



## Inclusivity in Indian Judiciary: A Study of Contemporary Trends and a Way Forward

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### Abstract

The metaphorical association of justice with blindness does not go well in consonance with society's ableist bias that blind individuals are incapable of discharging judicial rules. The Rights of Persons with Disabilities Act, 2016, and the Convention on the Rights of Persons with Disabilities have already laid down the principle of reasonable accommodation for persons with disabilities in India. However, the apex court's decision in *V. Surendra Mohan v. State of Tamil Nadu* restricted the recruitment of visually impaired individuals with disabilities over 50%. This decision was later overruled by the Supreme Court in *Vikas Kumar v. UPSC*, mentioning that visually impaired persons should be accepted as judges with reasonable accommodations supported by assistive technologies and resources. Nonetheless, there have been instances where state public service commissions have excluded blind individuals from the reservation for civil judge posts. This encroaches upon the principle of reasonable accommodation, and the authors aim to examine different states' implementation of the *Vikas Kumar* case, inclusivity on the bench, and constitutional commitments. The paper recommends accommodating visually impaired individuals on the bench with assistive technologies to ensure justice for everyone.

**Keywords:** Justice, Disabilities, Blind Individuals, Indian Judiciary, Inclusivity

### 1. Introduction

The personification of the blindfolded lady embodies the idea of justice. Can the same lady be allowed to be the one who dispenses justice? It is ironic that society, which attaches metaphoric virtue to

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the idea of blindness in justice (i.e., fair treatment), literally considers that blind persons are incapable of performing the functions of judges. History has shown that the ableist mindset of society has always come in the way of allowing blind people to serve on a jury or judiciary.<sup>1</sup> This exclusion seems to remain oblivious of the principle of reasonable accommodation, which runs across the veins of the Rights of Persons with Disabilities Act, 2016, and the Convention on the Rights of Persons with Disabilities. Though Supreme Court has taken on the role of a guardian when it comes to safeguarding the equality of opportunity for people with disabilities<sup>2</sup> by upholding and fostering their dignity, however, through the judgment of the highest court in the case of *V. Surendra Mohan v. State of Tamil Nadu*<sup>3</sup>, the court seems to have reneged on its promise of guaranteeing equal opportunities and ensuring dignified existence. The ruling made recruitment in the bench inaccessible to the visually-impaired or blind and hearing-impaired or deaf persons with more than 50% disability.

This ruling, which embraces the medical model of disability in its reasoning, soon gave in to the tenets of the social model of disability when it was declared to be a bad law in the case of *Vikas Kumar v. UPSC*,<sup>4</sup> (hereinafter referred to as “Vikas Kumar”). The apex court declared that blind persons should be allowed the position of judges by making reasonable accommodations with the help of assistive technologies and resources. Despite this judgment, there have been cases where the state public service commission has kept blind persons outside the scope of reservation for the posts of civil judges. The denial of reservation unintentionally permeates the layers of ableism in state policies and highlights the violation of the principle of reasonable accommodation. Unfortunately, not much literature demonstrates how effectively other states have followed

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<sup>1</sup> Doron Dorfman, “The Blind Justice Paradox: Judges with Visual Impairments and the Disability Metaphor” *Cambridge Journal of International and Comparative Law*, Volume 5 Issue 2 (2016).

<sup>2</sup> *Union of India v. National Federation of the Blind* (2013)2 SCC 772.

<sup>3</sup> (2019) 4 SCC 237.

<sup>4</sup> Civil Appeal No. 273 of 2021 Special Leave Petition (C) No. 1882 of 2021.

the judgment of the Vikas Kumar case in providing reservations to visually impaired persons.

Through this article, the authors will study the state of affairs concerning the implementation of the Vikas Kumar case by different states. It would also peruse how different countries have ensured inclusivity on the bench by including persons with disabilities. Further, it would analyze how constitutional commitments of ensuring equality, objectives of the Rights of Persons with Disabilities Act, 2016, and obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) are violated on screening of the candidates solely on the basis of disability. The paper would then propose how the practice of including visually-impaired or blind and hearing-impaired or deaf persons in the judiciary can be followed in India by reasonably accommodating them with the help of assistive technologies.

