



iProbono

SUBMISSION TO THE SUPREME COURT OF
INDIA, CENTRE FOR RESEARCH & PLANNING

PUBLIC CONSULTATION TO PREVENT USE OF HARMFUL STEREOTYPES AGAINST PERSONS WITH DISABILITIES IN LEGAL SETTING

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1. Introduction

The principles of '*non-discrimination*' and '*full and effective participation and inclusion in society,*' as articulated in the Rights of Persons with Disabilities Act, 2016, originating from the Convention on the Rights of Persons with Disabilities, 2006 (**UNCRPD**), are central to the framework of disability justice. Historically, individuals with disabilities have been perceived through a lens of charity, help, and pity (charity model), or seen primarily in terms of their medical treatment needs (medical model). However, evolving jurisprudence on disability rights has led to a paradigm shift. Current laws and policies now recognise ableist norms, infrastructure, and societal biases as disabling factors, shifting focus from the individual's impairments (social model).

The Rights of Persons with Disabilities Act, 2016 (**PWD Act**) looks at persons with disabilities as holders of equal entitlements and fundamental freedoms, aligning with the human rights model. While there has been a shift from the charity approach to a human rights perspective, existing laws and practices still have limitations in effectively addressing attitudinal barriers against individuals with disabilities. These barriers extend beyond personal interactions and manifest in various ways, restricting their complete access to essential facilities and services without discrimination.

1.1. Stereotypes - Nature & Effects

A stereotype assigns perceived group characteristics to individuals without considering their actual circumstances, which can be particularly detrimental to people, especially those from marginalised identities. The effect of a stereotype, mostly negative, is felt in various social, material, and individual contexts. Very often stereotypes do not manifest in explicit ways, but rather are rooted in lack of awareness and are unintentionally put to use, and are not always conscious, deliberative or controllable.

The prevailing stereotypes imposed on the disabled community often project notions of inferiority, vulnerability, incompetence, and a perception of appearing inept or pitiful. Due to the persistence of these stereotypes, society tends to position individuals with disabilities at its lowest rung, consequently undermining their perceived value and quality of life. For instance, discourses of disability in the media reinforce the images of persons with disabilities as victims who require help, treatment or rehabilitation based on their abnormality, impairment, illness, or a tragic loss of normal, healthy functioning or at best

a comic relief.¹ This significantly influences the minds of the general people, strengthening their biases against persons with disabilities and they are more prone to then view a person with disability with a prejudiced lens. Hence, stereotypes often transform into entrenched social norms, potentially posing a significant threat when they function to deny individuals their fundamental human rights.

1.2. Addressing common stereotypes against persons with disabilities:

(a) People with disabilities are objects of charity, helpless, pitiable, and dependent –

Persons with disabilities are frequently perceived as objects of pity or charity, often considered unequal to their counterparts without disability. Their experiences are often framed in a tragic light, positioning them as recipients of sympathy and assistance. This portrayal often unfairly stereotypes persons with disabilities as passive victims, diminishing their agency and casting them as dependents reliant on constant aid from individuals without disability. This perpetuates a stigmatising belief that individuals with disabilities lack the abilities to navigate daily life independently. Instead of addressing structural barriers and improving infrastructure, the focus is often misplaced, attributing the disabling element solely to the individual. This stems directly from an emphasis on the medical model, whereas the social model advocates for recognising the societal framework as the disabling factor, rather than placing the focus on the individual's impairment. Contrary to this stereotype, individuals with disabilities should be regarded as independent individuals fully capable of making meaningful contributions to society.

The stereotype further perpetuates the belief that persons with disabilities are incapable of leading fulfilling lives or making meaningful contributions. This misconception significantly hampers equal opportunities for individuals with disabilities, affecting areas such as education and employment. To combat the stereotype, the perspective requires acknowledging the deficiencies in the current system regarding the accommodation of persons with disabilities.

(b) People with disabilities are brave, courageous, heroic, and inspirational for living with their disability –

¹ Please see for an example on how media platforms may use non-inclusive language such as 'suffering from' and/or 'disease' in relation to persons with disabilities: Correspondent, S. (2022, February 19). India has five million people with communication disabilities: NHM director. The Hindu. <https://www.thehindu.com/news/national/karnataka/india-has-five-million-people-with-communication-disabilities/article65065563.ece>.

