

## Accessibility and Persons with Disabilities in India: Legal Aspect of Physical Barriers

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## Introduction

In this paper, I consider the accessibility problems of persons with disabilities in India, from the perspective of law and policy. Discussions on accessibility of persons with disabilities are generally in the context of accessibility to social services such as medical care and education<sup>1)</sup>. However, in this paper, I focus on accessibility in the physical sense, such as accessibility in terms of buildings, road infrastructure, public transport, such as railroads and buses, and information, such as display of information and website access. Although there are various issues to be considered, this paper focuses on accessibility related to infrastructure and transportation, in particular, because the regulations and disputes relating to these are becoming increasingly prominent with many issues to be examined regarding legal involvement.

To review guarantee of accessibility in accordance with law, it is necessary to consider the perspective from which this problem can be confronted. In this paper, I examine the issue from three aspects: the legal system, policy practice, and judicial cases. Therefore, this paper is roughly divided as follows.

First, in an overview of prior research on accessibility issues of people with disabilities in India, the rights of persons with disabilities, as enacted in 2016 (Rights of the Persons with Disabilities Act, 2016: hereinafter referred to as the Disabled Persons Act of 2016), will be examined. The trend of the discussion in the process of enacting the law and the transition of provisions submitted at the draft stage are also considered in this section. Next, regarding a policy for improving the accessibility of people with disabilities, the current situation is introduced by outlining the framework of the “Accessible India” campaign led by the current government. I then review the Rajive Raturi judgment as the latest case concerning accessibility and consider the directive indicated within the judgment. Finally, from the perspective of the above legislation, policies, and judicial precedents, I reconsider how the Indian legal system attempts to improve the accessibility of persons with disabilities and what points in the legal system are the subject of this problem.

### 1. Accessibility Problems of Persons with Disabilities in India

Various studies have examined issues related to accessibility of persons with disabilities in India. According to the 2011 census, there are about 26.81 million persons with disabilities in India, of which about 15 million are male and 11.8 million are female<sup>2)</sup>. This accounts for about 2.1% of the total population, but it is clear that a considerable number of people live facing challenging obstacles, although the figures vary

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1) “Structural barriers” mentioned in Gudlavalleti et.al. (2014) correspond to this.

2) Classification of disabilities is based on GOI (2016a, 3).

with the survey.

Sinha (2005, 3–7) mentions the concept of disability and the right of access for persons with disabilities as “access to not only justice in the court but also public buildings, dwellings, various facilities, including medical and healthcare, educational institutions, and sports facilities.” The barriers to access include “environmental barriers” in buildings and transportation, medical care, etc.; “structural barriers” relating to employment etc.; and “attitudinal barriers” such as prejudice and pity toward disabled people. In addition, education, employment, and access to medical care are considered along with a discussion on the need for “social reform.”

Kothari (2012), based on the Disabled Persons Act 1995, in one chapter mentions “the right of access and public service,” the obligation to eliminate the “environmental barrier,” and provide access to roads, public buildings, voting, information and technology, websites, etc. (Kothari 2012, 127–158).

Kannabiran and Hans (2017) gathered discussions from the viewpoint of “the rights of persons with disabilities” in the fields of education, labor, housing, and gender. At the same time, access to university facilities for people with disabilities have also been addressed (Kannabiran and Hans 2017, 94). However, among “environmental barriers,” access to public transportation and road problems are not considered in detail.

Ghosh (2016), in a collection of papers, focused on reconsidering disability problems in India from various perspectives such as labor, education, and gender. In the introduction, editor Ghosh says that the voice of the visually impaired and the motor disabled became bigger and that of other disabled persons such as mentally handicapped persons became relatively smaller in the movement of the new disabled person legislation following the ratification of the Convention on the Rights of Persons with Disabilities. As a result, it was focused on access to buildings and public transport; clauses were created and social obstacles, such as discrimination and repression, were overlooked (Ghosh 2016, 13–14).

From the above, it is clear that various ways of considering “what about” and “what” access have been discussed regarding the accessibility of persons with disabilities. Physical accessibility, the focus of this paper, is related to “environmental barriers” according to the above-mentioned classification of Sinha, but improvement is related to the removal of the so-called structural barriers in modern society. Therefore, legally proceeding to eliminate the “environmental barrier” means considering the role of the law in improving the quality of life of people with disabilities living in India. In the next section, an overview is provided of the accessibility of persons with disabilities as guaranteed by legislation and the form in which it is provided.