## **2. Dissecting the Ableist Approach of the Court**

The case of *V. Surendra Mohan v. Union of India*<sup>5</sup> was the first instance when the apex court faced the issue of whether blind judges should be allowed to serve on the judiciary. In 2014, V. Surendra Mohan took the written test required to become a civil judge in Tamil Nadu. He was not contacted for the subsequent oral test, even though he cleared the examination. When asked why, he was informed that he had a 70% visual impairment. Just those with a 40–50% impairment could become civil judges, according to a Tamil Nadu Public Service Commission (TNPC) notification. He was invited to take the oral test after submitting a writ petition before the Madras High Court. Results were kept under wraps pending High Court orders.

The High Court, though, affirmed the notification in 2015. The Supreme Court agreed after hearing an appeal in 2019, noting that 40–50% was a “reasonable level” to assure that a Civil Judge could carry out their responsibilities. The ruling received harsh criticism for being prejudiced and not upholding the Supreme Court’s stance

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<sup>5</sup> *Supra* 3.

on the right to a life with dignity for those with disabilities. This ruling highlight that disability is socially constructed instead of a medical phenomenon; this social construction of disability stigmatizes individuals with disabilities and discriminates against them. The difference in approach of the court with relation to metaphoric and literal blindness underlines the ableist mindset of the society.

With this ableist approach, disability is used as a rationalization for disparate treatment of people from different backgrounds, in addition to disabled individuals, explanation for discrimination and denial of rights. This rationalization of exclusion is couched in the reasoning that a blind person cannot analyze visual evidence, assess the witness, or consider documents, plans, or other material. Further, a blind person requires the assistance of a reader, which could bring the element of bias due to the presence of an external perspective in the court proceedings. Apart from these justifications, there are structural barriers in the court premises, which could also adversely affect the functioning of persons with visual impairments.

### **3. Concept of Reasonable Accommodation**

The role of society is crucial in the disablement of persons with visual impairments. The social constructs of disability and societal impressions of blind persons consider them an unsuitable group for the tasks of a judge. Thus, disability does not arise from any individual; rather, it is a phenomenon that occurs due to the social constructs of the environments and systems that we live in, where persons with disabilities are challenged with structural barriers, often known as societal disabling factors.<sup>6</sup> The social model provides the foundation for domestic laws against disability discrimination in many countries. The necessity that employers make reasonable accommodations (or adjustments) for skilled employees or potential employees with disabilities and modify the workplace environment to accommodate their requirements

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<sup>6</sup> *Supra* 1.

(instead of expecting the individual to make adjustments to the workplace) is a well-known example of such legislation that stands in the countries like India, US, England.

According to Article 2 of the UNCRPD, the denial of 'reasonable accommodation' constitutes discrimination if persons with disabilities are not provided with necessary modifications and adjustments to exercise their equal enjoyment of human rights.<sup>7</sup> As mentioned earlier, the principle of reasonable accommodation, given under Article 5 (3), is "an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability."<sup>8</sup> The Convention provides reasonable accommodation as a form of an ex-nunc duty which is to be given to a person with a disability on requiring access to a non-accessible environment while exercising his rights.

The principle of reasonable accommodation gets abrogated when the candidature of a disabled person is rejected on the ground of disability that he might not be able to perform the duties and obligations of a judge without even providing him with reasonable accommodation. The court's reasoning for rejecting him, mentioning the sorts of work that a judge is required to form, does not go on with the fact that a disabled candidate may be able to render the duties of a judge properly in providing reasonable accommodation to him.<sup>9</sup> There have been instances where the state has arranged for adjustments to ensure that a blind judge can render his duties properly. When Justice Richard Bernstein was appointed as a judge in Michigan Supreme Court, he was provided

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<sup>7</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 6 (2018), Article 2: Definitions*, 26 April 2018, CRPD/C/GC/6.

<sup>8</sup> The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 5 (3), 3 May 2008, a/res/61/106.