In contrast to the stereotype that portrays persons with disabilities as passive subjects of pity, another viewpoint characterises them as 'brave' and 'courageous' simply for existing with their disability. The argument against this stereotype acknowledges that individuals with disabilities can indeed exhibit bravery but cautions against the tendency to excessively praise routine actions, diverting attention from their individuality. This stereotype dehumanises persons with disabilities by attributing superhuman abilities to them and holds them to an unrealistic standard. It perpetuates the narrative of the brave and courageous individual with a disability, overshadowing the diverse and authentic experiences that shape their lives. The emphasis on praising individual coping mechanisms within the narrative surrounding persons with disabilities shifts the focus away from holding oppressive and exclusive structures accountable. This narrative tends to divert attention from the urgent need for systemic change. Rather than acknowledging the collective responsibility to dismantle barriers and discrimination, the spotlight remains on the individual's resilience.

The extension of the stereotype that associates a person's disability with divine intervention introduces a dual perspective, both positive and negative. In one light, there's a belief that deviating from the perceived normative body results from committing a sin, and health is considered a benevolent gift from a higher power. Conversely, a seemingly benevolent stereotype may cast persons with disabilities as possessing divine bodies, setting them apart from the human experience. This effort to counteract negative attitudes inadvertently places individuals with disabilities on a moral pedestal, establishing an inherent inequality. Embracing the idea that persons with disabilities possess divine powers to compensate for bodily deficiencies, aligning with the supercrip theory of disability, not only distorts self-concept but also hampers their identity in public. For instance, the use of the Hindi word 'divyang' designates persons with disabilities as exceptions, implying that they are considered outside the norm².

(c) A disability is a sickness, something to be fixed, an abnormality to be corrected or cured. Tragic disabilities are those with no possibility of cure, or where attempts at cure fail – The notion that a disability is a sickness, something to be fixed, an abnormality to be corrected or cured, has likely evolved from the historical segregation of people with disabilities in facilities separate from individuals without disabilities, often institutionalised in nursing homes and hospitals even when not in need of medical care. While certain disabilities may entail symptoms of continuous and chronic pain, it is inaccurate to generalise this experience to all persons with disabilities.

² Khetarpal, A., & Singh, S. (2016, April 28). Reintroducing differences linguistically!. Indian Journal of Medical Ethics. <https://ijme.in/articles/reintroducing-differences-linguistically/>.

This stereotype's manifestation can lead to discrimination against individuals with disabilities, limiting their access to opportunities. Moreover, it reinforces other stereotypes, treating persons with disabilities as objects of charity and pity. It's important to recognise that many individuals with disabilities do not face health issues on a daily basis and may experience sickness just like any other person without disability. Disentangling the association between disability and illness is crucial to promoting inclusivity and dispelling misconceptions about the diverse experiences of people with disabilities.

(d) Persons with intellectual disability are unreasonable, violent, and dangerous – The stigmatisation of mental health conditions emerges from the portrayal of individuals with intellectual disabilities as irrational, violent, and hazardous. This misconception is deeply rooted in the belief that intellectual disabilities stem from personal shortcomings, disregarding the complex factors and diverse causes that contribute to these conditions which affect cognitive functions. This myth is fueled by stereotypes that unfairly vilify people with psychosocial disabilities and is further sustained by biased media reports. These stereotypes significantly shape the public perception of individuals with intellectual disabilities, subjecting them to discriminatory behavior and intensifying societal stigma and prejudice, which might lead to denial of opportunity in cases of education, employment, etc.

2. Inclusive Language for Persons with Disabilities:

The language we choose to describe individuals with disabilities significantly influences our perceptions and, consequently, shapes our understanding of the world. By consciously selecting inclusive and respectful language, we contribute to fostering an environment that recognises the dignity and agency of persons with disabilities. This linguistic choice extends beyond mere semantics; it reflects our commitment to promoting equality, eradicating stereotypes, and cultivating a society that embraces diversity and inclusivity. It also shapes our perceptions and engagement with a person with disability, and continually acknowledges barriers that hinder individuals' full participation in society.

