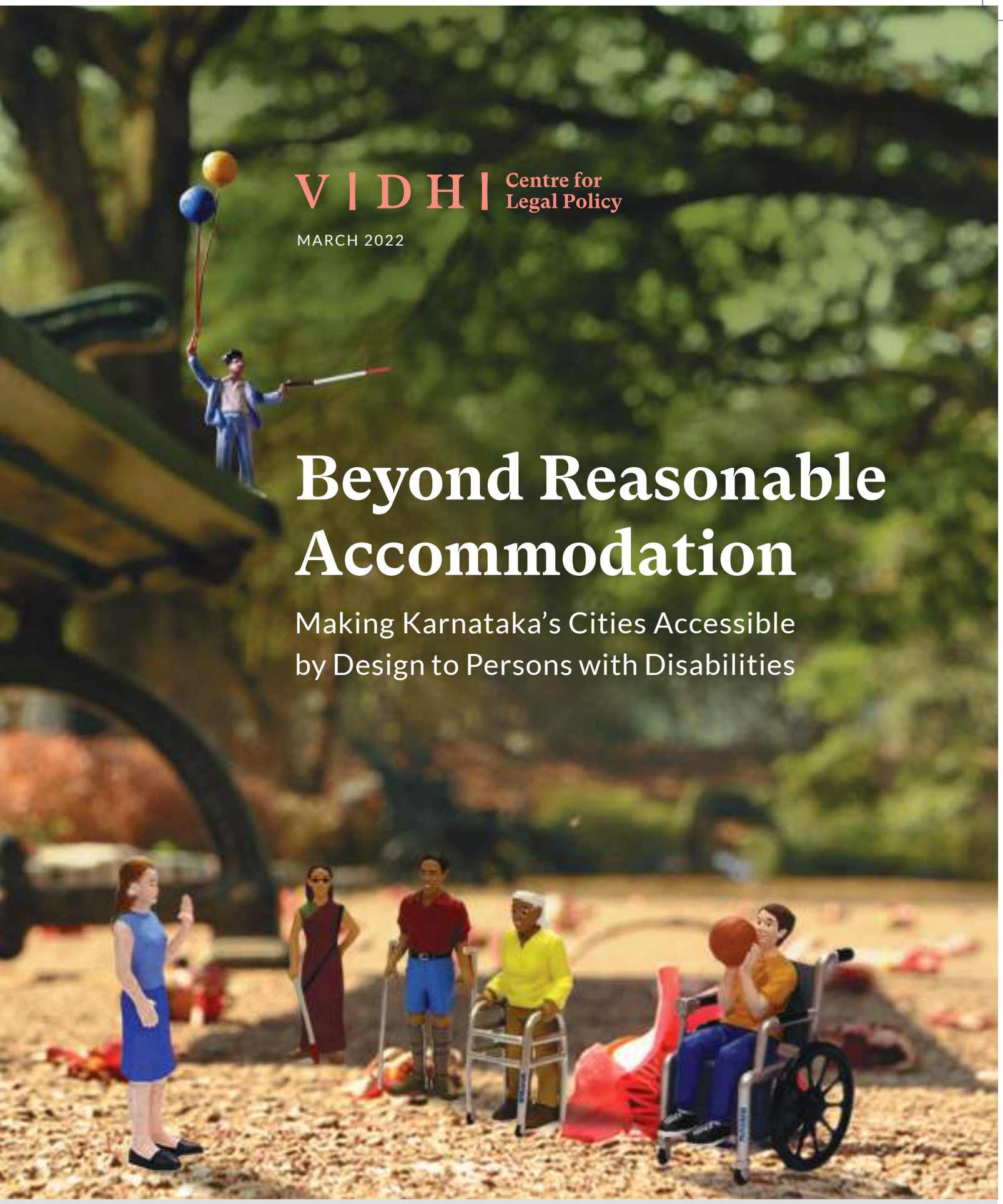

VIDHI | Centre for Legal Policy

MARCH 2022

Beyond Reasonable Accommodation

Making Karnataka's Cities Accessible by Design to Persons with Disabilities

SUPPORTED BY

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The H T Parekh Foundation is the philanthropic arm of HDFC Limited, established in 2012, the birth centenary of its Founder Shri H.T. Parekh, to commemorate his significant contribution toward the development sector in India. It is a progressive, impact-driven, philanthropic foundation, guided by the principles of inclusion, commitment, excellence, integrity, and respect. The Foundation envisions an inclusive India where vulnerable communities have the access and opportunity to transform their lives and move from a state of surviving to thriving. Since its inception, the Foundation has worked across rural and urban India with a focus in Healthcare, Education, Livelihoods, Sustainable Habitats, and Persons with Disabilities (PwDs). With a focus on strengthening the ecosystem for PwDs, the Foundation supports interventions, programmes, and research that have the potential to contribute to the goal of improving the quality of life of PwDs and also create a more inclusive society.

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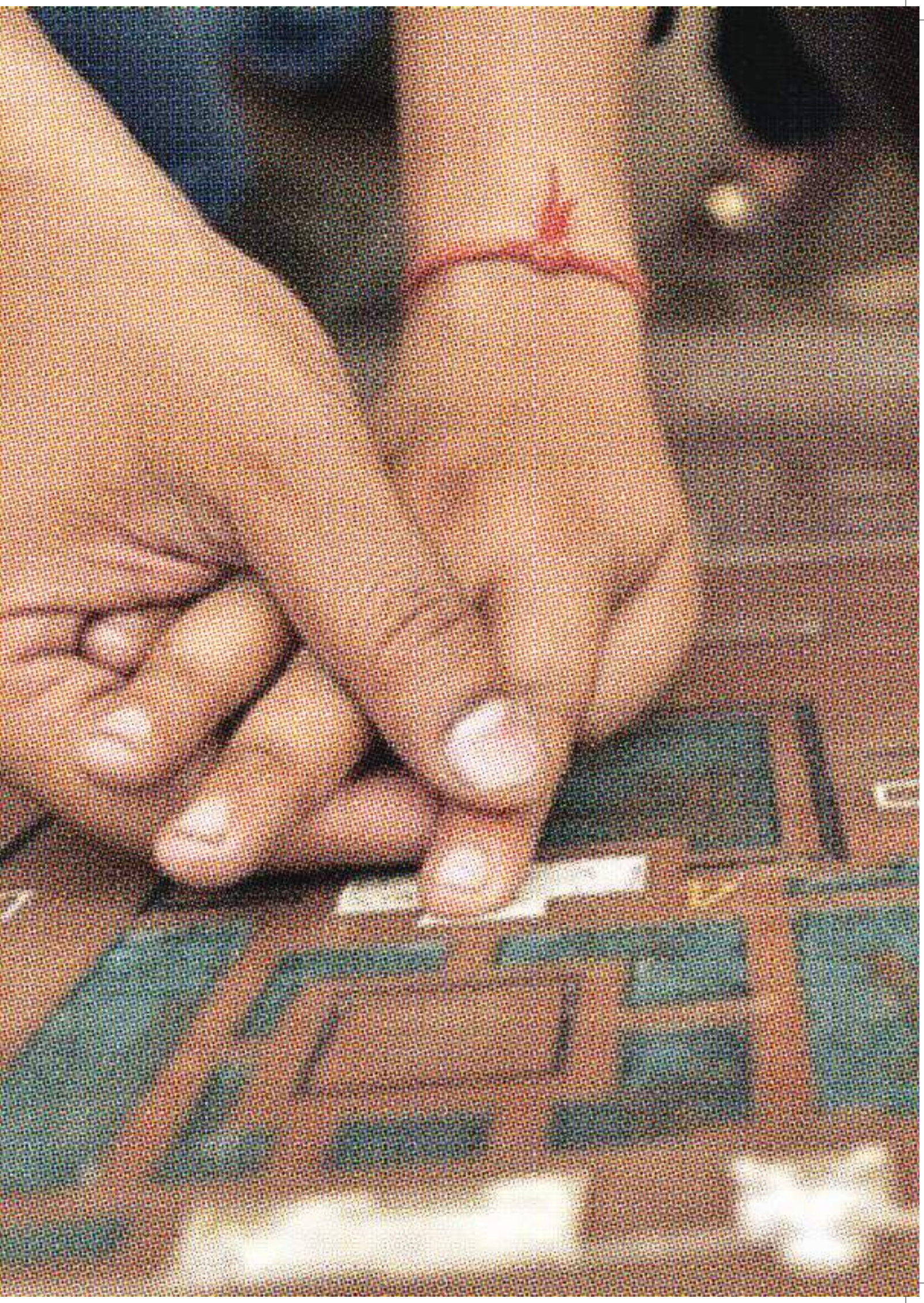
LIST OF ABBREVIATIONS

ADHD	Attention Deficit Hyperactivity Disorder
BBMP	Bruhat Bengaluru Mahanagara Palike
BDA	Bangalore Development Authority
BIS	Bureau of Indian Standards
BMA	Bangalore Metropolitan Area
BMLTA	Bengaluru Metropolitan Land Transport Authority
BMTC	Bengaluru Metropolitan Transport Corporation
CPWD	Central Public Works Department
DEPWD	Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment
DMRC	Delhi Metro Rail Corporation
DPOs	Disabled People's Organisations
DULT	Directorate of Urban Land Transport
ICCPR	United Nations International Covenant on Civil and Political Rights
ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights
ICF	International Classification of Functioning, Disability and Health
ICTs	Information and Communication Technologies
JNNURM	Jawaharlal Nehru National Urban Renewal Mission
MoHUA	Ministry of Housing and Urban Affairs
SDGs	Sustainable Development Goals
TCPO	Town and Country Planning Organisation
UDHR	Universal Declaration of Human Rights
ULBs	Urban Local Bodies
UMTA	Unified Metropolitan Transport Authority
UN	United Nations
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
UNDP	United Nations Development Programme
WHO	World Health Organization

Facing page: *Tracing a wall detail at Red Fort in Delhi during a Planet Abled heritage walk for the visually-impaired.*
photo: Planet Abled



EXECUTIVE SUMMARY

The question of access has long plagued cities and dominant urban planning processes have failed to account for the needs of marginalised groups, such as persons with disabilities, the elderly, and women among other vulnerable groups, rendering cities inaccessible, hostile, and exclusionary to them. This is particularly stark in the case of persons with disabilities, for whom the lack of access stems from a variety of factors including poor urban design, a lack of usable urban infrastructure, and a lack of safety and affordability, among others. A critical disability perspective then posits important questions about who the city is built for, why, and what values guide its planning processes.

As per the 2011 Census of India, 2.21 per cent of the total Indian population of 121 crores were deemed[1] to be persons with disabilities, constituting about 2.68 crores people, of which 31 per cent were living in urban areas. Of these, over 13 lakh persons with disabilities reside in the state of Karnataka. Within this population, factors such as gender, age, class, caste, religion, and sexuality, among others, intersect with disability, impacting the nature of the exclusion faced by persons with disabilities in Indian cities. Despite the existence of various disability rights frameworks in India, there are significant challenges to the effective realisation of these rights, particularly in the context of securing accessibility to urban space. A key issue that emerges on the examination of legal frameworks governing disability rights and those governing urban planning, design, and governance is the operation of these ecosystems in disparate silos. Another critical issue is the scant attention paid to invisible or hidden disabilities in the context of accessibility to urban space.

'Beyond Reasonable Accommodation – Making Karnataka's Cities Accessible by Design to Persons with Disabilities' is a white paper that tackles the question of accessibility to urban space for persons with disabilities in the context of existing legal frameworks in India. The paper questions the way cities are currently designed, planned, and built, critically analyses legislative frameworks that govern cities, and highlights the ways in which they remain inaccessible to persons with disabilities, especially those with invisible disabilities. While disability rights are guaranteed under central laws, their realisation in regard to accessibility to urban space lies in the domain of state and municipal laws, which vary across jurisdictions.

This paper focuses on the state of Karnataka, with special reference to Bengaluru, making a series of recommendations for policy and legal reform to secure accessibility. The approaches outlined and the key findings of the paper, however, are translatable and relevant to all states and municipalities across India. This paper

1 Ministry of Statistics and Programme Implementation, *Persons with Disabilities (Divyangjan) in India- A Statistical Profile: 2021*, 219

fills a critical gap in the literature on accessibility to urban space for persons with disabilities from a legal perspective and makes a case for adopting Universal Design as an approach to urban planning in India to create inclusive and equitable cities.

The introduction to the white paper lays down a theoretical framework for understanding accessibility and makes the case for a critical disability approach to accessibility that incorporates a feminist perspective, centring girls and women with disabilities. The second chapter analyses various rights and entitlements, including the right to an accessible, barrier-free environment available to persons with disabilities, guaranteed through various legal instruments at the international and the national and state levels in India, specifically in Karnataka. The third chapter lays out the legal norms pertaining to urban planning and accessibility standards for cities (i.e., for the built environment, mobility and transportation, and information and communication technology). While these norms are issued mainly at the national level, the paper notes that their implementation often comes within the purview of state agencies, municipalities and urban local bodies on account of their areas of operation and the functions entrusted to them. There is also a discussion of the judicial trends in India towards recognising and interpreting the rights of persons with disabilities, specifically in the context of accessibility to urban space.

The fourth chapter looks at the key issues that emerge during the realisation of accessibility to urban space. A critical analysis of the laws impacting accessibility to urban space indicates the failure to incorporate the ethos and specific requirements of accessibility into the extant frameworks governing urban planning, design, and governance in the state of Karnataka as well as in the rest of India. This is not only limited to the built environment but also extends to areas such as transport and mobility, information and communication technologies, and public procurement policies, which do not incorporate accessibility as a key requirement, and where accessibility standards do exist, they are not contextualised to local conditions. It examines the concept of Universal Design, especially in the context of India, and elaborates on the key principles relevant to advancing a disability perspective in India's urban planning processes.

The fifth chapter details recommendations based on the issues discussed including systemic legal reforms to municipal governance frameworks at the central, state, and municipal levels to democratise urban planning and encourage public participation, particularly from persons with disabilities; amendments to existing accessibility standards to ensure the inclusion of hidden or invisible

disabilities as well as tailoring them to local contexts; amending public procurement laws at the municipal level to incorporate accessibility as key prerequisites for urban projects; policy changes to ensure effective implementation, capacity building, and research and training. The sixth chapter covers case studies and outlines best practices based on a discussion of existing accessible models such as inclusive play spaces, assisted community living for persons with mental illness, and accessible urban transport systems.

This paper may be relevant to wide range of stakeholders, including persons with disabilities, persons engaged in disability rights advocacy, government personnel and policymakers at the national, state, and municipal levels, urban planners, architects, lawyers, academics, researchers, feminist and disability rights organisations, and anyone invested in the project of building cities for all.



1 INTRODUCTION

Urban planning is an inherently political process. The questions of which principles are valued and considered relevant for planning, which groups of people are left out in the process of planning and design, as well as how such a process is carried out reveal the deep assumptions that underpin dominant architectural, planning, and municipal practices in cities. Urban planning can be a transformative tool as it has the potential to either reinforce or subvert existing hierarchies of power between the different groups of people who occupy the city. Thus, the processes of urban planning and design actively produce and create normative categories of who 'belongs' in the city in the way they imagine the users and inhabitants of the city. For example, factors such as who is planned for and who is ignored in these processes have a direct and exponential impact on the lives of people in the city in long-lasting ways. Therefore, cities are 'constructed' to include certain groups of people, just as they simultaneously exclude others.

In this white paper, the focus is on the critical issue of access to urban space for persons with disabilities living in Indian cities. While the importance of the right to the city as a moral right[2] and the city as a vehicle for social inclusion has been well established, these articulations often fail to consider persons with disabilities or adopt a feminist approach[3] in tackling ableism in every dimension of urban planning—from inception to execution. While city planning processes in municipalities across the country need broad and comprehensive reforms to ensure participatory planning and inclusive urban development, this assumes paramount importance in the context of securing access for persons with disabilities. Whether it is formulating urban policies related to constructing accessible neighbourhoods, street design, transport and mobility infrastructure, sanitation, and information and communication technologies (ICTs), among others, the lack of a disability perspective leads to exclusionary design in urban space and policymaking. This not only hinders the rights of persons with disabilities but also leads to disproportionate poverty and deprivation and contributes to discrimination and endangerment in their daily lives in the city.

According to the World Report on Disability released by the World Health Organization (WHO) in 2011, approximately 15 per cent of the world lives with one or more disabilities.[4] This report also notes[5] that there is a higher prevalence of disability in lower-income countries than in higher-income countries, and disability disproportionately affects vulnerable populations, with people from the poorest wealth quintile, women, and older people recording a higher prevalence of disability. In addition, the United Nations Development Programme's (UNDP) Guidance Note on Disability Inclusive Development reports that 80 per cent of persons

2 United Nations Educational, Scientific and Cultural Organization, *Urban Policies and the Right to the City in India Rights, Responsibilities and Citizenship* (ISBN 978-81-89218-42-3, November 2011), Eds. Marie-Hélène Zérah, Véronique Dupont, Stéphanie Tawa Lama-Rewal Upendra Baxi, *A Philosophical Reading of the RTTC*

3 Sneha Visakha, Vidhi Centre for Legal Policy, *Making A Feminist City* (2021) 8

4 World Health Organisation, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011)

5 World Health Organisation, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011) 262

6 UNDP, *Guidance Note on Disability Inclusive Development* (2018) 9

with disabilities live in developing countries.[6] Further, in these countries, there is also a direct relationship between disability and higher illiteracy, unemployment and lower wages, with disability exacerbating the risk of poverty.[7] In developing countries, around 15–20 per cent of those living in poverty have been estimated to be persons with disabilities.[8]

As per 2011 Census of India, 2.21 per cent of the 121-crore population of India were deemed[9] to be persons with disabilities, constituting about 2.68 crore people, of which 31 per cent resided in urban areas. In the state of Karnataka, the number of persons with disabilities stands[10] at 13,24,205, making up 2.17 per cent of the total population of the state. Within this population, factors such as gender, age, caste, class, religion, marital status, and sexual orientation among others intersect with disability, impacting the nature of exclusions faced by persons with disabilities in cities. It has also been documented that persons with disabilities experience worse educational and labour market outcomes and are more likely to be poorer than persons without disabilities.[11] The economic and social costs of disability are significant,[12] but are difficult to quantify as they include direct and indirect costs. Many of these costs arise because of inaccessible environments and could be potentially reduced in more inclusive settings.

This evolving understanding of disability looks critically at the way society is organised and notes that disability results from the interaction between persons with impairments and that attitudinal, environmental, and institutional barriers hinder their full and effective participation in society on an equal basis. This suggests that barriers in society are created by ableism and not by the existence of an impairment alone. This shift in the gaze from the individual to the larger society, interrogating societal values such as prioritising productivity over holistic human development and how it constructs disability is of crucial significance in understanding how cities treat persons with disabilities. In the context of urban planning then, this view asks questions about who the city is built for, why, and what values guide its processes.

Access to the city is materially realised in how urban space itself is constructed—physically, socially, economically, culturally, politically, institutionally, attitudinally, and structurally, among others, which manifests in the form of barriers to access to, participation in, and enjoyment of the city for persons with disabilities as well as those who may be perceived as disabled. The question of the accessibility of urban space then becomes a matter of not only social injustice, but also spatial injustice and how the two are co-constituted. The ongoing denial of access to the city in everyday spaces for persons with disabilities results in stark injustice.

7 Ann Elwan, *Poverty And Disability: A Survey Of The Literature* (1999) 9932 SP World Bank 15-23

8 Ann Elwan, *Poverty And Disability: A Survey Of The Literature* (1999) 9932 SP World Bank 15-23

9 Ministry of Statistics and Programme Implementation, *Persons with Disabilities (Divyangjan) in India- A Statistical Profile: 2021*, 219

10 Ministry of Statistics and Programme Implementation, *Persons with Disabilities (Divyangjan) in India- A Statistical Profile: 2021*, 219

11 World Health Organization, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011) 39

12 World Health Organization, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011) 42

1.1 Understanding Disability

The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) recognises[13] disability as an evolving concept and that it results from the interaction between persons with disabilities and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. This articulation emerges from a transition[14] from an individual, medical perspective to a structural, social perspective that has been described as the shift from a 'medical model' to a 'social model' in which people are viewed as being disabled by society through the social and physical barriers that they face rather than by their bodies.

While often presented as dichotomous, disability cannot be understood as solely medical or solely social, and it should be seen as a complex interaction between the two. According to the WHO,[15] disability is the umbrella term for impairments, activity limitations, and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and the individual's contextual factors (environmental and personal).

A classification standard for health and disability statistics, the International Classification of Functioning, Disability and Health (ICF)[16] advances the understanding and measurement of disability. In the task of harmonising approaches across sources of disability data, the ICF posits an understanding of disability as a 'bio-psycho-social model'[17] which recognises the role of environmental as well as health conditions in creating disability. This view attempts to synthesise the erstwhile medical and social models of disability to provide a coherent view of the different perspectives in question: biological, individual, and social. In the context of cities, it is critical to understand and engage with the social and environmental dimensions of disability since disability is produced in the interaction between an impairment and an environment that is constructed with ableist[18] attitudes and systems.

1.2 Towards Universal Access: A Feminist Disability Approach

Feminist disability scholars working on the intersections of feminism, disability, and urban studies seek to understand disability not as an individual characteristic but as a socio-spatial construction.[19] A feminist approach[20] to disability, as well as other disability theories, engages with the concept of Universal

13 United Nations Convention on the Rights of Persons with Disabilities 2006, Preamble

14 World Health Organization, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011)

15 World Health Organization, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011)

16 World Health Organisation, *The International Classification of Functioning, Disability and Health*, 2002. The ICF is the WHO framework for measuring health and disability at both individual and population levels. The ICF was officially endorsed by all 191 WHO Member States as the international standard to describe and measure health and disability at the Fifty-fourth World Health Assembly on 22 May 2001 (resolution WHA54.21)

17 World Health Organization, ICF, *Towards a Common Language for Functioning, Disability and Health* (2002) 9

18 Disability Resource Centre, 'Ableism 101 Part One: What is Ableism? What is Disability?' (The University of Arizona)

19 Isabel Dyck, *Geographies of Disability: Reflecting on New Body Knowledges* (1st edn, Routledge 2010) 254; *In Toward Enabling Geographies: 'Disabled' Bodies and Minds in Society and Space*, (V. Chouinard, E. Hall, and R. Wilton, 1st edn, Routledge 2010), 253–264

20 *Disability, Space, Architecture: A Reader* (Jos Boys, Routledge 2010) 81

Design to prove that disability is a product of built and social environments rather than a medical state that is intrinsic to the body of an individual. For cities, this means that they locate the 'disabling' of specific groups in the ways cities are designed and constructed. Anyone can experience an impairment of abilities, such as a pregnant woman or a person recovering from a broken leg, which could be temporary or permanent owing to any number of factors. Such an impairment could cause difficulties in their daily functioning and limit their participation in the external world. However, an impairment in functioning does not, by itself, constitute disability.

Feminist and disability scholars working on theories of access have long disrupted[21] the notion of a neutral design of the environment. They argue that a so-called 'neutral' design of the environment masks the dominance of perceived majority identities and bodies. Feminist architectural theorists have also noted[22] that the built environment is neither value-free or inclusively human, and is largely the creation of a "white, masculine subjectivity,"[23] and that socio-spatial problems need solutions that require feminist activism[24] as well as architectural expertise.

Universal Design[25] is a design approach to the built environment that is dedicated to expanding access for as many people as possible, and it goes beyond the concept of barrier-free design. It aims at intervening at the design stage of built environments, incorporating accessibility at the outset, without the necessity of future retrofitting or changes to structure. Universal Design is not limited to following legal requirements or standards on accessibility, and it focuses on a holistic understanding of the specific requirements of a wide variety of users of a particular site.

Following accessibility or Universal Design principles in the context of urban infrastructure is cost-effective, flexible, and inclusive. According to the World Bank,[26] adopting this approach in the initial stages of planning adds only 0–1 per cent of additional costs, if any, and often, redesigning for accessible buildings requires no additional space—only a rearrangement of the existing plan. However, retrofitting, redesigning, or renovating existing inaccessible infrastructure for accessibility is significantly more expensive. Further, Universal Design varies based on local conditions, responsive to the needs of the local population, requiring robust local stakeholder participation. Therefore, the early incorporation of Universal Design, rooted in local contexts, following a participatory and consultative process is key to building inclusive cities. In the context of building equitable and sustainable cities, adopting a feminist disability perspective is essential.

21 *Disability, Space, Architecture: A Reader* (Jos Boys, Routledge 2010) 81

22 Leslie Kanes Weisman, 'Women's Environmental Rights: A Manifesto' [1981] 11 Heresies: Making Room: Women and Architecture 1

23 Leslie Kanes Weisman, 'Women's Environmental Rights: A Manifesto' [1981] 11 Heresies: Making Room: Women and Architecture 1

24 Leslie Kanes Weisman, 'Women's Environmental Rights: A Manifesto' [1981] 11 Heresies: Making Room: Women and Architecture 1

25 Connell, B. and others, 'The Principles of Universal Design' (*Center for Universal Design, North Carolina State University, Raleigh, NC*, 1997)

26 Harold Snider and Nazumi Takeda, 'Design for All: Implications for Bank Operations' (2008) The World Bank Working Paper

So how do we build equitable and sustainable cities? This study will illuminate that answer, drawing on research from literature on accessibility to urban space and extensive conversations with persons with disabilities, disability rights advocacy organisations, and existing best practices and learnings in the field.

For the purpose of this paper, the focus area is the issue of accessibility to urban space for persons with disabilities in India. The term 'disability' is an umbrella term for a range of complex and diverse sets of conditions that may have little congruence internally and manifest differently for different groups of people in the city. However, in the context of accessibility for persons with disabilities, emphasis often seems to be placed on locomotor disability in the form of wheelchair access, and one finds that non-mobility disabilities, such as those related to sight, hearing, cognition, chronic illness, and learning, are either paid little attention or ignored entirely. In most cases, accessibility itself seems to be understood in very limited parameters, such as the existence of a ramp or wheelchair-accessible restroom despite the fact that the minimum requirements of the Rights of Persons with Disabilities Act, 2016 (RPWD Act) lists far more detailed measures of accessibility across a spectrum of disabilities. This paper also attempts to expand the scope of how accessibility is seen and understood for different groups of persons with disabilities, particularly for invisible and non-mobility related disabilities, in the context of building equitable cities.

This paper is a critical examination of existing municipal and planning law frameworks to determine whether they integrate the principles and goals of accessibility structurally and secure disability justice in the context of access to the city. Therefore, the attempt being made is to understand the gaps in the law and the challenges involved in the realisation of accessibility in the everyday operations of local planning, governance, and service delivery. The intent of this paper is that the identification of key areas for reform and proposed changes will enable persons with disabilities, disability rights organisations, government agencies, and anyone interested in securing accessibility to undertake concerted efforts at local levels.

In this context, it is relevant to note that the UN Committee on the Rights of Persons with Disabilities in General Comment 2[27] states that accessibility is the precondition for persons with disabilities to be able to live independently and participate equally in society. Moreover, the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the right of access to any place or service intended for use by the general public, such as

27 UN Committee on the Rights of Persons with Disabilities Eleventh Session, 'General Comment No. 2' (2014) CRPD/C/GC/2

transport, hotels, restaurants, cafes, theatres, and parks. Thus, the international human rights framework views the right to access as a right per se.

The way in which urban space is designed often excludes persons with disabilities by not accounting for impairments and hence denying them access to the physical environment, transportation, ICTs including virtual platforms, and to other public facilities. A few examples of this include:

- Steps for entry to buildings that exclude those with locomotor disabilities
- The absence of lifts in buildings with multiple floors
- A lack of information in accessible formats, such as easy read or alternative text captions for images on virtual platforms (such as Twitter announcements by government agencies, ministries, or websites) for persons with visual disabilities
- Text captions for persons with auditory disabilities or alternative pictorial symbols to convey meaning, for instance, the time to get off at a metro station for persons with auditory disabilities, especially in a place like India where a large percentage of the population cannot read

These examples illustrate some of the ways in which the absence of a disability perspective in design directly contributes to the exclusion of persons with disabilities in the use and enjoyment of various public facilities and services.

1.3 Beyond Reasonable Accommodation: Building Accessible Cities

The approach of this paper draws on disability scholar Tanya Titchkosky's work on how disability plays out, is 'accommodated' through inclusion measures and therefore made 'exceptional' in bureaucratic spaces. Titchkosky writes, "While we all have bodies – bodies that we act, sense, feel, or move in and through – only some bodies, only some of the time and only in some places are understood as disabled ones."[28] When governments in urban planning or systems like universities consider persons with these bodies, they usually conceive of them as bodies that have an "individual functional limitation."[29]

The RPWD Act enumerates the kinds of disabilities specified by the Government of India. These broadly include (1) physical disability including locomotor disability, visual impairment, hearing impairment, speech and language disability; (2) intellectual disability; (3) mental illness, (4) disability caused due to chronic neurological conditions, blood disorder; (5) multiple disabilities

28 Tanya Titchkosky, *The Question of Access: Disability, Space, Meaning* (2011) 4

29 Tanya Titchkosky, *The Question of Access: Disability, Space, Meaning* (2011) 4

and (6) any others specified by the Central Government.[30] This non-exhaustive list of disabilities shows the broad range of people and bodies that might be disabled by human built environments or structures, often even bodies that are not viewed as disabled in popular perception.

The RPWD Act establishes its vision for accessibility through Chapter X.[31] In Section 40,[32] the Act specifies the responsibility of the Central Government to formulate, in consultation with the chief commissioner, standards for disability-inclusive 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," and in consecutive Sections 41–48,[33] the responsibility of state governments and the time by which these measures should be implemented.

This view of accessibility per the RPWD Act applies to all persons with disabilities and not merely those who can prove themselves as such through the act of assessment, declaring the person to have a 'benchmark disability,' certified as having over 40 per cent disability under any category per the RPWD Act. As Titchkosky writes, persons with disabilities using their documented certification or 'proof' of disability usually seek access through 'accommodations' and existing mechanisms of 'inclusion' that are often laid out on paper, towards ticking the 'diversity' box for an institution.[34]

This is referred to as 'ticking of a box' because these provisions do not necessarily transform the university into an actually inclusive or accessible space, even when the individual person with a disability is accommodated. Titchkosky explains that this approach towards inclusion through accommodations actually normalises the 'ongoing exclusion' of persons with disabilities. Such persons are positioned to become 'problem' students or employees, whose disability is an 'individual problem' to be addressed. The location of disability is then shifted from the university or institution that is not being inclusive to the body of the student or employee presented as having a lack.[35]

Titchkosky calls this the "paradox of bureaucracy."[36] Here, the processes put in place to avoid personal arbitrariness and organise or standardise actually prevent the organisation from being able to respond to the individual and irregular characteristics that mark human life, to the people who make up the organisation. For instance, a university might set a standard two-hour time limit within which to take and submit a final examination, in which every student gets the same questions on the same sheet of paper.