<sup>9</sup> Indian Express, Justice Richard H Bernstein on how people with disabilities make for good judges, March 07, 2020, *available at*: <https://indianexpress.com/article/express-sunday-eye/justice-richard-h-bernstein-on-how-people-with-disabilities-make-for-good-judges/> (last visited on May 15, 2023).

with a qualified reader, information in accessible print, a computer screen-reading program, and an audio recording of printed information.<sup>10</sup> Further, there have been cases where the visual description of evidence has been provided to the blind judge in the cases of criminal trials.<sup>11</sup> Thus, an ex-nunc duty of reasonable accommodation is breached when it fails to be provided to a disabled candidate.

#### 4. International Obligations of the State

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) forbids the discrimination of persons with disabilities on the ground of disability. Article 5, read in consonance with articles 1, 3, and 4 of the UNCRPD convention, requires the state to take positive actions for facilitating the enjoyment of rights on an equal basis by persons of disabilities. Here, the positive actions ensure accessibility, reasonable accommodation, and individual support.<sup>12</sup> Article 5 (3) of the Convention obliges the state to promote equality by ensuring reasonable accommodation is provided to all persons with disabilities.<sup>13</sup> The term 'equal benefit of the law' mentioned in the article requires the state to eliminate all forms of barriers to gaining equal protection and benefits from the law.

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<sup>10</sup> Kyle Feldscher, How Richard Bernstein, Michigan's 1st blind Supreme Court justice, says he'll approach the job, November 12, 2014, *available at*: [https://www.mlive.com/lansing-news/2014/11/new\\_michigan\\_supreme\\_court\\_jus.html](https://www.mlive.com/lansing-news/2014/11/new_michigan_supreme_court_jus.html) (last visited on May 14, 2023).

<sup>11</sup> IDIA Law, IDAP Interview Series: Interview XII with Judge David Szumowski, *available at*: <https://www.idialaw.org/idap-interview-series/idap-interview-series-interview-xii-with-judge-david-szumowski/> (last visited on January 10, 2023).

<sup>12</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 6 (2018), Article 5: Equality and Non-Discrimination*, 26 April 2018, CRPD/C/GC/6.

<sup>13</sup> The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 5 (3), 3 May 2008, a/res/61/106.

However, denial of the opportunity for the post of a judge falls short of this obligation when the decision is taken without even providing reasonable accommodation so that judicial duties can be rendered efficiently. This approach of state policies through the medical model of disability perceives the notion that an individual becomes unable to perform his duties efficiently on the ground of disability. The Committee for Drafting the general comment on Article 5 also discusses this approach and states that these attitudinal barriers must be removed as it unintentionally fails to portray the persons with disabilities as ‘full subjects of rights and as right holders.’<sup>14</sup> The UNCRPD calls for a central role of persons with disabilities in the progress of legal reforms.

The policy of denying appointment to the disabled person goes against the ‘equalization of opportunities,’ which constitutes the heart of this Convention.<sup>15</sup> The principle called ‘equalization of opportunities’ contemplates a shift from a ‘formal model of equality’ to a ‘substantive model of equality.’ ‘Formal model of equality’ prohibits direct discrimination against persons with disabilities by treating them similarly in a similar situation.<sup>16</sup> This model embraces the soul of the medical model as it fails to embrace the differences among individuals and does not acknowledge disability as a layer of an individual personality. On the other hand, the Substantive model of equality forbids structural and indirect discrimination by acknowledging the “differences among human beings in order to achieve equality.”<sup>17</sup> The policy of allowing disabled persons to be employed in a specified job is a manifestation of the former model where other jobs are denied on the argument that their disability renders them unsuitable for the performance of the job.

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<sup>14</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 6 (2018), Article 5: Equality and Non-Discrimination*, 26 April 2018, CRPD/C/GC/6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

The Convention obliges its signatories to adopt the substantive model of equality in its policies, which ensures a fair redistributive dimension by uplifting socioeconomic disadvantages, a recognition dimension by eliminating all forms of stigma, stereotype, and prejudice against persons with disabilities, a participative dimension to promote the inclusivity in the social structure and nature, an accommodating dimension for acknowledging the differences among the individuals, and reasonably accommodate them on the anvil of human dignity. These obligations of substantive equality for persons with disabilities are incomplete without including them in the judicial functions.