2.1. Person-First v. Identity-First Language – Over time, there has been a notable shift towards adopting person-first language. Person-first language underscores the importance of referring to an individual before alluding to their disability. This linguistic approach prioritises placing the person first, with the overarching goal of minimising bias and steering clear of perpetuating stereotypes. For instance, instead of saying 'the disabled or autistic person,' one would choose 'the person with a disability' or 'the individual with autism.' In cultivating an awareness of the impact language has on shaping attitudes, we actively contribute to creating a more inclusive and understanding society. By embracing person-first

language, we make a conscious effort of not equating and limiting a person to their disability and also shed light on the sensitivity to matters involving social justice and cultural awareness, especially given the marginalisation of persons with disabilities.

Person-first language and a focus on skills and contributions should supplant labeling and patronising terminology. While alternatives to offensive terms have emerged, many fall short, aiming to soften the reality of disability instead of embracing it. Terms like "differently abled" or "special" are euphemisms, denying reality and perpetuating stigma. It is the need of the hour to opt for neutral language like "persons with disabilities" or positive alternatives like "tailored assistance" and avoid usage of words like "special needs" and "special education," which carry negative connotations of segregation. It is also important to avoid treating disability as a disease or illness. We must ditch diagnoses as labels like "the autistic" or "the epileptic" and adopt person-first language such as "a person with autism" or "someone who has epilepsy".

However, recognising that disability spans a diverse spectrum of conditions, each carrying its distinctive implications in political, intellectual, and cultural realms, it becomes evident that advocating for a universal adoption of person-first language may not always be the most suitable approach. The nuanced nature of various disabilities suggests that linguistic preferences can vary among individuals and communities. Hence, a more inclusive and respectful communication strategy involves understanding and respecting the diverse linguistic choices of people with disabilities, whether they prefer person-first or identity-first language. This flexibility ensures that our language practices genuinely reflect the diverse experiences and preferences within the disability community, promoting a more inclusive and considerate discourse.

2.2. Oversensationalised v. Competence Based Language – Additionally, it is important to avoid sensationalised portrayal, stereotyping and exaggerated narratives while recognising disability as an integral facet of human diversity. Instead, individuals with disabilities deserve acknowledgement as multifaceted individuals possessing the same breadth of talents and abilities as anyone else. For example, addressing a person with a disability as “brave” or “courageous” is patronising and should be avoided [see section 1.2(b)].

Instead the focus should be on competence-based language, which emphasises positive and affirming communication in interactions with individuals with disabilities. Competence-oriented language is

characterised by positive expressions that convey acceptance of persons with disabilities, highlighting their abilities and skills of a person rather than focusing on their disability or deficits. In essence, competence-oriented language encourages positive engagements with and discussions about individuals with disabilities, steering away from negative connotations. By emphasising strengths and capabilities, this linguistic approach contributes to a more inclusive and supportive atmosphere, reinforcing the principle that individuals with disabilities should be recognised for their competencies and contributions rather than being defined by their challenges.

For instance, using a phrase like 'wheelchair-user' instead of 'wheelchair-bound' is a more competence-based language choice, as it emphasises the individual's ability to navigate the world with the assistance of a wheelchair. This phrasing avoids suggesting limitations in capacity and, instead, recognises the empowering role of the wheelchair in addressing deficiencies in the societal setup.

However, it is crucial to acknowledge that the line between focusing on their abilities and over-emphasising them is delicate. While recognising and appreciating strengths and capabilities is essential, it's equally important to avoid defining individuals solely by their abilities. Therefore, while crafting language for persons with disabilities, we should strive for a nuanced balance. We must not only recognise their strengths and contributions, but also acknowledge their diverse experiences, including the challenges they face.

Vulnerability stems from external circumstances, not disability itself, and can affect everyone at times. It is important to acknowledge the specific barriers and challenges faced by people with disabilities, including increased vulnerability to certain crimes such as violence towards minorities or caste-based violence, while avoiding unnecessary labeling and focusing on skills and strengths. Using terms like "victim" or "survivor" is offensive and should be used for a person who has suffered from genuine injustices, not for someone with inherent conditions like locomotor disabilities or blindness. Lastly, we must refrain from using disability-related terms as derogatory slurs. Terms like "tone-deaf", "slow learner" should not be used as they are offensive and insulting. Recognizing the context-dependent nature of disability challenges us to see beyond one-dimensional vulnerability frameworks and embrace the diverse realities of individuals with impairments.

The table below highlights the importance of using inclusive language when referring to people with disabilities. It showcases examples of terms that can be hurtful or outdated, alongside respectful alternatives, while acknowledging that it's not exhaustive and just a starting point for mindful communication.