30 Rights of Persons with Disabilities Act 2016

31 Rights of Persons with Disabilities Act 2016, Chap X

32 Rights of Persons with Disabilities Act 2016, s 40

33 Rights of Persons with Disabilities Act 2016, s 41–48

34 Tanya Titchkosky, *The Question of Access: Disability, Space, Meaning* (2011) 11

35 Tanya Titchkosky, *The Question of Access: Disability, Space, Meaning* (2011) 17

36 Tanya Titchkosky, *The Question of Access: Disability, Space, Meaning* (2011) 10

If there are students in the examination hall with a visual impairment or dyslexia who must be accommodated through certain inclusion measures, they would have to apply for extra time. A measure commonly provided to accommodate students with learning or psychosocial disabilities is extra time, commonly called "time and a half," as the concerned students get half the amount of the time more than the other students in which to write their examination.

However, this kind of 'inclusion through accommodation' approach actually strengthens the idea of disability as something 'exceptional,' located in these particular students, whereas the 'normal' university student is someone who fits neatly into the standard process. However, it does not in any way transform the idea of examinations into something designed for all kinds of persons and bodies. Similar approaches are adopted when it comes to making built spaces accessible.

What if these spaces were instead designed for "a consideration of all sorts of embodiments, health issues, or ethnic, religious, or sexuality commitments"[37] and how they intersect with indices like caste, class, and gender, among others in India?

When conceiving of disability and accessibility, the immediate response is only to provide accommodation measures, such as wheelchair ramps for locomotor disabilities. Broad swathes of invisible disabilities, such as mental illness, are left out of the imaginative sphere and, therefore, the policy sphere entirely. This leads to a massive disempowerment and exclusion from public space for such persons. For instance, in the case of invisible disabilities, such as severe mental illness like schizophrenia, access to a public space is contingent on the provision of quality public mental healthcare (including day-care centres or a mental health clinic in primary health centres) within their local community. Per the Mental Healthcare Act, 2017 (MHC Act),[38] the appropriate state governments in India are bound to provide less restrictive community-based establishments including halfway homes, group homes and the like (such as day-care centres) for all persons with disabilities so that they are not excluded from participation in the community purely because of their disability. Therefore, in this paper, the attempt is made to address different kinds of barriers to the inclusion and full participation of persons with disabilities in public space, even for those disabilities that may not be immediately perceptible.

In addition, it is important to note that the focus of accessibility cannot merely be on the built environment but must necessarily include making information technology and digital spaces

37 Tanya Titchkosky, *The Question of Access: Disability, Space, Meaning* (2011) XII

38 The Mental Healthcare Act 2017, s 19(3)

accessible to persons with disabilities. For example, food delivery apps are necessary not only for convenience but, as seen during the COVID-19 pandemic, also for survival. This issue was raised during a stakeholder interview with a feminist disability advocacy organisation, where the lack of accessibility to ICTs, which severely affected how persons with disabilities could procure essential and other goods during the COVID-19 lockdowns, was highlighted. Similarly, transportation through app-based services, for instance, would have to be made accessible to all including wheelchair users, and services procured by offices, such as software, would have to go through accessibility compliance as a step in procurement.

Similarly, the aim of this paper, drawing on Titchkosky's approach, is not to delve into the granularities of every embodied difference or new design solutions for each category of disability as listed in the RPWD Act. It aims to reorient the focus from perceiving disability as 'non-normal', for which 'access' is enabled by bureaucratic 'inclusions' and 'accomodations' in spaces like the university, dependent on certification, that requires disabled people to 'prove themselves.'

Instead, the paper aims to shift the onus of access for disabled people as a 'personal need' to access as a 'public right' to be enabled by cities in urban planning processes by considering the broadest possible embodiment based on Universal Design principles as advocated by disability scholars and activists. The application of Universal Design makes society accessible for all persons, not only persons with disabilities.

While designing or updating public spaces and services to be accessible, it is important to encompass as broad an imaginative range as possible while also accounting for the unique context of the specific location. For instance, cultures surrounding disability vary in Chennai and Kolkata. Accessibility measures must take specificity into account. It is important to think specifically about access needs by consulting with groups of persons who live with disabilities and with disabled people's organisations whose leadership and members are predominantly persons with disabilities, and plan directly based on what they need.

For instance, while designing an accessible washroom, the crucial factor might be assumed to make it wheelchair accessible. However, as one disability rights lawyer pointed out,[39] if this washroom was in parts of Tamil Nadu where, culturally, many people with locomotor disabilities prefer to crawl[40] rather than use assistive devices, it is equally crucial to plan that the washroom be kept dry and clean and that a plan be in place to maintain it.

39 Shikha Aleya, 'Interview- Amba Sallkar' (*In Plainspeak*, 1 September 2020)

40 Abir Mullick and others, 'Universal Bathroom and Toilet Specifications for Indian Use' *(RESNA Annual Conference* 2012)

Here, it is relevant to quote the UN Committee on the Rights of Persons with Disabilities' in General Comment 2, which states that everyone has the right to enjoy the arts, take part in sports and go to hotels, restaurants and bars. "However, wheelchair users cannot go to a concert if there are only stairs in the concert hall. Persons with visual impairments cannot enjoy a painting if there is no description of it they can hear in the gallery. Hard of hearing persons cannot enjoy a film if there are no subtitles. Persons with hearing impairments cannot enjoy a theatrical play if there is no sign language interpretation. Persons with intellectual disabilities cannot enjoy a book if there is no easy-to-read version or a version in augmentative and alternative modes. Article 30 requires that state parties recognise the right of persons with disabilities to take part in cultural life on an equal basis with others."[41]

The comment also adds that accessibility must be addressed in all its complexity. The focus is not just on the public or private nature of ownership of buildings, transport infrastructure, vehicles, ICTs, and services. "As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise."[42]

1.4 Municipal Law: A Disability Perspective

As discussed in the previous section, the approach to envisioning and planning urban space must centre accessibility as a key principle at the design stage and not as an afterthought. Accessibility is extremely critical since a gamut of rights and services for persons with disabilities are contingent on the existence of accessibility to urban infrastructure, which is governed by a framework of planning and municipal laws operational in the city.

An examination of the existing corpus of laws concerned with securing the rights of persons with disabilities and their implementation record reveals a stark difference in what the law guarantees on paper and their actual realisation in the daily lives of persons with disabilities. The existence of a central legislation is crucial in defining the rights of persons with disabilities and to provide a framework for securing disability justice. However, the mere existence of a central enactment does not necessarily translate into the realisation of rights at local levels. In the context of how everyday life in the city is governed and regulated, accessibility may then be impacted much more significantly by a government order, notification, or circular issued by a municipal authority with jurisdiction over such an area. This makes municipal law a critical site of engagement for questions of accessibility.

41 UN Committee on the Rights of Persons with Disabilities Eleventh Session, 'General Comment No. 2' (2014) CRPD/C/GC/2

42 UN Committee on the Rights of Persons with Disabilities Eleventh Session, 'General Comment No. 2' (2014) CRPD/C/GC/2

Municipal authorities such as urban local bodies (ULBs), development authorities, parastatal agencies, and other state departments are, therefore, primarily responsible for creating barrier-free environments in cities.

The RPWD Act defines disability broadly but provides for a specific category of 'benchmark disability' for the provision of entitlements. This seems to adopt an "identification of beneficiaries"[43] viewpoint, resulting in a difficult process of certification to narrowly identify beneficiaries for social protection and affirmative action. However, from an anti-discrimination and equity perspective, it is necessary to understand accessibility in an expansive manner and to include anyone who faces barriers to access in cities.

When thinking about accessibility for persons with disabilities in cities, it is necessary to situate this in a framework of 'disability justice', which locates disability and ableism in the context of different forms of oppression and identity-based exclusions. This means that while the focus of the paper is on securing accessibility for persons with disabilities, factors, such as gender, age, caste, class, and sexual orientation among others, that compound the exclusions faced by persons with disabilities in cities are also considered. Therefore, it is necessary to adopt a feminist disability approach in understanding accessibility needs while formulating appropriate initiatives in cities.

Therefore, the early incorporation of Universal Design rooted in local contexts following a participatory and consultative process is key to making equitable cities. It is important to note that while Universal Design emerged primarily with regard to accessibility for persons with disabilities, it is also a key broad-spectrum solution that is beneficial to everyone, including the elderly, people with strollers, pregnant women, people with chronic illnesses, and children, with the aim of removing barriers to access and creating an inclusive environment for everyone.

CURB CUTS

A curb cut is a small ramp built into the side of a footpath to make it easier for people using pushchairs or wheelchairs to move from the footpath to the road. This is useful for not only wheelchair users and pedestrians, but also for people with strollers and cyclists. This is a classic example of an access intervention with universal use, benefitting a wide range of users in the city.

43 Shikha Aleya, 'Interview - Amba Sallkar' (*In Plainspeak*, 1 September 2020)

Having made the case for an inclusive approach to urban planning from a feminist disability perspective, this paper focuses on integrating accessibility to urban space and Universal Design approaches in municipal, legal, and policy frameworks governing the planning and design of cities. In the next section, the project framework for the study is outlined, providing the details of the scope of the paper, research questions to be addressed, methodology adopted, and structure of the paper.

1.5 Project Framework

1.5.1 SCOPE

The RPWD Act requires standards of accessibility to be laid down for the physical environment, transportation, ICTs, and other facilities and services provided to the public in urban areas, and the rules issued under the statute obligate the government and private establishments to comply with standards laid down regarding each of these heads.

While the issues related to the intersections of disability rights laws regarding accessibility and municipal law are relevant to all states and urban centres in the country, for the purposes of this paper, the municipal laws in the state of Karnataka are examined specifically to identify gaps, challenges, key areas of reform, and to make recommendations accordingly. The scope of this paper is limited to the state of Karnataka in order to examine municipal and state laws on planning and securing accessibility in detail, notably in the context of Bengaluru. While state and municipal laws may vary for each state, the approaches outlined and key findings of the paper, however, are translatable and relevant to states across India.

In this regard, this paper examines laws such as the RPWD Act, the MHC Act, and their attendant rules and regulations, particularly those concerning accessibility to urban space such as the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons, 2016 (Harmonised Guidelines), among others, along with national and state policies related to persons with disabilities. This paper also examines municipal laws on planning and governance such as the Karnataka Town and Country Planning Act, 1961 (KTCP Act), Karnataka Municipal Corporations Act, 1976 (KMC Act), Bruhat Bengaluru Mahanagara Palike Act, 2020 (BBMP Act) and attendant rules and regulations, notably the building bye-laws, Urban and Regional Development Plans Formulation and Implementation Guidelines, 2014 (URDPFI Guidelines) as well as policies concerned with procurement at the municipal level, among others.

When speaking of accessibility in the context of cities, the key issues that emerge are accessibility to urban infrastructure and to services. For the purposes of this paper, we will be focusing on accessibility to urban infrastructure, which includes accessibility to public urban space including buildings, public infrastructure and facilities, and digital urban space.

Since urban planning is a state subject, the planning frameworks may differ in each state. In Karnataka, the KTCP Act governs urban planning and creates a framework for the preparation of regional and city planning, including creating master plans for cities. In Bengaluru, for instance, the Bangalore Development Authority (BDA) is responsible for planning and preparing the master plan for the city, which has a direct impact on the construction of public urban space and the design of public buildings. However, it is the Bruhat Bengaluru Mahanagara Palike (BBMP) which is responsible for the maintenance of urban infrastructure in the city. Therefore, the examination of the relevant master plans, building bye-laws, and rules concerning the maintenance and upkeep of public buildings and infrastructure are crucial in understanding the implementation and realisation of accessibility standards at the city level.

1.5.2 RESEARCH QUESTIONS

With regard to exploring the question of accessibility to urban space for persons with disabilities, the paper will focus on the following areas:

- Built environment including urban infrastructure and public buildings
- Mobility and transportation
- Other barriers to access including ICTs

With this background, the key objectives within the scope of this paper are to:

- Review existing laws and policies concerning disability with regard to accessibility to public urban space and to identify key areas for reform that need to be addressed for the same;
- Identify the best practices to be adopted in order to realise Universal Design principles in the city by adopting a feminist disability approach to ensure persons with disabilities can access and participate in the city on an equal basis; and
- Identify issues in municipal laws related to planning and governance in Karnataka and identify challenges to implementation to integrate accessibility as a key goal, making recommendations to laws and policies to address the same.

There is no simple or prescriptive solution to the highly complex and challenging issues of accessibility for persons with disabilities in the city, and this is even more so when disability is compounded by other forms of oppression. However, by focusing on a critical examination of the structural issues that result in hostile, discriminatory, and exclusionary cities, especially for persons with disabilities, this paper aims to strengthen the planning and governance mechanisms determining accessibility in the everyday life of the city for persons with disabilities to be active participants and co-planners in their respective communities and take part in decision-making.

1.5.3 RESEARCH METHODOLOGY

The objective of the paper is to enumerate and examine the key legislative frameworks and policies on securing accessibility to persons with disabilities to urban space. This has been undertaken to identify areas for necessary legal and policy interventions in municipal planning and governance frameworks. This will facilitate the implementation of accessibility norms, promote the adoption of Universal Design approaches, and advocate localised participatory planning at the city level. In order to achieve this, a mix of different research methods—a literature review and structured and unstructured interviews with subject matter experts and relevant stakeholders—were adopted.

The literature review included drawing on research in feminist, disability, and urban studies regarding access to urban space for persons with disabilities as well as examining existing laws and policies concerned with accessibility to public urban space. Interviews were also conducted with relevant stakeholders from government and civil society, disability rights activists, disability rights advocacy organisations, and subject matter experts from architecture, planning, and design backgrounds.

1.5.4 STRUCTURE OF THE WHITE PAPER

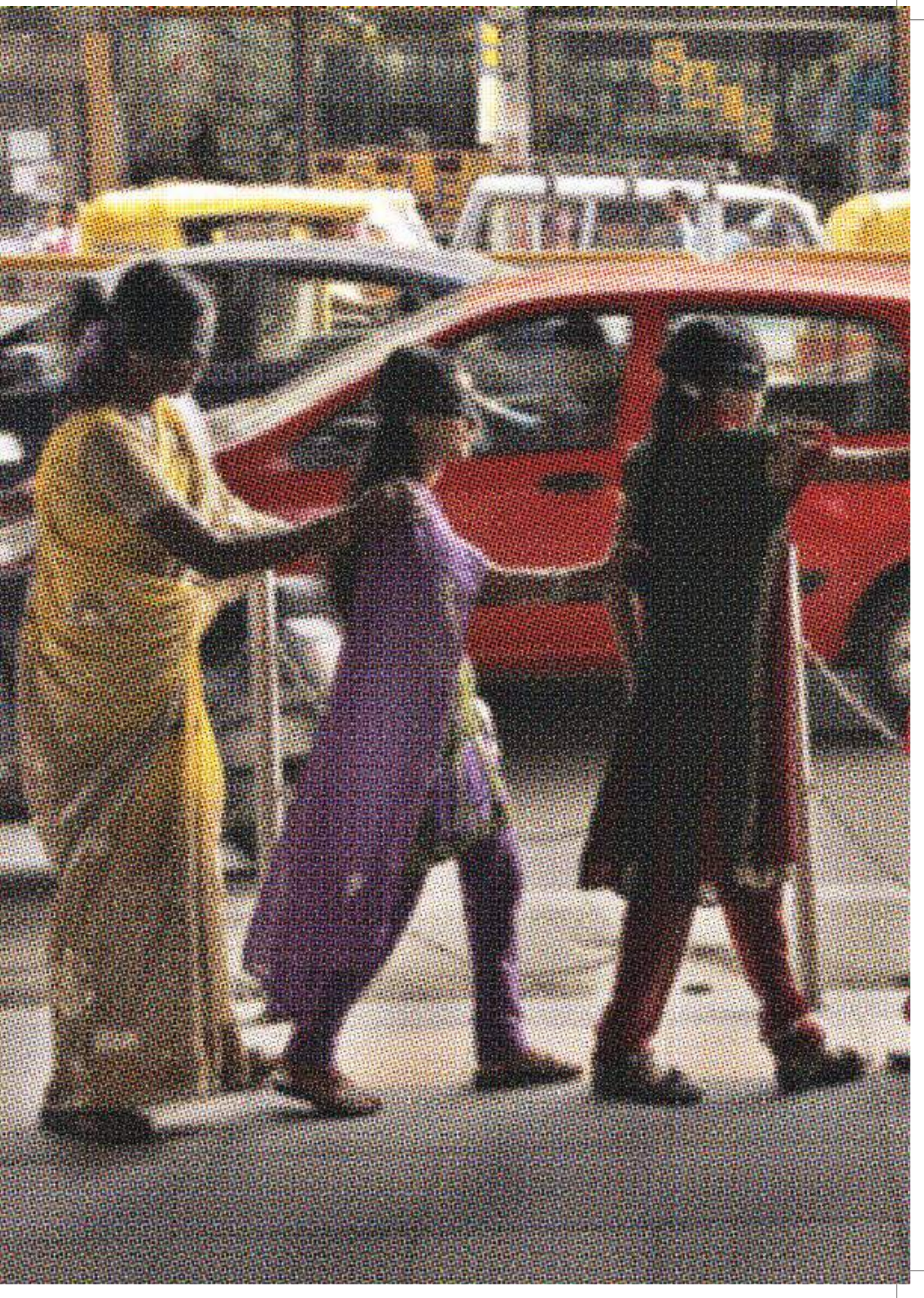
In order to fulfill the purpose of this paper, it has been divided into the following sections.

Section one contains the introduction to this paper as well as an elaboration of the key concepts that underpin the analysis in this paper. Taking off from here, sections two and three map out the legal framework governing the rights of persons with disabilities. These sections mainly analyse three broad legal frameworks:

the international legal framework, the national legal framework, and Karnataka's state legal framework. Each of these categories contains detailed analyses of various laws, bye-laws, policies, and standards that must be adhered to by the state.
Flowing from this analysis, the paper then moves to section four, which elucidates the various issues in Karnataka's legal and policy framework on municipal planning and governance for securing accessibility to persons with disabilities. It then goes on to suggest ways in which these challenges can be addressed through legal and policy changes.

Section five contains case studies of three of the most impactful disability rights organisations and government initiatives in India, which hold great promise if replicated across Indian states. Each case study highlights the impetus for change, the process for creating change, and key takeaways. Section six features the conclusion to this paper.

Blindfolded women walk in a row to join visually impaired persons during a 'Blind Walk' in Bangalore, 2014.
Photo: Aijaz Rahi | AP



2

APPLICABLE LEGAL FRAMEWORK ON URBAN PLANNING AND DISABILITY

2.1 Overview of International Legal Framework for Disability Inclusion in Cities

Persons with disabilities continue to face numerous barriers to full inclusion and participation in their communities. Owing to physical, social, attitudinal, infrastructural barriers, etc, they have experienced discrimination and denial of opportunities in myriad forms, including lack of access to education, health services and employment, disproportionate levels of poverty, lack of accessibility to physical and virtual environments, and underrepresentation in decision-making and political participation. This is particularly the case for women and girls with disabilities. The recognition that disability-based discrimination results in the exclusion, restriction, and denial of reasonable accommodation effectively violates the enjoyment or exercise of the basic human rights of persons with disabilities is central to various international instruments concerned with securing rights and justice for persons with disabilities.

The Universal Declaration of Human Rights (UDHR), an instrument dedicated to promoting the right to life, liberty, and security of all persons in society, explicitly recognised disability[44] as one of the circumstances that deserves protection and security. This was further strengthened by the two main international instruments, the United Nations International Covenant on Civil and Political Rights[45] and the United Nations International Covenant on Economic, Social and Cultural Rights[46] which, alongside the UDHR, form a triad of international human rights treaties called the International Bill of Human Rights, providing a basis for the universal human rights of persons with disabilities.

Some of the earliest international instruments on disability were the declarations on the rights of persons with disabilities adopted by the UN General Assembly. The first was the Declaration on the Rights of Mentally Retarded Persons (1971),[47] which raised awareness about the rights of persons with intellectual disabilities and the importance of the role of education as part of a global agenda. The second was the Declaration on the Rights of Disabled Persons (1975),[48] which promoted the social integration of persons with disabilities, setting standards for equal treatment and accessibility to services. Even though existing human rights treaties had been interpreted as encompassing disability, disability rights advocates pointed[49] out that these general treaties have been widely underutilised in the area of disability discrimination, and the call for a separate convention on disability grew. Adopted in 2006, the UN CRPD was envisaged as an instrument for inclusive development and for the realisation of the universal human rights of persons with disabilities.

44 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), art 25

45 International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA United Nations, Treaty Series, vol. 999, p. 171)

46 International Covenant on Economic, Social and Cultural Right (adopted 16 December 1966 UNGA United Nations, Treaty Series, vol. 993, p. 3)

47 UNGA Res 2856 (XXVI) (20 December 1971) *Declaration on the Rights of Mentally Retarded Persons* art 1, preamble 5

48 UNGA Res 3447 (XXX) (9 December 1975) *Declaration on the Rights of Disabled People Persons*

49 International Disability Rights (*Disability Rights Education & Defense Fund*)

The UN CRPD enshrines accessibility as one of the general principles[50] of the Convention, among others such as non-discrimination and gender equality, which are meant to inform the entire document and act as the guiding force for disability legislations that flow from it. Article 9 of the Convention specifically addresses accessibility and outlines the responsibilities of state parties to "take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas."[51]

The UN CRPD also incorporates two important concepts on accessibility, those of reasonable accommodation and Universal Design. Reasonable accommodation is reflected[52] in the commitment to equality and non-discrimination and in this context, it refers to the modification and adjustments necessary to ensure that persons with disabilities are able to enjoy their human rights and fundamental freedoms on par with non-disabled persons where reasonable. It promotes the concept of Universal Design[53] and obliges state parties "to undertake or promote research and development of universally designed goods, services, equipment and facilities… which should require the minimum possible adaptation and the least cost to meet the specific needs of persons with disabilities, to promote their availability and use, and to promote Universal Design in the development of standards and guidelines."[54]

These concepts and the general principle of accessibility underlie all the articles of the UN CRPD to safeguard and promote the rights of all persons with disabilities, which are particularly relevant in the context of achieving inclusive urban development as well as building accessible cities.

2.1.1 DISABILITY AND INCLUSIVE URBAN DEVELOPMENT

In the context of disability justice and development, there have been a series of international frameworks that have explicitly recognised and reaffirmed the need for disability-inclusive urban development, with a focus on girls, women, and other vulnerable groups with disabilities. The need for disability-inclusive development has also been reaffirmed in various development agreements time and again. Some of these frameworks include the following.

50 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 3

51 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9

52 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 5

53 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 2

54 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 4 (1)(f)

The 2030 Agenda on Sustainable Development pledges to leave no one behind, including persons with disabilities and other disadvantaged groups and includes goals and targets for the inclusion and empowerment of persons with disabilities, accessible transport, accessible public and green spaces, and building countries' capacities to disaggregate data by disability. The 2015 Sendai Framework for Disaster Risk Reduction includes persons with disabilities as agents of change. The Addis Ababa Action Agenda addresses the needs of persons with disabilities in the areas of social protection, employment, education, infrastructure, financial inclusion, technology, and data. In 2016, the World Humanitarian Summit launched the first-ever Charter on Inclusion of Persons with Disabilities in Humanitarian Action. Also in 2016, the UN Conference on Housing and Sustainable Development adopted a disability-inclusive New Urban Agenda, guiding urban development with the principles of Universal Design and accessibility for all.[55]

2.1.1.1 **2030 Agenda for Sustainable Development**

In 2015, the United Nations adopted the Agenda for Sustainable Development[56] that features 17 Sustainable Development Goals (SDGs) and 169 associated targets as a universal call to action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity by 2030. The 17 SDGs and their associated targets are seen as integrated and indivisible;[57] they embody the recognition that action in one area will affect outcomes in others and that development must balance social, economic, and environmental sustainability.

The 2030 Agenda, along with its 17 SDGs, provide a powerful framework[58] to guide local communities, countries, and the international community toward the achievement of disability-inclusive development. The 2030 Agenda recognises disability as an essential cross-cutting issue[59] and explicitly addresses it in five SDGs on education, growth and employment, inequality, accessibility of human settlements, and data collection, monitoring and accountability.

55 New Urban Agenda, United Nations Conference on Housing and Sustainable Urban Development, 2016

56 UNGA Res A/RES/70/1 (25 September 2015) UN GA Resolution, Transforming our world: the 2030 Agenda for Sustainable Development Point 18, 6/35

57 UNGA Res A/RES/70/1 (25 September 2015) Transforming our world: The 2030 Agenda for Sustainable Development Point 18 6/35

58 Department of Economic and Social Affairs, United Nations, *Disability and Development Report* (2018), 1

59 UNGA Res A/RES/68/3 (23 September 2013) Outcome document of the high-level meeting of the General Assembly on the realisation of the Millennium Development Goals and other internationally agreed development goals for persons with disabilities: the way forward, a disability-inclusive development agenda towards 2015 and beyond.

UN SDG GOAL 11:
MAKE CITIES AND HUMAN SETTLEMENTS INCLUSIVE, SAFE, RESILIENT AND SUSTAINABLE[60]

11.1 By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.

11.2 By 2030, provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons.

11.3 By 2030, enhance inclusive and sustainable urbanisation and capacity for participatory, integrated and sustainable human settlement planning and management in all countries.

11.4 Strengthen efforts to protect and safeguard the world's cultural and natural heritage.

11.5 By 2030, significantly reduce the number of deaths and the number of people affected and substantially decrease the direct economic losses relative to global gross domestic product caused by disasters, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations.

11.6 By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management.

11.7 By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities.

11.A Support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening national and regional development planning.

11.B By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, and develop and implement, in line with the Sendai Framework for Disaster Risk Reduction 2015-2030, holistic disaster risk management at all levels.

11.C Support least developed countries, including through financial and technical assistance, in building sustainable and resilient buildings utilizing local materials.

60 Goal 11: Making cities and human settlements inclusive and sustainable for persons with disabilities (United Nations Sustainable Development Goals)

2.1.1.2 The Sendai Framework for Disaster Risk Reduction 2015–30

The Sendai Framework[61] for Disaster Risk Reduction 2015–30 aims to achieve a substantial reduction of disaster risk and losses of lives, livelihoods, and health and in the economic, physical, social, cultural, and environmental assets of persons, businesses, communities, and countries over the next 15 years. There are specific mentions of disability in the framework under the Preamble, Guiding Principles, and Priority 4 (Enhancing disaster preparedness for effective response, and to "Build Back Better" in recovery, rehabilitation, and reconstruction).

In Priority 4, elaborating on the critical opportunity to "Build Back Better", the framework specifically refers to "empowering women and persons with disabilities to publicly lead and promote gender equitable and universally accessible response, recovery, rehabilitation, and reconstruction approaches"[62] as vital. It also explicitly mentions persons with disabilities and their organisations as key stakeholders, critical in the assessment of disaster risk and in designing and implementing plans tailored to specific requirements, taking into consideration the principles of Universal Design.[63] In the context of disaster-risk reduction, it emphasises empowerment and inclusive, accessible, and non-discriminatory participation, with special attention to people disproportionately affected by disasters, particularly the poor. It also calls for a gender, age, disability, and cultural perspective to be integrated[64] in all policies and practices in disaster-risk reduction, advocates for the promotion of women and youth leadership. It also advocates risk-informed decision-making based on the open exchange and dissemination of disaggregated data, including by sex, age, and disability.[65]

2.1.1.3 New Urban Agenda (2016)

The New Urban Agenda[66] (2016), adopted at the UN Conference on Housing and Sustainable Development in Quito, underlined the connection between urban development agendas and the 2030 Agenda, particularly in Goal 11[67] on sustainable cities and communities. The New Urban Agenda envisions itself as a universal, participatory, and people-centred policy focused on protecting the planet with a long-term vision, setting out priorities and actions at various levels of governance—global, regional, national and local—that governments and other relevant stakeholders can adopt based on their needs.

61 The Sendai Framework (adopted 18 March 2015 Third UN World Conference on Disaster Risk Reduction in Sendai, Japan) outlines seven targets and four priorities for action to prevent new and reduce existing disaster risks: (i) Understanding disaster risk; (ii) Strengthening disaster risk governance to manage disaster risk; (iii) Investing in disaster reduction for resilience and; (iv) Enhancing disaster preparedness for effective response, and to "Build Back Better" in recovery, rehabilitation, and reconstruction

62 The Sendai Framework (adopted 18 March 2015 Third UN World Conference on Disaster Risk Reduction in Sendai, Japan) para 32

63 The Sendai Framework (adopted 18 March 2015 Third UN World Conference on Disaster Risk Reduction in Sendai, Japan) para 36(a)(iii)

64 The Sendai Framework (adopted 18 March 2015 Third UN World Conference on Disaster Risk Reduction in Sendai, Japan) para 19(d)

65 The Sendai Framework (adopted 18 March 2015 Third UN World Conference on Disaster Risk Reduction in Sendai, Japan) para 19(g)

66 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador)

67 Goal 11: Making cities and human settlements inclusive and sustainable for persons with disabilities (United Nations Sustainable Development Goals)

It advocates the promotion of inclusive urban development for all and a pledge to eliminate discrimination for persons with disabilities. The New Urban Agenda also mentions issues of providing equal access to technology, employment, and public services, including transport infrastructure and ensuring the participation of persons with disabilities in decision-making processes in urban planning.

2.1.2 CREATING INCLUSIVE CITIES: AN INTERNATIONAL PERSPECTIVE

2.1.2.1 **Accessibility to Public Space**

Accessibility to public space and services has been identified as a key target area to advance the full participation of and equality for persons with disabilities in early international instruments, such as the World Program of Action Concerning Disabled Persons[68] (1982) and the Standard Rules on the Equalization of Opportunity for Persons with Disabilities (1994), which focus on the accessibility of the physical environment and of information and communication.[69]

The UN CRPD requires state parties to ensure that programmes and services are fully accessible by persons with disabilities through Universal Design, reasonable accommodation, and the elimination of discrimination. It obliges state parties to develop, promulgate, and monitor the implementation[70] of minimum standards and guidelines for the accessibility of public facilities and services and to ensure[71] that private entities offering facilities and services open to the public take into account all aspects of accessibility. This necessitates public sector entities to undertake accessibility audits and develop and implement plans to realise the right to accessibility to all urban spaces and buildings open to the public. In this regard, the UN CRPD also requires state parties to provide training[72] for stakeholders on accessibility issues faced by persons with disabilities, to provide buildings and other facilities open to the public to have signages[73] in Braille and in easy-to-read and understand forms, forms of live assistance[74] and intermediaries, including guides, readers, and professional sign language interpreters, to facilitate accessibility. It further obliges[75] state parties to take measures to ensure that persons with disabilities have access to sporting and recreational venues.