### **5. Judicial Stand in other Countries**

It is important to analyze the judicial position in other countries in the matters of the appointment of a disabled candidate for the post of a judge. In the United States of America, the inclusion of a person with disabilities is allowed within the judiciary by various state laws through the provision of reasonable accommodation. These states are “Oklahoma, California, Virginia, Oregon, Texas, South Carolina, Washington, Massachusetts, Wisconsin, and New York.”<sup>18</sup> The USA has seen many blind and deaf judges serving the judiciary, for example, Judge Richard C Casey (Federal Court for the Southern District of New York), Judge Richard Bernstein (Michigan Highest Court), Judge Louis Corbin (USA Florida Court), Judge Peter J. Donoghue (Civil Court of the City of New York), Christopher Benneth (Allegheny County Court of Common Pleas criminal division), and Sheila Conlon Mentkowski.

Interestingly, it cannot be said that there was always a resistant-free appointment of blind jurors. The appointment of blind jurors in good numbers can be attributed to the fact that blind people were

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<sup>18</sup> Oklahoma Statute Title 38, § 28 (1991); California Civil Procedure Code § 203(a); Code of Virginia § 8.01-337 (1990); Texas Government Code § 62.104 (1989); South California Code § 14-7-810 (1991); Revised Code of Washington § 2.36.070 (1991); General Laws Massachusetts Chapter 234A, § 3; Wisconsin Statute § 756.02 (West 1990); New York Judiciary Law § 510 (McKinney 1992).

able to convince the public that they would be able to discharge their duties. The state machinery was said to bear a notion that disability would be a key barrier to social inclusion and employment for persons with visual impairments. Due to underlying biases and misconceptions about his credentials, according to Bernstein, a committee wouldn't have ever decided to place him on the bench. He owes his selection to the fact the high court justices in the US are selected by the general people. He argues that by launching his campaign with the motto "Blind Justice," he seemed to have the chance to influence the voters and persuade them of his qualifications. The citizens of Michigan were looking for justice to who they felt a connection, who could relate to their challenges and troubles, and who was passionate about their issues, as per Bernstein.<sup>19</sup>

Similarly, the judiciary's attitude towards appointing blind judges was initially not conducive. For instance, a blind juror was not given the post of a juror as he was not in "possession of his natural faculties."<sup>20</sup> Similarly, the Supreme Court ordered a new trial of the defendant when he raised the inability of a blind juror to adjudicate his case owing to his disability.<sup>21</sup> A relatively progressive approach was taken by the court in the case of *People v. Caldwell* case.<sup>22</sup>, where the blanket bar on the appointment of a blind juror was held as discriminatory, and a visually impaired person could be appointed as a juror on a case-to-case basis. Similarly, the District Court for the District of Columbia, while discussing the ability of a blind to become a juror, threw some important light on the reasonable accommodation which can be made to remove the exclusion of blind jurors.

The Court stated,

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<sup>19</sup> Doron Dorfman, *The Blind Justice Paradox: Judges with Visual Impairments and the Disability Metaphor*, *Cambridge Journal of International and Comparative Law* Volume 5 Issue 2 (2016).

<sup>20</sup> *Edwin R Lewinson v Robert J Crews* 28 A.D.2d 111.

<sup>21</sup> *Commonwealth v. Susi* 394 Mass. 784, 786 (1985).

<sup>22</sup> *People v. Cadle* 71 A.D.3d 689.

“...blind individuals, like sighted jurors, weigh the content of the testimony given and examine speech patterns, intonation, and syntax in assessing credibility. Thus, the darting glance, the uneasy shifting or revealing gesture is almost always accompanied by auditory correlates, [including inter alia,] clearing the throat, pausing to swallow, voice quavering or inaudibility due to stress or looking downward; ... and permits a blind juror to make credibility assessments just as the juror’s sighted counterparts.”<sup>23</sup>

The case of *Tennessee v Lane*<sup>24</sup> have also highlighted the obligations of state courts to take reasonable measures and remove all barriers coming in the way of ensuring accessibility to judicial services for all persons with disabilities.