Non-inclusive Language [Incorrect]	Inclusive Language (Preferred)
<ol style="list-style-type: none"> 1. Disabled person³; 2. Differently-abled; 3. Person with specific needs or special; 4. Person living with a disability; 5. Diseased or disease burdened; 6. Disorder; 7. Disadvantaged or deprived; 8. Unequals; 9. Incapable; 10. Inadequate; 11. Invalid; 12. Helpless; 13. Afflicted or Stricken; 14. Victim (of cerebral palsy etc.); Survivor or Sufferer; 15. Atypical or abnormal; 16. Unfit; 17. Lame; 18. Deformity; 19. Weaker; 20. Limp; or 	<p>Person with disability/Persons with disabilities</p>

³ Many individuals with disabilities may prefer identity-based language, and it is important to respect their choice when they use such terminology to emphasise their lived experience. However, it is crucial to exercise caution and be mindful of individual preferences, as not everyone within the disability community may share the same linguistic preferences. It is advisable to engage in open and respectful communication to ensure that language choices align with the preferences of those involved.

21. Stooge	
Birth defects or Defected from birth	Person with disability from birth
<ol style="list-style-type: none"> 1. Maimed; 2. Mutilated; 3. Confined; 4. Cripple/Crippled; 5. Handicapped; 6. Impaired; 7. Limp; or 8. Person with physical limitations 	<p>Person with orthopedic disability</p> <p>Person with mobility disability</p> <p>Person with mobility impairment</p> <p>Person with physical disability</p> <p>Person using a mobility device</p> <p>Person who walks with crutches</p> <p>Person who uses a walker</p>
<ol style="list-style-type: none"> 1. Wheelchair bound; 2. Confined to a wheelchair; or 3. Person with physical limitations 	<p>Wheelchair user</p> <p>Person who uses a wheelchair</p> <p>Person using a mobility device</p> <p>Person with mobility impairment</p> <p>Person with physical disability</p>
<ol style="list-style-type: none"> 1. Moron; 2. Idiot; 3. Lunatic; 4. Dumb; 5. Stupid; 6. Demented; 7. Psycho; 8. Maniac; 9. Crazy; 10. Hysterical; 11. Nuts; 12. Hypersensitive; 13. Intellectually challenged; 14. Slow-learner; 	<p>Person with intellectual disability</p> <p>Person with mental health condition</p> <p>Person with psycho-social disability</p>

<ul style="list-style-type: none"> 15. Mentally ill; 16. Mentally retarded or retarded; 17. Mentally challenged; 18. Infirm; 19. Deranged; 20. Incapable of rational answers; 21. Medical or legal insanity; 22. Mental non-development; 23. Unsound mind; 24. Feeble-minded or weak-minded; 25. Mental patient; or 26. Lame 	
<ul style="list-style-type: none"> 1. Dyslexic; 2. Specific Learning Disability; 	Neurodivergent
<ul style="list-style-type: none"> 1. Normal; or 2. Able -bodied 	People without disability
<ul style="list-style-type: none"> 1. Dwarf or Dwarfism; 2. Stunted; 3. Midget; 4. Little person 	Person with short stature/ Person with skeletal dysplasia
<ul style="list-style-type: none"> 1. Deaf; 2. Mute; 3. Hearing impaired; 	Person with hearing impairment
Completely blind or Visually Impaired	Person with total visual impairment
Partially blind or Visually Impaired	Person with partial visual impairment, person with low vision
Dumb or Verbally impaired,	Person with verbal impairment

Spastic/Victim of cerebral palsy	Person with cerebral palsy
Epileptic/Victim of epilepsy	Person with epilepsy
Attack, Spell or Fit	Seizures
Symptoms of a condition	The impacts or effects of a condition
<ol style="list-style-type: none"> 1. Mongoloid; 2. Weird; 3. Special person; or 4. Down 	Person with [name of genetic disability] (For example person with down syndrome or Person with trisomy etc.)
Albino	Person with albinism
Leper or Leprosy patient	Person with leprosy
Multiple disabilities [For example: Deaf and dumb, blind and mute, Deafblind etc.]	Person with cross-disabilities/ Persons with multiple disabilities.