68 UNGA Res /37/a37r052 (1982) World Programme of Action concerning Disabled People

69 Standard Rules on the Equalization of Opportunity for Persons with Disabilities (1994)

70 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9(a)

71 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9(b)

72 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9(c)

73 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9(d)

74 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9(e)

75 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 30

The 2030 Agenda calls for the provision[76] of universal access to safe, inclusive, and accessible green and public spaces, in particular for women and children, older persons, and persons with disabilities. The New Urban Agenda commits[77] to the promotion of measures that facilitate access to the physical environment of cities for persons with disabilities on an equal basis with others, in particular to public spaces, public transport, housing, education, health facilities, public information and communication (including ICTs), and other facilities and services open or provided to the public in urban areas.

2.1.2.2 Accessibility to Mobility and Transportation

The UN CRPD includes specific provisions[78] regarding accessible transportation, calling for appropriate measures to ensure that persons with disabilities have access to transportation on an equal basis with others, specifying that these measures shall include the identification and elimination of obstacles and barriers to accessibility. The 2030 Agenda also calls[79] for providing access to safe, affordable, accessible, and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities, and older persons. The New Urban Agenda also commits[80] to improving road safety, sustainable mobility, and transport infrastructure for persons with disabilities.

2.1.2.3 Accessibility to Information and Communication Technology

For persons with disabilities, ICTs represent a powerful opportunity to improve their quality of life, enhance inclusion and social engagement, and make independent living possible. Increasing access to ICTs for persons with disabilities has been reaffirmed by a series of international frameworks, focusing mainly on affordable and equitable access, removing barriers in accessing ICTs for persons with disabilities, and promoting ICTs that respond to the needs of persons with disabilities.

The UN CRPD recognises[81] the critical role of information and communication in ensuring that persons with disabilities fully enjoy all human rights and fundamental freedoms. It also calls for promoting research and development and enhancing[82]

76 Target 11.7, United Nations Sustainable Development Goals

77 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) point 36.

78 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9

79 Target 11.2, United Nations Sustainable Development Goals

80 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) para 113

81 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106), Preamble

82 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 4(g)

the availability and use of new technologies, including ICTs. Of particular importance is Article 9[83] which is dedicated to accessibility and stipulates that state parties should take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to information and communications, including ICTs. It further calls for the removal of barriers to the availability of ICTs and for the promotion of the design, development, production, and distribution of accessible ICTs. It further urges[84] private entities and the mass media to make their services accessible to persons with disabilities, and it calls[85] on state parties to promote the availability, knowledge, and use of assistive technologies used in this regard.

The SDGs[86] commit to significantly increasing access to ICTs and providing universal and affordable access to the Internet in the least developed countries by 2020 as one of the targets in the goal of building resilient infrastructure, promoting inclusive and sustainable industrialisation, and fostering innovation. The New Urban Agenda also emphasises the importance of ensuring access to ICTs for persons with disabilities on an equal basis with others.[87] It commits to promoting the development of national ICT policies and e-government strategies to make ICTs accessible to the public including persons with disabilities.[88]

The existing international instruments on human rights, disability, and inclusive and sustainable urban development as outlined above provide a comprehensive framework for national policymaking and legislation and international cooperation, and for building an inclusive society for persons with disabilities. This international disability rights framework constitutes a tool for strengthening legal protection, policymaking, and planning for development, which may be utilised to support disability-inclusive policies and practices at the global level as well as support the harmonisation of national legislation, policies, and programmes at the level of state parties. In the context of India, subsequent to the ratification of the UN CRPD, the RPWD Act and the MHC Act were passed with the stated objective of implementing the UN CRPD in India. In addition to the international legal obligation to implement these frameworks, it is important to note that the principles and approaches outlined in this section are forward thinking and progressive, and it is necessary to incorporate them in the Indian context in order to build equitable and sustainable cities that can reflect the highest standards of accessibility.

83 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9, "To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces; (b) Information, communications and other services, including electronic services and emergency services"

84 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 21

85 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 26

86 Target 9c significantly increases access to ICTs and strives to provide universal and affordable access to the internet in LDCs by 2020 (United Nations Sustainable Development Goals)

87 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) paras 34 and 35

88 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) para 56

2.2 Legal Frameworks and Policies for Persons with Disabilities at the National Level

2.2.1 THE CONSTITUTION OF INDIA

The objectives set out in the Preamble to the Constitution, i.e., justice, liberty, and equality are sought to be achieved for all citizens of India, including persons with disabilities, by guaranteeing their Fundamental Rights (set out in Part III of the Constitution) and through the Directive Principles of State Policy, which are important for the governance of the country (set out in Part IV of the Constitution).

The Fundamental Rights are basic human rights guaranteed to all persons in India, subject to any limitations specifically mentioned. Though Part III of the Constitution does not expressly mention "persons with disabilities," the Fundamental Rights apply to all such persons as they would apply to any other person or citizen of India. In this regard, the Supreme Court of India in Vikash Kumar v. Union Public Service Commission[89] has observed that "Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled."[90]

The right to equality, enshrined in Article 14 of the Constitution, guarantees that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 14 embodies the principle of non-discrimination[91] and envisages that no person is above the law; it further postulates that the application of the same laws alike and without discrimination to all persons similarly situated,[92] implying that among equals, the law should be equal and equally administered.[93] In the context of the rights of persons with disabilities, the Supreme Court of India in Jeeja Ghosh v. Union of India[94] noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognising the different needs of persons with disabilities, to pave the way for substantive equality.[95] Specifically, the Court observed that equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action, and reasonable accommodation.[96]

89 *Vikash Kumar v. UPSC* Civil Appeal No. 273 of 2021, decided on 11 February 2021

90 *See* The Constitution of India 1950, Part III shall also be applicable to persons with disabilities, such as, art 20, 22, 23, 25, 29, 30 and 32

91 *See* The Constitution of India 1950, art 15, 16, 17 and 18

92 *Jagannath Prasad v. State of Uttar Pradesh* AIR 1961 SC 1245

93 *See* M.P. Jain, *Indian Constitutional Law* (8th ed., reprint 2020) p. 908

94 *Jeeja Ghosh v. Union of India* Writ Petition (C) No. 98 of 2012, decided on 12 May 2016

95 As noted by the Supreme Court of India in *Vikash Kumar v. Union Public Service Commission* Civil Appeal No. 273 of 2021, decided on 11 February 2021

96 *Jeeja Ghosh v. Union of India* Writ Petition (C) No. 98 of 2012, decided on 12 May 2016

In addition, subject to reasonable restrictions, Article 19 of the Constitution guarantees certain freedoms to citizens (including persons with disabilities), such as the freedom of speech and expression, to assemble peacefully and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession or to carry on any occupation, trade, or business. Further, Article 21 of the Constitution has been interpreted liberally by the Court and a bundle of human rights (such as the right to live with dignity[97] and the right to livelihood[98]) have been brought within its purview. These rights have also been recognised in relation to persons with disabilities.[99] The Supreme Court of India in Jeeja Ghosh. v. Union of India[100] observed:

> **The rights that are guaranteed to differently-abled persons under the 1995 Act [PWD Act], are founded on the sound principle of human dignity which is the core value of human rights and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution.**

Moreover, the Court in Rajive Raturi v. Union of India[101] recognised the importance of accessibility to persons with disabilities' right to life, given that Article 21 of the Constitution has been interpreted broadly to incorporate the right to accessibility.[102] In Deaf Employees Welfare Association v. Union of India[103] the Court observed that the dignity of a deaf and mute person is harmed when she is being marginalised, ignored, or devalued, and such treatment violates Article 21 of the Constitution.

While the Fundamental Rights impose a negative duty on the State from taking any detrimental action against an individual, the Directive Principles of State Policy are in the nature of positive obligations on the State[104] and seek to achieve a welfare state.[105] Specifically, the Constitution, in Article 38, lays down that the State shall aim to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic, and political, shall inform all the institutions of national life. It shall also strive to minimise inequalities in income and eliminate inequalities in status, facilities, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Unlike the Fundamental Rights, the Directive Principles of State Policy are not enforceable in any court, but are fundamental in

97 *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* AIR 1981 SC 746

98 *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 1073

99 Rajive Raturi v. Union of India Writ Petition (C) No. 243 of 2005, decided on 15 December 2017

100 *Jeeja Ghosh v. Union of India* Writ Petition (C) No. 98 of 2012, decided on 12 May 2016

101 Writ Petition (C) No. 243 of 2005, decided on 15 December 2017

102 Held by the Supreme Court of India in the *State of Himachal Pradesh v. Umed Ram Sharma* AIR 1986 SC 847 upon observing the importance of accessibility vis-a-vis persons with visual disability

103 Writ Petition (C) No. 107 of 2011, decided on December 12, 2013

104 The Constitution of India 1950, art 36, "State" shall have the same meaning as set out in Part III of the Constitution

105 M.P. Jain, *Indian Constitutional Law* (8th ed., reprint 2020) p. 1466

the governance of the country, and it is the duty of the state to apply these principles while making laws.[106] As far as persons with disabilities are concerned, of note is Article 41 of the Constitution, which stipulates that the State shall, within the limits of its economic capacity and development, make effective provisions to secure the right to work, education, and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

2.2.2 THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The RPWD Act, which came into effect on 19 April 2017, was enacted by the Indian Parliament to enact India's commitments under the UN CRPD. The RPWD Act, read with the Rights of Persons with Disabilities Rules, 2017 (RPWD Rules),[107] forms the most integral part of the extant Indian legal framework relating to the rights of persons with disabilities. The RPWD Act replaces the previously enacted Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (PWD Act),, marking a shift from a narrow perspective of disability (aimed at early detection, prevention, and reservation/affirmative action) to a broad, rights-based approach. The Department of Empowerment of Persons with Disabilities (DEPWD) is responsible for overseeing the implementation of the RPWD Act.[108]

The RPWD Act defines a "person with disability" as "a person with long term physical, mental, intellectual or sensory impairment, which in interaction with barriers, hinders his full and effective participation in society equally with others."[109] The term 'barrier' has a broad construction and means "any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society."[110] While, as a general rule, the legal framework under the RPWD Act is applicable to a "person with disability", there are additional provisions[111] that are applicable to particular categories of persons with disabilities, i.e., a "person with benchmark disability"'[112] and a "person with disability having high support needs."[113] In order to determine whether a person falls into these categories, the RPWD Act lists out "specified disabilities"[114] including:

1. Physical disability (locomotor disability, visual impairment, hearing impairment, speech, and language disability);
2. Intellectual disability (specific learning disabilities, autism spectrum disorder);
3. Mental behaviour (mental illness);

106 The Constitution of India 1950, art 37

107 Issued under Rights of Persons with Disabilities Act 2016, s 100 and came into effect on 15 June 2017

108 The DEPWD has also issued guidelines on various matters for the implementation of the Rights of Persons with Disabilities Act 2016

109 Rights of Persons with Disabilities Act 2016, s 2(s)

110 Rights of Persons with Disabilities Act 2016, s 2(c)

111 Rights of Persons with Disabilities Act 2016, Chap VI and VII

112 The Rights of Persons with Disabilities Act 2016, s 2(r) states that a ""person with benchmark disability" means a person with not less than forty percent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority."

113 The Rights of Persons with Disabilities Act 2016, s 2(t) states that a "person with disability having high support needs" means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support."

114 The Rights of Persons with Disabilities Act 2016, s 2(zc) provides that a "specified disability" means the disabilities as specified in the Schedule."

115 Rights of Persons with Disabilities Act 2016, Chap II

116 Rights of Persons with Disabilities Act 2016, s 2(b), "appropriate Government" means:
(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government."

4. Disability caused due to chronic neurological conditions or blood disorders;
5. Multiple disabilities (more than one of the above specified disabilities); and
6. Any other category as may be notified by the Central Government.

The RPWD Act lays down[115] the rights and entitlements of persons with disabilities. It sets out important obligations on the 'appropriate government', which includes the state government.[116] The appropriate government shall ensure that persons with disabilities enjoy the right to equality, life with dignity, and respect for their integrity equally with others; they shall not be deprived of their personal liberty only on the ground of disability; and they shall not be discriminated[117] against, on the ground of disability.[118] The appropriate government is required to take steps to utilise the capacity of such persons by providing an appropriate environment and reasonable accommodation.[119],[120] The Supreme Court of India in Vikash Kumar v. Union Public Service Commission[121] observed that Section 3 of the RPWD Act is a statutory recognition of the constitutional rights embodied in Articles 14, 19, and 21 among other provisions of Part III of the Constitution.

The RPWD Act has set up the Central Advisory Board on Disability as well as state advisory boards on disability to advise the appropriate government on disability matters, facilitate the evolution of a comprehensive policy for the empowerment of persons with disabilities, and to review and coordinate the activities of all departments of the Central Government or state governments (as the case may be) in dealing with matters relating to persons with disabilities.[122] The state government is also required to constitute a district-level committee/(s) to perform such functions as may be prescribed.[123]

Further, Chapter XII stipulates that a Chief Commissioner for Persons with Disabilities as well as state commissioners for persons with disabilities shall be appointed by the Central Government and the state governments respectively to monitor the implementation of the RPWD Act. These commissioners have various powers and functions,[124] such as undertaking an inquiry into the deprivation of the rights of persons with disabilities and recommending corrective action to the appropriate authorities.[125]

In line with the principle of 'accessibility' enshrined in the UN CRPD, the RPWD Act also recognises accessibility as a pre-condition for persons with disabilities to exercise their rights fully and effectively in society equally with others. Some examples are:

117 Rights of Persons with Disabilities Act 2016, s 2(h) states ""discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation."

118 The Rights of Persons with Disabilities Act 2016, s 3(3) clarifies that no person shall be discriminated on the ground of disability unless it is shown that the relevant act or omission is a proportionate means of achieving a legitimate aim

119 The Rights of Persons with Disabilities Act 2016, s 2(y) defines "reasonable accommodation" as "necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others"

120 Rights of Persons with Disabilities Act 2016, s 3

121 *Vikash Kumar v. UPSC* Civil Appeal No. 273 of 2021, decided on 11 February 2021

122 Rights of Persons with Disabilities Act 2016, Chap XI

123 Rights of Persons with Disabilities Act 2016, s 72

124 *See* Rights of Persons with Disabilities Act 2016, s 80 and 81

125 In such cases, the appropriate authority is required to take necessary action and inform the commissioner within three months of receipt of the recommendation. If the authority does not accept the recommendation, it is required to inform the commissioner (along with reasons for non-compliance) as well as the aggrieved person. *See* Rights of Persons with Disabilities Act 2016, s 81

Housing and community life: Persons with disabilities have the right to live in a community. The appropriate government cannot force persons with disabilities to live in any particular living arrangement and must instead provide access to a range of in-house, residential, and other community support services.[126]

Disaster management: Persons with disabilities have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies, and natural disasters. Authorities engaged in reconstruction activities subsequent to the occurrence of any of these situations must undertake such activities in accordance with the accessibility requirements of persons with disabilities.[127]

Access to justice: The appropriate government must ensure that persons with disabilities are able to access any court, tribunal, authority, commission, or any other body with such powers. It must also ensure that filing departments, registries, or any other offices have the necessary equipment and infrastructure to enable filing as well as facilitating the recording of testimonies and arguments by persons with disabilities.[128]

Elections: The Election Commission of India as well as the state election commissions are required to ensure that all polling stations are accessible to persons with disabilities.[129]

126 Rights of Persons with Disabilities Act 2016, s 5

127 Rights of Persons with Disabilities Act 2016, s 8

128 Rights of Persons with Disabilities Act 2016, s 12

129 Rights of Persons with Disabilities Act 2016, s 11

130 Rights of Persons with Disabilities Act 2016, s 25

131 Rights of Persons with Disabilities Act 2016, s 2(m), ""inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities."



Police officers assist a voter in a wheelchair at a polling station during elections in Mumbai in 2019.
Photo: Dhiraj Singh | Bloomberg

Healthcare: The appropriate government and the local authorities shall provide barrier-free access to all persons with disabilities in all parts of government and private hospitals and other healthcare institutions and centres.[130]

Inclusive education:[131]The appropriate government and local authorities shall ensure that all educational institutions funded or recognised by them provide inclusive education to children with disabilities by providing necessary support in environments which maximise their academic and social development consistent with the goal of full inclusion. Towards this, such institutions must make buildings, campuses, and various facilities accessible, and provide transportation facilities.[132]

Employment: A government establishment is prohibited from discriminating against persons with disabilities in any matter relating to employment.[133] Such an establishment is mandated to provide reasonable accommodation and an appropriate barrier-free environment to employees with disability.[134] The RPWD Act also stipulates that every establishment[135] shall notify an 'equal opportunity' policy that sets out the measures it proposes to implement for persons with disabilities, including provisions for barrier-free accessibility.[136]

Cultural life, recreational, and sporting activities: The appropriate government and the local authorities shall take steps for making art accessible to persons with disabilities and developing technology to enable access to recreational activities.[137] The appropriate government and sports authorities shall also make provisions for the effective participation of persons with disabilities in sporting events by redesigning and supporting sporting infrastructure facilities for persons with disabilities.[138]

2.2.3 THE MENTAL HEALTHCARE ACT, 2017

In line with the RPWD Act, the MHC Act[139] was passed by the Indian Parliament to give effect to India's commitments under the UN CRPD and its Optional Protocol. The MHC Act, which replaces the previously enacted Mental Health Act, 1987, pertains to a particular category of persons with disabilities, i.e., persons with mental illness;[140] the MHC Act seeks to provide mental healthcare[141] and protect the rights of persons with mental illness during the delivery of such care. The MHC Act comes under the purview of the Ministry of Health and Family Welfare.

While the MHC Act has several features,[142] the most significant of them is the focus on the rights of persons with mental illness.[143]

132 Rights of Persons with Disabilities Act 2016, s 16

133 Rights of Persons with Disabilities Act 2016, s 2(k), a ""Government establishment" means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government"

134 Rights of Persons with Disabilities Act 2016, s 20

135 Rights of Persons with Disabilities Act 2016, s 2(i), an "establishment" includes a government establishment and a private establishment

136 Rights of Persons with Disabilities Act 2016, s 21. Read with Rights of Persons with Disabilities Rules 2017 Rule 8

137 Rights of Persons with Disabilities Act 2016, s 29

138 Rights of Persons with Disabilities Act 2016, s 30

139 This act came into effect on 29 May 2018

140 The Mental Healthcare Act 2017, s 2(1)(s) of the MH Act states that ""mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence."

141 The Mental Healthcare Act 2017, s 2(1)(o), ""Mental healthcare" includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness."

142 Other features are set out in the Mental Healthcare Act 2017, Chap III (Advance Directive), Chap IV (Nominated Representative) and s 115 (Presumption of severe stress in case of attempt to commit suicide).

143 *See* The Mental Healthcare Act, 2017 Chap V

Any person with mental illness shall have the right to access mental healthcare, ranging from mental health services run or funded by the appropriate government.[144] Such services must be of good quality, available in sufficient quantity at an affordable cost, accessible geographically, and without any discrimination. These services must include provisions for halfway homes, sheltered accommodation and supported accommodation, and hospital- and community-based rehabilitation establishments.[145] The appropriate government shall also ensure that persons with mental illness are not required to travel long distances to access mental health services, and such services shall be available close to the place where the person resides.[146] Such a person has the right to live with dignity and to be protected from cruel, inhuman, or degrading treatment in any mental health establishment.[147,148] Moreover, when a person with mental illness no longer requires treatment in a mental health establishment, the appropriate government shall also provide for or support the establishment of less restrictive community-based establishments.[149]

Further, all mental health establishments in a state are required to be registered with the state mental health authority (constituted in each state per Chapter VIII of the MHC Act), and those establishments which are under the control of the Central Government are required to be registered with the Central Mental Health Authority (constituted per Chapter VII of the MHC Act). Such mental health establishments are required to comply with the minimum standards of facilities and services as may be specified by regulations issued by the Central Authority or the state authority as applicable.[150] In this regard, the Central Authority lays down the minimum standards[151] for a mental health establishment, which includes compliance with the provisions of the RPWD Act.[152]

2.2.4 THE NATIONAL TRUST FOR THE WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities was constituted under Section 3 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999[153] to fulfil specific objectives in relation to certain classes of persons with disabilities.[154] Some of these objectives include:[155]

144 The Mental Healthcare Act 2017, s 2(1)(b) states that "appropriate Government" means,––
(i) in relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government;
(ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of—
(A) a State, the State Government;
(B) a Union territory having legislature, the Government of that Union territory"

145 The Mental Healthcare Act 2017, s 18. Further, the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018, Rules 3 and 4 set out the factors to be taken into account by the appropriate government while setting up these bodies. In addition, there are other rules issued under the Mental Healthcare Act, 2017, (i.e. the Mental Healthcare (Central Mental Health Authority and Mental Health Review Boards) Rules, 2018 and Mental Healthcare (State Mental Health Authority) Rules, 2018), which deal with the setting up of, functioning, procedures, etc. of other bodies/ authorities required to be set up under the Mental Healthcare Act, 2017.

146 Mental Healthcare Act 2017, s 18

147 The Mental Healthcare Act 2017, s 2(1)(p) defines "mental health establishment" as "any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; *but does not include a family residential place where a person with mental illness resides with his relatives or friends.*"

- Facilitating the realisation of equal opportunities, protection of rights, and full participation of persons with disabilities;
- Enabling and empowering persons with disabilities to live fully and independently and as close to the community to which they belong; and
- Strengthening facilities to provide support to persons with disabilities to live within their own families.

Specifically, the Board of Trustees of the National Trust shall receive a corpus of funds from the Central Government, the income from which is required to be utilised to provide an adequate standard of living to persons with disabilities.[156] It also receives sums from the Central Government during each financial year to provide financial assistance to carry out approved programmes in relation to its objectives.[157]



148 Mental Healthcare Act 2017, s 20

149 Mental Healthcare Act 2017, s 19

150 Mental Healthcare Act, 2017 s 65

151 The Mental Healthcare (Central Mental Health Authority) Regulations, 2020 Regulation 10

152 Standard 12, Schedule to the Mental Healthcare (Central Mental Health Authority) Regulations, 2020

153 The manner of constitution, qualification of board members, procedures involved, and the manner of functioning of the National Trust is set out in the rules and regulations issued under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000, and Board of the Trust Regulations, 2001, both issued under the National Trust Act.

154 The National Trust Act, s 2(j) defines "persons with disability" as a "person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability."

155 National Trust Act, s 10

156 National Trust Act, s 11

157 An 'approved programme' includes any programme which promotes independent living in the community, promotes respite care, foster family care, or day-care services, and the setting up of residential hostels and residential homes for persons with disability. *See* National Trust Act, s 11. The National Trust also has several schemes pursuant to its objects. For a brief overview, see The National Trust: Schemes. These include Vikaas (day care), Samarth (respite care), Gharaunda (group home for adults), Gyan Prabha (educational support), Sambhav (aids and assistive devices) and Badhte Kadam (awareness and community interaction)

2.2.5 POLICIES AND SCHEMES OF THE CENTRAL GOVERNMENT

In addition to the RPWD Act, the DEPWD issued the National Policy for Persons with Disabilities in 2006, which focuses on the prevention of disabilities, rehabilitation measures, provision of social security, and data collection.[158] The National Disability Policy also recognises that a 'barrier-free' environment supports the independent functioning of persons with disabilities in their daily activities and, therefore, to the maximum extent possible, buildings, places, and transportation systems for public use should be made barrier-free.

Moreover, the DEPWD has, over the years, issued several schemes aimed at creating an inclusive society where equal opportunities are available for the growth and development of persons with disabilities.[159] Of note is the Scheme for Implementation of Rights of Persons with Disabilities Act, 2016, under which the DEPWD has provided financial aid to agencies, such as departments of states/union territories, autonomous or statutory bodies, etc. to implement the RPWD Act.[160] Initiatives under this Act include[161] the Unique Disability ID Project[162] and the Accessible India Campaign (discussed below).

2.3 Legal Framework and Policies for Persons with Disabilities in Karnataka

Pursuant to Section 101 of the RPWD Act, the Government of Karnataka issued the Karnataka State Rights of Persons with Disabilities Rules (KRPWD Rules).[163] The Department for the Empowerment of Differently Abled and Senior Citizens, Government of Karnataka, is responsible for implementing the provisions of the KRPWD Rules. These rules pertain to procedural aspects, such as the constitution, conditions of service of members, processes involved, and functioning of the state advisory board,[164] district-level committee[165] and the state commissioner's office,[166] and the manner in which state funds may be utilised.[167]

In addition, the Karnataka State Policy on Disability aims at better coordination between various implementing agencies towards the early detection of disabilities, rehabilitation, promotion of education among children with disabilities, and self-employment amongst persons with disabilities. The policy stipulates that there will be no discrimination of persons with disabilities for roads, transport and in built-in environments, and there must be barrier-free access in places such as parks, cinemas, places of worship, and public halls.[168] Further, the Government of Karnataka has several

158 *See* National Policy for Persons with Disabilities (Ministry of Social Justice and Empowerment No.3-1/1993-DD. III). The National Policy is currently in the process of being revised and being brought in line with the provisions of the RPWD Act. *See* Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India, Annual Report 2020-21, pp. 19-20

159 These include the Deen Dayal Rehabilitation Scheme and the District Disability Rehabilitation Centres Scheme, Scheme of Assistance to Disabled Persons for Purchase Fitting of Aids Appliances, Scholarship Scheme, Scheme for Providing Financial Assistance under the National Fund for Persons with Disabilities, Scheme relating to Indian Spinal Injury Centre. *See* Compendium of Schemes for the Welfare of Persons with Disabilities, (DEPWD 2020)

160 The Scheme for Implementation of Rights of Persons with Disabilities Act, 2016, was initially started in 1999 to implement the provisions of the PWD Act.

161 Initiatives under the Scheme for Implementation of Rights of Persons with Disabilities Act, 2016, include skill development programmes, awareness generation schemes, research, employment incentives, and sensitisation of functionaries of the central/ state governments and local bodies

162 This is a project being implemented by the DEPWD towards creating a national database of persons with disabilities and for issuance of Unique Disability Identity Cards to such persons. It is aimed at achieving transparency and efficiency in providing government benefits/ services to persons with disabilities.

163 These rules came into effect on 5 September 2019

164 Karnataka State Rights of Persons with Disabilities Rules, 2019 Chap VIII

165 Karnataka State Rights of Persons with Disabilities Rules, 2019 Rules 28 and 29

166 Karnataka State Rights of Persons with Disabilities Rules, 2019 Chap IX

167 Karnataka State Rights of Persons with Disabilities Rules, 2019 Chap IX

168 *See* Karnataka State Policy on Disability, paras. G(1) and (2)

programmes in place for persons with disabilities.[169] These include education schemes for establishing residential special schools, setting up hostels for employees and trainees with disabilities, establishing a social service complex providing boarding for persons with disabilities, and issuing identity cards to persons with disabilities to avail benefits under various government schemes.

In addition, states, under the MHC Act, have the power to make rules on the same subject matter as the Central Government, provided they have taken previous approval from the latter.[170] Accordingly, the Karnataka state cabinet recently notified the Karnataka State Mental Healthcare Rules, 2021, and the Karnataka State Mental Health Authority is in the process of being set up.[171]

169 *See* Schemes (Directorate of Welfare of Disabled and Senior Citizen Government of Karnataka)

170 Mental Healthcare Act, 2017, s 121

171 *See* 'Cabinet approves Karnataka State Mental Healthcare Rules; sanitary napkins in schools' (*The Hindu*, 19 August 2021) and Ralph Alex Arakal, 'Explained: What is Karnataka's State Mental Health Authority?' (The *Indian Express*, 22 August 2021) A copy of the Karnataka State Mental Healthcare Rules, 2021, is currently not readily available in the public domain.

3

CREATING INCLUSIVE CITIES IN INDIA

The previous chapter described the various rights and entitlements, including the right to an accessible, barrier-free environment to persons with disabilities, guaranteed through various legal instruments both at the national level as well as in Karnataka. In the following sections, the extant legal norms relating to urban planning and accessibility standards for urban spaces are described. While these legal norms exist at the national level, their adoption and application, and consequently their enforcement and monitoring, comes within the purview of state agencies, municipalities, and ULBs on account of the areas of operation and mandate entrusted to them. Both these aspects are analysed below in sections 3.1 and 3.2 respectively.

3.1 Overview of Legal Norms for Urban Planning and Accessibility of Urban Spaces

3.1.1 URBAN AND REGIONAL DEVELOPMENT PLANS FORMULATION AND IMPLEMENTATION GUIDELINES, 2014

Planning is the starting point for inclusive growth and development of an urban area. Towards this, the Town and Country Planning Organisation (TCPO), the technical wing of the Ministry of Housing and Urban Affairs (MoHUA; previously the Ministry of Urban Development),[172] issued the URDPFI Guidelines,[173] which set out the planning process, contents of plans, methodologies for plan implementation, suggestions for institutional reforms, etc. towards sustainable and inclusive urban and regional planning in India. Being in the nature of guidance, these guidelines act as a reference for various state governments, town planning departments, and development authorities in preparing plans for the areas under their jurisdiction, taking local conditions into account.

The URDPFI Guidelines stipulate that the objective of a development plan or a master plan is to provide strategic details to meet the social and economic needs of the people in an urban area under the larger umbrella of a perspective plan (plans for the overall balanced growth of a state) as well as regional plans.[174] The proposals set out in the development plan are detailed further in a local area plan for better implementation.[175] Land use set out in a development plan is also required to integrate transport planning as well as transit-oriented development.[176]

In order to make urban spaces accessible to persons with disabilities, the URDPFI Guidelines envisage that a development

172 The TCPO advises various ministries of the Central Government, state governments, ULBs, and development authorities on matters of urbanisation, town planning, regional development, and capacity building

173 In 1985, the TCPO also issued the Model Regional and Town Planning and Development Law, which sets out the framework for town and country planning laws at the state level and constitution of agencies who will be involved in both planning and implementation. The URDPFI Guidelines replace the previously issued guidelines in 1996.