In providing visually impaired persons the position of jurors or judges, an argument is raised that it would affect the defendant’s right to a fair trial. However, the appointment of blind jurors or judges does not deprive the defendants of any fundamental rights or fair trial.<sup>25</sup> Framing “these cases as a balancing act between defendants’ rights to a fair trial and blind Americans’ rights to serve on a jury often creates a false dichotomy.”<sup>26</sup> Reasonable accommodation ensures the fair evaluation of evidence, be it a piece of physical evidence or a video one.<sup>27</sup> A describer can assist a juror or judge by preparing a written report of video evidence, which could act as a substitute for the videotape. This would ensure that the defendant’s right to a fair trial is in harmony with the right of a blind or visually impaired judge to get appointed to the post of a juror or judge.

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<sup>23</sup> *Id.*

<sup>24</sup> *Tennessee v. Lane* 541 U.S. 509, 532 (2004).

<sup>25</sup> *Bewley v. Oklahoma* 695 P.2d 1357, 1359 (Okla. Crim. 1985).

<sup>26</sup> *Id.*

<sup>27</sup> *People v. Hayes* 923 P.2d 221 (1995).

Similarly, Canada has also provided for the inclusion of blind and deaf people to serve on the jury by amending their laws.<sup>28</sup> The Criminal Code of Canada was amended in 1997 to allow persons with disabilities on the jury.<sup>29</sup> Further, the inclusion of persons with disabilities in the jury is explicitly allowed in England through Section 9(b) of the Jury Act, 1974. The accessibility of judicial positions to persons with disabilities is ensured through the provision of reasonable accommodation mentioned in Section 20 of the Equality Act, 2010. Moreover, there are many blind and deaf persons who have served in the judiciary of England. Sir John Wall (blind), who served as the judge at the Highest Civil Court of England in 1990; Sir John Fielding (blind), who served as the Magistrate at Westminster Court London; Mr. Amir A. Majid (blind), Judge John Lafferty (blind), who served as a judge in Snaresbrook Crown Court in 2007, and Matthew Johnston (deaf), served as a juror in the Jury of the Crown Court in England and Wales).

Pakistan has also had a blind judge recently named Justice Yousaf Saleem, who is the first blind judge there.<sup>30</sup> Other countries that have had blind judges in the judiciary include South Africa (Justice Zakeria “Zak” Mohammed Yacoob)<sup>31</sup>, Brazil,<sup>32</sup> France,<sup>33</sup> Peru,<sup>34</sup> Seoul (Judge Choi Young (blind), Associate Judge in the Seoul

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<sup>28</sup> Jury Act (Alberta), RSA 2000, Chapter J-3, § 6(1); Jury Act (British Columbia), RSBC 1996, Chapter 242, § 5; Jury Act (New Brunswick), RSNB 1973, Chapter J-3.1, § 5.1(1).

<sup>29</sup> Criminal Code, R.S., 1985, c. C-46, § 627 (1985).

<sup>30</sup> Sana Jamal, *Young Pakistani to become the first blind judge*, May 13, 2018, available at: <https://gulfnews.com/world/asia/pakistan/young-pakistani-to-become-first-blind-judge-1.2220802> (last visited February 12, 2021).

<sup>31</sup> Constitutional Court of South Africa, Justice Zak Yacoob, available at: <https://www.concourt.org.za/index.php/judges/former-judges/11-former-judges/67-justice-zak-yacoob> (last visited February 12, 2021).

<sup>32</sup> Alex Dunham, *Blind man wins battle to become judge*, May 14, 2014, available at: <https://www.thelocal.es/20140514/blind-man-wins-battle-to-become-a-judge> (last visited February 12, 2021).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

Northern District Court)<sup>35</sup>, and Spain (Justice Gabriel Perez Castellanos)<sup>36</sup>, etc.