3. Stereotypes in Legal Settings:

The nature of stigma and its manifestation in the lives of stigmatised individuals is evident across various aspects of life, including their social identity, political participation, economic opportunities, and access to justice. Often stigma results in negative treatment of the person, and the transportation of stigma in legal contexts is equated with discrimination, resulting in violation of human rights. Therefore, there is a pressing need for a change in how actors within the legal system—judges, lawyers, court personnel, police, and other stakeholders—perceive persons with disabilities. It will ensure that biases do not deny equitable treatment and protection under the law.

The history of stigmas and stereotypes against persons with disabilities has been deeply rooted in the socio-political history of India, and this influence is evident in legal settings, raising concerns about their access to justice. The enactment of the 2016 Act represents an effort towards incorporating more inclusive terminology in law, aiming to ensure non-discrimination, equal opportunity, respect, and dignity for individuals with disabilities. However, conceptions such as “benchmark disabilities” leads to

exclusion of individuals whose conditions may not fall within this category and thus may not be considered "sick enough" based on predefined criteria. While the statute claims to be based on the social model, this "benchmark" criterion is a relic of the medical model.⁴

The engagement of lawyers and judges with the issues concerning persons with disabilities and the legislation on it, has exhibited several implicit biases and stereotypes over the years. For instance, in the landmark case of *Vikas Kumar v. Union Public Service Commission & Ors.*⁵, the counsel for the state came from a place of stereotype to argue that the provision of a scribe could offer an undue advantage to persons with disabilities. However, the Court rightfully busted the argument to note that there is no evidence to make that argument, and also remarked that it perpetuates the stereotype that persons with disabilities have to resort to state largesse due to their inability to compete on a level-playing field. However, in the same judgment, the use of the phrase '*discrete and insular minority*' for persons with disabilities inadvertently reinforces a legal and social framework that views them primarily through a protective lens, rather than as equal and active members of society.

Despite legislative and judicial efforts aimed at prioritising the best interests of persons with disabilities and transitioning towards a social model, the persistence of stereotypes embedded in language remains implicit. Therefore, an active effort is essential to foster a more inclusive and empowering narrative for individuals with disabilities. While many contemporary legal judgments are progressive and uphold the rights of persons with disabilities, there is a crucial need for extra caution in the language employed. Although the language may seem harmless within a specific context, it is important to consider its potential interpretation in different contexts where it could unintentionally perpetuate stereotypes.

For example, court judgments persistently employ the phrase 'mental retardation' when referring to individuals with intellectual disabilities⁶. The term 'retard' is often used as an insult or synonym for 'stupid' or 'idiot,' which is demeaning and perpetuates negative stereotypes against persons with disabilities. For that matter, even the adoption of the recently introduced term 'mental illness' in the Mental Healthcare Act, 2017 can be argued to associate impairments with illnesses, potentially perpetuating stigmatisation of individuals with mental health challenges, reinforcing societal biases and

⁴ *Vikas Kumar v. Union Public Service Commission* (2021) SCC OnLine SC 84, ¶136.

⁵ *Vikas Kumar v. Union Public Service Commission* (2021) SCC OnLine SC 84, ¶139.

⁶ *Dasharath Vs. The State of Maharashtra and Ors* (2024) BHC-AUG 382, ¶12; and *Hakim v State of Maharashtra and Ors. and Hamid Bashumiya Shaikh v State of Maharashtra and Ors.* (2023) MANU/MH 4371, ¶14.

hindering efforts to promote understanding and inclusion by continuing to using terms such as ‘mental retardation’.⁷ However, the persistent association with illness perpetuates the marginalisation of disability. This linguistic shift, though a step toward inclusivity, still contributes to the broader issue of negating the experiences of individuals with disabilities.

When courts face claims of unsound mind as a defense to culpability, they often resort to terms like ‘lunacy,’ ‘abnormality,’ and ‘insanity,’ mental retardness. In certain cases, the judgements use the term ‘handicapped’ which is considered derogatory and unacceptable.⁸ Such terms implies a functional limitation stemming from an impairment that puts someone at a relative disadvantage in fulfilling their societal roles and carries connotations of dependency.⁹ By doing this, the courts create precedents that perpetuate a discourse and influence how cases are built and ultimately concluded¹⁰.