174 *See* URDPFI Guidelines, Volume I, pp. 7-10

175 *See* URDPFI Guidelines, Volume I, p. 13

176 "Transit-oriented development" means "any development, macro or micro that is focused around a transit node, and facilitates complete ease of access to the transit facility thereby inducing people to prefer to walk and use public transportation over personal modes of transport." *See* URDPFI Guidelines, Volume I at pp. 15-16

plan must account for inclusive planning by creating barrier-free environments.[177] Specifically, in the context of infrastructure planning, the URDPFI Guidelines prescribe that the minimum accessibility standards set out in the Guidelines and Space Standards for Barrier Free Built Environment for Disabled and Elderly Persons, 1998, by the Central Public Works Department (CPWD Guidelines) issued by the CPWD under the MoHUA must be adhered to.[178] The CPWD Guidelines have now been subsumed under the Harmonised Guidelines issued by the MoHUA (discussed below).

Even in the process of planning itself, the URDPFI Guidelines envisage inclusive and participative planning as key stages. Inclusive planning entails broad-based improvements in the living standards of all residents, including persons with disabilities.[179] The Guidelines also recognise that the planning process must be a 'bottom-up' approach to make the process more inclusive and sustainable. Therefore, different groups of stakeholders must be consulted to understand their needs, and the planning goals may be prioritised accordingly.[180]

3.1.2 ACCESSIBILITY OF URBAN SPACES

Subsequent to the planning of an urban area (as described above), any urban space itself must actually be accessible. Towards securing the rights and entitlements of persons with disabilities, the RPWD Act sets out accessibility standards for various categories of urban spaces, i.e., physical environment, transportation, information and communications including appropriate technologies and systems, and other facilities and services provided to the public in urban areas. The rules setting out accessibility standards are laid down by the Central Government in consultation with the Chief Commissioner for Persons with Disabilities[181] in Rules 15 and 16 of the RPWD Rules.

Rule 15 of the RPWD Rules states that every establishment[182] shall comply with the accessibility standards relating to physical environment, transport, and ICTs. The Central Government is required to review accessibility standards from time to time based on the latest scientific knowledge and technology.[183] Moreover, the concerned ministries and departments are required to ensure compliance with the accessibility standards specified under Rule 15 through the relevant domain regulator or otherwise.[184]

The accessibility standards for each category of urban spaces are described below.

177 *See* URDPFI Guidelines, Volume I, p. 20

178 *See* URDPFI Guidelines, Volume I, p. 379

179 *See* URDPFI Guidelines, Volume I, p.30

180 *See* URDPFI Guidelines, Volume I, pp. 32-33

181 Rights of Persons with Disabilities Act 2016 s 40 read with Rights of Persons with Disabilities Act 2016, s 100(2)(g)

182 Per the Rights of Persons with Disabilities Act 2016, s 2(i), an "establishment" includes a Government establishment and a private establishment

183 Rights of Persons with Disabilities Rules 2017 Rule 16

184 Rights of Persons with Disabilities Rules 2017 Rule 15

3.1.2.1 Accessibility to Physical Environment (Built Infrastructure and Public Spaces)

Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons, 2016

For the physical environment, Rule 15 of the RPWD Rules stipulates that the standard for public buildings as specified in the Harmonised Guidelines must be complied with. The Harmonised Guidelines integrate the accessibility standards set out under the CPWD Guidelines, the Chief Commissioner Guidelines, and the National Building Code of India, 2005 (NBC 2005) issued by the Bureau of Indian Standards (BIS).

The Harmonised Guidelines apply to all public buildings[185] in India, including buildings where access is open to the general public. The Harmonised Guidelines take into account the principles of Universal Design and envisage that while planning, designing, and constructing accessible buildings and spaces, opportunities exist not only to optimise independent access to persons with disabilities but to improve access for all. The Harmonised Guidelines require that building elements (both internal and external aspects) should be universally accessible (i.e. respond to all users including persons with disabilities) and new buildings should ensure complete accessibility from the planning stage itself.[186]

The Harmonised Guidelines set out detailed accessibility standards for building premises, signages, level design (i.e. ramps, kerb ramps, wheelchair stair and platform lifts), toilet facilities, fire evacuation needs, alighting and boarding areas, adapted housing, and roads and transport. Components of universal signage, which cut across all types of barriers so that even a lay person can understand the symbols and pictograms, are emphasised.[187] The Harmonised Guidelines also set out an access audit checklist to review the accessibility of buildings and spaces to determine whether they are indeed barrier-free.[188]

As far as enforcement is concerned, the RPWD Act mandates that an establishment cannot be granted permission to build a structure if the building plan does not adhere to the accessibility standards set out under the RPWD Act. Further, the Act also stipulates that an establishment cannot be issued a certificate of completion or be allowed to occupy a building unless it has adhered to these standards.[189] In addition, all existing public buildings[190] must be made accessible in accordance with the said standards within a maximum period of five years from the date of the notification

185 Similarly, per Rights of Persons with Disabilities Act 2016, s 2(w), a "public building" means a government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways.

186 *See* Harmonised Guidelines and Space Standards for Barrier Free Built Environment for persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) p.2

187 *See* Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) p.39, 43

188 *See* Harmonised Guidelines and Space Standards for Barrier Free Built Environment for persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) p.99

189 Rights of Persons with Disabilities Act 2016, s 44

190 Per the Rights of Persons with Disabilities Act 2016, s 2(w), ""public building" means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways."

of the RPWD Rules (through which the accessibility standards are made applicable). However, the Central Government may grant states an extension for compliance on a case-to-case basis depending on their state of preparedness and other factors. The appropriate government as well as local authorities are also required to formulate and publish an action plan based on prioritisation to enable accessibility in all their buildings and spaces providing essential services such as primary healthcare centres, civic hospitals, schools, railway stations, and bus stops.[191]

Model Building Bye-Laws, 2016, and National Building Code of India, 2016

The Model Building Bye-Laws, 2016 (MBBL),[192] issued by the TCPO, are in the nature of guidance to regulate coverage, height, floor space, construction, and architectural design of buildings to promote the orderly growth of an area and are to be read along with the development or master plan of that area. State governments, ULBs, and development authorities may rely on the MBBL while framing building bye-laws for areas under their jurisdiction. The MBBL lays down the processes for obtaining building permits, the completion of a project, and obtaining permission for occupation.[193]

One of the other salient features of the MBBL is that it sets out provisions for creating a barrier-free environment for persons with disabilities (towards site development, access paths, parking, building requirements, lifts, toilets, and signages) in public buildings (i.e. buildings used by the public).[194,195] It stipulates that the accessibility norms mentioned in the CPWD Guidelines, Chief Commissioner Guidelines, NBC 2005, the draft version of the Harmonised Guidelines in 2014, and the National Disability Policy shall be followed.[196] It is relevant to note that since that point, the CPWD Guidelines, Chief Commissioner Guidelines, and NBC 2005 have been subsumed in the final version of the Harmonised Guidelines in 2016 (discussed above). The MBBL lists the types of buildings which must adopt barrier-free guidelines. These spaces have been differentiated on the basis of accessibility for ambulant disabled people, non-ambulant disabled people, and non-ambulant people using small wheelchairs.[197]

The National Building Code of India, 2016 (NBC 2016), issued by the BIS is a model code which regulates building construction activity across India and may be adopted by local bodies, public works departments, construction agencies (both public and private), etc. It replaces the NBC 2005, and it emphasises accessibility and Universal Design for ensuring a barrier-free

191 Rights of Persons with Disabilities Act 2016, s 45

192 Replaces the previously issued Model Building Bye-Laws 2004

193 The Model Building Bylaws 2016, Chap 2, p. 13

194 The Model Building 2016, para 8.2, p. 105. Further, all buildings and facilities used by the public such as educational, institutional, assembly, commercial, business, mercantile buildings and group housing are constructed on plots having an area of more than 2000 sq.m. It shall not apply to private residential buildings.

195 *See* Model Building 2016, Prelude, and Model Building Bylaws 2016, Chap 8, p. 105

196 The Model Building 2016, p. 105

197 The Model Building 2016, pp. 105-106

environment for persons with disabilities and covers detailed accessibility requirements for public buildings.[198] It also provides for periodic accessibility audits to ensure that the buildings remain universally accessible and barrier-free.[199]

It follows that the Harmonised Guidelines lay down the accessibility standards that must be followed by every building that is accessed by the public at large (whether set up by the government or by a private entity). These accessibility standards, being binding in nature, apply to all such buildings in India. On the other hand, the MBBL and the NBC 2016 are in the nature of guidance and cover the larger gamut of construction activities of buildings, including accessibility, and they may be adopted by ULBs involved in the approval of building plans, construction, supervision, and in the maintenance of buildings at the local level.

3.1.2.2 **Accessibility to Transportation**[200]

As far as accessibility to transportation is concerned, accessibility standards for various categories of transportation have been issued by the relevant ministries/departments. In addition, certain policies have also been issued, and these are described below.

Buses

Rule 15 of the RPWD Rules stipulates that the standard for the Bus Body Code for transportation systems specified in Notification No. G.S.R. 895(E) of 20 September 2016[201] issued by the Ministry of Road Transport and Highways (MoRTH) must be complied with. The notification amends Rule 125C (1) of the Central Motor Vehicles Rules, 1989, issued under the Motor Vehicles Act, 1988. The provision lays down the technical standards applicable for the testing and approval for building the bodies of new models of buses. It is also relevant to note that under the Harmonised Guidelines (as mentioned above), accessibility standards have been prescribed for alighting and boarding areas;[202] moreover, in the context of transport and road planning, the Harmonised Guidelines set out accessibility standards for footpaths, ramps, road intersections, subways, traffic signals, and for various modes of public transport (i.e. land transport, such as buses, trams, taxis, and three-wheelers; rail transport including railway cars; and air and water transport crafts).[203]

The RPWD Act places obligations on the appropriate government to provide facilities for persons with disabilities at bus stops, railway stations, and airports, conforming to the prescribed accessibility standards relating to parking spaces, toilets, ticketing

198 *See* The National Building Code of India, 2016 Volume I Part 3 'Development control rules and General Building requirements', 13 and Annex- B,

199 *See* The National Building Code of India 2016, Volume I Part 0 Para 7.2(b), p. 8

200 The Rights of Persons with Disabilities Act 2016, s 44. 2(zd) states that ""transportation systems" includes road transport, rail transport, air transport, water transport, para transit systems for the last mile connectivity, road and street infrastructure, etc."

201 *See* Ministry of Road Transport and Highways Notification. *See also* Automotive Industry Standard Code of Practice for Bus Body Design and Approval

202 *See* Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) Chap 10

203 *See* Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) Chap 11

counters, and machines. Further, the government is also required to provide accessible roads to address the mobility issues of persons with disabilities as well as 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.[204]

Airports and Air Transport

The Civil Aviation Requirements, 2008, and the Civil Aviation Requirements, 2014, issued by the Director General of Civil Aviation stipulate that all airline operators in India engaged in scheduled and non-scheduled air transport services for both domestic and international travel, all foreign carriers engaged in scheduled air transport operating in the Indian territory and all airport operators within the Indian territory are required to ensure that persons with disabilities receive all possible assistance during their travel.[205] The Civil Aviation Requirements are issued under the provision of Rule 133A[206] of the Aircraft Rules, 1937, and it stipulates the minimum requirements for the grant of a permit to operate scheduled passenger air transport services in India.[207]

The Handbook on Barrier Free Space Standards for Built Environment for Persons with Reduced Mobility[208] issued by the Civil Aviation Ministry presents inclusive design norms to be followed to cater to the needs of passengers with reduced mobility undertaking air travel. It is a guidance document that is intended to help airports enhance the accessibility of air travel for persons with disabilities, persons with reduced mobility, and persons with hidden disabilities. Being in the nature of guidance, the handbook is meant to act as a reference manual towards adopting Universal Design principles for a barrier-free environment. It prescribes guidelines for mobility devices, space allowances, accessible buses, accessible car parking, signages etc., which, if adopted, would make airports and air travel more accessible for persons with disabilities.

Railways

The Harmonised Guidelines for Passenger with Disabilities issued by the Indian Railways lay emphasis on Universal Design and reasonable accommodation as provided under the RPWD Act. The Guidelines cover information system accessibility, station accessibility, platform accessibility, train coach accessibility, and monitoring and feedback mechanisms. The Guidelines state that railway coaches and stations are to be made accessible by retrofitting the existing infrastructure and integrating accessibility

204 Rights of Persons with Disabilities Act 2016, s 41

205 Civil Aviation Requirements (*Office of The Director General of Civil Aviation*), s 1.3

206 The Aircraft Rules 1937, Rule 133 (1[1]) The Director-General may, through Notices to Airmen, Aeronautical Information Publication, Aeronautical Information Circulars (AICs), Notice to Aircraft Owners and Maintenance Engineers and publication entitled Civil Aviation Requirements, issue special directions not inconsistent with the Aircraft Act 1934 (22 of 1934) or these rules, relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft registered in India.

207 Airline Operations- Regulatory Issues (*Ministry of CIvil Aviation*)

208 Handbook on Barrier Free Space Standards for Built Environment For Persons With Reduced Mobility (*Airports Authority of India The Journey of Persons with Reduced Mobility*)

in any new infrastructure from the planning and design stage. The Guidelines also recommend that railway inspection reports should include details on disability-friendly facilities/ services and suggestions on improvements. The Guidelines are recommendatory in nature and are intended to improve accessibility as a part of the Indian Railways' commitment under the 'Accessible India Campaign' (described below).

Metro Rail Policy, 2017

The Metro Rail Policy, 2017,[209] was released by the MoHUA, the ministry responsible for overseeing the implementation of metro project,s and emphasises the need to ensure that metros comprehensively enhance urban mobility. It seeks to achieve social, economic, and environmental sustainability. The policy also recognises the importance of urban mass rapid transit systems in facilitating movement, economic growth, and improving the quality of life. Further, the policy recommends a comprehensive approach to planning for urban land use and transport infrastructure and creating a multi-modal transport system in cities. For this, a comprehensive mobility plan is suggested as a mandatory prerequisite while planning metro railways in any city. For such planning, the establishment of the Unified Metropolitan Transport Authority (UMTA) is required. The policy also suggests including ULBs and city development authorities as stakeholders during planning.

The policy suggests the integration of roadways, railways, non-motorized transport, and other modes of transport to improve mobility options and to encourage the use of public transport. Given the capital-intensive nature of the construction of metros, the policy recommends preparing an 'alternatives analysis report' to make possible comparisons between the various alternative transportation options available, which may be prioritised in urban areas instead of metros.

The Metro Rail Policy also recommends the creation of a 'project report' for every metro project undertaken to assess feasibility. Such a report should also consider 'techno-economic' feasibility and include methods to integrate the metro with the other modes of transportation in the city. This report must also consider the universal accessibility of the metro infrastructure.

The policy recommends that where Central Government assistance has been taken to establish the metro in a city, the state government should commit to setting up and operationalising the UMTA in the city within a year. The policy suggests that every

209 Metro Rail Policy, (2017)

project proposal created for the metro should mandatorily include a 'Transit-Oriented Development' chapter with provisions on intermodal integration, universal accessibility, adequate walkways, pathways for non-motorised transport, adequate parking lots, and feeder services.

National Urban Transport Policy, 2014

The National Urban Transport Policy, 2014, issued by the MoHUA, has the mandate of providing sustainable mobility and accessibility in urban areas at an affordable cost and within a reasonable time, and it aims to make urban transport universally accessible.[210] The policy seeks to integrate the principles of universal accessibility with existing urban transport infrastructure. For universal accessibility, the emphasis is on fair, free, safe, and simple access to transport services. Further, for such use of transport services, the policy suggests that a universally accessible design would not require the use of unnecessary bodily strength by any person, and it would create and maintain appropriate space for the easy movement of persons with disabilities. It suggests the inclusion of footpaths of adequate width, tactile plates on the pavement, anti-skid paving at public transit station entry/exit gates, table-top road crossing facilities, ramps and lifts at foot-over bridges, signages supplemented with Braille and pictograms, and pedestrian crossing facilities with lifts, among others.

3.1.2.3 Accessibility to Information and Communication Technology[211]

Under the RPWD Rules, the appropriate government is required to take measures to ensure that all content available in audio, print, and electronic media is in accessible formats and that all persons with disabilities have access to them by providing audio descriptions, sign language interpretations, and closed captioning. Further, the appropriate government must also ensure that electronic goods and equipment meant for everyday use are available in Universal Design.[212,213]

Towards operationalising the above, Rule 15 of the RPWD Rules states that as far as ICTs are concerned, website standards as specified in the Guidelines for Indian Government Websites, adopted by the Department of Administrative Reforms and Public Grievances, Ministry of Personnel, Public Grievances and Pension in February 2019, must be complied with. Moreover, documents which are to be placed on websites must be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based on pdf format.[214]

210 National Urban Transport Policy 2014, Provision 8.3

211 Rights of Persons with Disabilities Act 2016, s 2(n) stipulates that ""information and communication technology" includes all services and innovations relating to information and communication, including telecom services, web based services, electronic and print services, digital and virtual services".

212 "Universal design" is defined under Rights of Persons with Disabilities Act 2016, s 2(ze) as "the design of products, environments, programmes and services to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities".

213 Rights of Persons with Disabilities Act 2016, s 42

214 Rights of Persons with Disabilities Act 2016, s 15 (1)(c)(ii)

Moreover, under the RPWD Act, both public as well as private service providers are required to provide services in accordance with the accessibility standards prescribed under the RPWD Rules within two years of the date of notification of the Rules.[215] In this regard, Rule 15 of the RPWD Rules further stipulates that accessibility standards with respect to other services and facilities[216] were required to be specified by the Central Government within a period of six months from the date of notification of the RPWD Rules.

Guidelines for Indian Government Websites

The Guidelines for Indian Government Websites[217] is the main legal instrument that governs accessibility standards for Indian government websites and applications. These Guidelines rely on the Information Technology Act, 2000, and the Website Content Accessibility Guidelines, 2008 (WCAG) to ensure that Indian "Government websites are usable, user-centric and universally accessible."[218]

'Web accessibility' as per the Guidelines includes two types of access; first, that persons with disabilities are able to perceive, understand, navigate, and interact with the Internet; second, that they are able to contribute to the Internet.[219] The term 'disabilities' as per the Guidelines includes visual, auditory, physical, speech, cognitive, and neurological disabilities.[220]

The four main principles of accessibility[221] as per the WCAG require that web content is required to be:
Perceivable: Users must be able to perceive the information being presented i.e. it cannot be invisible to all of their senses.
Operable: Users must be able to operate the interface, and the interface cannot require interaction that a user cannot perform.
Understandable: Users must be able to understand the information as well as the operation of the user interface.
Robust: Users must be able to access the content as technologies advance.

3.1.3 THE ACCESSIBLE INDIA CAMPAIGN

Towards putting the provisions of accessibility as described under the RPWD Act into effect, on 3 December 2015, the DEPWD launched the Accessible India Campaign,[222] a nation-wide campaign seeking to achieve universal accessibility for persons with disabilities. The campaign identified its two core principles as Universal Design and reasonable accommodation, and it deals with three aspects:

215 Rights of Persons with Disabilities Act 2016, s 46

216 In this context, please note that per Rights of Persons with Disabilities Act 2016, s 2(x), ""public facilities and services" includes all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation".

217 *See* Guidelines for Indian Government Websites

218 Guidelines for Indian Government Websites (Government of India) WCAG is an internationally recognized standard created by the World Wide Web Consortium.

219 Guidelines for Indian Government Websites, 6

220 Guidelines for Indian Government Websites, 6

221 Guidelines for Indian Government Websites, p 7

222 *See also* About Accessible India Campaign and Accessible India Campaign

Accessibility of built environments: Removing barriers from built environments (such as corridors, emergency exits, parking, ramps, etc.) and indoor or outdoor facilities (such as lighting, signages, alarm systems, toilets, etc.), such that any person (including persons with disabilities) is able to freely access any government building.

Accessibility of transport systems: Making transport infrastruture accessible to all to enable mobility and equal participation. This is not limited to the premises (such as airports or railway stations) but also extends to the carriers and services involved. Some of the features include bus shelters with barrier-free access, folding ramps inside low-floor buses, space to park wheelchairs with provisions for safety belts for security while traveling in buses, and provisions for Braille signages and audible messages on signage panels.[223]

Accessibility of knowledge and the ICT ecosystem: Making all kinds of information readily accessible so that any person (including persons with disabilities) can understand and take decisions in their daily lives. This component specifically aims at enhancing the proportion of accessible and usable public documents and websites that meet internationally recognised accessibility standards, enhancing the pool of sign language interpreters, and enhancing the proportion of daily captioning and sign language interpretation of public television news programmes.

Towards each of the above, the campaign sets out specific targets, which are mentioned in Annexure A.

3.2 Agencies Involved in Karnataka and the City of Bengaluru

This sections sets out a description of the various agencies at the state and municipal levels in Karnataka, including the city of Bengaluru, which, by virtue of the areas of operation and functions mandated to them as well as the tools of enforcement available to them under law, are responsible for implementing the legal norms on urban planning and accessibility of urban spaces. In addition to the Department for the Empowerment of Differently Abled and Senior Citizens, Government of Karnataka, which is responsible for implementing the provisions of the KRPWD Rules, the implementation of legal norms on urban planning and accessibility of urban spaces by various bodies may, at present, be categorised as:

1. Planning authorities in Karnataka and the city of Bengaluru;
2. Municipal administration in Karnataka and the city of Bengaluru; and
3. Transportation planning authorities in Karnataka and the city of Bengaluru.

223 Facilities for Differently Abled Persons in Railways (*Press Information Bureau Release*, Press Release 11 December 2019)

3.2.1 PLANNING AUTHORITIES IN KARNATAKA AND THE CITY OF BENGALURU

3.2.1.1 **Karnataka Town and Country Planning Act, 1961: Planning Authorities**

As described above, the URDPFI Guidelines act as guidance for state town planning departments and development authorities while they are preparing plans for the areas under their jurisdiction. In India, states enact their own town and country planning legislations.[224] The KTCP Act is the principle legislation which deals with planned land use and development in Karnataka. The state government is required to notify areas within the state as 'local planning areas' to which the provisions of the KTCP Act will apply.[225] Further, the state government, in consultation with the state planning board,[226] shall notify a 'planning authority' to undertake the relevant functions in relation to a local planning area.[227]

Every planning authority must prepare a map showing the present land use of the planning area[228] and submit it to the state planning director.[229,230] The planning authority will also carry out a survey and prepare and publish a master plan[231] for the planning area and submit the same to the state government for approval through the state planning director.[232] A master plan should contain a series of maps and documents indicating the manner in which the development and improvement of the entire planning area will be regulated and undertaken.[233] Specifically, the master plan shall include proposals for the following:

- Zoning of land use for residential, commercial, industrial, agricultural, recreational, educational, and other purposes together with applicable zoning regulations;
- A complete street pattern, indicating major and minor roads, national and state highways;
- Areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings, areas reserved for new civic developments, and areas earmarked for future expansion;
- Reservation of land for the purposes of the Central Government, state government, planning authority, public utility, or any other authority; and
- The stages in which the master plan will be carried out.

The master plan is required to be revised at least once every 10 years.[234] All land use and development is required to be in accordance with the KTCP Act and the master plan as finally approved by the state government. No change in said land use or development can be made except with the written permission of the planning authority.[235] To enact the proposals under the master plan, the planning authority

224 The legislative competence for this appears to flow from the Constitution of India 1950, Seventh Schedule, List II- State List, Entries 5 and 18. In addition, states may also rely on the URDPFI Guidelines (discussed above) while undertaking urban and regional planning

225 The Karnataka Town and Country Planning Act 1961, s 4A

226 Under The Karnataka Town and Country Planning Act 1961, s 4, the State-Town Planning Board or the State Planning Board has been constituted which is responsible for advising the state government on planning and determining principles for achieving balanced development of the state as a whole

227 The Karnataka Town and Country Planning Act 1961, s 4C

228 The Karnataka Town and Country Planning Act 1961, s 2(6) defines "Planning Area" as "any area declared to be or included in a local planning area under this Act".

229 Under the Karnataka Town and Country Planning Act 1961, s 3, a director of town planning for the entire State or the State Planning Director shall be appointed.

230 The Karnataka Town and Country Planning Act 1961, s 6 read with Karnataka Planning Authority Rules 1965, Rule 30

231 Per The Karnataka Town and Country Planning Act 1961, s 2(3-b), ""Master Plan" means a plan for the development or redevelopment of the area within the jurisdiction of a planning authority".

232 The Karnataka Town and Country Planning Act 1961, s9. Further, per the Karnataka Town and Country Planning Act 1961, s13, the state government shall approve the master plan. There is also a process of obtaining public comments on the master plan and the modified master plan is required to be submitted to the state government for final approval.

233 The Karnataka Town and Country Planning Act 1961, s12

234 The Karnataka Town and Country Planning Act 1961, s 13D

235 The Karnataka Town and Country Planning Act 1961, s 14

may make town planning schemes for the planning area.[236] Such schemes may make provision for matters such as:

- Layout, construction, diversion, extension, alteration, or improvement of streets, roads, and communications;
- Construction, alteration, and removal of buildings, bridges, and other structures;
- Allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green belts, transport facilities, and for other public purposes;
- Lighting; and
- Imposition of conditions and restrictions on open spaces to be maintained around buildings as well as parking space and loading and unloading space for any building.

3.2.1.2 The Bangalore Development Authority Act, 1976: Bangalore Development Authority

Under the KTCP Act, the city of Bengaluru has been notified as a local planning area, and the BDA constituted under the The Bangalore Development Authority Act, 1976 (BDA Act), is the planning authority for the same.[237] The BDA shall consist of several members including persons with experience in finance, town planning, and architecture.[238]

The Revised Master Plan 2031[239] issued by the BDA is a statutory document prepared in accordance with the provisions of the KTCP Act to promote and guide the growth of the Bangalore Metropolitan Area (BMA). The Revised Master Plan 2031 was withdrawn[240] in 2020 for further revision to incorporate key documents such as the Transit-Oriented Development Policy and Comprehensive Mobility Plan brought out by the Bengaluru Metro Rail Corporation Limited (BMRCL) and the Directorate of Urban Land Transport (DULT) in 2019.

In addition to planning for the city of Bengaluru in accordance with the KTCP Act, the BDA, being an urban development authority, also has the mandate to draw up and implement development schemes[241] for the larger BMA.[242] Such development schemes may be taken up by the BDA on its own initiative or on the recommendation of a local authority or the state government.[243] Moreover, under the BDA Act,[244] the initial laying, lighting, sewering, drainage, and cleaning of streets in accordance with the development scheme is incumbent upon the BDA. On completion, and upon the satisfaction of the state government in consultation with the BDA, the responsibility for the upkeep of the streets shall vest in the appropriate municipal corporation (discussed below). This also applies to open spaces, such as parks and playgrounds.[245]

236 The Karnataka Town and Country Planning Act 1961, s 26

237 The Karnataka Town and Country Planning Act 1961, s 2(7)(a) read with The Karnataka Town and Country Planning Act 1961, s 81-B. In this regard, it is also relevant to note that urban development authorities have been established under the Karnataka Urban Development Authorities Act 1987 for undertaking planned development of major urban areas in the state of Karnataka, except for the Bangalore Metropolitan Area. *See* Bangalore Development Authority Act 1976, s 67

238 Bangalore Development Authority Act 1976, s 3

239 BDA Revised Master Plan 2031, Master Plan Document (*Open City Urban Data Portal*, 27 November 2017)

240 Naveen Menezes, 'BDA to prepare fresh master plan for Bengaluru' (*Bangalore Mirror*, 22 January 2021)

241 In this context, it is relevant to note that Bangalore Development Authority Act 1976, s 2(j) defines "development" as "carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment".

242 Bangalore Development Authority Act 1976, s 2(c) defines "Bangalore Metropolitan Area" as "the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act 1945 (Mysore Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify."

243 Bangalore Development Authority Act 1976, s 15 and s 16

244 Bangalore Development Authority Act 1976, s 28 and s 30

245 It may be noted that the Bangalore Metropolitan Region Development Authority constituted under the Bangalore Metropolitan Region Development Authority Act, 1985, is tasked with planning, coordinating and supervising the orderly development of the areas within the 'Bangalore Metropolitan Region' (as opposed to the 'Bangalore Metropolitan Area'), as notified by the state government.

3.2.2 MUNICIPAL ADMINISTRATION IN KARNATAKA AND THE CITY OF BENGALURU

The KMC Act[246] and the Karnataka Municipalities Act (KM Act)[247] govern the municipal administration of the state of Karnataka. The jurisdiction and applicability of these two laws is based upon the division of areas into larger urban areas and smaller urban areas.[248] The administration of the larger urban areas is entrusted to eight municipal corporations established under the KMC Act. On the other hand, the KM Act governs the municipal affairs of smaller urban areas (i.e. other than those which are already governed by the municipal corporations established under the KMC Act).

The KMC Act and the KM Act were enacted pursuant to Part IXA of the Constitution, which was inserted by the Constitution (Seventy-Fourth Amendment) Act, 1992. It aims at strengthening local self-government in urban areas by laying down the framework according to which municipalities[249] shall be constituted. Such a framework is required to be set out by state legislatures through legislation.[250] The state legislature may, by such law,[251] lay down the functions and powers of municipalities, which may relate to the performance of functions and the implementation of schemes on matters listed in the Twelfth Schedule of the Constitution. For certain categories of municipalities, ward committees along with other committees shall be constituted.[252] These committees may, by law, also be given authority to carry out functions on matters listed in the Twelfth Schedule of the Constitution.[253]

Some of the subject matters listed in the Twelfth Schedule of the Constitution are urban planning (including town planning); regulation of land use and construction of buildings; roads and bridges; safeguarding the interests of persons who are handicapped and 'mentally retarded'; provision of urban amenities and facilities, such as parks, gardens, and playgrounds; and public amenities such as street lighting, parking lots, bus stops, and public conveniences.

In addition, in every state, a committee for district planning or a committee for metropolitan planning shall be constituted at the district level[254] or in every metropolitan area respectively[255] to prepare a draft development plan for the district or the metropolitan area as a whole (as the case may be). This may be provided through state legislation.[256]

246 *See* The Karnataka Municipal Corporations Act 1976

247 *See* Karnataka Municipalities Act 1964

248 This is based on criteria such as population, population density, municipal revenue and other relevant factors specified in the Karnataka Municipal Corporations Act 1976 and the Karnataka Municipalities Act 1964, s3.

249 Per the Constitution of India 1950, art 243P(e), a "Municipality" means "*an institution of self-government constituted under article 243Q*." Further, the constitution of India 1950, art 243Q(1) provides that:
"(1) There shall be constituted in every State,-
(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
(b) a Municipal Council for a smaller urban area; and
(c) a Municipal Corporation for a larger urban area,
in accordance with the provisions of this Part…".