## 2. Guaranteeing accessibility of Persons with Disabilities by legislation

### 2.1. Outline of accessibility-related provisions in the Act on Disabled Persons 2016

A comprehensive law concerning the protection of the rights of persons with disabilities for the first time established in India was the Disabled Persons (Opportunity Equality, Rights Security and Full Participation) Act 1995 (hereinafter referred to as the Disabled Persons Act 1995). Its contents have been introduced in Asano (2010) etc., but in addition to provisions for the protection of the various rights of persons with disabilities, it stipulated the establishment of a Chief Commissioner Office of Persons with Disabilities etc. (Asano 2010, 152–165). However, since it ratified the UN Convention on the Rights of Persons with Disabilities in 2007, it became necessary to develop related domestic laws. Hence, the Ministry of Social Justice and Empowerment established the “Committee on the Drafting of the Rights of the Disabled” by appointing Ms. Sudha Kaul<sup>3)</sup> as the chairperson in 2010. The Committee submitted a draft of the law for the disabled in June 2011 after reviewing the basic policies of the bill<sup>4)</sup>.

Next, after holding a public hearing, etc., the disability rights bill was submitted to the Rajya Sabha in February 2014 and further examination was done after it was referred to a standing committee on September 16, 2014. The Standing Committee submitted a report in May 2015, in which it had reviewed the draft in detail and made further recommendations<sup>5)</sup>. Based on this, the bill was again submitted to the Rajya Sabha on December 1, 2016, and it was passed by the Rajya Sabha on December 14, 2016. It was passed by the Lok Sabha on December 16, and the 2016 Act on Disability then became law<sup>6)</sup>.

The 2016 Act on Disabled Persons is a law comprising 17 chapters with 102 Sections; it was not only a reworking of the Disabled Persons Act 1995 but also a revision with new contents in terms of its composition<sup>7)</sup>. When classifying the contents based on the title of each chapter, except the preliminary provisions (chapter 1; hereinafter the number mentioned the chapter) and miscellaneous rules (17), it is roughly mentioned in two parts as follows (the number after the title of each chapter is the chapter number).

#### a. Matters related to the rights of people with disabilities

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- 3) Director of the Indian Institute of Cerebral Palsy. She was awarded the Padma Shri in 2010.
  - 4) Regarding the drafting process, refer Asano (2017, 91–92).
  - 5) Lok Sabha Secretariat, Standing Committee on Social Justice and Empowerment (2014–2015) *The Rights of Persons with Disabilities Bill, 2014 Fifteenth Report* (<http://www.prsindia.org/uploads/media/Person%20with%20Disabilities/SC%20report-%20Persons%20disabilities.pdf>) (Accessed on November 29, 2017)
  - 6) “Disabilities Bill passed; New conditions, revised quota and few concerns,” *Indian Express (Web version)* Dec. 15, 2016. (<http://indianexpress.com/article/india/disability-bill-passed-parliament-revised-quota-conditions-reforms-4427364/>) (Accessed on November 28, 2017)
  - 7) This paper is based on GOI (2016b). The Japanese translation of the Act is in Asano (2018).

Rights and Entitlements (2), Education (3), Skill Development and Employment (4), Social Security, Insurance, Rehabilitation and Recreation (5), Special Provision for Persons with Benchmark Disabilities (6), and Special Provision for Persons with Disabilities with High Support Needs (7)

b. Responsibilities or duties of government agencies

Duties and Responsibilities of Appropriate Governments (8), Registration of Institutions for Persons with Disabilities and Grants to Such Institution (9), Certification of Specified Disabilities (10), Central and State Advisory Boards on Disability and District Level Committee (11) Chief Commissioner and State Commissioner for Persons with Disabilities (12), Special Court (13), National Fund for Persons with Disabilities (14), State Fund for Persons with Disabilities (15), Offences and Penalties (16)

Among these, the provisions related to the “accessibility” covered in this paper, that is, “elimination of environmental barriers,” except for the definition of the provisions of the terms in Section 2, are as follows:

Section 10 (Reproductive Rights): Guaranteeing access to information on reproductive and family planning

Section 11 (Access to voting): Access to polling stations and materials related to voting

Section 12 (Access to justice): Guaranteeing access to courts and other institutions

Section 13 (Legal capacity) (1): Guarantee of legal capacity in financial matters etc.

Section 16 (Duty of educational institutions) (ii) Issue: Duty to make facilities such as buildings accessible

Section 24 (Social security) (3) (e): Access to safe drinking water and sanitation facilities

Section 25 (Health care) (1) (b): Barrier-free access in hospitals, healthcare institutions, etc.

Section 29 (Culture and recreation) (g): Development of technology, support equipment, etc. for participation in recreational activities

Section 29 (h): Guaranteeing access to television programs, for deaf people

Section 40 (Accessibility): Rule setting concerning accessibility for persons with disabilities

Section 41 (Access to transport): Measures to ensure accessibility related to transportation

Section 42 (Access to information and communication technology): Guarantee of accessibility to various media

Section 44 (Mandatory observance of accessibility norms): Permission and approval related to construction

Section 45 (Time limit for making existing infrastructure and premises accessible)

Section 46 (Time limit for accessibility of service providers)

Section 65 (Functions of Central Advisory Board on Disability) (2) (e): Recommendations concerning accessibility etc. concerning information, services, buildings, etc.