3.1. Emphasis on Rightful Claims and Accountability and not on Individual’s Disability –

In addition to the explicit use of language that perpetuates stereotypes against persons with disabilities, these stereotypes are sometimes unintentionally reinforced even in seemingly positive actions. One such instance arises when the court, while safeguarding the rights of a person with a disability, justifies its decision by emphasising the individual's disability rather than focusing on their rightful claim, the defendant's wrongful conduct, or the state's responsibility to provide accommodation. In the case of *X v. Union of India & Ors*, the judgment, while addressing the guardianship claim of a child with autism, the judgment consistently refers to the child as an ‘incapable adult’.¹¹ Similarly, in the case of *National Insurance Company Limited v. Subhasish Manna*, where a person with a disability was seeking increased compensation, the court's reliance on the idea that any compassionate employer might hesitate to hire the claimant, despite their 100% functional disability, for some desk work, underscores a troubling emphasis on ‘pity’. This reflects a pattern where the court highlights the individual's disability rather than centering the discussion on their rightful claim to such compensation, thus diverting attention from the essential aspects of their case and the need to address the broader considerations related to their well-being. It perpetuates the stereotype that individuals with disabilities are inherently unemployable, diverting attention from the core issues of the case and reinforcing societal biases.

⁷ See for definition of ‘mental illness’, Mental Healthcare Act (2017) 10, S.2(s), https://main.mohfw.gov.in/sites/default/files/Mental%20Healthcare%20Act%2C%202017_0.pdf.

⁸ *Net Ram Yadav v The State of Rajasthan* (2023) INSC 822, ¶123.

⁹ See definition of ‘Disability’ in *Raj Kumar v Ajay Kumar* (2011) ACJ 1, ¶16.

¹⁰ See usage of the definition of ‘disability’ in *Krishna Thakur Vs. Himachal Road Transport Corporation* (2012) ACJ 2686, ¶19.

¹¹ *X v Union of India* (2023) KER 80741, ¶1, ¶2, ¶18.

3.2. Challenging 'able-bodied' as the standard norm –

In the realm of judicial decision-making, there exists a presumption that the standard for capability is set by the seemingly 'able-bodied,' who is considered inherently capable of earning a living and leading a meaningful life¹². However, the use of the term 'able-bodied' and the underlying presumption inadvertently juxtapose individuals with disabilities against this norm, implicitly conveying that anyone diverging from this standard is inherently labeled as disabled. This linguistic framework not only reinforces societal biases but also perpetuates a binary distinction, implying a lack of capability for those who do not conform to the 'able-bodied' archetype. The able-bodied standard further exacerbates discrimination against persons with disabilities.

In legal proceedings, such as the assessment of testimonies, courts often give precedence to the able-bodied perspective, positioning it as the norm, and potentially undermining the credibility of individuals with disabilities. For instance, *Mange v. State of Haryana*¹³, where the Court outrightly dismissed reliance on the testimony of a thirteen-year-old girl with a disability, asserting that '*no useful purpose would have been served by examining her.*' The apex court has rightfully criticised such a stance, emphasising that a witness with disability should not be deemed weak or inferior simply because their interaction with the world differs from that of their able-bodied counterparts¹⁴. This underscores the importance of challenging ingrained biases and ensuring equal consideration for the perspectives of individuals with disabilities in legal proceedings¹⁵. This is not to suggest that a witness with a disability may not require accommodations in legal processes. To establish the relevance of their testimony necessitates a reevaluation of judicial procedures, urging the judiciary to implement accommodations that empower these witnesses to provide comprehensive depositions. Dismissing the testimony of a person with disabilities without making such accommodations fails to hold the existing structures accountable. It underscores the imperative for the legal system to adapt and ensure inclusivity, allowing individuals with disabilities to participate fully and meaningfully in legal proceedings.

4. Conclusion & Recommendations –

¹² *Chander Prakash v. Shila Rani* (1968) SCC OnLine Del 52; and *Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303.

¹³ *Mange v. State of Haryana* (1979) 4 SCC 349.

¹⁴ *Patan Jamal Vali Vs. The State of Andhra Pradesh* (2021) AIR SC 2190.

¹⁵ *Ibid.*

Among the numerous barriers hindering the full and effective participation of individuals with disabilities in society, attitudinal barriers stand out as a major obstacle. These barriers manifest in various forms across social, political, and judicial spheres, impacting access to justice for people with disabilities. To address and overcome stereotypes, it is crucial for the judiciary to adopt a perspective of sensitivity and empathy when dealing with disability-related issues. Treating individuals with disabilities equally, without discrimination, and ensuring necessary accommodations are provided, should be fundamental principles. The way in which the judiciary handles cases involving persons with disabilities holds significant influence on societal perceptions and sets a precedent for future decisions. Therefore, prioritising fair treatment and inclusivity in judicial decision-making can have a positive ripple effect on the overall societal treatment of individuals with disabilities.