**Table 1: List of Famous Blind Judges**

Name	Court (Year)
Sir John Wall	England's High Court of Justice (1990-2002)
Judge Johan Laferty	Snaresbrook Crown Court (2007)
Judge Luis Corbin	Fourth Circuit in Duval County, Florida (1972)
Judge Nicholas T Pomara	Cook County in Illinois, USA (1976)
Judge Tony Cothren	Tenth Circuit in Jefferson County, Alabama (1996)
Judge Peter J.O'Donoghue	New York State Supreme Court (2002)
Judge Richard B. Tietelman	Supreme Court of Missouri (2002)
Judge David Tatel	US Court of Appeals for the District of Columbia Circuit (1994)
Judge Richard C. Casey	Federal Court for the Southern District of New York (1997)
Judge Craig D. Alston	District Judge, Bay County, Michigan
Justice Yousaf Saleem	Civil Judge, Pakistan (2018)
Justice Zakeria Mohammad Yacoob	Constitutional Court of South Africa (1998-2013)

## 6. Analysis of the Judiciary approach regarding the Appointment of Blind Judges in India

Before the judgment of *Vikas Kumar v. UPSC*, the courts had the ableist approach regarding the appointment of blind judges.<sup>37</sup> Even

<sup>35</sup> No Jin-ho, Sarah Kim, *Blind doesn't need sight to see the truth*, Korea JoongAng Daily, available at: <https://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2952752>. (last visited February 12, 2021).

<sup>36</sup> *Supra* 32.

<sup>37</sup> Sanjay S. Jain and Saranya Mishra, *Non-abyssal and Ableist Indian Supreme Court: The Abyssal Exclusion of Persons with Disabilities*, July 03, 2019, available at: <https://ohrh.law.ox.ac.uk/non-abyssal-and->

though the Courts were under the obligation to provide appointments to persons with disabilities by taking affirmative measures, however, many high courts have their own rules that a civil judge should be mentally and physically fit to render their duties efficiently. These rules are binding while selecting the judges as governor, and the state public service commission is bound to consult High Court before releasing any notification for recruiting civil judges.

These rules have often barred blind and deaf candidates from even coming under the eligibility criteria of judges. And the kernel of reasoning given behind this eligibility criterion is highlighted in the excerpt of Surendra Mohan's judgment, where it is mentioned that

"the appellant (blind candidate) cannot be said to be a person who can perform the duties of the Civil Judge who is required to hear the cases, record the statement of witnesses, read the documents and then decide."<sup>38</sup>

However, some high courts have allowed the appointment of blind and deaf candidates to be eligible for the appointment of judges; for instance, the High Court of Rajasthan and Delhi has previously permitted blind and deaf candidates to be available for the recruitment of judges.<sup>39</sup> With the onset of Vikas Kumar's judgment, a new chapter regarding the progressive approach of accommodating persons with disabilities in the workplace has started, where the courts would be obligated to provide a barrier-free environment for these people so that they can render their duties efficiently.

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ableist-indian-supreme-court-the-abysal-exclusion-of-persons-with-disabilities/ (last visited May 20, 2023).

<sup>38</sup> *V Surendra Mohan v. State of Tamil Nadu*, (2019) 4 SCC 237.

<sup>39</sup> Apoorva Mandhani, This Is How Mr. Brahmananda Sharma Beat All Odds To Become Rajasthan's First Visually Impaired Judge, April 16, 2018, available at: <https://www.livelaw.in/mr-brahmananda-sharma-beat-odds-become-rajasthans-first-visually-impaired-judge/> (last visited May 12, 2023).

## 7. Analyzing the Approach of Judicial Appointment

### 7.1 Pre-Vikas Kumar Era

Even before the assistance of reasonable accommodation was penned down by the apex court in Vikas Kumar's judgment, the ableist mindset of the state was reflected in various notifications put forward by it for the recruitment of civil judges. Perhaps, it was believed that a judge's blindness would not allow him to assess evidence or review other materials properly, or his opinion would be tainted by an external view of the reader. Building on that mindset, the states have come out with their own set of rules where only a limited set of disabled people are categorized as "eligible" candidates for the application of civil judges. For instance, the Judicial Department, Government of West Bengal, through a notification bearing no.386-J dated January 24, 2007, has exempted the persons suffering from blindness from the purview of reservation as per the proviso to section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.<sup>40</sup>

Andhra Pradesh State Judicial (Service and Cadre) Rules, 2007<sup>41</sup> only considers Orthopaedically Handicapped (Lower portion of the body) to be eligible under the category of persons with disabilities for recruitment of civil judges. A similar provision is found in the service and cadre rules of Telangana, which also excludes blind people from the eligible set of persons with disabilities. The non-consideration of blind judges, here, unintentionally highlights the stereotypical mindset of policymakers, where blind people are presumed to be inefficient for the jobs of judges.<sup>42</sup> The approach of the human rights model and reasonable accommodation get lost between the lines of rules or notifications like these.