Section 71 (Functions of State Advisory Board on Disability) (2) (e): Recommendations concerning accessibility etc. on information, services, buildings etc. at the state level

Section 100 (Power of Central Government to make rules) (2) (g): Rule establishment of accessibility standards under Section 40.

First, the provision of Section 40 is set out as follows.

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

In other words, the Central government is required to set accessibility standards in the physical environment, traffic, and information and communication services. As far as the physical environment is concerned, Section 44 stipulates the following regarding building permits, etc.:

Sec. 44 (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government.

Transportation is also specified in detail in Section 41. Among them, the contents of sub section one prescribed for public transportation are as follows. The second sub section is a provision stipulating the government's obligation to promote small-scale transportation such as automobiles and personal mobility aids.

Sec. 41 (1) The appropriate Government shall take suitable measures to provide (a) facilities for persons with disabilities at bus stops, railway stations, and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters, and ticketing machines;

(b) access to all modes of transport that conform to the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(c) accessible roads to address mobility necessary for persons with disabilities.

Section 42 is a provision concerning access to information and communication means. Among them, a wide variety of matters are listed as follows.

Sec. 42 The appropriate Government shall take measures to ensure that

(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation, and close captioning;

(iii) electronic goods and equipment, which are meant for everyday use, are available in universal design.

Similar to the universal design mentioned in Section 43, Section 44 also has clauses related to universal design relating to consumer goods. In addition, in Section 45, the provision of transition mentions measures such as making public buildings accessible within 5 years. In Section 46, government and private service providers are to provide services in accordance with accessibility rule within 2 years. Regulations concerning accessibility are established like this in relation to various matters, but the discussion of the situation that led to the process of enactment will be examined while focusing on these articles.

## **2.2. Legislative process of accessibility-related provisions**

The 2011 bill drafted by the aforementioned Sudha Kaul Committee consists of 170 sections (and supplementary provisions) in total, of which 15 are special provisions concerning accessibility. Later, in 2014, a bill based on the 2011 Bill (hereinafter referred to as the 2014 legislation) was submitted to Parliament, but deliberations were terminated with the expiration of the term of office of Lok Sabha. Subsequently, based on opinions from disabled party organizations, etc., regarding the Bill of 2014, the Standing Committee of Parliament prepared a report in 2015 and submitted a bill to Parliament again in 2016. Ultimately, this bill passed through Parliament and was enacted as the Act of 2016. In this section, the draft provision in the 2011 Bill and the 2014 legislation that falls under Section 40, Section 41, Section 42, Section 45, and Section 46 of the 2016 Act is considered, and its transformation is outlined.

### **2.2.1. Section 40 (setting accessibility standards)**

Various provisions concerning accessibility, considered in this paper, are listed in the second edition titled “Authority, Obligations and Responsibilities” of the 2011 Bill. Among them, Section 40 and Section 77 sub section 1 to 3 correspond to Section 40 of the 2016 Act. In Section 76, as “general provisions on accessibility,” it is necessary to ensure right of equality with respect to the physical environment, traffic, information, communication, or access to public or other facilities and services (sub sec. 1). In sub section two, the relevant government agencies, etc. stipulate that they must guarantee the right of access specified in the preceding section. In addition, Section 77 concerns accessibility standards, saying that national disability rights protection agencies shall establish accessibility standards concerning physical environment, transportation, information etc. (sub sec. 1). The criteria must be age- and gender appropriate (sub sec. 2), and the standards are to be revised every 5 years (sub sec. 3).

On the other hand, in the 2014 Bill, Section 39 of the bill provides general provisions on accessibility, and is linked to Section 76 of the 2011 Bill. In this Section, the National Commission for the Persons with Disabilities (abbreviated as the National Committee) mentions provision of access to information and communications, including physical environment, transportation, and appropriate technologies and institutions, in urban and rural areas, besides the standards for accessibility related to other facilities and services.

Comparing the provisions of Sections 76 and 77 of the 2011 Bill with Section 39 of the 2014 Bill, the 2011 Bill provides for a more detailed consideration of age, gender, standard review procedures, etc. In contrast, in the Bill of 2014, Section 77 (1) of the 2011 Bill has been merged into one Section. Also, in the 2014 Bill it is stipulated that a National Disabled Personnel Committee be established. Ultimately, except for the section on the establishment of the national committee, the wording of the 2014 Bill is as mentioned in the Act of 2016.