250 *See* the Constitution of India 1950, Part IXA; *see also* the Constitution of India 1950, art 246(3) read with the Constitution of India 1950, Seventh Schedule, List II- State List, Entries 5

251 The Constitution of India 1950, art 243W(a)

252 Per the Constitution of India 1950, art 243S, a ward committee shall be constituted, consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more.

253 The Constitution of India 1950, art 243W(b)

254 Per the Constitution of India 1950, art 243P(b), a "district" means "a district in a State".

255 Per the Constitution of India 1950, art 243P(c), a "Metropolitan area" means "an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part."

256 *See* the Constitution of India 1950, art 243ZD and 243ZE

3.2.2.1 **The Karnataka Municipal Corporations Act, 1976**

For every large urban area or city, the KMC Act establishes a corporation, standing committees, and a commissioner as the municipal authorities to execute the functions set out under it.[257] A corporation shall consist of not more than 200 and not less than 30 elected councillors. Further, a maximum of five persons may be nominated by the state government from amongst the residents of the city who have special knowledge of and experience in municipal administration, or matters relating to health, town planning, and education, or who are social workers.[258] For each corporation, various standing committees, including a standing committee on town planning and improvement, consisting of the prescribed number of councillors shall be appointed.[259] A commissioner shall be appointed by the state government after consultation with the mayor, who shall carry out the specific functions mentioned in the KMC Act.[260]

Per the KMC Act, the city is divided into wards, and each ward is further divided into areas as may be notified by the state government.[261] An area sabha shall be set up in each area, and all registered voters in the said area shall be members of the area sabha.[262] In every ward, there shall be a ward committee. Each ward committee is represented by the councillor of the ward, who is also the chairperson of the ward. The chairperson is aided by 10 other members nominated by the corporation, of which a prescribed number must be from certain designated categories representing particular interests.[263]

The function of an area sabha is largely recommendatory in nature and includes forwarding development proposals to the ward committee, identifying deficiencies in sanitation, water supply, and street lighting arrangements, promoting harmony among various groups of people in the area, and assisting the ward committee in discharging its functions.[264] The ward committees have been granted greater powers under the KMC Act to affect changes at the municipal level. The ward committees shall discharge functions such as the preparing and submitting ward development schemes to the corporation for the allocation of funds, ensuring the proper utilisation of such funds, supervising all programmes and schemes being implemented in the ward, and maintaining street lighting, parks, and open spaces.[265]

257 The Karnataka Municipal Corporations Act 1976, s 3, s 6 and s 11

258 The Karnataka Municipal Corporations Act 1976 s 7 of the KMCA. In addition, the corporation shall also consist of members of the House of People and members of the State Legislative Assembly representing a part or whole of the city whose constituencies lie within the city, and the members of the Council of State and State Legislative Council who are registered as electors in the city.

259 The Karnataka Municipal Corporations Act 1976, s 11

260 The Karnataka Municipal Corporations Act 1976, s 14. Further, per the Karnataka Municipal Corporations Act 1976, s 10, a mayor is elected from amongst the councillors of the corporation who performs certain functions as specified in the KMC Act

261 The Karnataka Municipal Corporations Act 1976, s21 and S 13A, s13B

262 The Karnataka Municipal Corporations Act 1976, s 13C. Per the Karnataka Municipal Corporations Act 1976,s13D, each area sabha shall also have a representative nominated by the Corporation on the recommendation of the councillor of the particular ward and such representative shall be a member of the area sabha.

263 The Karnataka Municipal Corporations Act 1976, s13H

264 The Karnataka Municipal Corporations Act 1976, s 13G

265 The Karnataka Municipal Corporations Act 1976, s 13I

The functions and powers of a corporation are laid down in Sections 57, 58, and 59 of the KMC Act. In the context of urban planning and rights of persons with disabilities, the obligatory functions of the corporation include the cleaning, lighting, and maintenance of all public spaces, the construction, maintenance, and improvement of public streets, the removal of obstruction on streets, bridges, and other public spaces, and the provision of public parks, gardens, and recreational grounds.[266] In addition, the KMC Act lays down the discretionary functions of a corporation, which includes the organisation, maintenance, or management of care and training of persons who are blind, deaf, mute, or otherwise disabled.[267]

In addition, pursuant to the 74th Constitutional Amendment Act, every year, every corporation is required to prepare a development plan and submit it to the district planning committee[268] or the metropolitan planning committee constituted under Section 503B of the KMC Act as the case may be.[269] Section 503B of the KMC Act refers to the setting up of a metropolitan planning committee for the BMA, and this is discussed further in the following section in the context of the BBMP Act.

3.2.2.2 The Karnataka Municipalities Act, 1964

For every smaller urban area or municipal area, the (KM Act) establishes a municipal council.[270] A municipal council shall consist of councillors directly elected as per the ratio set out in the KM Act. Further, a maximum of five persons may be nominated by the state government, similar to the manner set out under the KMC Act.[271]

The functions and powers of a municipal council are laid down in Sections 87, 88, and 91 of the KM Act and are similar to the functions and powers of corporations under the KMC Act.[272] In addition, the KM Act lays down the discretionary functions of a council, which includes constructing or maintaining public parks, gardens, libraries, mental hospitals, offices, rest houses and homes for disabled and destitute persons. [273]

As is evident, the Act itself uses offensive language while referring to persons with disabilities. The Act must therefore be amended to reflect more respectful and appropriate language to refer to persons with disabilities.[274] In addition, pursuant to the 74th Constitutional Amendment Act, every year, every municipal council is required to prepare a development plan and submit it to the district planning committee[275] or the metropolitan planning committee constituted under Section 503B of the KMC Act as the case may be.[276]

266 The Karnataka Municipal Corporations Act 1976, s 58

267 The Karnataka Municipal Corporations Act 1976, s 59

268 Constituted under Karnataka Panchayat Raj Act 1993, s 310

269 *See* The Karnataka Municipalities Act 1964, s 503A

270 The Karnataka Municipalities Act 1964, s 3 and s 10

271 The Karnataka Municipalities Act 1964, s 11. In addition, the council shall also consist of members of the House of the People and members of the State Legislative Assembly representing a part or whole of the municipal area whose constituencies lie within the said area, and the members of the Council of the State and State Legislative Council who are registered as electors in the municipal area.

272 The Karnataka Municipalities Act 1964, s 87

273 The Karnataka Municipalities Act 1964, s 91

274 In *Vikash Kumar v. Union Public Service Commission*, Civil Appeal No. 273 of 2021, decided on 11 February 2021, the Supreme Court of India emphasised that the shift in societal perception of disability from an individual pathology to a social construct must also be reflected in the language of our discourse and that such a shift in language must make evident an aspiration to make persons with disabilities feel empowered and included instead of alienated.

275 Constituted under Karnataka Panchayat Raj Act 1993, s 310

276 *See* The Karnataka Municipalities Act 1964, s 302A

3.2.2.3 Model Building Bye-Laws Issued under the KMC Act[277] and the KM Act[278]

The KMC Act Bye-Laws[279] and the KM Act Bye-Laws[280] have been issued by the state government to be adopted by municipal corporations and municipalities as may be applicable. The Bye-Laws aim to regulate the coverage, height, floor space, construction, and architectural design of buildings to promote the orderly growth of the area under the jurisdiction of the municipal corporation and municipalities and are to be read along with the development or master plan of that area.[281] The Bye-Laws apply to all building activities (development, re-development, erection, or alteration of a building[282]) undertaken by private or government agencies.[283] They lay down the process for obtaining building permits, completing the project, and obtaining permission for occupation.[284]

Chapter 9 of the KMC Act Bye-Laws and KM Act Bye-Laws sets out provisions for creating a barrier-free environment for persons with disabilities in public buildings (i.e. buildings used by the public such as educational, institutional, assembly, commercial, business, mercantile buildings, and group housing constructed on plots larger than 2,000 square metres. It shall not apply to private residential buildings).[285] Both Bye-Laws list out the types of buildings which must adopt barrier-free guidelines. These spaces have been differentiated on the basis of accessibility for ambulant disabled people, non-ambulant disabled people, and non-ambulant people using small wheelchairs.[286] In line with the MBBL, both Bye-Laws stipulate that the accessibility norms mentioned in the CPWD Guidelines, Chief Commissioner Guidelines, NBC 2005, the draft version of the Harmonised Guidelines, 2014 (which have been subsumed in the final version of the Harmonised Guidelines in 2016 discussed above), and the National Disability Policy shall be followed.[287]

The barrier-free provisions under the Bye-Laws have been formulated towards site development, access paths, parking, building requirements, lifts, toilets, and signages.[288] Examples include: a corridor connecting the entrance/exit must contain the overall information of the specific building; lifts with an audio device must indicate the floor and the opening and closing of the lift door; the provision of a special toilet on each floor with suitable provisions to access drinking water near these toilets; the provision for a refuge area on each floor, which can safely hold one or two wheelchairs; the use of the international symbol for wheelchairs in the areas designed for persons with disabilities; and avoiding any protruding signs which could create an obstruction to walking.

277 *See* The Karnataka Municipalities Act 1964, s 428

278 *See* The Karnataka Municipalities Act 1964, s 325

279 Model Building Bye-Laws (*Urban Development Secretariat Notification-I No. UDD 14 TTP* 2017)

280 Model Building Bye-Laws (*Urban Development Secretariat Notification-II No. UDD 14 TTP* 2017)

281 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building Bye-Laws 2017, Bye-Laws 1(3) and 3.2

282 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building Bye-Laws 2017, Bye-Law 2(21) provides a detailed definition of different types of buildings on the basis of height, design, use and other features

283 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building 2017, Bye-Laws 3.2 and 3.3

284 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building 2017, Chap 3

285 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building 2017, Bye-Law 9.1

286 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building 2017, Bye-Law 9.3

287 Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building 2017, Bye-Law 9.2

288 *See* Karnataka Municipal Corporations Model Building Bye-Laws 2017 and Karnataka Municipalities Model Building 2017, Chap 9

3.2.2.4 Municipal Administration in the City of Bengaluru: Bruhat Bengaluru Mahanagara Palike

The Bruhat Bengaluru Mahanagara Palike Act, 2020 (BBMP Act),[289] is an independent legislation enacted to improve decentralisation, integrate public participation in municipal governance, and ensure efficient decision-making by the BBMP.[290] The BBMP shall be the corporation at the municipal level entrusted with the governance of the area that constitutes Bengaluru.[291]

The BBMP Act establishes various authorities of the corporation required to carry out specific functions: the BBMP, mayor, chief commissioner, zonal commissioner, zonal committees, standing committees, ward committees, and area sabhas.[292] The state government, through notifications, shall divide the area under the jurisdiction of the corporation into zones.[293] Each zone is further divided into wards,[294] and each ward is then divided into areas.[295]

The corporation shall consist of elected councillors representing each ward and of members nominated by the state government from residents of the city who have special knowledge and experience in municipal administration, or matters relating to health, town planning and education, or who are social workers; such nominated members must not exceed 10 per cent of the total number of councillors.[296] The members of the corporation shall elect one of its members as the mayor,[297] who shall discharge the role envisaged under the BBMP Act.[298] There shall also be various standing committees of the corporation, including the standing committee for ward-level public works, town planning and infrastructure, and the standing committee for education and social justice.[299]

Further, the state government, in consultation with the mayor, shall appoint a chief commissioner (who shall not be a member of the corporation).[300] Similarly, for each zone under the corporation, a zonal commissioner shall also be appointed by the state government.[301] Each zone under the corporation shall have a zonal committee consisting of all councillors elected from the wards in the zone (and a chairperson elected among them), a ward engineer, a solid waste management expert and an urban governance expert, nominated by the state government.[302] The administrative hierarchy is further delineated into ward committees and area sabhas. The constitution of ward committees and area sabhas is similar to that set out under the KMC Act (discussed above).[303]

The chief commissioner shall be responsible for the supervision and direction of the zonal commissioners.[304] The zonal commissioner shall be the nodal authority for carrying out the civic administration of the functions of the corporation (discussed below) in relation

289 The Bruhat Bengaluru Mahanagara Palike Act 2020

290 The BBMP was established and governed by the Karnataka Municipal Corporations Act, 1976. With time, however, the Karnataka Municipal Corporations Act, 1976, was found to be inadequate and provided limited flexibility in the municipal governance of the city of Bengaluru. Therefore, the Bruhat Bengaluru Mahanagara Palike Act, 2020, was enacted and per the Bruhat Bengaluru Mahanagara Palike Act 2020, s 376, provisions of the Karnataka Municipal Corporations Act, 1976 pertaining to the BBMP were repealed.

291 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 4. Further, the area that constitutes Bengaluru is to be determined by the Governor based upon criteria such as the population, population density, revenue generated by local administration, amongst others

292 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 3

293 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 12. The number of zones shall not be more than 15.

294 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 2(67) read with Section 7. There shall not be less than 225 and not more 250 wards in the area constituting Bengaluru.

295 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 89

296 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 8. In addition, the Corporation shall also consist of members of the House of People whose constituencies are within the area of the Corporation and the members of the Council of State who are registered as voters in the Corporation, and members of the State Legislative Assembly whose constituencies are within the area of the Corporation and members of the State Legislative Council who are registered as voters in the Corporation.

297 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 56

298 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 59, which provides that the mayor presides over the meetings of the corporation and may provide directions regarding the implementation of any resolution of the corporation or a standing committee, to the chief commissioner, who shall comply with such directions.

to the zone under her jurisdiction and shall supervise the ward committees and area sabhas on these matters.[305] The functions of the zonal committees include[306] improvement of public streets and parks, discussions on matters recommended by ward committees and suggesting the same to the corporation, recommending any amendments to bye-laws to the corporation, and organising public engagement activities to improve civic awareness.

Further, the functions of a ward committee and area sabha are similar to those set out under the KMC Act (discussed above). In addition, a ward committee under the corporation can also organise meetings in the ward sabha (consisting of all persons registered as voters in the ward) for formulating a ward development plan and submit it to the corporation.[307]

Section 107 of the BBMP Act provides that the corporation has the power and responsibility to implement schemes for urban development and social justice on matters listed in the First Schedule of the BBMP Act. The core functions of the corporation include: urban planning including town planning; planning for economic and social development; roads (footpath and road-crossing facilities for pedestrians) and bridges; safeguarding the interest of persons with physical and mental disabilities; and providing and maintaining urban facilities and public amenities, such as parks, playgrounds, public markets, street lighting, parking spaces for vehicles, bus stops, and public conveniences. Some of the general functions of the corporation include promoting community participation in all development activities and introducing information technology and e-governance in the working of the corporation.

The First Schedule of the BBMP Act also sets out the sector-wise functions of the corporation. Under the heads of urban and town planning and public works, the corporation is responsible for the planned development of new areas for human settlement, integration of the development schemes of the areas under its jurisdiction with the district or regional development plan (as applicable), and construction and maintenance of roads. Under the umbrella of social welfare, the corporation is responsible for running institutions for the welfare of persons with disabilities, sanctioning and distributing pensions to persons with disabilities, and removing obstructions on streets, bridges, and other public places.

In addition, pursuant to the 74th Constitutional Amendment Act, Section 367 of the BBMP Act constitutes a metropolitan planning committee for the BMA[308] to prepare a draft development plan for the area as a whole, which shall be forwarded to the state government.

299 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 80 and 81. A standing committee shall not consist of more than 15 councillors.

300 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 63

301 The Bruhat Bengaluru Mahanagara Palike Act 2020, s72

302 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 77

303 *See* The Bruhat Bengaluru Mahanagara Palike Act 2020, s 82, 83, 90 and 91

304 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 64

305 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 74

306 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 78

307 *See* the Bruhat Bengaluru Mahanagara Palike Act 2020, s 86 and 93

308 An explanation to the Bruhat Bengaluru Mahanagara Palike Act 2020, s 367(1) provides that "For the purpose of this section "Bengaluru Metropolitan area" means an area specified by the Governor to be a metropolitan area under clause (c) of Article 243P of the Constitution of India".

3.2.2.5 The Bangalore Mahanagara Palike Building Bye-Laws, 2003

The BBMP Bye-Laws[309] were issued under the KMC Act and continue to remain applicable to construction of buildings in Bengaluru.[310] The Bye-Laws lay down the processes for obtaining building permits, completing the project, and obtaining permission for occupation.[311]

The BBMP Bye-Laws provide that public and semi-public buildings[312] with a covered area of 300 square metres and above shall be designed and constructed to provide facilities to physically handicapped persons as prescribed in Schedule XI of the BBMP Bye-Laws.[313] The categories of physical disabilities in the Bye-Laws are non-ambulatory disabilities, semi-ambulatory disabilities, and hearing and sight disabilities.[314]

Barrier-free provisions have been made in the Bye-Laws for walkways, parking, corridors, lifts, toilets, handrails, and signages.[315] Specific requirements include the accessibility of pathways for wheelchairs; the provision of disabled parking spots at the entrance of a building, which should not be more than 30 metres from the entrance; space for wheelchairs in the building corridors; standardised staircases and the provisions of ramps to approach the plinth level; special water closets in toilets; handrails for ramps, staircases, lifts, and toilets; at least one lift with wheelchair-friendly dimensions; and warning floor material for persons with visual disabilities along with proper signages.

3.2.3 TRANSPORTATION PLANNING AUTHORITIES IN KARNATAKA AND THE CITY OF BENGALURU

3.2.3.1 At the State Level: The Directorate of Urban Land Transport and Road Transport Corporations

The DULT, under the Department of Urban Development,[316] and the Karnataka State Transport Department determine the transport policy. The DULT is, in general, responsible for overseeing all the urban land transport initiatives in the urban/local planning areas of Karnataka and for coordinating the planning and implementation of urban transportation policies in the state. For this, it undertakes a periodic assessment of travel demand; determines the public transportation required in different areas and the types of transportation systems required; procures public transportation services from private operators; and recommends policy guidelines for the development of transport networks in urban areas and creates city-level transportation plans.[317]

309 The Bangalore Mahanagara Palike Building Bye-Laws 2003

310 Per The Bruhat Bengaluru Mahanagara Palike Act 2020, s 376, any bye-law issued under the KMCA shall be deemed to have been issued under the relevant provisions of the BBMP Act, despite repeal of provisions of the KMCA pertaining to the BBMP.

311 The Bangalore Mahanagara Palike Building Bye-Laws 2003, Part II

312 The Bangalore Mahanagara Palike Building Bye-Laws 2003, Bye-Law 2.68 provides that "'public and semi-public building' means a building used or intended to be used either ordinarily or occasionally by the public such as offices of State or Central Government or Local authorities, a church, temple, chapel, mosque or any place of public worship, dharmashala, college, school, library, theatre for cultural activities, public concert room, public hall, hospital run by public institutions, public exhibition hall, lecture room or any other place of public assembly."

313 The Bangalore Mahanagara Palike Building Bye-Laws 2003, Bye-Law 31.0

314 The Bangalore Mahanagara Palike Building Bye-Laws 2003, Schedule XI

315 The Bangalore Mahanagara Palike Building Bye-Laws 2003, Schedule XI

316 The Directorate for Urban Land Transport was established by the Government of Karnataka in its Government Order No. UDD 134 BMR 2006 (I) Bangalore, based on the recommendations in the National Urban Transport Policy (2006) and based on the recommendations of the National Working Group on Urban Transport that was set up under the 11th Five-Year Plan.

317 Directorate for Urban Land Transport

Further, at present, four road transport corporations established under Section 3 of the Road Transport Corporations Act, 1950, operate in the state, and these are the Karnataka State Road Transport Corporation, North West Karnataka Road Transport Corporation, the North East Karnataka Road Transport Corporation, and the Bengaluru Metropolitan Transport Corporation (BMTC).[318] The Act provides that a board of directors with representatives from the central and state governments shall be responsible for the management of any corporation set up under it.[319] Further, it is the duty of a corporation to provide an efficient, adequate, economical, and properly coordinated system of road transport services.[320] The Act also gives corporations elaborate powers to operate road transport services and to manufacture, purchase, maintain and repair vehicles, appliances, and equipment.[321]

3.2.3.2 Transport Planning Authorities for the City of Bengaluru

Bruhat Bengaluru Mahanagara Palike

The BBMP is responsible for maintaining the infrastructural assets of the Greater Bangalore Metropolitan Area. The BBMP is also responsible for the construction and maintenance of roads and bridges, bus shelters and public places. Section 182 of the BBMP Act provides for the establishment of an urban transport fund, which is to be utilised for coordinating, planning, and implementing projects relating to urban transport and their integrated management to cover as much of the city as possible. Administered by DULT,[322] this fund is to be used to conduct studies and research and for promotions and campaigns to encourage the use of public transport.[323]

Bengaluru Metropolitan Land Transport Authority

The Bengaluru Metropolitan Land Transport Authority (BMLTA) is expected[324] to be established to coordinate all land transport matters in the Bangalore Metropolitan Region and to prepare a detailed master plan for transport infrastructure in Bengaluru. As per the draft BMLTA Bill, the Authority would regulate the development, operation, maintenance, monitoring, and supervision of urban mobility. The Bill recognises that the existence of multiple institutions, departments, and regulators has caused an overlap in responsibilities and functions, which, in turn, has impeded planning and implementation.

The BMLTA will have the function of promoting seamless mobility and integrating land use and transport planning.[325]

318 Government Order (No.HTD 127 TRA 96, 22 February 1997)

319 The Road Transport Corporations Act 1950, s 5

320 The Road Transport Corporations Act 1950, s 18

321 The Road Transport Corporations Act 1950, s 19

322 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 82(3)

323 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 182(2)(b)

324 Finally, Bengaluru gets a bill to end mobility mess in city (*Deccan Herald*, 14 September 2021)

325 The Bengaluru Metropolitan Land Transport Authority Bill, 2021, s 14(a)

Once created, the BMLTA will prepare policies for parking, non-motorised transport, transit-oriented development, multi-modal integration, and freight transport.[326] The BMLTA will also create a comprehensive mobility plan,[327] which should include accessible mobility and transport for persons with benchmark disabilities and persons with disabilities as defined under RPWD Act.[328]

Bengaluru Metro Railways

The BMRCL was established as a joint venture of the Government of India and the Government of Karnataka. The BMRCL acts as a special purpose vehicle that oversees the Bengaluru Metro Rail Project. The Metro Railways (Operation and Maintenance) Act, 2002 (MR Act), governs the operation, maintenance, and regulation of all the metros established in India. Though the MR Act was initially promulgated to be applied to the Delhi Metro Railways through Section 100 of the Act, giving the Central Government the power to make the rules for carrying out the MR Act, it has been extended to other cities.

Under Section 3, the MR Act gives the Central Government the power to set up a metro railways administration to carry out the functions mentioned in the Act. Such an administration will maintain and operate the metro and undertake the activities necessary for the same. The MR Act also establishes that any metro railways administration is bound by the directions issued by the Central Government. As per the powers outlined in Section 6 of the MR Act, the administration can provide for carriage of passengers; acquire, hold, and dispose properties; establish and maintain telegraph lines; and establish electric supply lines as needed for the operation of the metro.

Sections 14 and 15 state that the sanction of the Central Government is required to open a metro line for passenger services and for such sanction, the Commissioner of Metro Railway Safety, as appointed under Section 7, scrutinises the metro railways, track structure, strength of bridges, signalling systems, and structure of the civil works. Upon such an inspection, if the metro is deemed fit for public use, the Central Government will sanction opening the metro services to the public. The same process of scrutiny applies to the opening of additional metro lines/routes, opening of stations and junctions, re-modelling of yards and re-building of bridges, and any structural alterations or material reconstruction.

Chapter VI of the MR Act covers the provisions concerning the working of the metro. It covers the information to be made publicly and conspicuously available at metro stations, such as the fare

326 The Bengaluru Metropolitan Land Transport Authority Bill, 2021, s 20

327 The Bengaluru Metropolitan Land Transport Authority Bill, 2021, s 21

328 The Bengaluru Metropolitan Land Transport Authority Bill, 2021, s 21(h)

charges, travel routes, and ticketing information; it establishes the processes concerning ticketing, carriage of goods, and the communication between passengers and metro officials.

Further, the Metro Railways (Construction of Works) Act, 1978, was promulgated to regulate metro railways construction works. Under this Act, the Central Government has the power to constitute and appoint an advisory board for the formulation and coordination of plans for the development of metros and their subsequent expansion. Chapter IV of the Act details the construction of works that can be undertaken by the metro railways administration. The administration has extensive powers, subject to the control of the Central Government to undertake construction and development activity for the establishment of metros.

Comprehensive Mobility Plan for Bengaluru, 2019

The draft Comprehensive Mobility Plan for Bengaluru issued by the DULT and BMRCL proposes the integration of the Bengaluru Metro, Suburban Rail (to be constructed), and the buses run by the BMTC to create a mass transit system. It aims to build a multi-modal transport system for equitable mobility access and minimised negative externalities.[329] The Plan details the sustainable mobility principles it seeks to implement, and this includes accessibility, equity, health, and safety, among others. Under accessibility, it focuses on accessibility to people, places, and services to achieve social and economic sustainability. Demand management through planning urban design and infrastructure and diversifying transportation options to include cost-effective and efficient transport options that allow people more choices to meet their access needs are some of the strategies adopted under the Plan to improve accessibility.

Bengaluru Transit-Oriented Development Policy, 2019

The BMRCL released the draft Transit-Oriented Development Policy in 2019. The Policy seeks to integrate transit and land use provisions in order create an effective and time-efficient transportation policy. The Policy, if adopted, would be applicable to ULBs, all departments, agencies, authorities, parastatals bodies, and companies involved in the planning, funding, implementation, management, and monitoring of urban transport and land use.[330] The Plan focuses on promoting design that encourages walking, cycling, and the use of public transport[331] and destination accessibility to facilitate wider access to various places of travel.[332] The Policy seeks to adopt universal access in design with special attention to women, children, senior citizens, and persons with disabilities.[333]

329 Comprehensive Mobility Plan for Bengaluru (Mission, October 2019)

330 Draft Bengaluru Transit-Oriented Development Policy (2019) Para 2.3

331 Draft Bengaluru Transit-Oriented Development Policy (2019) Para 4.1.3

332 Draft Bengaluru Transit-Oriented Development Policy (2019) Para 4.1.4

333 Draft Bengaluru Transit-Oriented Development Policy (2019) Para 9.3

Bangalore Development Authority's Revised Master Plan, 2031

The draft 2031 Master Plan includes universal accessibility as one of its guiding principles for urban planning. Under universal accessibility for transportation, it envisions a public transport system that is barrier-free and allows easy movement between bus stops or railway platforms and into buses or trains for all groups of users in wheelchairs. It suggests the use of guiding signs to be installed to direct the differently abled towards accessible entrances when using public transport and the use of guiding blocks along accessible walkways from bus stands to building entrances to aid persons with visual disabilities. Accessible car parking, the use of appropriate signages, the installation of elevators and ramps for persons with disabilities at foot-over bridges or pedestrian underpasses are some of the other strategies in the Plan towards the design of urban spaces.

3.3 Important Judicial Decisions Relating to Rights of Persons with Disabilities and Accessibility

This section presents an account of the landmark judicial decisions at the level of the Supreme Court of India and various state high courts recognising and interpreting the rights of persons with disabilities. This section also helps understand judicial trends in relation to the removal of barriers and promotion of accessibility for persons with disabilities specifically in the context of urban spaces and cities.

While a majority of the cases in India have focused primarily on the PWD Act and the RPWD Act, they also examine the applicable international laws and conventions to secure the rights of persons with disabilities and the obligations of the central and state governments under the provisions of the Constitution in securing these rights.

In *Javed Abidi v Union of India*,[334] the petitioner sought the implementation of the PWD Act by seeking the provision of ambulifts, aisle chairs and the grant of concessions by the carrier Indian Airlines for persons with locomotor disabilities. In addition, the petitioner also sought the constitution of various state- and central-level executive and coordination committees under the PWD Act. The Supreme Court of India observed that the committees already constituted by the Central Government and the respective state government(s) must make earnest endeavours to achieve the objectives of the PWD Act. The Court directed that

334 *Javed Abidi v Union of India*, Writ Petition (C) No. 326 of 1997, decided on 17 December 1998

persons with 80 per cent or more locomotor disabilities must be granted concessions for travel by air by Indian Airlines. The Court also noted that the main objective of the PWD Act was to create a barrier-free environment for persons with disabilities and to make special provisions for their integration into the social mainstream.

Jeeja Ghosh v. Union of India[335] was a case in which the petitioner was deplaned from an airline due to her disability. The Supreme Court of India noted that the Civil Aviation Requirements with regard to Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility 2008 and 2014 did provide for the accommodation of persons with disabilities on commercial flights.[336] The Court noted that the PWD Act, which deals with the accessibility of transportation systems, encapsulates the government's obligations to ensure that those with disabilities can achieve their full potential free from discrimination and harassment.

The Court examined India's obligations under international legal instruments that guarantee rights for the disabled such as the UN CRPD, which have also been ratified by India. Under this, the state has an obligation to prohibit all discrimination on the basis of disability and to ensure that transportation systems are accessible to persons with disabilities. The Court further directed that the fulfilment of obligations under international covenants and instruments guaranteeing rights to persons with disabilities is not only the state's duty, but private entities are also expected to honour these obligations. The Court also noted that the existence of the Civil Aviation Requirements issued by the Director General of Civil Aviation reflected that the authorities were aware of the barriers to access faced by persons with disabilities.[337]

In *Justice Sunanda Bhandare Foundation v. Union of India*,[338] the Supreme Court noted the apathy shown by various state governments and instrumentalities of the states towards the PWD Act. This case reached the Supreme Court of India in 2014, where it was decided that the Central Government, state governments and union territories were required to implement the provisions of the PWD Act in all respects, including with respect to persons with visual disability.

Rajive Raturi v. Union of India[339] concerned safe accessibility for persons with visual disability to pavements and to roads and other transport. It also sought the provision of proper and adequate access to public places. The Supreme Court of India noted the provisions of the Constitution in relation to the rights of persons with disabilities, specifically the duties of the state in this regard.

335 *Jeeja Ghosh v. Union of India*, Writ Petition (C) No. 98 of 2012, decided on 12 May 2016. The petition also highlighted various instances of persons with disability either being denied transport in airlines, being harassed on airlines or being asked to sign indemnity bonds for their travel, which was alleged to be in contravention of the Constitution, statutory and international law.

336 The Court also deliberated on the recommendations of the Ashok Kumar Committee, which was appointed by the Ministry of Civil Aviation to review the Civil Aviation Requirements.

