cognition or sensitivity of an individual, which could readily be influenced by a number of factors. These could be inherited (race, gender, nationality, etc), developed (political and religious perspective, etc), or behavioural (a person's objective viewpoint on how to approach problems). Therefore, the legislators or the web/ app designer, while balancing the bias

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<sup>27</sup> Web Content Accessibility Guidelines 2.1 2025

<sup>28</sup> Regine M. Gilbert, *Inclusive Design for a Digital World: Designing with Accessibility in Mind (Design Thinking)* (Apress Berkeley 2019)

towards persons with disability, must peek into the problem with the objective lenses instead of the subjective ones.

Consider the opposite mandates to observe the possible assumptions and hypotheses before reaching a solution. Human minds are always inclined to be influenced by similar people (homophily). Therefore, while designing, we must always gather information or inputs from the targeted audience (persons with disabilities) with different points of view.

Embracing a growth mindset corresponds to the mindset that favours change. The people must be open to change to grasp the available services. Hence, the design must be formulated keeping in mind both people with a fixed mindset and people with a growth mindset. Put in other words, the design must be universally applicable.

## **ASSISTIVE TECHNOLOGY VS ADAPTIVE TECHNOLOGY**

Both are often considered similar, yet they are different. Assistive technologies refer to the additional devices that are used by disabled persons in order to facilitate daily basic activities. Equipment such as wheelchairs, hearing aids, mobility aids, low vision aids, etc. On the other hand, adaptive technologies refer to the devices, services or products that help disabled persons to access the physical and digital ecosystem. They are specially designed for disabled persons, for instance, screen readers, magnification applications, text-to-speech synthesisers, speech recognition software, closed captioning services, keyboard fillers, and electronic pointing devices, etc.<sup>29</sup> Both technologies differ in approach; the former progresses with the medical model of disability, whereas the latter focuses on the social model of disability. To pitch in digital transformation, adaptive technologies must be incorporated into the governance system to ensure independence and freedom. It not only generates a sense of oneness but also facilitates 'smart equity' within the system.

## **DIGITAL ACCESSIBILITY IN INDIA: PROGRESS SO FAR**

Apparently, not only India but also other countries in the world lack legislation or guidelines for the incorporation of digital designs in the digital world. It is evident from the legal framework that, though indirectly, rights about digital accessibility in information and

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<sup>29</sup> 'What are adaptive technologies?' (Accessibility @ UW-Madison) <<https://accessible.wisc.edu/guides/what-are-adaptive-technologies/>> accessed 19 May 2025

communication are assured to persons with disabilities. But rights hold no value unless they are implemented. Accordingly, in the absence of appropriate policies and guidelines to educate the web developers and service providers in order to make more accessible digital designs, inclusivity cannot be conferred.

The Indian Judiciary played a pivotal role in championing the rights of disabled individuals to accessible digital environments. In *Re: Distribution of Essential Supplies and Services during Pandemic*, the court emphasised that digital platforms for the COVID-19 vaccine must be accessible to all and no one should be left out due to disability. Recently, two writ petitions were filed before the Hon'ble Supreme Court by an acid attack victim, who suffers from facial disfigurement, and a person suffering from 100% blindness, concerning hardships in accessing digital services. The petitions were filed seeking appropriate guidelines for Digital KYC to make the digital domain more inclusive. The Court, harnessing the opportunity and focusing on the rights-based approach of disability, held that everyone can learn and has a right to an inclusive society. The principle of substantive equality demands that digital transformation be both inclusive and equitable. Hence, declaring the right to Inclusive Digital Access as an intrinsic component of the Right to Life and Liberty under Article 21 of the Constitution of India.<sup>30</sup> Recently, on 19th May 2025, the Delhi High Court ordered OTT platforms and producers to include accessibility features in movies.<sup>31</sup>

Recently, the Supreme Court, in an Order, mandated the OTT platforms and movie producers to make movie content more accessible to people with disabilities. The accessibility features include Same Language Captions/Subtitles (SLCS), Audio Description (AD), English translated captions, and Indian Sign Language (ISL).<sup>32</sup> Moreover, the PwD Act 2016, though in a roundabout way, outlines key provisions for ensuring digital accessibility. Section 40 of the Act manifestly obliges the Central Government to lay down the standards of accessibility for information and communication, including technologies. The relevant part is supplied here under: 40. Accessibility – The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation,