In the furtherance of the above submissions, iProbono recommends the following –

On the use of inclusive language in decision-making:

- *Prioritise person-first language, ensuring references to individuals with disabilities avoid isolation, dehumanisation, or equating the condition with the person.*
- *Seek to understand an individual's disability before making assumptions or involving them in any judicial decision-making processes.*
- *Refrain from using language that reinforces negative stereotypes, generalisations, or labels for persons with disabilities.*
- *Avoid sensationalising descriptors that equate a person's impairment with inherent limitations; for example, prefer "person with autism" over "person suffering from autism."*
- *Refrain from using phrases or connotations that equate disability with an illness unless contextually necessary.*
- *Avoid condescending euphemisms such as "handicapped," "differently abled," "special," or "challenged" that diminish the agency of persons with disabilities.*
- *Use language that upholds the dignity and integrity of each individual, avoiding terms like "subnormal" or "retarded."*

On making judicial processes more accessible and inclusive for persons with disabilities:

- *Acknowledge persons with disabilities as full individuals before the law, affording equal weight to their complaints and statements as any other individual.*

- *Remove existing barriers in complaint mechanisms and legal procedures to enhance accessibility for persons with disabilities in investigations and court proceedings.*
- *Offer procedural, communicational, and infrastructure accommodations as needed for persons with disabilities.*
- *Facilitate the testimony of individuals with intellectual disabilities by making reasonable accommodations in court processes.*
- *Avoid conflating mental capacity with the right to hold and exercise legal capacity, ensuring non-discriminatory practices.*
- *Ensure stakeholders undergo training and sensitisation to engage effectively with persons with disabilities, emphasising communication skills and combating biases and prejudices.*

Annexure - I - Relevant Legal Materials & Academic Literature

A. Case Laws:

(a) Supreme Court

Vikas Kumar v. Union Public Service Commission (2021) SCC OnLine SC 84.

- 1) Net Ram Yadav v The State of Rajasthan (2023) INSC 822.
- 2) Raj Kumar v Ajay Kumar (2011) ACJ 1.
- 3) Chander Prakash v. Shila Rani (1968) SCC OnLine Del 52.
- 4) Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303.
- 5) Patan Jamal Vali Vs. The State of Andhra Pradesh (2021) AIR SC 2190.
- 6) Mange v. State of Haryana (1979) 4 SCC 349.

(b) High Court

- 1) Dasharath Vs. The State of Maharashtra and Ors (2024) BHC-AUG 382.
- 2) Hakim v State of Maharashtra and Ors. and Hamid Bashumiya Shaikh v State of Maharashtra and Ors. (2023) MANU/MH 4371.
- 3) Krishna Thakur Vs. Himachal Road Transport Corporation (2012) ACJ 2686.
- 4) X v Union of India (2023) KER 80741.

B. Legislations:

- a. Mental Healthcare Act, 2017
- b. Persons with Disabilities, 2016.

C. International Documents:

- a. United Nations Convention on the Rights of Persons with Disabilities (2008).
- b. Committee on Rights of Persons with Disabilities, General Comment No. 6, (26 April 2018), CRPD/C/GC/6

D. Papers & Websites:

- a. Mukhija, K. (2023, February 17). *Speaking inclusion: Ableist language further marginalises people with disabilities*. The Indian Express.
<https://indianexpress.com/article/opinion/speaking-inclusion-ableist-language-marginalises-people-disabilities-8450248/>.
- b. Correspondent, S. (2022, February 19). India has five million people with communication disabilities: NHM director. The Hindu.
<https://www.thehindu.com/news/national/karnataka/india-has-five-million-people-with-communication-disabilities/article65065563.ece>.
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<https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>.

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<https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/accessibility/quick-reference-guides/disability-language-words-matter.html>.
- e. Khetarpal , A., & Singh, S. (2016, April 28). Reintroducing differences linguistically!. Indian Journal of Medical Ethics.
<https://ijme.in/articles/reintroducing-differences-linguistically/>.