337 However, despite the existence of the same, persons with disabilities continue to face accessibility challenges while undertaking air travel. In light of the legal framework and the recommendations of the Ashok Kumar Committee, the Court directed the relevant departments concerned with civil aviation in India to study the recommendations and incorporate them as needed.

338 *Justice Sunanda Bhandare Foundation v. Union of India*, Writ Petition (C) No. 116 of 1998 with Nos. 115 of 1998, 430 of 2000 and Civil Appeal Nos. 6442-43 of 1998, decided on 26 March 2014

339 *Rajive Raturi v. Union of India*, Writ Petition (C) No. 243 of 2005, decided on 15 December 2017

It also observed that one of the objectives of the PWD Act is the creation of a barrier-free environment[340] and that the RPWD Act further expands the scope of accessibility (as discussed above).

The Court observed that the Constitution, under Article 19(1)(c), obligates the state and public authorities to lay down proper norms with respect to built environments and public facilities, including roads, buildings, public spaces, transport, etc. Article 21 of the Constitution, with its expansive application, requires additional compensative skill-enhancing facilities to ensure that persons with visual disability can go about their daily lives without suffering any indignity and being perceived as dependent and helpless.[341] The Court issued certain directions, some of which included:

- All government buildings providing services to the public were to be made fully accessible by July 2019;
- An accessibility audit of 50 per cent of government buildings was to be completed in the 10 most important cities listed by each state and for the buildings to be made fully accessible by December 2019;
- Accessibility audits were to be completed of all international airports and full accessibility was to be provided by December 2016;
- 50 per cent of all railway stations were to be made fully accessible by March 2018;
- Government buses were to be made disability-friendly and brought in compliance with the Harmonised Guidelines;
- BIS was to embed disability aspect benchmarks in all relevant parts of the NBC 2016 ; and
- Advisory boards were to be constituted by all states and union territories within a period of three months from the judgment.

In *Disabled Rights Group v. Union of India*,[342] the Supreme Court of India dealt with the extent that higher educational institutions complied with the RPWD Act, specifically with adequate accessibility for persons with disabilities to ensure free movement in educational spaces to undertake their studies effectively. The Court directed the Central Government, under Section 40 of the RPWD Act, to lay down accessibility standards for colleges and other higher educational institutions within six months from the date of the judgment. In addition, the appropriate government was directed to implement the RPWD Rules within two years per Section 46 of the RPWD Act. The Central Government was also directed to create an audit template for higher educational institutions, and for the appropriate governments to conduct an audit of all higher educational institutions within six months. All higher educational institutions were directed to make their institutions accessible in accordance with the RPWD Act and

340 Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act 1995, s 44, 45 and 46 provide specific guidelines for making the built environment, roads, and transport facilities accessible for persons with disabilities.

341 By reading The Constitution of India 1950, art 38(2), 19(1)(d) and 21, the Supreme Court of India in *Himachal Pradesh v. Umed Ram Sharma* AIR 1986 SC 847 held that without workable roads, no communication was possible in a hill state like Himachal Pradesh, thus emphasising the need for effective transportation.

342 *Disabled Rights Group v. Union of India*, Writ Petition (C) No. 292 of 2006, decided on 15 December 2017

the rules issued under it within two years, with each institution forming an enabling unit for persons with disabilities to ensure the monitoring and implementation of accessibility standards.

The Supreme Court of India in *Vikash Kumar v. Union Public Service Commission*[343] discussed the denial of reasonable accommodation as discrimination. The Court noted that reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society; the duty to provide reasonable accommodation was an individualised duty. Accommodation mandated under law was 'reasonable' because it was to be tailored to the requirements of each condition of disability, and the expectations which every person with disability had were unique to the nature of their disability and the characteristics of the impediments which were encountered as its consequence.

The Supreme Court of India also held that a case-by-case approach must be adopted by the relevant body charged with providing reasonable accommodation, which would require the said body to engage in a dialogue with persons with disabilities. In relation to resource constraints, the Court noted that in providing such reasonable accommodation, it was necessary to consider the overall assets of the organisation rather than just the concerned unit or department, and it should be ensured that the persons with disability were not required to bear the costs of such accommodation.

In *Kaukab Naqvi v Union of India*,[344] the High Court of Delhi took note of the facilities provided by the Central Government in rail transport and also provided suggestions for more facilities to benefit persons with disabilities. The Court suggested the provision of the following facilities:

1. "At the time of the issuance of concessional tickets to a physically handicapped person or a person who is blind, deaf and/or dumb, information regarding the complete details of the passenger name, address, and the telephone number of the emergency contact should be obtained.
2. The railway authorities, on the basis of the information obtained from passengers with disabilities, should print a card providing the full particulars of the passenger's name, address, emergency contact details, the boarding station, and the destination station.
3. Each person with physical disabilities, a person who is blind, deaf or dumb, or a sick person traveling on concessional fare should carry such a card to enable them to seek assistance from fellow passengers/travellers in case of need."

343 *Vikash Kumar v. Union Public Service Commission*, Civil Appeal No. 273 of 2021, decided on 11 February 2021. The case concerned the denial of a scribe in the civil services examination for a person suffering from dysgraphia (writer's cramp).

344 *Kaukab Naqvi v Union of India*, AIR 2002 Del 240, decided on 20 December 2001.

In *Integrated Disabled Employees Association v. State of West Bengal*,[345] the petitioners sought directions from the Calcutta High Court to state authorities for the implementation of Section 44 (Non-discrimination in Transport) and Section 45 (Non-discrimination on Road) of the PWD Act. In addition, the petitioners sought the implementation of the reservation of two seats in all state-run, state-sponsored, or private buses, and awareness generation among conductors and drivers to ensure that persons with disabilities were not victimised. The Court granted all the demands of the petitioners and directed authorities to actively implement measures under Sections 44 and 45 of the Act, including the installation of auditory signals at red lights on public roads and crossings for the benefit of persons with visual handicaps, the provision of curb cuts and slopes on pavements for easy access for wheelchair users, engravings on surfaces of the zebra crossings for the blind, or devising appropriate symbols for disability and warning signals at appropriate places for persons with low vision.

Nipun Malhotra v. Government of NCT of Delhi[346] concerned the implementation of the Accessible India Campaign specifically in the context of accessibility of public transport.[347] Upon examining the applicable accessibility norms, the High Court of Delhi stated that public transport must be designed, as far as is practical, to include facilities that can accommodate persons with disabilities; new vehicles being purchased must comply with accessibility standards to enable all persons, including those in wheelchairs, to use the public transportation services provided by the government.

In a subsequent order,[348] the Court took note of the progress made by the Central Government under the Accessible India Campaign. As of 2018, it noted that there were no accessible bus stations, toilets, provisions for passengers using wheelchairs, crutches and callipers to board buses, tactile footpaths, curb cuts for wheelchair users to enter footpaths, auditory signals at red-light crossings, engraved zebra crossings, and islands between roads. The Court also observed that the Delhi Government's decision with respect to the purchase of buses reflected no real intention to acquire accessible transport in Delhi, and it also ignored the fact that the acquisition of accessible buses would be immaterial unless bus stands, stations, and roads were modulated/rectified to enable mobility for persons with disabilities. However, despite these observations, the Court noted that the percentage of accessible buses (low-floor buses) in Delhi was more than the required 10 per cent of total public transport as mandated under the campaign and

345 *Integrated Disabled Employees Association v. State of West Bengal* Writ Petition (W) 17615 of 2008 and Writ Petition (W) 18513 of 2008, decided on 10 June 2013

346 *Nipun Malhotra v. Government of NCT of Delhi*, Writ Petition (C) No. 9643 of 2017, decided on 1 June 2018

347 The petitioner challenged the Delhi government's decision to purchase 2,000 buses that were not conducive for use by persons with disabilities. The petitioner highlighted that the decision went against the goals of the Accessible India Campaign, which required at least 10 per cent of government-owned public transport vehicles to be fully accessible to persons with disabilities. The petitioner also sought the involvement of persons with disabilities in the decision-making processes of the government with respect to the purchase of public transport, a policy decision that immensely affected persons with disabilities.

348 Writ Petition (C) No. 9643/2017, decided on 22 October 2018

hence, it refused to grant a mandamus to prohibit the Government of Delhi from procuring more standard-floor buses.

The Bombay High Court in *Disability Rights Initiative v. National information Centre*[349] dealt with the matter of ensuring universal accessibility to government websites for persons with disabilities and directed the Maharashtra state government to update all its websites to make them disability-friendly. Further, *Ahmad M. Abdi v. State of Maharashtra*[350] concerned the provision of a new building for the Bombay High Court with fixtures, furniture, and other infrastructure to make it accessible for persons with disabilities. The Bombay High Court noted that court complexes must have features for the benefit of persons with disabilities. Specifically, the Court noted that ramps must be operable, feasible, and tried and tested with steel railings and handles. For persons with visual disabilities, the court infrastructure must have tactile pavements and signages in Braille. In addition, there must be maps, floor plans at entry and exit points, visible signage, and directional arrows with colour coding throughout the court premises.

ILS Legal Aid Centre v. State of Maharashtra[351] dealt with the matter of providing buses designed for persons with disabilities and infrastructure that aided the mobility of persons with disabilities, such as ramps, railings, and accessible toilets in the state of Maharashtra. The Bombay High Court, in deliberating over the matter, noted that the main objective of the PWD Act was to create an environment that is barrier-free for persons with disabilities.

Karnataka Federation for the Blind v. State Government of Karnataka[352] dealt with the issue of whether the Government of Karnataka's circular directing all government employees to report for duty at 100 per cent capacity during the COVID-19 pandemic was against the principle of reasonable accommodation. This circular came against the backdrop of an office memorandum issued by the Central Government which exempted employees with disability from roster duty during the pandemic. Since the circular issued by the Government of Karnataka was contrary to this, a public interest litigation was filed on behalf of government employees with disabilities to seek reasonable accommodation for work due to the challenges posed by the pandemic.[353] The Karnataka High Court noted that COVID-19 fears and social distancing norms made it increasingly difficult for persons with disabilities, especially those with visual impairments, to get physical assistance from others. The Court directed the Government of Karnataka to follow the Central Government's office memorandum and reconsider its circular to ensure the accommodation of persons with disabilities.

349 *Disability Rights Initiative v. National information Centre*, Public Interest Litigation No. 126 of 2012, decided on 31 August 2018; 2018 SCC OnLine Bom 10260

350 *Ahmad M. Abdi v. State of Maharashtra*, Public Interest Litigation No. 57 of 2012, decided on 22 January 2019; (2019) 2 Bom CR 639

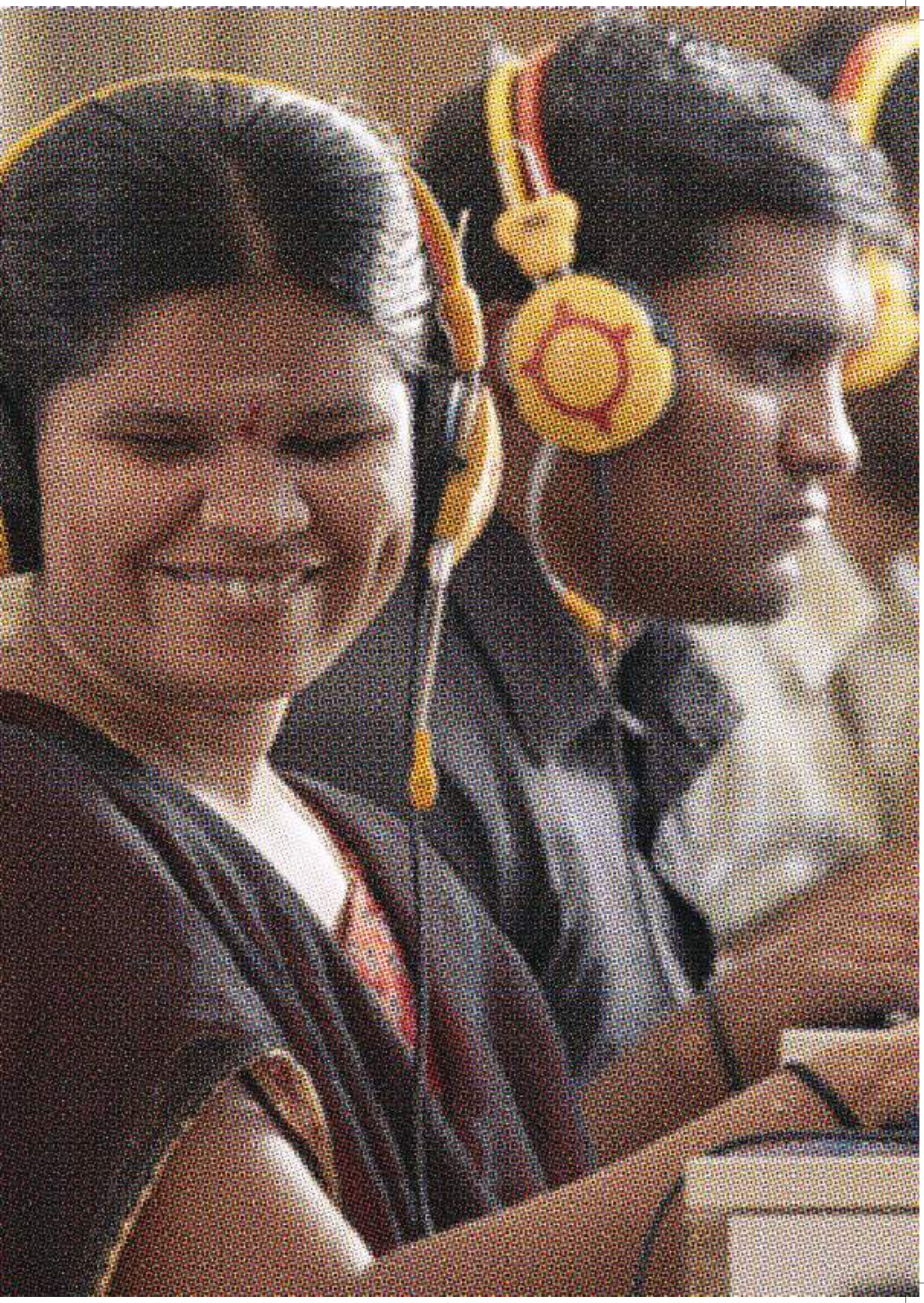
351 *ILS Legal Aid Centre v. State of Maharashtra*, Public Interest Litigation No. 70 of 2002. Order dated 24 August 2005

352 *Karnataka Federation for the Blind v. State Government of Karnataka*, Writ Petition (C) No. 9260 of 2020, decided on 20 August 2020

353 The petitioner argued that the Rights of Persons with Disabilities Act 2016, s 2(y), 3(5) and 20(2) place a positive duty on the Government to provide reasonable accommodation and a barrier-free conducive work environment for persons with disabilities.

To summarise, this chapter described the various rights and entitlements, including the right to an accessible, barrier-free environment, of persons with disabilities guaranteed through various legal instruments at the international and national levels as well as in Karnataka. Further, legal norms relating to urban planning and accessibility standards for cities, including the built environment, mobility and transportation, and ICTs, were also set out. While the legal norms mentioned are issued primarily at the national level, their implementation often comes within the ambit of state agencies, municipalities and ULBs on account of their areas of operation and functions entrusted to them.

However, it has been observed through various judicial pronouncements, stakeholder interviews, and the literature review that despite accessibility standards being mandated by law along with several enforcement agencies operating at different levels with specific functions and powers, cities are still far from being truly inclusive of persons with disabilities. The subsequent chapters aim at identifying and discussing these challenges and gaps in law and aim to provide solutions in law and policy which may help in creating truly inclusive cities for all.



4

KEY ISSUES

The understanding of what constitutes disability and who is deemed to be a person with disability has significantly evolved over time, from an individual-centric perspective to that of an outcome relating to a person's physical, social, and cultural environment. In this context, the design and use of urban infrastructure, mobility, spatial policies, creation of public spaces, and interaction between people and institutions are all essential areas of intervention in ensuring that everyone is able to fully participate in society. In this section, the main issues involved in conceptualising and implementing accessibility to urban space are discussed.

4. 1 Understanding Accessibility: Key Issues

The right to accessibility is a prerequisite for the realisation and enjoyment of a basket of rights and entitlements guaranteed to persons with disabilities. In numerous legal instruments, the right to accessibility has been recognised and enshrined[354] as crucial for enabling persons with disabilities to live independently and participate fully in all aspects of life.

The success of accessibility initiatives rests on the proper recognition of the existing barriers to access and on understanding what securing access entails. While thinking of accessibility, it is essential to take into account external constraints[355] including affordability, competing priorities, and availability of technology and knowledge, along with sensitivity to cultural differences. It is vital to build[356] a 'culture of accessibility' that focuses on ingraining accessibility as a key desired goal, with a focus on removing environmental barriers and simultaneously pursuing a higher standard of Universal Design.

The following are some of the key issues that emerge on examining the challenges in securing accessibility for persons with disabilities.

4.1.1. EMPHASIS ON PHYSICAL DISABILITY, LIMITED CONSIDERATION OF INVISIBLE DISABILITIES IN ACCESSIBILITY STANDARDS

Despite the recognition[357] of a wide spectrum of disabilities in the myriad legislative frameworks in place in India, accessibility standards seem to focus on certain classes of disability, with little or no engagement with others. Design interventions seem to be focused exclusively on the physical dimensions of accessibility, with little to no reference to the social dimensions of access.
In particular, scant attention seems to have been paid to the accessibility needs of persons with invisible or hidden disabilities. Simply put, an invisible[358] or hidden disability is a physical, mental, or neurological condition that is not visible from the outside, but

354 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 9

355 World Health Organization, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011) 193

356 Harold Snider and Nazumi Takeda, 'Design for All: Implications for Bank Operations' (2008) The World Bank Working Paper

357 The Rights of Persons with Disabilities Act 2016, Schedule, s 2(zc)

358 What is an Invisible Disability? (*Invisible Disability Association*)

that can yet limit or challenge a person's movements, senses, or activities. The fact that these symptoms are invisible can lead to misunderstandings, false perceptions, and judgment. Some examples of invisible disabilities include intellectual, psychosocial, and learning disabilities such as autism spectrum disorder, dyslexia, mental illness such as depression, and Parkinson's disease, as well as symptoms such as chronic pain, fatigue, and dizziness.

For instance, the role of the built and social environment in urban areas in impacting mental health outcomes has been well documented.[359] Research has found that exposure to natural environments through access[360] to urban green space is beneficial to persons with mental illnesses such as depression and provides symptomatic relief for anxiety disorders, schizophrenia, attention deficit hyperactivity disorder (ADHD), and dementia. Drawing on such research, the concept of 'restorative urbanism'[361] places mental health, wellness and quality of life at the forefront of city planning and urban design. This approach has the potential to inform the trajectories and priorities of urban development for the purpose of fostering healthy cities. A recent case study[362] in New Delhi examines the impact of existing urban planning practices on mental health and recommends making interventions in the planning and design of urban spaces to improve public mental health and well-being. There is an urgent need to integrate this kind of cutting-edge research, conducted at the intersections of psychosocial disabilities, mental health, and urban planning, into the development and revision of urban planning principles and accessibility standards currently in use.

The lack of an expansive understanding of the different types of disability and the varying accessibility needs amongst them can have a direct impact on the priorities in, and creation of, accessible urban infrastructure. For instance, the dire lack of resting spaces or public seating on streets can be extremely hostile to a range of users navigating the city, especially elderly persons, pregnant women, and persons with chronic illnesses or heart conditions that can lead to fatigue and breathing difficulties.

While there exists a robust set of laws that mandate barrier-free urban spaces, the accessibility standards prescribed in this regard are not uniform at all levels of governance. Moreover, in certain instances, the accessibility standards do not appear to be comprehensive and therefore need to be reviewed and updated regularly. For instance, the Harmonised Guidelines[363] set out accessibility standards for building premises, signage, level design, toilet facilities, fire evacuation needs, alighting and boarding areas, adapted housing, and roads and transport for different classes of disabilities. However, based on a plain reading of the

359 World Health Organization, Global Report on Urban Health (2016), 83

360 Jenny Roe, 'Cities, Green Space, and Mental Well-Being' (Oxford Research Encyclopedia of Environmental Science 2016)

361 Jenny Roe and Layla McCay, Restorative Cities: Urban Design for Mental Health and Wellbeing, (Bloomsbury 2021) 9

362 Kriti Agarwal, 'From the City of Djinns to the City of Sins: how Delhi has facilitated mental wellbeing through urban design' (2019) 6 Journal of Urban Design and Mental Health, 9

363 Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons (Government of India Ministry of Urban Development 2016)

guidelines, it appears that other than the section on universal signage,[364] the standards directly address only certain classes of disability, i.e., locomotor, blindness, hearing and speech-related disabilities, but not intellectual and psychosocial disabilities. Even under the NBC 2016,[365] there appears to be limited reference to persons with intellectual and psychosocial disabilities in the enumeration of different types of disabilities for the purpose of design interventions. Moreover, the BBMP Bye-Laws lay down accessibility standards for only physically handicapped persons and do not expressly cover any other categories of disability.

4.1.2 PERSISTENT LACK OF IMAGINATION IN ENVISIONING URBAN ACCESSIBILITY

Persons with disabilities are not the imagined users of urban space. The embodied experience of persons with disabilities is not taken into consideration in the design and planning of urban spaces, which renders such spaces hostile and inaccessible to persons with disabilities in their everyday life, resulting in stark discrimination and inequity in access to the city.

In the course of stakeholder interviews with subject matter experts and representatives from disabled people's organisations (DPOs), this was a key theme that emerged repeatedly. A constant refrain was the decided lack of consideration for persons with disabilities, their body politics, and their specific needs in the context of accessibility to urban spaces, be they public buildings (whether owned by government or privately), transportation infrastructure ,or website and app infrastructure.

The lack of consideration of different users afflicts modern urban planning and has been critiqued[366] by many feminist and disability scholars as contributing to the creation of inequitable cities. When people are left out of the set of imagined users, their real lives and needs are excluded from policy and architecture—leading to their cloistering indoors, limiting their opportunities, and perpetuating these exclusions. Over the course of interviews with disability rights activists and representatives of DPOs, it emerged that this lack of consideration affected the quality of life for persons with disabilities in every dimension of life. At times, it was a question of mere play and enjoyment of basic rights that non-disabled people can take for granted. In a stakeholder interview with a DPO working on accessibility, the experience of planning travel was shared—this involved additional labour to ensure that trips to tourist spots were accessible for wheelchair users, since such services did not exist, resulting in constant barriers to movement due to inaccessible urban infrastructure.

364 Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) Point 6.4.2.5, Signage, Pg 40

365 National Building Code of India 2016, 13.3.2

366 *Disability, Space, Architecture: A Reader* (Jos Boys, Routledge 2010) 81

A notable example of a lack of imagination and how it impacts persons with disabilities was witnessed during the COVID-19 pandemic. In a stakeholder interview with a feminist-disability rights organisation, the inaccessibility of food-delivery apps such as Swiggy and Zomato for persons with visual impairments was discussed. This had resulted in significant disruption in their routines and had created dependency on caregivers, especially during the extended lockdowns in India owing to COVID-19, when these apps were the primary way for many people to source groceries or food items.

The New Urban Agenda advocates[367] for 'planning from the margins,' a principle that advocates the centring of vulnerable populations, which ultimately results in the benefit of all residents of the city. Planning for persons with disabilities in the context of urban spatial and mobility infrastructure or web applications through the use of Universal Design results in urban environments that are also accessible to elderly people, women, parents with prams, and myriad other users in the city. A feminist approach to urban planning in this context ensures[368] that women and girls with disabilities are centred, ensuring that accessibility is not understood in isolation but in relation to issues such as safety for women in the city, issues that women with disabilities face disproportionately owing to the combined experience of gender and disability.

4.1.3 LIMITATIONS OF BARRIER-FREE DESIGN AND THE NEED FOR CROSS-DISABILITY PERSPECTIVES

Securing access to urban space is not simple or without its challenges. For instance, one person's access requirement could be a potential barrier for someone else. This necessitates an approach that takes into account the multiplicity of uses of a particular access intervention as well as the diversity of users, particularly across the spectrum of disabilities. Disability scholar Aimi Hamraie describes[369] the experience of developing curb cuts in Berkeley, California, USA, that unearthed frictions within the disability community. Curb cuts have enabled wheelchair and power-chair users to get around, and in cities like Berkeley, people have been known to fashion curb cuts from found materials in the city, a practice dubbed as 'guerrilla urbanism,' in order to create makeshift access interventions in the city. However, people who were blind or visually impaired objected[370] to such curb cuts, arguing that such interventions made cities less predictable and harder to navigate.

367 *New Urban Agenda Illustrated Handbook* (UN Habitat, 2020).

368 Sneha Visakha, Vidhi Centre for Legal Policy, *Making A Feminist City* (2021)

369 Aimi Hamraie, *Building Access: Universal Design and Politics of Disability* (University of Minnesota Press 2017) 118

370 Aimi Hamraie, 'A Smart City Is an Accessible City' (*The Atlantic*, 6 November 2018)

These concerns had not been considered when the focus was on wheelchair users and walking people, both presumed to be sighted, and this objection to the curb cut disrupted the universality of wheelchair use as the prototype and led to the development of a growing 'cross-disability consciousness.'[371] This issue was resolved by working in cross-disability coalitions to produce new design standards that combined curb cuts with raised, yellow, tactile bumps that would enable wheelchair access while also signalling the change in grade to someone using a cane.

It was also highlighted in multiple stakeholder interviews that accessibility interventions need to be designed keeping in mind sensitivities across disabilities. For instance, if public transport facilities such as buses and trains have 'next stop' audio announcements for persons with visual impairments, care must be taken to ensure that these announcements are not too loud or jarring to persons with sensory difficulties, such as those with autism.

These examples highlight the limitations of barrier-free design approaches, which only focus on the physical dimensions of space, and underscore the importance of shifting to a Universal Design approach that considers all disabilities and is sensitive to factors such as gender and age, among others. This is also indicative of the lack of involvement of a diverse set of users from within the disability community in the process of design and planning. While there is awareness of the importance of disability accessibility, it is critical that conversations concerning accessibility involve cultivating a cross-disability consciousness and that space is made for cross-disability coalitions in the design and planning process.

4.1.4 STRUCTURAL PROBLEMS IN URBAN PLANNING FRAMEWORKS IN INDIA

Urban planning in India suffers from a series of structural and political problems. There is a serious deficit of democratic functioning in the context of urban planning and governance that significantly impacts the ability of citizens to participate in the process of urban planning and the development of their own cities. The New Urban Agenda speaks of a 'participatory and people-centred' vision,[372] which is particularly necessary for ensuring the inclusion of marginalised groups in city planning processes, through age- and gender-responsive approaches, and with particular attention to contributions from persons with disabilities. The New Urban Agenda also specifically calls[373] on state parties to establish legal and policy frameworks ensuring appropriate

371 Aimi Hamraie, *Building Access: Universal Design and Politics of Disability* (University of Minnesota Press 2017) 118

372 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) para 16

373 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) paras 89 and 90

fiscal, political, and administrative decentralisation based on the principle of subsidiarity and support, strengthening the capacity of local governments to implement effective local and metropolitan multilevel governance. It also calls for local governments to be involved[374] in decision-making and supports making reforms to urban planning laws and policy interventions to endow local authorities with the necessary powers and resources to manage critical urban, metropolitan, and territorial concerns in order for persons with disabilities, particularly women and girls with disabilities and those from vulnerable socioeconomic backgrounds, to have access to civic participation and local government.

The following are some of the key structural problems affecting extant frameworks of urban planning and governance in India that need to be addressed:

4.1.4.1 Lack of Decentralisation of Planning Functions

While the 74th Constitutional Amendment Act entrusts states with the task of devolving planning functions to municipalities, most states in India have been extremely lax in carrying out this task, with the notable exceptions[375] of Kerala and West Bengal. In most major Indian cities, specialised agencies of the state government carry out functions such as urban planning and land-use regulation, instead of elected ULBs. For instance, in Bengaluru, the BBMP, the elected ULB, has a very limited role in the context of planning. Instead, the BDA, a statutory authority under the state government, is the principal planning authority[376] under the KTCP Act for the local planning area. This results in a third tier of urban governance that is politically and functionally disempowered.

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM), launched in December 2005, focused[377] on reforms to urban infrastructure and governance and securing basic services for the urban poor. Under the programme, the Central Government linked the disbursement of substantial financial assistance over a period of seven years to states and municipalities on the fulfilment of the Mission's requirements, which included a series of mandatory and optional reforms to be undertaken by states and municipalities. At the state level, the mandatory reforms included[378] the implementation of decentralisation measures as envisaged in the 74th Constitutional Amendment Act, the enactment of community participation laws to ensure citizens' participation, and the assignment of city planning functions to elected ULBs. This was intended to modify the existing two-tier system of urban local governance into a three-tier system.

374 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) para 91

375 The Energy and Resources Institute, 'Enhancing Public Participation Through Effective Functioning of Area Sabhas' (May 2010) 11

376 The Karnataka Town and Country Planning Act 1961, s 81B

377 Ministry of Urban Development, *Jawaharlal Nehru National Urban Renewal Mission: Overview* (2005) 5

378 Ministry of Urban Development, *Jawaharlal Nehru National Urban Renewal Mission: Overview* (2005) 12, 13

In order to comply with the JNNURM compulsion, Karnataka passed the Karnataka Municipal Corporation Amendment Act[379] in 2011 (popularly known as the Community Participation Law) that set out a framework for constituting ward committees and area sabhas, entrusting functions and institutionalising citizen participation. However, this law was severely criticised[380] for its inefficient structuring of ward committees and area sabhas and for merely paying lip service to the notion of community participation, whilst failing to reflect the spirit of the obligations under JNNURM that sought to give effect to the 74th Constitutional Amendment Act.

The Community Participation Law provided that area sabha representatives would be nominated by the municipal corporation on the basis of the local councillor's recommendation, instead of being elected. This compromises the neutrality and independence of the representative. It also did not devolve any significant functions or powers to the area sabhas, rendering them ineffective. Similarly, the ward committees were to consist of the councillor and 10 members nominated by the corporation on the councillor's recommendation,[381] instead of being elected. While there is reference to representation[382] for women and members from scheduled castes and scheduled tribes, there is no representation for persons with disabilities or DPOs in the ward committees under this scheme. The ward committees are also conferred with very limited powers and functions. In addition, at complete odds with the spirit of community participation, the Act conferred[383] on councillors the power to veto any decision taken by a ward committee, thus nullifying the very notion of citizens' participation.