### **2.2.2. Section 41**

The corresponding provisions in the 2011 Bill are Sec. 4 of Section 77 and Section 78. The former says “related government agencies, etc. make stations and airports compliant with the standards, make transportation equipment compliant, and regulations so that persons with disabilities can obtain driver’s license.” Furthermore, Section 78 stipulates that the plan titled “means of transportation of individuals” is “to implement a plan or program so that individual means of transport can be obtained at an appropriate price.”

In the Bill of 2014, the relevant government agencies need to take appropriate measures such as provide persons with disabilities facilities at bus stops, stations, parking lots at airports, toilets, ticket offices, ticket vending machines, etc. as per accessibility standards (a of sub sec.1). In addition to listing (b) and road accessibility (c), sub section 2 stipulates promoting individual transportation measures.

When the above two bills are compared, we see that the provision of the 2014 Bill is



more specific than that of the 2011 Bill. Moreover, as in the case of Section 40 of the 2016 Act, the provisions of the 2014 Bill have been introduced in the 2016 Act.

### **2.2.3. Section 42 (Access to Information)**

Regarding Section 42 (i), the bill stipulated in Section 80 (1) (a) of the 2011 Bill provides for the disabled to access by voice, printing, or electronic means any form of information. In (ii) of the same Section, it is stipulated that section 2 of Section 79 should ensure that people with disabilities gain access to publicity and information corresponding to public health, disaster preparedness, employment, etc. In Section 3 of Section 80, all websites are to be made accessible within one year from the standard setting in accordance with the standards prescribed by the rights protection organization of national handicapped persons Correspondingly, the provisions in the 2011 Bill corresponding to Section 42 (iii) are almost equivalent to those stipulated to comply with the principle of universal design for electrical products etc. in Section 80 (1) (d).

In the 2014 Bill, Section 41 deals with making it possible for disabled persons to access media such as voice and printing under (i), providing voice, sign language, subtitles etc. on the communication media and making it accessible (ii), and ensuring electrical appliances are based on universal design (iii). This is almost the same as the provision of Section 42 of the 2016 Act.

Thus, as in the case of Section 41 of the Act of 2016, there are minor differences between the 2011 Bill and the 2014 Bill, and the one summarizing the provisions of the 2011 Bill becomes the provision of the 2014 Bill. Again, as in the case of Section 41 of the Act of 2016, clearly the provisions of the 2014 Bill are applied to the 2016 Act as it is.

### **2.2.4. Sections 45 and 46 (transition period)**

Sections 45 and 46 of the 2016 Act prescribe the transitional period for meeting accessibility rules. Section 84 of the 2011 Bill assigns a 3-year deadline for existing government agencies to follow public regulations (sub sec.1); for other public buildings, a deadline of 5 years (sub sec. 2) was set. Furthermore, Section 85 provides a 1-year deadline for the service provider's obligations as in Section 84. On the other hand, in the Bill of 2014, sub section 1 of Section 44 corresponds to Section 84 of the 2011 Bill. In the same section, it is mentioned that appropriate government agencies and local agencies are required to prepare and issue an action plan to prioritize accessibility in public buildings such as public health centers, hospitals, schools, and stations. This falls under Section 47 of the 2011 Bill. In addition, Section 45 of 2014 Bill stipulates that the service provider must be able to provide services conforming to the accessibility standards set forth in Section 39, within two years. It corresponds to Section 85 of the 2011 Bill.

I reviewed the legal provisions related to accessibility and the process of enactment. According to this, the 2014 legislation has simplified provisions compared to the 2011 Bill

drafted in a detailed manner and emphasizing the rights of persons with disabilities. It then becomes clear that the provisions of the 2014 Bill are handed down almost exactly to the 2016 Act.

According to the Act of 2016, buildings and public transportation are required to increase accessibility of persons with disabilities, setting criteria for those requested. Therefore, the next paragraph outlines standards related to accessibility in buildings.

As mentioned above, laws for persons with disabilities are gradually improving. However, accessibility to people with disabilities will not fully improve unless these provisions are implemented fully. One of the policies aimed at improving the accessibility of people with disabilities is titled “Accessible India Campaign” currently promoted by the government. In the next section, the content and current situation of the campaign is described.

### **3. Accessible India Campaign**

#### **3.1. Incheon Strategy**

A government-initiated campaign that was launched in 2015 is the Accessible India Campaign (Sugamya Bharat Abhiyan). This campaign is set and implemented according to guidelines of the “Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific (hereinafter referred to as “Incheon Strategy”) by the UNESCAP adopted in 2012<sup>8)</sup>. The Incheon Strategy consists of ten goals, 27 targets, and 62 indicators. Among them, the goal titled “Physical environment, public transportation, knowledge” is related to Goal 3 of the Accessible India campaign.