<sup>30</sup> *Pragya Prasun v Union of India* WP (C) No 289/2024

<sup>31</sup> *Akshat Baldwa & Anr v Maddock Films & Ors* WP (C) 1608/2024

<sup>32</sup> Minakshi Bidhani, 'Delhi High Court Directs OTT Platforms and Film Producers to Add Accessibility Features for Disabled Viewers' (*Law Chakra*, 19 May 2025) <<https://lawchakra.in/high-court/delhi-high-court-directs-ott-platforms/>> accessed 19 May 2025

**information and communications, including appropriate technologies and systems,** and other facilities and services provided to the public in urban and rural areas.

The definition of ‘communication’ includes accessible information and communication.<sup>33</sup> Information and communication technology is defined in the Act, which includes web-based, electronic services, digital and virtual services.<sup>34</sup> The Act also places a statutory duty on the government to implement Reasonable Accommodations, which means necessary adjustments and modifications for disabled individuals.<sup>35</sup> Relevant part is supplied hereunder:

2. Definitions. — In this Act, unless the context otherwise requires — (f) “communication” includes means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and **accessible information and communication technology;**

(n) “information and communication technology” includes all services and innovations relating to information and communication, including telecom services, **web-based services, electronic and print services, digital and virtual services; ...”**

Conjoint understanding of these provisions suggests that the right of inclusive digital accessibility is well embedded in the Statute. What is lacking is the identification, cognition, and implementation of such a right. The directive under Section 40 of the Act requires execution. Implementation of the formulated rules regarding the subject matter is the immediate call to action.

To bring India in line with global standards and to fulfil the obligation under Section 40 of the PwD Act, 2016, an initiative was kick-started by the Ministry of Electronics and Information Technology under the Knowledge and Resource Centre for Accessibility in ICT Project. Consequently, the Indian Standard on Accessibility for ICT Products and Services was adopted by the Bureau of Indian Standards. The Standard strives to provide a set of accessibility requirements, to specify how one can make content accessible primarily to

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<sup>33</sup> The Rights of Persons with Disabilities Act 2016, s 2(f)

<sup>34</sup> The Rights of Persons with Disabilities Act 2016, s 2(n)

<sup>35</sup> The Rights of Persons with Disabilities Act 2016, s 2(y)



disabled persons, to various stakeholders such as telecom, broadcasting, development, education, and banking, etc. Driven by the digitisation process, ICT-based procedures are adopted by almost all key sectors, including banking, finance, jobs, e-commerce, education, and health.

“Accessibility” is defined in the Indian Standard to mean the ‘extent’ to which various services are provided to the public at large, including the marginalised. The relevant part is supplied as under:

3.1 Terminology For this standard, the terms given in ETSI EG 201 013 and the following shall apply:

3.1.1 Accessibility – **Extent to which products, systems, services, environments and facilities can be used by people from a population with the widest range of user needs, characteristics and capabilities, to achieve identified goals in identified contexts of use.**<sup>36</sup>

This Standard covers the accessibility requirement for all web, mobile apps, software and hardware, from desktops, laptops, mobiles and all else and including facilities; online documents, contents and e-books; two-way voice including real-time text; ICT with video communications including TV with set-top box and remote control; support document and help-desk for ICT; and ICT providing emergency and relay services.

Similarly, the Government of India adopted Guidelines for Indian Government Websites 3.0, formulated by the National Informatics Centre. The guidelines are the direct adoption of the WCAG 2.0 by W3C to ensure that government websites can be used by the widest audience possible.