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<sup>40</sup> Public Service Commission, West Bengal, December 30, 2022, *available at*:

[https://wbpsc.gov.in/Download?param1=Cur\\_20221230104513\\_ADVT.pdf&param2=advertisement](https://wbpsc.gov.in/Download?param1=Cur_20221230104513_ADVT.pdf&param2=advertisement) (last visited May 17, 2023).

<sup>41</sup> Andhra Pradesh State Judicial (Service and Cadre) Rules, 2007, Rule 7.

<sup>42</sup> Telangana State Judicial (Service and Cadre) Rules, 2017, Rule 7.

Apart from putting blanket restrictions on blind people from applying to the posts of civil judges, there is another way of reflecting the ableist mindset by allowing only a specific subset of blind people in the recruitment process. This is usually done by putting a cap on disability, whereby a specific number of people who have a disability beyond a certain threshold (usually 40%) gets eliminated. For instance, Tamil Nadu only allowed candidates with a visual disability of 40%-50%, under the category of 'visually disabled,' to appear for the examination of civil judges in 2019. The underlying premise behind putting out such a rule is that a person needs to have a reasonable limit of the faculties of hearing, sight, and speech to discharge the functions of a judicial officer (hearing cases and delivering judgments) efficiently.

## 7.2 Post-Vikas Kumar Era

Vikas Kumar's judgment, in real terms, is a watershed moment in the history of disability rights in India. Nonetheless, the concern that everything remains on paper instead of implementing it on the ground level is getting reflected in this case as well. The central government, through its notification dated January 04, 2021, has already declared the post of a civil judge to be suitable for persons with blindness and low vision. The concept of reasonable accommodation, which was statutorily granted and judicially recognized in the judgment, does not appear to rescue blind people from the stereotypical mindset of people toward disability. For instance, even after the Vikas Kumar judgment, there have been many notifications, which have recently been issued, that do not allow blind persons to appear for the examination of civil judges.

In a notification issued by the West Bengal Public Service Commission for the recruitment of civil judges in 2022, it was stated that blind persons are excluded from the scope of reservation provided to disabled persons under section 33 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.<sup>43</sup> Despite the enactment of the Rights of

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<sup>43</sup> *Supra* 40.

Persons with Disabilities Act 2016, the state has continued to follow the provisions of the 1995 act for providing reservations. Similarly, Telangana<sup>44</sup>, Gujarat<sup>45</sup> and Andhra Pradesh<sup>46</sup> Have continued to reserve its seat under the category of disability for orthopedically handicapped persons (lower portion of the body). Interestingly, states like Uttar Pradesh, Rajasthan, Delhi, etc., have continued to provide reservations for blind persons without any limitation. Though the court has mandated the protection of the rights of blind persons by the provision of reasonable accommodation, however, a change in perception needs to take place where the ableist thinking of the policymakers is transformed, and the idea of reasonable accommodation is reflected in the spirit of every notification or rule.

**Table 2: Reservation Rules of Some States in the Appointment of Civil Judges**

State	Reservation Rules
West Bengal <sup>47</sup>	Persons suffering from Blindness or Cerebral Palsy have been exempted from the purview of reservation as contemplated under section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
Andhra Pradesh <sup>48</sup> and Telangana <sup>49</sup>	One percent reservation for Physically handicapped, i.e., orthopedically handicapped persons (lower portion of the body)

<sup>44</sup> High Court of Telangana, February 01, 2023, available at: [https://tshc.gov.in/documents/reccell\\_14\\_2023\\_02\\_01\\_14\\_04\\_01.pdf](https://tshc.gov.in/documents/reccell_14_2023_02_01_14_04_01.pdf) (last visited May 17, 2023).