There are four targets relating to Goal 3: “increase the accessibility of the publicly opened physical environment in the nation’s capital (target 3.A),” “increase accessibility and convenience of public transportation (target 3.B),” “increase accessibility to information (Target 3. C),” and “increase the proportion of persons with disabilities who have support equipment or support products (Target 3. D)”. Among them, the three targets from 3.A to 3.C above are directly related to the Accessible India Campaign. I then outline the contents of the campaign while considering their relationship with the indicators.

#### **3.2. Goals of Accessible India Campaign**

In this campaign, the following seven goals were set, and each goal includes with one to three targets.

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8) The Original text of the Incheon Strategy would be referred at: [http://www.unescapsdd.org/files/documents/PUB\\_Incheon-Strategy-EN.pdf](http://www.unescapsdd.org/files/documents/PUB_Incheon-Strategy-EN.pdf) (Accessed on December 26, 2016)

### 3.2.1. Goal 1 “Make government buildings accessible”

Making government buildings accessible allows persons with disabilities to enter buildings without the challenges of obstacles (barriers), use the facilities, including stairs, corridors, gates, emergency exits, etc. In addition to such facilities as cars, lights, and signs, warning systems and toilets are also included among the facilities that are accessible. An annual audit is required to check whether the building is accessible. Furthermore, the standards should be largely consistent with international standards such as ISO and match the regional situation as well. There are three targets related to this goal.

1.1 Audit accessibility for 50 buildings of the most important government agencies in 26 main cities<sup>9)</sup> such as Delhi and Mumbai and convert them to fully accessible buildings by July 2016.

Also, accessibility audits should be conducted on 25 buildings of the most important government agencies in 24 major cities such as Ranchi or Jhansi, and make them fully accessible by July 2016<sup>10)</sup>.

1.2 50% of the government buildings in the National Capital and State Capital shall be fully accessible by July 2018.

1.3 Audit to be conducted in 50% of government agencies’ buildings in ten important cities or towns in each State other than the cities indicated in 1.1 and 1.2 and make them fully accessible.

### 3.2.2. Target 2 “Strengthen accessibility of airport”

The following targets are set to ensure that a disabled person can enter freely, use the facility freely, and is able to board freely.

2.1 Accessibility audits are conducted at all international airports and all of them shall be fully accessible (by July 2016)

2.2 Make accessibility audits at all domestic airports and make them all accessible completely (by March 2018)

### 3.2.3. Target 3 “Make railway stations accessible”<sup>11)</sup>

The targets related to this goal are as follows.

9) Cities other than Delhi and Mumbai are Bengaluru, Chennai, Hyderabad, Kolkata, Ahmedabad, Pune, Bhopal, Kanpur, Coimbatore, Indore, Jaipur, Vadodara, Surat, Nagpur, Lucknow, Patna, Vishakhapatnam, Raipur, Gurgaon, Srinagar, Thiruvananthapuram, Bhubaneswar, Chandigarh, and Guwahati

10) Cities other than Jhansi and Ranchi are Port Brea, Itanagar, Daman, Panaji, Shimla, Nasik, Gandhinagar, Kamarhati, Agra, Aizawl, Noida, Imphal, Kohima, Puducherry, Gangtok, Agartala, Dehra Dun, Silvassa, Ludhiana, and Varanasi.

11) In the 2017-2018 budget, it was mentioned that the amount for renovating 500 stations has been allocated.

3.1 Make A1, A and B categories stations<sup>12)</sup> fully accessible (by July 2016)

3.2 Make 50% of stations in India fully accessible stations (by March 2018)

#### **3.2.4. Target 4 “Make public transport accessible”**

For public transport such as buses the following targets are set.

4.1 10% of government-owned public transportation is to be accessible completely (by March 2018)

#### **3.2.5. Target 5 “Enhance accessibility and availability to make public documents and websites comply with international accessibility standards”**

This means that publications and websites issued by governments such as laws, regulations, reports, forms, information magazines, etc., are to conform to international standards. In this regard, the following two targets have been set.

5.1 Make accessibility audits on 50% of all government (central and state) websites and make them accessible completely (by March 2017).

5.2 At least 50% of all publications issued by the central and state governments shall be compliant with accessibility standards (by March 2018).

#### **3.2.6. Goal 6 “Increase the number of sign language interpreters”**

To achieve this, the target is set as below:

6.1 Hire more than 200 sign language interpreters through training (by March 2018)

#### **3.2.7. Target 7 “Provide subtitles and sign language interpreters on public TV news broadcast on a daily basis”**

Sign language interpretation, subtitles, etc. are required to be attached to news broadcasts produced or funded by the government. For this, the following two targets are set.