With the passage of the BBMP Act in 2020, the constitution and functioning of area sabhas and ward committees in Bengaluru is now governed by a special law. Even though this Act does away with the veto power of the councillor in ward meetings, it continues the pattern of creating a functionally and politically weak role for ward committees, specifying that the recommendations of the ward committee are merely advisory[384] in nature.

4.1.4.2 Lack of Inclusion in Design of Urban Spaces and Participatory Planning

The primary legislation governing planning in the state of Karnataka is the KTCP Act, which sets out the framework and process for the preparation of planning documents for the city. Section 9 of the Act lays out the process for the preparation of a master plan by the planning authority for a designated local planning area in Karnataka. It requires that the master plan be revised every decade.

379 The Karnataka Municipal Corporation Amendment Act 2011

380 Shyam Singh, CIVIC, 'The Community Participation Law in Urban India: Status and Issues' (2012)

381 The Karnataka Municipal Corporation Amendment Act, s13H(2)

382 The Karnataka Municipal Corporation Amendment Act, s 13H(2)(b)

383 The Karnataka Municipal Corporation Amendment Act, s13H(7)

384 The Bruhat Bengaluru Mahanagara Palike Act 2020, s 86(4)

A master plan[385] is a long-term strategy that builds a connection between buildings, social settings, economic activities, geography, characterisation, and culture to guide future growth in a city. It serves as a high-level framework for the design of urban spaces and planning, and forms the basis of local land-use regulations and zoning ordinances that ensure that urban development is consistent with the community goals and policies expressed in the plan. The use of master plans in the 20th century reflected the perception that urban areas could be ordered, planned, and managed through conscientious spatial arrangement and aimed to reflect citizens' aspirations for their city in the desired physical forms and patterns set out in the plan. The master plan thus serves as a context for the planned urban development and governance of the city.

A technocratic[386] master planning exercise, along with a notable lack of a participatory planning framework, results in the creation of cities that do not account for people's needs and aspirations, particularly affecting those at the margins, such as women, persons with disabilities, children, the elderly, and socially and economically vulnerable groups. This results in cities that are exclusionary and hostile to the needs of vast swathes of users in the city, starkly affecting persons with disabilities in particular. This is exacerbated by the lack of political representation of persons with disabilities as well as representation across various levels of decision-making in urban planning and governance processes.

The New Urban Agenda promotes[387] participatory age- and gender-responsive approaches at all stages of the urban and territorial policy and planning processes, from conceptualisation and design to budgeting, implementation, evaluation, and review, rooted in new forms of direct partnership between governments at all levels and civil society, including through broad-based and well-resourced permanent mechanisms and platforms for cooperation and consultation open to all, using information and communications technologies and accessible data solutions.

While the URDPFI Guidelines identify inclusive planning as a key stage for preparing a master plan, neither the KTCP Act[388] nor the BDA Act mentions this principle while preparing the master plan for the city of Bengaluru. Further, the KMC Act Bye-Laws and the KM Act Bye-Laws stipulate[389] that the applicable accessibility norms are those mentioned in the CPWD Guidelines, Chief Commissioner Guidelines, NBC 2005, the draft version of the Harmonised Guidelines, 2014, and the National Disability Policy. This is the case under the MBBL as well. However, with the passage of the final version of the Harmonised Guidelines in 2016, the previously applicable CPWD Guidelines, Chief Commissioner

385 *New Urban Agenda Illustrated Handbook* (UN Habitat, 2020) Glossary, 159

386 Sneha Visakha, Vidhi Centre for Legal Policy, *Making A Feminist City* (2021) 35

387 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) para 92

388 There is limited reference to persons with disabilities in the context of town planning under the Karnataka Town and Country Planning Act, 1961. Specifically, Karnataka Planning Authorities (Allotment of Civic Amenity Sites) Rules 2016, Rule 6, issued under the Karnataka Town and Country Planning Act, 1961, stipulates an allotment of 2 per cent of civic amenity sites to those institutions, which have been "established for the benefit of the physically and mentally disabled".

389 The Karnataka Municipalities Model Building Bye-laws 2017, Chap 9.2

Guidelines, and NBC 2005 have since been subsumed into the Harmonised Guidelines. This update, however, is currently not reflected in these instruments.

4.2 Challenges in Implementation of Existing Legal Frameworks

Despite the prevalence of legal frameworks that address accessibility in a variety of contexts such as the built environment, transport and mobility, and ICTs, among others, there are significant challenges that hinder implementation of such frameworks. The next section examines the issues and challenges that deter the effective implementation of existing laws and standards relating to accessibility.

4.2.1 IMPLEMENTATION OF ACCESSIBILITY STANDARDS FOR THE BUILT ENVIRONMENT

Under the RPWD Act, all existing public buildings, whether government or private, used or accessed by the public at large, are obliged[390] to comply with the accessibility standards prescribed under the RPWD Rules in order to make their existing infrastructure and premises accessible to persons with disabilities. However, in this context, the government or local authorities could formulate and develop an action plan prioritising[391] such buildings and public spaces providing essential services, such as primary healthcare centres, civil hospitals, schools, railway stations, and bus stops, while still striving towards progressive universal accessibility of urban spaces.

In the context of enforcing accessibility standards for the physical environment, the RPWD Act mandates that an establishment cannot be granted permission to build any structure if its building plan does not adhere to the accessibility standards set out under the RPWD Act, i.e., the Harmonised Guidelines. Moreover, the RPWD Act also stipulates that an establishment cannot be issued a certificate of completion or be allowed to occupy any building unless it has adhered to the above-mentioned standards.[392] In this regard, it is relevant to note that the relevant municipal laws, i.e., the KMC Act, the KM Act, and the BBMP Act, along with the bye-laws issued under each of these acts, set out the framework for obtaining building permits, completion certificates, and permission for occupation of buildings.[393] The respective bye-laws also refer to accessibility standards required to be followed by such buildings.

Any person who intends to construct, re-construct, alter, modify, or add to a building is required to send to the commissioner of a

390 Rights of Persons with Disabilities Act 2016, s 45

391 Rights of Persons with Disabilities Act 2016, s 45(2)

392 Rights of Persons with Disabilities Act 2016, s 44

393 Karnataka Municipal Corporations Act 1976, s 2; Karnataka Municipalities Act 1964, s 2 and Bruhat Bengaluru Mahanagara Palike Act 2020, s 2, set out a broad definition of "building".

394 Karnataka Municipal Corporations Act 1976, s 299; Karnataka Municipalities Act 1964, s 187 and Bruhat Bengaluru Mahanagara Palike Act 2020, s 242

municipal corporation or municipal council or a zonal commissioner of the BBMP, as the case may be, an application for permission to execute the work, along with a site plan and other documents/ particulars, as may be prescribed under the applicable building bye-laws.[394] Work cannot be commenced until permission is received from the municipal commissioner or zonal commissioner.[395] The municipal laws lay down the grounds on the basis of which permission may be rejected.[396] These include instances where the work, use of the site, site plan, or any document/particulars submitted violates any applicable law, including building bye-laws. They also lay down the timeframe within which permission may be granted[397] and construction may be commenced upon receipt of such permission.[398]

Upon completion of work, a notice of completion must be sent to the commissioner. The building can be occupied only after applying for permission to occupy and upon receipt of this permission from the commissioner.[399] The commissioner has the power to inspect the construction and take action where it contravenes the site plan as well as any applicable law (including building bye-laws).[400] Moreover, upon submitting the notice of completion, an inspection of the building by the commissioner must be facilitated.[401]

The KMC Act Bye-Laws and the KM Act Bye-Laws mandate the registration of certain categories of stakeholders involved in the development of buildings.[402] This includes professionals who are empanelled by a municipal corporation or municipal council to certify that the construction or implementation has been in accordance with the site plan (conforming to the building bye-laws), among others.[403] An 'empanelled professional' is defined as:

> "professionals such as Architects, Engineers, Structural consultants, MEP consultants, Environment consultants etc., who are empanelled by the Authority as per the provisions of these bye-laws as authorised persons to inspect the plots before, during, and after construction, as the case may be, to certify the constructions made as per the provisions of the approved plans and report to the Authority and also to sanction building plans of certain buildings as notified by the government."[404]

An empanelled professional is required to undertake responsibilities on behalf of the municipal corporation or the municipal council, and the definition above as well as the provisions of the building bye-laws clearly set out the nature of these responsibilities.[405] Moreover, the Building Bye-Laws also lay down the procedure for empanelment and selection of these professionals.[406]

395 Karnataka Municipal Corporations Act 1976, s 300, Karnataka Municipalities Act 1964, s 187 and Bruhat Bengaluru Mahanagara Palike Act 2020, s 239

396 Karnataka Municipal Corporations Act 1976, s 303; Karnataka Municipalities Act 1964, s 187 and Bruhat Bengaluru Mahanagara Palike Act 2020, s 244

397 Karnataka Municipal Corporations Act 1976, s 301; Karnataka Municipalities Act 1964, s 187 and Bruhat Bengaluru Mahanagara Palike Act 2020, s 243

398 Karnataka Municipal Corporations Act 1976, s 306; Karnataka Municipalities Act 1964, s 187 and the Bangalore Mahanagara Palike Building Bye-Laws 2003, Bye-Law 5.2

399 Karnataka Municipal Corporations Act 1976, s 310; and Karnataka Municipalities Act 1964, s 190. Under KM Act, an application may be sent to the municipal commissioner or the chief officer as the case may be.

400 Karnataka Municipal Corporations Act 1976, s 307 of the KMC Act and Karnataka Municipalities Act 1964, s 187 of the KM Act. Under the KM Act, the inspection may be carried out by the municipal commissioner or the chief officer, as the case may be.

401 Karnataka Municipal Corporations Act 1976, s 310 and Karnataka Municipalities Act 1964, s 190 of the KM Act. Under the KM Act, the inspection may be carried out by the municipal commissioner or the chief officer as the case may be.

402 Karnataka Municipal Corporations Act 1976, Bye-Laws, Bye-Law 3.10, and Karnataka Municipalities Act 1964, Bye-Laws, Bye- Law 3.10

403 This also includes professionals for preparing the site plan, professionals who intend to supervise the implementation of various aspects of the site plan, and contracting/ implementing agencies.

404 Karnataka Municipal Corporations Act 1976, Bye-Laws, Bye-Law 2(49) and Karnataka Municipalities Act 1964, Bye-Laws, Bye- Law 2(49).

405 Karnataka Municipal Corporations Act 1976 Bye-Laws, Appendix- IA and Karnataka Municipalities Act 1964 Bye-Laws, Appendix- IA

406 Karnataka Municipal Corporations Act 1976 Bye-Laws, Appendix- V and Karnataka Municipalities Act 1964 Bye-Laws Appendix- IA

Under the BBMP Act, upon completion of work, an application for a certificate of completion must be made to the zonal commissioner, accompanied by a certificate from an empanelled architect stating that the building has been completed in accordance with the site plan (conforming to the BBMP Bye-Laws). At this stage, the zonal commissioner may undertake an inspection and issue a completion certificate accordingly. The building cannot be occupied without this certificate.[407] In addition, the BBMP Bye-Laws require that all construction work, including on commencement of construction, shall be subject to inspection by the BBMP.[408]

Per stakeholder feedback, while the municipal legal framework sets out the accessibility standards to be followed in public buildings along with inspection requirements, in reality, these are not strictly enforced, and such buildings continue to remain inaccessible to persons with disabilities. It is relevant to note that under both the KMC Act Bye-Laws as well as the KM Act Bye-Laws, while there is a provision for empanelment of professionals for inspecting and certifying that a building has complied with all the requirements stipulated in the Bye-Laws, this does not include persons with disabilities. Empanelled professionals can include a structural engineer, an electrical engineer, a transportation engineer, etc., who will inspect specific aspects of a building (according to their competency) and certify that the building is constructed and completed in accordance with the building bye-laws.[409] Such persons may not be best placed to understand the technical nature of the accessibility requirements and whether, indeed, a building is accessible for persons with disabilities.

4.2.2 IMPLEMENTATION OF ACCESSIBILITY STANDARDS IN PUBLIC PROCUREMENT

The implementation of accessibility standards faces serious challenges in the context of procurement. However, public procurement processes have gained attention increasingly[410] as effective implementation tools to promote accessibility of products and services procured by the government.

The KTPP Act and the KTTP Rules framed under it together set out the principles and processes for procurement of goods and services, and for undertaking construction works by various procurement entities in Karnataka. Procurement entities include[411] the departments of the Government of Karnataka, undertakings and corporations established under a law and owned or controlled by the state government, and any local authority. Specifically, procurement entities include[412] the BBMP and any other municipal corporation in Karnataka.

407 Bengaluru Mahanagara Palike Act 2020, s 246 read with the Bangalore Mahanagara Palike Building Bye-Laws 2003, Bye-Law 5.6

408 Bangalore Mahanagara Palike Building Bye-Laws 2003, Bye-Law 5.3

409 Karnataka Municipal Corporations Act 1976 Bye-Laws, Chap III read with Appendix-IA and Karnataka Municipalities Act 1964, Bye-Laws Chap III read with Appendix-IA

410 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*

411 Karnataka Transparency in Public Procurements Act 1999, s 2(d)

412 *See* the Bengaluru Mahanagara Palike Act 2020, Chap XII and Karnataka Municipal Corporations Act 1976, s 183

A review of the public procurement law and illustrative tenders issued by municipal authorities within the state of Karnataka indicates that a disability perspective is absent in the state's current public procurement policy.

4.2.3 IMPLEMENTATION OF ACCESSIBILITY STANDARDS FOR INFORMATION AND COMMUNICATION TECHNOLOGY

The Smart Cities Mission is one of India's most ambitious[413] infrastructure projects, where the country is aiming to turn 100 of its most promising cities into hubs of economic growth and prosperity based on the principles of sustainability and inclusive development.

This presents a critical opportunity to make Indian cities more accessible and disability-friendly. However, a study by the National Centre for Promotion of Employment for Disabled Persons shows[414] that disability accessibility as a concept was seldom mentioned in the process. In addition, while some cities have addressed accessibility concerns in the context of the physical environment, most have failed to take into account that technological interventions may be a key tool in ensuring inclusive cities. Further, upon interviewing the officers in charge, it was found[415] that most had not budgeted for making accessibility a priority in the creation of these cities. This will have a notable negative impact on many aspects of living with disabilities within the city—on transportation, employment, and safety, among others.

A study[416] conducted by the Centre for Internet and Society found that out of the 7,800 government websites that were tested, 1,985 failed to open and most of the remaining 5,815 websites had accessibility barriers. While the Guidelines for Indian Government Websites exist, they remain inadequate in one critical way—Rule 15 of the RPWD Rules requires that 'establishments' (meaning both private and government establishments)[417] are bound by the accessibility standards prescribed under it. However, the Guidelines only require that government websites be made accessible and do not expressly include private websites within their scope, leading to ambiguity in their application and a continuing lack of accessibility. [418]

Similarly, mobile-based apps have become an integral part of life for all persons with access to smartphones and facilitate convenient and effective access to goods, services, transportation, communication, food, health, and environment. In the context of accessibility to mobile apps, it was highlighted in stakeholder

413 Smart Cities Mission, Ministry of Housing and Urban Affairs, Government of India.

414 Structural Framework for Accessible Urban Infrastructure in Smart Cities (FICCI)

415 Structural Framework for Accessible Urban Infrastructure in Smart Cities (FICCI)

416 Accessibility of Government Websites in India (*The Centre for Internet and Society*) 3.

417 Rights of Persons with Disabilities Act 2016, s 2(i)

418 Accessibility of Government Websites in India (*The Centre for Internet and Society*) 6

interviews that multiple popular mobile apps used in urban centres for delivery and other services had minimal to no accessibility features. A study conducted by the Centre for Internet and Society, titled *Mobile Accessibility Practices (Making Mobile Applications Accessible and Usable for Persons with Disabilities)*, similarly found that a large number of both public and privately developed mobile apps were inaccessible to persons with disabilities.[419] These apps have become especially important during the COVID-19 pandemic, with those related to food and grocery delivery becoming practically indispensable. However, persons with disabilities have been unable to benefit from the use of these apps due to their inaccessibility. However, in an encouraging development, in response to a petition calling on them to make their app accessible to persons with disabilities, food delivery app Swiggy incorporated changes to enable the use of a screen reader that benefits persons with visual impairments as well as switch access, a two-button navigation system in the app that benefits persons with motor impairments.[420]

The most recent version of the Guidelines for Indian Government Websites, released in 2018,[421] addresses in Chapter 11 the need for making apps in India accessible to persons with disabilities.[422] It may be noted that there are currently no overarching international guidelines governing mobile application accessibility. The Central Government has prescribed technical guidelines for both the Apple iOS and Google Android operating systems.[423] However, it is unclear currently whether these guidelines apply to only government-owned apps or to private apps as well.[424] Further, there is no mention of a mechanism for the monitoring and enforcement of these guidelines, which has led to lax implementation.

Further, under the RPWD Act, both public as well as private service providers are required to provide facilities and services in accordance with the accessibility standards prescribed under the RPWD Rules within a period of two years from the date of notification of these Rules.[425] Accessibility standards in this regard were required to be specified by the Central Government within a period of six months from the date of notification of the RPWD Rules,[426] which does not appear to have been done as yet, despite a clear statutory mandate.

419 Mobile Accessibility Practices (Making mobile applications accessible and usable for persons with disabilities), (The Centre for Internet and Society) 2.

420 Rishabh Tripathy, 'Designing the Swiggy app to be truly 'accessible'', (*Swiggy Bytes - Swiggy's Official Tech Blog, 21 September 2021*).

421 Guidelines for Indian Government Websites is the main legal instrument that governs accessibility standards for Indian government websites and applications.

422 Guidelines for Indian Government Websites, 101

423 Arpita Raj, 'Most popular apps inaccessible to millions of disabled, says study' (*The Times of India*, 21 November 2016)

424 Arpita Raj, 'Most popular apps inaccessible to millions of disabled, says study' (*The Times of India*, 21 November 2016)

425 Rights of Persons with Disabilities Act 2016, s 46

426 Rights of Persons with Disabilities Act 2016 with Disabilities Rules Rights of Persons with Disabilities Rules 2017, Rule 15

4.2.4 IMPLEMENTATION OF ACCESSIBILITY STANDARDS FOR MOBILITY AND TRANSPORTATION

The lack of a unified policymaking and implementation body has affected the execution of transportation policies that are otherwise cognizant of accessibility standards. Due to the involvement of multiple ministries and agencies at the central, state and municipal levels, planning and regulation of public transport is fragmented.[427]

The following are some of the key issues that need to be addressed for the effective implementation of accessibility standards in the context of mobility and transportation.

4.2.4.1 **Involvement of Multiple Ministries and Agencies in Mobility and Transportation Planning**

Urban transportation, which falls under the head of urban development, is an item in the State List as per the VIIth Schedule of the Constitution. However, in reality, multiple agencies at the central, state, and municipal levels perform functions pertaining to urban transport. At the central level, transportation is dealt with by the MoHUA, the MoRTH, and the Ministry of Civil Aviation. With multiple ministries handling the subject of transportation, there is an apparent mismatch between the technical expertise of a ministry and the aspect of transport regulation it covers. Further, the existence of multiple nodal agencies has affected the delivery of efficient transport services as well as their accessibility. A lack of cross-coordination between the various ministries and between the central and state levels leaves open questions concerning the operation and maintenance of public transport infrastructure, decision-making, and implementation. For instance, the Guidelines for Passengers with Disabilities issued by the Ministry of Railways, which provide accessible train coach design and platform infrastructure specifications pertaining to any rail infrastructure, need not be adopted by the metro rail projects because these projects are undertaken by MoHUA—despite the Ministry of Railways having expertise in rail infrastructure, the metro rail projects do not fall under its purview.

427 Urban Transport in India Challenges and Recommendations, IIHS RF Paper on Urban Transport 17

Despite the existence of national and state-level transport policies that are intended to work towards improving accessibility of public transport to persons with disabilities, there is a lack of focus on accessibility of multi-modal transport, last-mile connectivity, and maintenance of infrastructure surrounding public transport. The existence of multiple agencies such as the BMRCL, the BMTC, the DULT, and the BBMP, which tend to work in silos while planning and implementing policies, creates overlaps in functions and also leaves gaps in implementation of policy measures, which tend to negatively affect the overall functioning of public transport.[428] For example, while the BMTC runs the public buses in Bengaluru, the BBMP is responsible for building and maintaining bus shelters in the city. The infrastructure of bus shelters is crucial to ensure that transportation by buses remains accessible for persons with disabilities. Curb-side facilities, ramps, and railings ensure that persons with disabilities are able to enter buses that have accessible low floors. For an overall accessible bus transit facility, there needs to be coordination between the policies of the BBMP and the BMTC, but this is often seen to be lacking in practice.[429] Hence, even if the BMTC adopts an accessibility-friendly transit policy, this policy will fail in practice if bus shelters remain inaccessible. Given that such matters fall under the purview of different agencies, the lack of coordination and timely redressal of grievances leaves gaps in the overall transportation policy framework that are not adequately addressed.

4.2.4.2 Need for Integrated Land Use and Mobility and Transportation Planning

Another significant gap in the urban transportation framework is the lack of integration between planning for land use and planning for mobility and transportation. Land use planning determines the use of land in various locations of the city for various activities, such as residential, commercial, recreational, and industrial activities, and it also determines what spaces will be left open. Through such planning, land resources are intended to be used in an efficient manner. Transportation planning determines the availability of transport to various locations in the city and thus also significantly influences these activities.[430] Land use and availability of transportation, therefore, together determine the subsequent social and economic growth of various parts of the city, as well as accessibility in a city. Land use planning and transportation thus have an intricately linked relationship.[431] However, while land use planning for Bengaluru is under the purview of the BDA, public transportation planning, financing, and maintenance are split between the Urban Development Department, the BBMP,

428 Urban Transport in India Challenges and Recommendations, IIHS RF Paper on Urban Transport 16

429 Avinash Bhat, 'Show us the bus shelters, please' (*The Hindu*, 6 April 2016)

430 Development of Toolkit under "Sustainable Urban Transport Project" Land Use Transport Integration and Density of Urban Growth (*Ministry of Urban Development and UNDP*)

431 Cervero R, Landis J., 'The transportation–land use connection still matters' [1995] ACCESS Magazine, 1(7), 2–10

the BMTC, and the BMRCL.[432] Though there is recognition of the need to integrate land use and transportation,[433] the existence of multiple centres of decision-making regarding one mode of transport (land transport in this case) and the lack of clear determination regarding which agency or department is responsible for what aspect of transport planning together create complex linkages that make implementation of plans and policies complicated and challenging.[434]

4.2.5 LACK OF ADEQUATE MONITORING AND MAINTENANCE OF ACCESSIBILITY INITIATIVES

No matter how well planned an accessibility initiative is, it is bound to fail if there is no plan in place for monitoring and maintenance by ULBs and other municipal authorities. Over the course of stakeholder interviews, there were numerous accounts of lapsed accessibility interventions, owing to the lack of monitoring, review, and upkeep. One notable example was that accessible interventions, such as inclusively designed play equipment and electronic sign boards, fell into disuse in public parks, and with the lack of appropriate procurement policies and sensitised stakeholders, the continuation of accessibility was threatened.

The maintenance of accessibility facilities could include the repairs of digital equipment for public information systems or, mechanical ramps in low-floor buses, and replacement of tactile paving blocks on footpaths, to cite some examples. Even if designed in compliance with accessibility standards, a space cannot be considered to be permanently accessible without continuous monitoring and upkeep to ensure that external factors are not disruptive to continued accessibility. The lack of ongoing stakeholder engagement can be a significant hurdle in securing an accessibility initiative's lifespan. In stakeholder interviews, it was highlighted that involving local DPOs in the monitoring and maintenance of accessibility infrastructure in their localities could prove critical for the continuation of accessibility initiatives.

4.2.6 LACK OF COORDINATION, SENSITISATION AND CAPACITY BUILDING

While the DEPWD is the nodal department responsible for the protection and upliftment of persons with disabilities, it is necessary for every governmental agency to be guided by the needs of all persons, including persons with disabilities. The lack of coordination and synchronicity between different government

432 Vivek Vaidyanathan and Sujaya Rathi, 'Urban Transport Planning in Bengaluru, A Polycentric Governance System'

433 Land Use Transport Integration (*Directorate of Urban Land Transport,Urban Development Department, Government of Karnataka*)

434 Vaishali Gijre and Sanjay Gupta, '*Urban Transport Governance Practice and Challenges in an Emerging Economy - Case Study of India*' (2020) Transportation Research Procedia 48

departments was a consistent feature that emerged in stakeholder interviews. The governance of a city and its management is a mammoth task undertaken by different state actors and agencies, and their services need to incorporate accessibility as a fundamental principle in order to create an accessible city.

Another recurrent theme that emerged in the stakeholder interviews was the lack of training and expertise in the context of implementing accessibility measures locally. There is a critical lack of sensitisation, awareness, and technical capacity both within the government as well as in the private sector. The lack of awareness and sensitisation to disability perspectives necessary for professionals involved in the planning and design of cities was cited as a key challenge, particularly at the level of implementation in local settings. There is an absence of a culture of accessibility and a lack of appropriate training for architects, engineers, urban planners, and managers working at the municipal level, along with contractors and those involved in procurement and monitoring as well as contract management. Accessibility and inclusive design approaches are also not a part of the curriculum in professional degrees like civil engineering, architecture, and other allied disciplines.

For the fulfilment of the SDGs,[435] the vision set out in the New Urban Agenda,[436] and even the legal obligations under the RPWD Act, capacity building of service providers is of paramount importance. Capacity building measures will ensure that there is efficiency in service delivery and that service providers are more conscious of the needs of persons with disabilities.[437]

4.3 A Case for Universal Design

Universal Design is a design approach with the goal of making products and the built environment universally usable by all people everywhere. While the concept of Universal Design emerged primarily in the context of disability justice, it is a broad-spectrum solution[438] that helps everyone, including older people, people with strollers, pregnant women, children and other such groups, in addition to persons with disabilities. It is highly dependent on the cultural context of people in a specific location and, by its very nature, must be highly participatory.

In this section, the case for adopting a Universal Design approach is made, exploring Universal Design principles and their implementation in the context of India.

435 Department of Economic and Social Affairs, *United Nations, Disability and Development Report* (2018), 1

436 UN A/RES/71/256 The New Urban Agenda (adopted 20 October 2016 United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador) para 92

437 *New Urban Agenda Illustrated Handbook* (UN Habitat, 2020) 17

438 Harold Snider and Nazumi Takeda, *Design for All: Implications for Bank Operations* (2008) The World Bank Working Paper

4.3.1 UNDERSTANDING UNIVERSAL DESIGN

Universal Design is defined[439] as "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design." In 1997, a working group of architects, product designers, engineers and environmental design researchers collaborated to establish the principles of Universal Design (see Annexure B) to guide a wide range of design disciplines, including design of environments, products, and communications. These principles were developed to be applied to evaluate existing designs, guide the design process, and educate both designers and consumers about the characteristics of more usable products and environments.

4.3.1.1 **Universal Design India Principles**

The Universal Design India Principles (UDIP)[440] were developed at the National Institute of Design through a collaborative study by a group of nine experts from academic institutions and disability organisations. The objectives[441] of the study were to develop the UDIP with a strong Indian idiom, to elaborate on the UDIP to present guidelines of practice in the Indian context, and to expand them for wider understanding with examples from India.

UNIVERSAL DESIGN INDIA PRINCIPLES[442]

PRINCIPLE		DESCRIPTION
Equitable	Saman	The design is fair and non-discriminating to diverse users in the Indian context.
Usable	Sahaj	The design is operable by all users in the Indian context.
Cultural	Sanskritik	The design respects the cultural past and the changing present to assist all users in the Indian context.
Economy	Sasta	The design respects affordability and cost considerations for diverse users in the Indian context.
Aesthetics	Sundar	The design employs aesthetics to promote social integration among users in the Indian context.

According to the authors of the UDIP,[443] these five principles are standalone Universal Design goals focusing on Indianness and inclusivity and are intended to address the needs of diverse Indian users with social differences in terms of culture, age,

439 Connell, B. and others, *The Principles of Universal Design* (*Center for Universal Design, North Carolina State University, Raleigh, NC*, 1997)

440 Rachna Khare and others, 'Universal Design India Principles @ 2011: A collaborative process of developing design principles', (2012) 13th International Conference on Mobility and Transport for Elderly and Disabled persons

441 Rachna Khare & Abir Mullick, "Universal Design India Principles; A Contextual Derivative For Practice", (2012) Proceedings of the Human Factors and Ergonomics Society Annual Meeting 56 (1), 624-628

443 Rachna Khare & Abir Mullick, Universal Design India Principles, A Contextual Derivative For Practice, (2012) Proceedings of the Human Factors and Ergonomics Society Annual Meeting 6 (1), 624-628

gender, disability, caste, class, religion, poverty, and urban/rural background. The UDIP were developed to complement the original seven Universal Design principles prevalent internationally, and to contextualise them to address regional requirements and customise them for the Indian context.

An absence of cultural sensitivity in the development of accessibility standards for Universal Design can lead to the design of facilities that are ultimately exclusionary for persons with disabilities using them. The customisation of Universal Design for the Indian user has to be sensitive to the local context, particularly to the cultural notions surrounding the use of assistive devices in certain parts of the country. The importance of this aspect can be illustrated through the following example, the design of an inclusive public restroom.

4.3.1.2 **Designing an Inclusive Public Restroom**

A key problem that hinders access to sanitation for persons with disabilities is not only the lack of sufficient toilets commensurate to the needs of the population but also culturally inappropriate designs that contribute to the problem. The design imperatives for inclusive public toilets need to be informed by the needs of all users, including persons with disabilities, but notably, they need to be informed by the cultural contexts and habits of persons with disabilities in different parts of India. As one disability rights lawyer pointed out in stakeholder interviews, in parts of Tamil Nadu, people with locomotor disabilities prefer to crawl rather than use assistive devices, which means that the design of the washroom needs to be informed by the needs of such users. This might require the washroom floor to be kept dry and clean, with an ongoing upkeep plan for its maintenance.

A study[444] that examines the Universal Design standards for Indian public toilets also notes that most mobility-impaired Indians are polio victims and are not wheelchair users, owing to the fact that they live in homes with narrow doorways, unpaved outdoor environments, or are unable to afford wheelchairs. As a result, they prefer crawling inside the home or using a modified tricycle to navigate their surroundings. In addition to this, many Indians are not familiar with the western-style commodes that are suggested in most accessible water closet/toilet designs and prefer Indian-style squatting toilets instead.