<sup>45</sup> High Court of Gujarat, March 10, 2023, available at: [https://gujarathighcourt.nic.in/hccms/sites/default/files/Recruitment\\_files/999\\_999\\_2023\\_3\\_10\\_79.pdf](https://gujarathighcourt.nic.in/hccms/sites/default/files/Recruitment_files/999_999_2023_3_10_79.pdf) (last visited May 17, 2023).

<sup>46</sup> High Court of Andhra Pradesh, November 11, 2022, available at <https://aphc.gov.in/docs/JCJ-2022%20Notification,%20dated%2010.11.2022.pdf> (last visited May 17, 2023).

<sup>47</sup> *Supra* 40.

<sup>48</sup> *Supra* 41.

<sup>49</sup> *Supra* 42.

State	Reservation Rules
Odisha <sup>50</sup>	To the extent of four per centum of the vacancies in the cadre of District Judges which are required to be filled under sub-rule (4) of Rule 6 shall be reserved for persons with benchmark disabilities having a physical disability as specified in the Schedule to the Rights of Persons with Disabilities Act, 2016 (49 of 2016) excluding cerebral palsy.
Punjab <sup>51</sup>	Reservation for visually impaired persons is allowed
Chhattisgarh <sup>52</sup>	Reservation for orthopedically handicapped persons and reservation for visually impaired persons is not allowed.
Uttar Pradesh <sup>53</sup>	Reservation for visually impaired persons is allowed

### 8. How can the Integration of Blind Persons be made in Judiciary?

First of all, a fundamental shift in the approach of society is required, where persons with disabilities are not seen as a burden or someone who couldn't do the task at hand. Persons with disabilities have to be integrated gregariously into mainstream society without any bit of discrimination. The implementation of the principle of reasonable accommodation in letter and spirit can help in the integration of blind persons in the judiciary. The goal can be achieved by making necessary adjustments, such as providing a qualified reader to the judge and appropriate technology like a screen reader, document reader, etc.

Further, documents or petitions filed online have to be in compliance with WCAG principles. Apart from these adjustments, there are physical barriers in the court premises that affect the

<sup>50</sup> Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007, Rule 9A.

<sup>51</sup> Punjab Public Service Commission, October 03, 2022, *available at*: <https://blogmedia.testbook.com/blog/wp-content/uploads/2022/09/ppsc-punjab-judiciary-2022-9fa13883.pdf> (last visited May 16, 2023).

<sup>52</sup> Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006, Rule 6.

<sup>53</sup> Uttar Pradesh Public Service Commission, December 10, 2022, *available at*: <https://images.news18.com/ibnkhobar/uploads/2022/12/uppsc-civil-judge-recruitment-notification.pdf> (last visited May 19, 2023).

functioning of blind persons adversely. There must be adequate infrastructural changes made in the court premises, especially at the subordinate judiciary level, to make sure that the integration of blind persons in the subordinate level judiciary has been made conveniently.

## **9. Conclusion**

The policymakers seem to have remained oblivious of the fact that a blind person can efficiently discharge the functions of a judicial officer if he is adequately provided with the assistance of stenographers, clerks, and scribes. Further, they haven't taken inspiration from countries like the United States of America, Canada, and South Africa, where blind people are allowed to sit on juries for a very long time. Reasonable accommodations, like document reading software, the electronic format of applications, and evidence availability in accessible formats, can be made to ensure their presence in the judiciary.

The exclusion of blind persons from the judiciary embraces the contours of the medical model of disability, which has been critically rejected by the makers of the Convention on the Rights of Persons with Disabilities. The apex court has succinctly highlighted the duties of the state in providing reasonable accommodation to persons with disabilities so that they can effectively counter the challenges posed by their disability. Despite this, as highlighted above, there have been instances of states putting up a notification where they have excluded blind persons from the scope of eligible candidates for the post of civil judges.

The time has come that implementation of Vikas Kumar's judgment is made in letter and spirit. India has already ratified the CRPD convention, and the exclusion of blind persons goes against its obligations under the Convention. Structural barriers in courts need to get removed to efficiently implement the judgment of Vikas Kumar. The rules or notification that straight away rejects the idea of blind persons as judges should be amended, and provisions for providing reasonable adjustments should be included in the cadre

and service rules of the state public service commission. Without this, the progressive realization of disability rights would not have been made.