7.1 Develop domestic standards for subtitles and sign language interpreters in consultation with domestic media organizations and adopt it (by July 2016)

7.2 Among TV programs to be broadcast on government channels, 25% to comply with the above criteria (by March 2018).

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<http://www.thehindu.com/business/budget/Highlights-of-Union-Budget-2017-18/article17127298.ece>  
(Accessed on February 6, 2017).

12) A1 stations are 75 stations such as Chatrapati Shivaji Terminus, New Delhi Station etc. The A ranked stations are 332 in number.

Regarding the realization of these goals, the results achieved in government buildings are clarified by accessible audits with the cooperation of private organizations. In the next section, I consider the actual situation of the campaign, based on the audit conducted by one of the NGOs, Svayam.

### **3.3. Accessibility Audit**

#### **3.3.1. Check items in the accessibility audit**

As mentioned in Target 1 above, accessibility audits were to be conducted on buildings of government agencies in large cities. For the contents of the audit, a checklist was released<sup>13)</sup>. The items to be checked are roughly divided into four sections; the first section concerns information and communication on the service provided in the building, the second section deals with what kind of service is provided, the third deals with matters concerning the physical aspects of the buildings.

Regarding the first section, for example, items to be checked include (a) whether buildings are provided with photographs on accessibility facilities, (b) whether prints and booklets, documents, menus, etc. are also provided in Braille, and (c) whether staffs are received sign language interpreter training.

Regarding the second section, items to be checked include questions on whether staff training deals with how to cope with the disabled and their problems, how to use disabled subject facilities, fundamental sign language, etc..

The items listed in the third section are the most numerous part of the checklist.

For the outdoor environment, first, regarding the parking lot, the presence or absence of a parking space for a person with disabilities, the size (3.6 m × 6 m), and the distance from the space to the accessible entrance are check items. Regarding the entry and exit place, its presence, the absence of a step to the entrance, etc. are listed as items. Also, regarding accessible passage, whether it leads to the entrance, the parking lot, etc., the width of at least 1.2 m, whether the surface is made of a material that does not slip, obstacles on the passage, etc. are check items.

In the indoor environment, items related to the entrance are listed: the accessibility of the main entrance to all, the entrance size, the usability of the door by persons with disabilities, etc. Besides, regarding the receptionist and lobby, the check items are the size, the height of the counter, whether the color of the counter contrasts with the wall, and so on. Regarding the stairs, the height and width of the stair, the contrast of the stage, the material of the surface, the shape of the landing area, etc. are listed as items. Focusing on the slope, the presence or absence of a slope as a substitute for the staircase, its slope and width, the installation of a handrail, etc. are check items.

Regarding indoor facilities, handrails, elevators, escalators, corridors, doors and

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13) Please refer [http://disabilityaffairs.gov.in/upload/uploadfiles/files/Annexure\\_%20II%20docx.pdf](http://disabilityaffairs.gov.in/upload/uploadfiles/files/Annexure_%20II%20docx.pdf) (Accessed on December 24, 2017)

entrances, accessible cafeteria, drinking water facilities and management facilities<sup>14)</sup>, signs, and the like are cited. With regard to the elevator, the size of the elevator, the presence or absence of a mirror, the height of the button, and the manner of display, etc. are checked items. For the door, items to be checked are the shape of the lever, the space when opened, and the opening time in the case of an automatic door in addition to the size. Regarding the toilet, check items are listed in detail, such as the size of the room, the size of the toilet bowl, the shape of the flushing lever, etc.

As described above, the check items are enumerated in detail in the check list. In next part, an overview of how to proceed with the audit is introduced.

### 3.3.2. Current status of the accessibility audit

There are 18 organizations that conduct auditing accessibility of buildings; among them four organizations are institutions of architectural studies or universities (including faculty members), the rest are private sector organizations related to persons with disabilities.

One of the above private organizations, Svayam, has been conducting activities to audit the accessibility of disabled people for 15 years, especially access of historical heritage and public buildings<sup>15)</sup>. Their past achievements include auditing and making recommendations on access possibilities in monuments such as the Qutab Minar or the Red Fort in the suburbs of Delhi. Under the Accessible India Campaign, they audit 340 buildings in eight cities<sup>16)</sup>.

In implementing the audit, Svayam conducted training on the auditor (Access Auditor) and prepared for the accessibility audit. To conduct the audit, in addition to the auditor, they organized a team of five to six people consisting of architects, engineers, disabled persons, etc. Other organizations that conduct the audit also have teams consisting of auditors, wheelchair users, person with visual or auditory disabilities, architects, and engineers<sup>17)</sup>.

Although the government tried to implement policies for accessibilities of disabled people, various lawsuits were filed in relation to the accessibility problem. In the next section, an example of one such lawsuit that addresses issues of accessibility in government-related buildings is examined.