## CONCLUSION

When all is understood and analysed, this prolonged discussion over the rights of digital accessibility and digital inclusivity recommends that there are positive aspects, but also some limitations to consider. Considering the institutional context, the issue stems from the lack of awareness and education regarding such a precious right among the stakeholders, who are directly engaged in the formulation of the digital platforms, products, or services. The

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<sup>36</sup> Indian Standard on Accessibility for ICT Products and Services 2021

developers, coders, and corporations are generally devoid of the hardships faced by people with disabilities, which in turn creates a roadblock in devising a design that could be accessible to the most ignored fractions of society. Hence, education in this domain must be an immediate priority. Consequently, behavioural barriers need to be eliminated through education. Accessibility and inclusivity should be seamlessly integrated into the curriculum to produce human power, such as accessibility professionals or specialists, to facilitate the integration of accessibility goals into society, both physically and digitally.

From the technological context, we still lack advancements when it comes to addressing the diverse range of disabilities. As far as cognitive disability is concerned, fewer solutions are known. Accessibility and usability are the two sides of the same coin. Therefore, the digital designs must be made while keeping in mind the usability of such designs by diverse forms of disabled people. Just the other day, Chief Justice of India BR Gavai, while speaking at the University of Cambridge on the issue of 'Role of Technology to Improve 'Access to Justice'', called technology a double-edged sword with a dual role in the Justice delivery system. He called it 'both a tool for inclusion and a potential source for new divides.'<sup>37</sup>

Another limitation is the inefficiency of the laws and guidelines. Guidelines in hand without any effort on their comprehension to all the related actors, including disabled persons and stakeholders, are pointless. Generally, complexity in guidelines hinders their implementation in entirety. Advocacy and training in this regard are also a necessity. Furthermore, a lack of interaction with the group for whom the guidelines or laws are formulated creates a bridge between the aspirations of the government and the needs of the targeted groups. Having mentioned that, it is pertinent to note that collective efforts do not need policies. Stakeholders need to start developing every design with inclusivity in mind to facilitate a change.

Behavioural or attitudinal barriers construct a wall between the legislators and the marginalised. Similarly, persons with disabilities often go unnoticed. Hence, a more sensitive and proactive approach must be embraced to achieve ideal accessibility structures, which will benefit not only the target group but society as a whole.

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<sup>37</sup> Debayan Roy, 'Unequal access to internet can reduce access to justice for marginalised communities: CJI BR Gavai' *Bar and Bench* (10 June 2025) <<https://www.barandbench.com/news/technology-and-digital-tools-must-assist-not-replace-judicial-mind-cji-br-gavai>> accessed 10 June 2025

The Aadhar provides for an inclusive design, granting identity to previously excluded people. But in practice, it needs to be more accessible, especially for persons with disabilities. Methods of authentication such as biometrics, eKYC, gestures, and image capture by blinking are limited to those who have the usability for them. For instance, a digital signing method is worthless for a blind person; eKYC or image capturing is entirely ineffective for a victim of an acid attack with face disfigurement. Hence, excluding them from using valuable services where Aadhar is incorporated. Therefore, a handful of options must be made available for virtual authentication, keeping in mind the hardships faced by divyang jan.

As far as the Constitutional Barriers are concerned, we entirely lack a direct provision for persons with disabilities. Nevertheless, the Judiciary has played a pivotal role in recognising the human rights of disabled persons to acquire the place of fundamental rights in India. Therefore, the rights are not merely unenumerated but are coincident with the present fundamental rights. In my opinion, the Constitution must strive to establish a Commission for Disabled people to safeguard the rights of the disabled fragments of society. It will also facilitate a mechanism to monitor the minimum policies and guidelines for people with disabilities.

The government must also assume a proactive role in assessing the right to accessibility. It must rework the already available legal framework to make it more strategic litigation, instead of a case. Access to Justice must also be a part of this transformation, and a provision for effective legal services and working special courts for speedy justice must be emphasised.

According to a news article, 'despite claiming inclusivity as its guiding spirit, Union Budget 2025 has ignored India's disabled population.'<sup>38</sup> Not a single policy or financial provisions are mentioned in the budget. From my perspective, cost must never be a stumbling block. Technological advancements must be encouraged for efficient, inclusive, and accessible digitisation.

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<sup>38</sup> Arman Ali, 'Union Budget 2025 has Ignored India's Disabled Population' *The Assam Tribune* (02 February 2025) <<https://assamtribune.com/national/union-budget-2025-has-ignored-indias-disabled-population-1566726>> accessed 19 May 2025