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14) Automatic vendor, Electric plugs, etc.

15) Description is based on views expressed by Mr. S. C. Vashisht and Ms. S. Kumari (recorded on September 11, 2017). I would like to express my appreciation for their inputs.

16) Mumbai, Delhi, Gurgaon, Faridabad, Jaipur, Dehra Dun, Varanasi, and Chandigarh

17) In the case of Pandit Deendayal Upadhyaya Institute for the Physically Handicapped.

## 4. Rajive Raturi Case<sup>18)</sup>

On December 15, 2017, the Supreme Court issued an order<sup>19)</sup> to ensure accessibility to Central and state government buildings for disabled persons in the judgment of a public interest litigation brought by Mr. Rajive Raturi, who works for human rights organizations. In this section, the contents of the directive indicated in the judgment are reviewed.

### 4.1. Outline of the Rajive Raturi Case

Plaintiff Rajive Raturi is visually impaired and works for a human rights group in the city of Delhi. Originally this case began with an action seeking accessibility for visually impaired people relating to the use of roads and in traffic (1, the following numbers are paragraph numbers). According to the plaintiff, 12 items concerning roads need to be improved, such as installation of traffic lights with sounds and clear crosswalks with contrasts; for transportation, voice guidance on subways and the like; and information in braille signs at bus stops. The plaintiff insisted that the government's action to improve these items is slow.

After talking about protection by international law on the rights of visually handicapped people, the court, as an example of the protection of rights under the Constitution, the right to live with dignity under the Section 21 of the Constitution, guaranteed protection by citing the Moulin case judgment<sup>20)</sup>. In addition, based on the Ram Sharma judgment<sup>21)</sup>, it was mentioned that the right of life under Section 21 of the Constitution includes the right to accessibility. Furthermore, regarding the relationship between the dignity of human beings and the protection of the rights of persons with disabilities in the Jija Ghosh judgment<sup>22)</sup>, guaranteeing rights is indispensable for constituting disabled persons as members of society. Furthermore, after considering the provisions related to accessibility in the Act of 2016, it was mentioned that public transportation facilities should be made accessible to people with disabilities, besides giving them access to toilets and waiting places at the transportation facilities. To mention a difference between the Act of 1995 and the Act of 2016, the former included the wording that facilities related to improving accessibility are based on "economic conditions," but the latter is more advanced in that such conditions have not been

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18) *Rajive Raturi vs. Union of India and Others*, WP (Civil) No. 243 of 2005 with WP (Civil) No. 228 of 2006

19) Please refer: [https://www.sci.gov.in/supremecourt/2006/15134/15134\\_2006\\_Judgement\\_15-Dec-2017.pdf](https://www.sci.gov.in/supremecourt/2006/15134/15134_2006_Judgement_15-Dec-2017.pdf) (Accessed on September 6, 2018)

<http://globalaccessibilitynews.com/2017/12/18/make-government-buildings-easier-to-access-for-persons-with-disabilities-sc/> (Accessed on December 22, 2017)

20) *Francis Coralie Mullin vs. Administrator, UOI and Others*, (1981) 1 SCC 608.

21) *State of Himachal Pradesh and Another vs. Umed Ram Sharma and Others*, (1986) 2 SCC 68.

22) *Jeeja Ghosh and Another vs. Union of India and Others*, (2016) 7 SCC 761.

included in the provision.

Subsequently, reviewing the contents of the statement filed by the plaintiff against the report submitted by the government on April 12, 2017, it is found that the plaintiff commented on the achievements submitted by the government on the ten goals indicated in the Accessible India Campaign.

For example, in response to the goal of “making government-related buildings in 50 cities fully accessible by December 2017,” as indicated in the campaign, the Government stated that “for 1653 buildings accessibility audit has been implemented, and as of March 2017 an estimate on subsidies for renovation of 647 buildings was accepted and an expenditure of 71.6 million rupees was made for 354 buildings.” However, the plaintiff argued, “The audit was done only for 1165 buildings; the estimate for subsidies was only for 366 buildings, and on 67 buildings only 1.4 million rupees were spent.”

Similarly, regarding the goal of “making 50% of government-related buildings in the Capital and all the state capital cities fully accessible by December 2018,” the Government said “that the model building standards were formulated, and the revised building standards will be published in 2017.” However, the plaintiff countered this saying, “These standards and rules should be made before securing accessibility in buildings.”

In this way, the plaintiff pointed out that there are insufficiencies with respect to the achievement reported by the government on the targets established in the Accessible India Campaign, and matters to be included in the order from the court are listed.

Regarding the accessibility of buildings in the aforementioned 50 cities, for example, the state government should calculate the cost estimates for the remaining 1,000 buildings within one month. The central government is required to pay subsidy to refurbish all the 1653 buildings. Then, the state government would refurbish 1653 buildings by December 2017, and so on. Also, for targets relating to more than 50% of the government-related buildings in the capital and capital city, all state governments shall submit to the Central government a list of buildings included in that 50% within one month. It is also mentioned that the government should finish the work from estimate to renovation by December 2018.

In response to the comments of the plaintiff, the government argued that the expenditure for renovation costs is based on fiscal conditions, and that it is reasonable to have a transitional time of six months. It mentioned that finalizing the renovation by December 2017 was impossible. It was also claimed that it is appropriate to implement accessibility audit after the renovation work. The plaintiff, on the other hand, argued that some of the targets to be addressed had already passed the original date, and that the defense that expenditure would be affected by the fiscal situation is not a point to be used as a defense as it only points out problems.

Based on these arguments, the court found that the 10 items proposed by plaintiffs for improvement are legally required under the Act of 2016. It also noted that the government



admitted that in response to the fact that the Central government's various countermeasures, many state governments had not taken adequate countermeasures. Therefore, as decided based on the judgment of the Justice Sunanda Bhandare Foundation Case, the Central and state governments must abide by the 2016 Act. Then, the court issued its direction.

#### **4.2. Direction by the Supreme Court**

The Supreme Court in its ruling directed the government as follows.

① “To make 20 to 50 important government-related buildings in 50 cities fully accessible by December 2017”

② “To make 50% of the government-related buildings in the Capital and state capital fully accessible by December 2018”

③ In 50% of the government-related buildings in the major cities or towns of each province or Central territory, which are not included in ① and ②, the accessibility audit was to be completed by December 2019, Then, it had to make them accessible.”

④ “About the Central Government Buildings,” the government was asked to complete the items shown in the process chart by August 2018.

⑤ “ Regarding the accessibility of the airport, it directed the government to conduct accessibility audits of all international airports and make them fully accessible”

⑥ “Regarding accessibility in railways, the Ministry of Railways was required to make all stations in A1, A, and B categories accessible by July 2016. And 50% of all stations were to be fully accessible by March 2018.”

⑦ “10 percent of government-owned public transportation facilities should be made fully accessible by March 2018”

⑧ “Comprehensively review knowledge related to accessibility and the critical problems under the information technology system, and at least 50% of Central and state government websites to be compliant with accessibility standards by March 2017. Furthermore, at least 50% of public documents must be compliant with accessibility standards by March 2018.”

⑨ “The Bureau of Indian Standards is to incorporate matters related to obstacles to the revised National Building Standards.”

⑩ “Hire or promote another 200 people to become sign language interpreters by March 2018 by providing training”

⑪ “According to Sections 60 and 66 of the Act of 2016, the establishment of the Central Disability Advisory Council and the State Disability Advisory Council is required in all states and Central territories, and therefore, for effective implementation of these improvements, councils are to be set up within three months for enforcement.”

Regarding these directions, it is stated that submission of a progress report is required three months after receipt, and that the government must also indicate follow-up after that.

From now on, it is noteworthy to understand the follow-up carried out by the government based on this direction. In addition, it is clear from the contents of the direction that the courts also play a role in promoting the Accessible India Campaign. Therefore, implementation of policies and judicial monitoring is linked to improving the accessibility of disabled people in India.

## Conclusion

In this paper, I examined the problem of physical accessibility of disabled persons in India, mainly from the perspectives of legislative, policy, and judicial judgment.

Regarding the 2016 Act, as far as the legislative process is concerned, the bills created in 2011 provided details on accessibility, whereas the legislation became the basis of the existing law. It was shown that the 2014 Bill simplified the contents of the 2011 Bill. However, more clauses concerning accessibility were added compared with the 1995 law, and it is undeniable in the future that the movement for improving accessibility of persons with disabilities will be accelerated according to the provisions.

Regarding the accessibility policy, a wide range of contents will be noticed in the Accessible India Campaign. Though works, such as accessibility audit, have been advanced, not all the audits of the originally scheduled cities and buildings have been completed. Once the audit is over, building renovation work etc. can be promoted based on that recommendation by the audit. Hence, further implementation of various measures included in the campaign is necessary for improving accessibility of persons with disabilities.

The fact that the court is paying attention to the movement of the government can also be inferred from the direction in the Rajive Raturi judgment. As mentioned above, the Supreme Court has received appeals from plaintiffs and has issued directives concerning improvement of accessibility. Since the case was a Public Interest Litigation, it is considered that the court will continue to monitor the implementation status of the direction in the future.

In present-day India, the movement is viewed from various aspects concerning accessibility of persons with disabilities. There is a need to keep a close watch on the future movements of the Accessible India Campaign and the government's response by the government to orders by the Supreme Court.

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