A review[445] of Indian accessibility standards in a study on Universal Design standards for inclusive public toilets in India shows that

444 Abir Mullick and others, 'Universal Design Standards for Bathroom and Toilet: Full Scale Simulation for Indian Public Toilet Specifications' (2012) SPANDREL-Journal of School of Planning and Architecture: New Dimensions in Research of Environments for Living 4

445 Abir Mullick and others, 'Universal Design Standards for Bathroom and Toilet: Full Scale Simulation for Indian Public Toilet Specifications' (2012) SPANDREL- Journal of School of Planning and Architecture: New Dimensions in Research of Environments for Living 4

current standards have merely mimicked UK and US standards and are not grounded in the accessibility needs of Indians with disabilities. One of the clearest examples of a mismatch between suggested accessibility standards and cultural context can be seen in the Harmonised Guidelines.

The Harmonised Guidelines include a chapter[446] titled 'Access to Toilet Facility', which lays down specifications for wheelchair users and for the use of ambulant disabled persons. The entire chapter focuses only on the accessibility specifications necessary for a western-style water closet, with no reference to an Indian squatting toilet or the accessibility needs for the latter's design. For example, the chapter lays down specifications for wall-mounted grab bars next to the water closet and placement of toilet roll dispensers (similar to those in the US and UK), whereas the majority of Indians use squatting toilets, which requires maintaining a squatting posture during defecation. There are no guidelines specifying design interventions for accessibility for Indian-style squatting toilets or for persons with disabilities who do not use wheelchairs and prefer crawling.

This example makes it abundantly clear that the accessibility standards laid out for bathroom and toilet specifications in India display an utter lack of sensitivity to local cultural contexts and are not grounded in Indian culture, habits, and usability.

4.3.2 IMPLEMENTING UNIVERSAL DESIGN

The following issues are key to ensuring the successful implementation of Universal Design in urban contexts.

4.3.2.1 **Early Incorporation of Universal Design: Some Approaches**

Adopting Universal Design at the outset is an essential component of any urban project in order to ensure that it is accessible, inclusive, and minimises additional costs. Adopting[447] Universal Design in the initial stages of planning contributes only 0–1 per cent of additional costs, if any, and often, redesigning for accessible buildings requires no additional space, only rearrangement of the existing plan. Further, Universal Design varies based on local conditions, and is responsive to the needs of the local population, which requires robust local stakeholder participation. Therefore, early incorporation of Universal Design, rooted in local contexts, following a participatory and consultative process is key to making inclusive cities.

446 Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) Chap 8

447 World Bank, *World Report on Disability* (ISBN 978 92 4 156418 2, 2011)

Under the RPWD Act, Universal Design is used only in the context of ICTs and consumer goods (Sections 42 and 43). There is no mention of Universal Design in the URDPFI Guidelines, the MBBL, the KTCP Act, the BDA Act, the KM Act, the KMC Act, or the BBMP Act. The Harmonised Guidelines take into account the principles of Universal Design and envisage that building elements, both internal and external, should be universally accessible (i.e. respond to all users including persons with disabilities) to comply with Universal Design principles and that new buildings should ensure complete accessibility from the planning stage itself.[448] Towards achieving this, they set out accessibility standards for building premises, signage, level design, toilet facilities, fire evacuation needs, alighting and boarding areas, adapted housing, and roads and transport for different classes of disabilities. However, in both the Harmonised Guidelines and the NBC 2016, the envisaged approach does not truly incorporate an approach of Universal Design—while it says so in as many words, the actual approach appears to be that of code compliance and accessibility standard compliance instead.

448 Harmonised Guidelines and Space Standards for Barrier Free Built Environment forPersons with Disability and Elderly Persons (*Government of India Ministry of Urban Development* 2016) Chap 8



5 RECOMMENDATIONS

Based on the issues identified and delineated in the previous section, the recommendations of this paper are as follows.

5.1 Encouraging Inclusive and Participatory Planning and Representation of Persons with Disabilities

The URDPFI Guidelines recommend[449] inclusive and participatory development, advocating the direct involvement of citizens in pre- and post-planning processes and mechanisms. In this context, there are two mechanisms of participation (long term and short term) that should incorporate representation of persons with disabilities. The long-term mechanism is discussed in section 5.1.1 and the short-term mechanism is discussed in section 5.1.2 below.

5.1.1 DEVOLUTION OF FUNCTIONS AND POWERS TO THE THIRD TIER ON THE PRINCIPLE OF SUBSIDIARITY AND REPRESENTATION OF PERSONS WITH DISABILITIES

The long-term mechanism of participation includes participation of persons with disabilities through institutional processes, municipalities, ward committees, and other planning processes. However, the current urban planning framework does not allow for participatory planning (as seen in the previous section), and therefore, the following changes are recommended.

The task of planning cities must be undertaken by elected ULBs as envisaged under the 74th Constitutional Amendment. This requires that planning functions, along with the necessary administrative and financial powers, be devolved to the ULBs, on the principle of subsidiarity, which dictates that "what can be done best at a particular level should be done there itself."[450]

- At the municipal level, urban planning should be the domain of the elected municipality. In the context of Bengaluru, this means that urban planning should be carried out by the municipal corporation, the BBMP, instead of the BDA, a parastatal agency. However, until the BBMP is made the planning authority for Bengaluru, the composition of the BDA must be amended to ensure representation of persons with disabilities, particularly women and those from socially and economically vulnerable groups.

- At the level of the ward, ward committees need to be empowered with greater administrative, functional, and financial powers to ensure that they are able to play a role in the planning

449 Ministry of Urban Development, *Urban and Regional Development Plans Formulation and Implementation Guidelines* (2014) 33

450 'A Long Haul' (Down to Earth, 15 July 2000)

process for their respective wards. There should be no veto power conferred on the councillor in ward meetings as this nullifies the notion of citizens' participation.

- In order to ensure that ward committees are empowered to function as representative local bodies, at least some members of every ward committee should be directly elected, and its composition should be changed to ensure representation of persons with disabilities and DPOs working in the ward. There should be specific representation for underrepresented groups such as women with disabilities and those from socially and economically vulnerable communities. For this purpose, it would be useful to follow the Kerala model, as provided in the Kerala Municipality Act, 1994, which has often been cited as an example of best practices for empowering the third tier and for participatory planning.

- In other parts of Karnataka, where urban planning is carried out by planning authorities, it is necessary to ensure that the planning authorities are representative of the persons with disabilities, particularly women with disabilities and those from socially and economically vulnerable communities.

5.1.2 INCORPORATION OF INCLUSIVE PLANNING PROCESSES

As per the URDPFI guidelines, temporary mechanisms of participation include community design charrettes,[451] advisory committees made up of representatives throughout the planning process, focus groups, low-cost demonstrations for visual understanding, and relatively inexpensive temporary transformations to test a proposed project and experience changes, along with tools such as accessibility audits, participatory mapping, and participatory budgeting, among others.

However, the KTCP Act does not reflect these principles of inclusive and participatory planning within itself and needs to be amended to reflect these principles, with a focus on persons with disabilities.

5.1.3 LEGAL CHANGES RECOMMENDED

5.1.3.1 **Amendment to the Karnataka Town and Country Planning Act, 1961**

- Section 81C of the KTCP Act must be amended to divest the BDA of its planning and regulatory functions, assigning these to the BBMP for the local planning area instead.

451 Charrettes are organized to encourage the participation of all. A charrette is an intensive planning session where citizens, designers and others collaborate on a vision for development, giving immediate feedback to the designers. This process allows everyone who participates to be a mutual author of the plan. It is located near the project site, where a team of design experts and consultants sets up a full working office. Formal and informal meetings are held throughout the event and updates to the plan are presented periodically. Through brainstorming and design activity, many goals are accomplished during the charrette. Ultimately, the purpose of the charrette is to give all the participants enough information to make good decisions during the planning process; Ministry of Urban Development, *Urban and Regional Development Plans Formulation and Implementation Guidelines* (2014) 33

- Section 4C of the KTCP Act, which constitutes the planning authority, must be amended to require representation of persons with disability, particularly women with disabilities and those belonging to socially and economically vulnerable communities, among the members of the Authority.

- Section 12 of the KTCP Act, pertaining to the contents of the master plan, deals with the manner in which the development and improvement of the planning area takes place. This must be amended to incorporate principles of inclusive and participatory planning as laid down in the URDPFI Guidelines. This will include the incorporation of tools such as community charrettes, focus groups, accessibility audits and collecting disaggregated data on disability, among others, as an integral part of the master-planning exercise.

5.1.3.2 Amendment to the Bangalore Development Authority Act, 1976

Until the BBMP is designated as the planning authority for the city of Bengaluru under the KTCP Act, Section 3 of the BDA Act, which deals with the composition of the BDA, must be amended to include persons with disabilities, notably women with disabilities and representatives of local DPOs.

5.1.3.3 Amendment to the Karnataka Municipal Corporations Act, 1976

- Section 113H of the KMC Act governs the composition of ward committees and must be amended to strengthen it and make it more representative. It must be amended to include representation of persons with disabilities, notably women with disabilities and those from socially and economically vulnerable communities. It should also have representation from local DPOs that are active in the ward as members of the ward committee. The ward committee model set out by the Kerala Municipality Act, 1994, could be emulated here.

- Section 113H(7) of the KMC Act must also be amended to remove the extraordinary veto power conferred on the councillor in regard to ward committee meetings, which undermines the fundamental principles of community participation in the wards.

- Section 113I of the Act, which sets out the functions of the ward committees, must be suitably amended to endow them with greater functions such as preparing ward plans for their respective wards.

5.1.3.4 Amendment to the KM Act, 1964

- Section 91(q) of the KM Act which deals with the discretionary functions of the municipal councils must be amended to remove the term 'cripples'. The phrase 'persons with disabilities' must be incorporated instead.

5.1.3.5 Amendment to the BBMP Act, 2020

- Section 83 of the BBMP Act, which governs the composition of ward committee, must be amended to make it more representative. This includes representation of persons with disabilities, notably women with disabilities, those from socially and economically vulnerable communities, and representation from local DPOs. The model set out by the Kerala Municipalities Act, 1994, could be emulated here.

- Section 86 of the BBMP Act, which deals with the functions of the ward committee, should be suitably amended to endow them with greater functions such as preparing ward plans for their respective wards.

5.2 Revising Accessibility Standards to Ensure Better Understanding of Accessibility

Existing accessibility standards suffer from a range of issues, including limited consideration of invisible disabilities such as intellectual and psychosocial disabilities, a lack of imagination in the design of spaces, and an absence of cross-disability perspectives. These issues also highlight the limitations of barrier-free design approaches that focus solely on the physical dimensions of accessibility.

There is a strong need to develop new standards of accessibility focusing on social inclusion through user testing and ensuring that Universal Design in public facilities is sensitive to local cultural contexts and the socio-economic status of the majority of users in India, particularly those reliant on public facilities in Indian cities and towns. This also requires the incorporation of extensive consultations with cross-disability groups representing persons with disabilities across different socioeconomic and cultural contexts.

It is necessary to undertake periodic reviews of existing accessibility standards to ensure that they are up-to-date and take into account the latest developments in the research and design of accessibility interventions, especially technological advancements.

In this regard, the following recommendations are suggested:

5.2.1 REGULAR REVIEW AND UPDATING OF EXISTING ACCESSIBILITY STANDARDS AFTER CONSULTATION WITH ALL STAKEHOLDERS

The applicable accessibility standards for the physical environment contained in the Harmonised Guidelines must be made more comprehensive and must be periodically reviewed by the MoHUA to integrate the evolving research on accessibility to urban space for persons with mental, intellectual, and other invisible disabilities. Towards this end, efforts need to be made to ensure that the accessibility standards prescribed are amended to take into account, at a minimum, all categories of disabilities currently listed under the RPWD Act.

Consequently, the accessibility standards must be reviewed periodically in consultation with all relevant stakeholders, notably persons and organisations representing the interests of previously under-represented disabilities. Accordingly, frameworks that mention accessibility standards for physical environments (such as the URDPFI Guidelines) or laws through which these standards are sought to be implemented (such as the MBBL, the KMC Act Bye-Laws, the KM Act Bye-Laws, and the BBMP Bye-Laws) must be updated accordingly.

It is relevant to note that the KMC Act Bye-Laws[452] and the KM Act Bye-Laws[453] have been issued by the state government to be adopted by municipal corporations and municipalities. However, these Bye-Laws, along with the BBMP Bye-Laws, have not been updated to reflect the recent changes in accessibility standards, rendering the regulations outdated in the face of changing standards and the latest research.

It is also, therefore, recommended that a mechanism of periodic review and assessment be set up to ensure that the rules and regulations at the municipal level are updated in line with the changes in the national accessibility standards.

5.2.2. REVIEW AND NOTIFYING ADDITIONAL ACCESSIBILITY STANDARDS FOR TRANSPORTATION

It is recommended that the standards for the Bus Body Code for transportation systems specified in Notification No. G.S.R. 895(E) of 20 September 2016,[454] issued by the MoRTH, must be complied with.[455] From a bare reading of the notification, it appears that the technical standards mentioned in it are applicable to the testing

452 Model Building Bye-Laws (*Urban Development Secretariat Notification-I No. UDD 14 TTP* 2017)

453 Model Building Bye-Laws (*Urban Development Secretariat Notification-II No. UDD 14 TTP* 2017)

454 Notification The Central Motor Vehicles (Twelfth Amendment) Rules 2016 amends Motor Vehicle Rules 1989, Rule 125C(1) issued under the Motor Vehicles Act 1988.

455 Rights of Persons with Disabilities Rules 2017, Rule 15

and approval for building the bodies of only new models of buses; they do not include any other form of transportation. It is relevant to note that the DEPWD, under the Accessible India Campaign, has recognised two additional standards in relation to transportation, i.e., the Harmonised Guidelines for Passenger with Disabilities over Indian Railways by the Ministry of Railways and the Handbook on Barrier Free Space Standards for Built Environment for Persons with Reduced Mobility by the Ministry of Civil Aviation.[456]

It is, therefore, recommended that the DEPWD, in consultation with the relevant nodal ministries review these two guidelines and notify them (along with the Civil Aviation Requirements) as additional accessibility standards for transportation under Rule 15 of the RPWD Rules.

5.2.3 EXTENDING ACCESSIBILITY STANDARDS ON INFORMATION AND COMMUNICATION TECHNOLOGIES

An analysis of the accessibility standards governing web pages in India shows that the question of whether the Guidelines for Indian Government Websites extend to private entities is still legally ambiguous. It is, therefore, recommended that the Central Government amend these Guidelines to reflect that mobile apps and the web pages of private entities must also follow the accessibility guidelines prescribed under these Guidelines.[457]

Moreover, even in the context of accessibility standards for facilities and services as mandated under the RPWD Act, it is recommended that the DEPWD, in coordination with other relevant ministries/ departments at the central level, must initiate the process of identifying the facilities and services to be provided to the public in urban areas, commence the preparation of accessibility standards for the specific facility or service, and notify the same under Rule 15 of the RPWD Rules.

5.3 Undertaking Training, Sensitisation, and Capacity Building Measures

One of the crucial steps in the proper implementation of any law is awareness generation and the regular training of entities (of both government as well as private bodies or persons) tasked with implementation of the law. The RPWD Act recognises this and stipulates that the appropriate government, in consultation with the appropriate commissioner, shall conduct awareness campaigns and sensitisation programmes for the protection of the rights of persons with disabilities, such as awareness on the inclusion of curriculum on the rights of persons with disabilities

456 *See* Demystifying Accessibility in Built Infrastructure (2021) 1 DEPWD 10

457 The Central Government has the power to do so under Rights of Persons with Disabilities Act 2016, s 40, read with Rights of Persons with Disabilities Rules 2017, Rule 15.

at the school, college, and university levels.[458] It is also tasked with the responsibility to develop human resources for the purposes of RPWD Act and to that end, it must mandate training on disability rights in all courses for the training of legislators, administrators, police officers, and judges. It must also induct disability sensitisation as a component for all educational courses for teachers, doctors, social welfare officers, engineers, architects, other professionals, and community workers.[459]

In the sphere of urban planning, various parties are involved at different stages of planning, design, execution and construction, and maintenance. For instance, in the context of the physical environment, persons involved may range from planners, engineers, and architects who design and prepare a site plan for buildings, to contractors, builders, and masons (including persons engaged by them) who are involved in the actual construction of the building, as well as government agencies who may be responsible for ensuring that the buildings are built in a legally compliant manner. In such a situation, where multiple parties are involved, it is necessary that each party is sensitised to the requirements of persons with disabilities, to the applicable accessibility standards and how they may be incorporated, and to the changes that may need to be suggested from time to time.

At the very outset, certain bodies are required to be set up by the state government under the RPWD Act for its implementation. Where such bodies, i.e. the state advisory board and the district-level committee (as applicable to the city of Bengaluru) have not been set up, it must be implemented at the earliest. When it comes to institutional knowledge building, it is necessary that officers at multiple levels of the government are trained bi-annually in addition to being provided regular orientation sessions on disability laws and their functions.

In order to address the existing knowledge and expertise gap, this paper recommends two solutions. In the short term, it is recommended that the state government and municipal authorities empanel certain renowned NGOs working in the space of disability rights as empanelled trainers whose mandate it would be to periodically train the relevant personnel on issues concerning disability rights and accessibility.

In the longer term, it is suggested that state governments and municipal authorities create disability awareness cells staffed with experts in the fields of disability laws and accessibility and also in other allied fields so that they can develop institutional capacity to adequately train personnel.

458 Rights of Persons with Disabilities Act 2016, s 39

459 Rights of Persons with Disabilities Act 2016, s 47

5.4 Incorporating Accessibility Norms in Public Procurement Policies

There are two methods that one can adopt while integrating accessibility norms into the procurement policy at the state or city level.

5.4.1 PREFERENTIAL POLICY

As a sector-agnostic, overall public procurement policy, one method to integrate accessibility is by encouraging disability inclusion through the creation of decent work for persons with disabilities by adopting a preferential policy towards companies or registered contractors who employ persons with disabilities. Such a model has been adopted by countries such as South Africa,[460] the United States,[461] and the Philippines.[462]

An amendment to the KTPP Act in 2017 created[463] a similar preferential policy[464] in favour of bidders employing persons belonging to scheduled castes and scheduled tribes. The KTPP Rules were also amended to include a rule[465] creating a preferential policy in favour of bidders belonging to the scheduled castes or scheduled tribes in construction works. The existing preferential policy could be expanded to favour persons with disabilities in public procurement processes as well.

5.4.2 INCLUSION OF ACCESSIBILITY BY WAY OF ADOPTING UNIVERSAL DESIGN APPROACHES

While state governments and municipal authorities are required to comply with the minimum standards of accessibility norms set out under the law, they are free to adopt a higher standard of inclusive design. Consequently, the inclusion of Universal Design in the design of goods or services, including ICTs, as well as construction works from the very outset of procurement could play an integral role in developing spaces and services that are truly inclusive of persons with disabilities in cities.

For instance, it is common practice for governments today to promote ICT privacy and security by including[466] them as part of public procurement. The provision for accessibility could be modelled in a similar way. A city-level accessible public procurement policy could be developed using Universal Design concepts. Such a policy could also be adapted for sector-specific procurements, such as ICTs or construction works, tailored to the needs and requirements of the product or service being procured, or keeping in mind the needs of the specific project.

460 South Africa's Preferential Procurement Policy Framework creates a preferential points system where enterprises are awarded contracts based on disability inclusion as one of the areas that positively impact the company's overall rating vis-à-vis the public sector. G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 5

461 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 5

462 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 5

463 Karnataka Transparency in Public Procurement Act 1999, s 6

464 Karnataka Transparency in Public Procurement Act 1999, s 6 proviso

465 Karnataka Transparency in Public Procurement Rules 2000, Rule 27[A]

466 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 5

The system of accessible procurement is already an established practice in countries such as the United States, which have provisions such as Section 508 of the Rehabilitation Act which[467] governs federal government purchase, development, maintenance, and use of accessible electronic and information technology; or in Europe, where the European accessibility standards were developed to support[468] the European Commission's rules that add accessibility criteria to the public procurement of ICT products and services in Europe.

It is, therefore, recommended that the KTPP Act and the rules framed under it be amended to incorporate a section on accessibility.[469] In addition, based on the accessibility policy developed for the city, it may be recommended that wherever applicable, tender documents (for the procurement of goods and services including ICTs and construction works, etc.) clearly set out the applicable accessibility standards which must be complied with; that the eligibility criteria of any bidder must include technical qualifications or an understanding of accessibility standards as well as any relevant experience in this regard (with requisite certificates from third parties).[470] Moreover, any agreement executed between the procurement entity and the bidder/contractor must clearly identify the applicable accessibility standards and obligations to be adhered to, as well as regular inspection and review of the deliverables under the agreement against such standards and obligations.[471]

5.4 3. LEGAL CHANGES RECOMMENDED

5.4.3.1 **Amend the KTPP Act and the KTPP Rules to Integrate Accessibility to Public Procurement Processes in Karnataka**

i) Amend Section 6 of the KTPP Act to expand the preferential policy in tendering to include persons with disabilities. This will encourage disability inclusion through incentivising tenderers to employ persons with disabilities. This will also act to ensure the representation of persons with disabilities in public procurement processes that will be beneficial to the goals of accessibility integration.

ii) Amend Rule 27(A) of the KTPP Rules, 2000, to expand the preferential policy in tendering to include persons with disabilities in construction works. This will encourage disability inclusion through incentivising tenderers to employ persons with disabilities in construction works.

467 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 5

468 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 5

469 *See* Deepti Samant Raja, 'Bridging the disability divide through digital technologies', Background Paper for the 2016 World Development Report: Digital Dividends 24-25. This is also the case at the central level where under Chapter 1 of the Manual for Procurement of Goods, 2017, at pp. 6-7 issued by the Ministry of Finance, it is stipulated that procurement entities have the responsibility to conduct procurement in a manner towards facilitating achievement of the broader objectives of the Government of India which includes accessibility to persons with disabilities (to the extent included within the procurement rules).

470 *See* Mukta Kulkarni, 'Digital accessibility: Challenges and opportunities' IIMB Management Review (2019) 31(1), 91-98

471 G3ict Smart Cities for All, *Guide to Adopting an ICT Accessibility Procurement Policy*, 15

iii) Amend the KTPP Act and the KTPP Rules to create a provision on incorporating accessibility criteria in public procurement. This provision can provide for the development of an accessibility policy for municipal public procurement, enabling the integration of accessibility standards as well as Universal Design concepts in the procurement process. Moreover, this provision could also be framed so as to ensure the creation of sector-specific accessibility policies for the procurement of specialised services or goods such as ICTs.

5.5 Ensuring Better Implementation of Existing Legal Frameworks on Accessibility

In the context of ensuring the implementation of existing accessibility standards, the recommendations focus on two areas: the built environment and mobility and transportation.

5.5.1 IMPLEMENTING ACCESSIBILITY STANDARDS IN BUILT ENVIRONMENT

While the municipal legal framework sets out the accessibility standards to be followed in public buildings along with inspection requirements, in reality, these are not strictly enforced, and such buildings continue to remain inaccessible to persons with disabilities. It is relevant to note that both under both the KMC Act Bye-Laws as well as the KM Act Bye-Laws, while while there is a provision for the empanelment of professionals for to inspecting and certifying that a building has complied with all requirements stipulated in the Bye-Laws, this list of empanelled professionals does not include persons with disabilities.

It is, therefore, recommended that the definition of 'empanelled professional' under the KMC Act Bye-Laws as well as the KM Act Bye-Laws (Bye-Law 2(49)) must include persons with disabilities (including DPOs) as well as a separate sub-category under Appendix-IA. Appendix-V in both Bye-Laws must be amended to reflect the process for the empanelment and selection of such persons. Moreover, Chapter III of both Bye-Laws must clearly stipulate that the municipal corporation or the municipal council must require inspection and certification of all public buildings (to which the accessibility standards apply) by persons with disabilities, who are empanelled professionals (in addition to any inspection carried out by other empanelled professionals).

Moreover, it is also recommended that all empanelled professionals as well as stakeholders who are involved in the development of buildings and are required to be registered with the municipal authorities must also have the requisite qualifications, knowledge and/or experience in relation to the rights of persons with disabilities and accessibility standards in urban spaces. The KMC Act Bye-Laws and KM Act Bye-Laws may add this as a prerequisite to registration and Appendix-IA may be revised accordingly.

It is relevant to note that the BBMP Bye-Laws do not explicitly mention empanelling any professionals by the BBMP for the inspection and certification of buildings; it refers only to registration of architects, engineers and supervisors who carry out limited functions and are not involved in discharging any function on behalf of the BBMP.[472] Given that the KMC Act Bye-Laws and the KM Act Bye-Laws are more robust and updated to account for the realities of modern town planning, it is recommended that the BBMP Bye-Laws are revised on similar lines, including with the suggestions in this paper.[473]

In addition, even at the national level, it is recommended that the MBBL and the NBC 2016 be amended to reflect inspection or audit by persons with disabilities to determine whether public buildings are barrier-free, while issuing a building permit or a completion/ occupancy certificate. This may then serve as a model for other states/ municipalities to follow while drafting their building bye-laws.

5.5.2 IMPLEMENTING ACCESSIBILITY STANDARDS IN MOBILITY AND TRANSPORTATION

In the context of implementing accessibility standards in mobility and transportation, the following measures have been recommended.

5.5.2.1 **Creating An Overarching Regulatory Authority for Mobility and Transport Planning**

One of the ways through which the problem of lack of coordination among the many government bodies governing transportation in Bengaluru can be addressed is by establishing the UMTA. The UMTA would need to be vested with substantial control and over-sight[474] over transportation in the city as well as over various bod-ies such as the BMTC and the BMRCL. The UMTA would also need to ensure congruence amongst the various laws, regulations, and policies and their implementation on the ground. In this regard, it is recommended that the BMLTA Bill[475] be passed as soon as possible.

472 Bangalore Mahanagara Palike Building Bye-Laws 2003, Bye- Law 3.6

473 The BBMP is in the process of revising the BBMP Bye-Laws on the basis of the KMCA Bye-Laws and KMA Bye-Laws, *see* Chitra V Ramani, 'BBMP updating building by-laws' (*The Hindu*, 12 March 2019).

474 Urban Transport in India Challenges and Recommendations, IIHS RF Paper on Urban Transport 16

475 Chiranjeevi Kulkarni, 'BMLTA draft bill placed before Karnataka govt' (*The Deccan Herald*, 27 December 2019)

5.5.2.2 Ensuring Harmonisation between Transportation Policies and the Master Plan

There needs to be harmonisation between transportation policies and land use. It is recommended that the state government mandate that the various agencies governing the planning and development of the city as well as its transportation system work in tandem and ensure the integration of transportation needs into the master plan. Such a harmonisation must address the current jurisdictional concerns that exist with regard to different agencies creating plans expected to be applied to matters beyond their competency, such as the BMRCL, a special purpose vehicle set up to implement the metro railways project, being a co-planner for Bengaluru's Comprehensive Mobility Plan. It needs to be ensured that the planning activity of an agency or department is within the norms laid down by its institutional and jurisdictional framework.

5.6 Making Progress Towards Implementation of Universal Design

In order for Universal Design to be successfully leveraged for inclusive urban development and planning, the following steps of action are recommended.

5.6.1 UTILISING LEGAL INSTRUMENTS TO APPLY UNIVERSAL DESIGN AS A KEY COMPONENT OF PLANNING AND DEVELOPMENT POLICIES

If the principal legislation dealing with rights of persons with disabilities, i.e. RPWD Act, makes Universal Design an underlying theme, then it can slowly be brought into all aspects of urban spaces, such as built infrastructure, transportation, and services, and not just be limited to ICTs and consumer goods. Similarly, Universal Design may be eventually adopted into the URDPFI Guidelines and Harmonised Guidelines, followed by the NBC, MBBL and KMC Act Bye-Laws, KM Act Bye-Laws and BBMP Bye-Laws. This will ensure that Universal Design is implemented at the national level, and if subsequently adopted by states (through their town and country planning laws such as the KTCP Act) and municipalities (through their building bye-laws), its impact may be felt at all levels. This, along with corresponding changes to procurement laws and capacity building, training and awareness generation will go a long way in bringing in Universal Design as an approach to urban planning.

5.6.2 PROMOTE STAKEHOLDER PARTICIPATION AND ENCOURAGE TRAINING AND CAPACITY BUILDING ON UNIVERSAL DESIGN

In general, Universal Design is highly localised and context-specific, and designs that have worked in one region or country are generally not transferable to another context. It is extremely important to incorporate stakeholder consultations in the planning process to seek inputs from the local community of users, including persons with disabilities, with an emphasis on women, children, and the elderly along with DPOs working across a wide spectrum of disabilities. For the task of implementing Universal Design, coordination, sensitisation, training, and capacity building plays a crucial role.[476] It is necessary to ensure that there is adequate training for all relevant stakeholders to allow for the increasingly extensive application of Universal Design amongst all relevant stakeholders and involve various actors such as governments, private sector, civil society, DPOs, universities, professionals, and other agencies in playing an active role in promoting Universal Design.

5.6.3 AMEND PUBLIC PROCUREMENT POLICIES TO INCORPORATE UNIVERSAL DESIGN CRITERIA

The RPWD Act obliges governments to undertake measures to promote universally designed ICTs, consumer goods, and accessories. However, this does not prevent governments from adopting a higher standard of accessibility of Universal Design, instead of mere barrier-free design and extending it to other sectors. It is recommended that Universal Design concepts are adopted as the standard for accessibility criteria in public procurement policies.

Whether undertaken by municipal authorities or the state government, public procurement in the city ought to integrate Universal Design principles into procurement processes by establishing policies and procedures that mandate the application of Universal Design concepts, especially in the context of urban infrastructure, mobility and transportation projects, and ICTs, among others.

While a robust set of laws exists at the national, state, and municipal level to make urban spaces barrier-free/accessible, eventually, the aim should be to adopt Universal Design in all aspects of urban planning because Universal Design, as an approach, aims at universal accessibility. Unlike the accessibility

476 Department of Economic and Social Affairs, United Nations, *Disability and Development Report* (2018), 1

standards that are currently in force, and which apply to only specific classes of persons with disabilities, Universal Design applies to all persons (irrespective of abilities, gender, and age) who will be or are expected to use an urban space.

6

CASE STUDIES

This section sets out certain case studies that work as models of design in public spaces, which enable them to be accessible by all persons. These models have been chosen from the cities of Bengaluru, Kolkata, New Delhi, and London.

6.1 Inclusive Play Spaces by Kilikili

Kilikili is a registered trust that aims to create inclusive play spaces that are accessible to all children, regardless of their ability.

"**Why don't we see disabled children playing in public parks?**"

"**Where is play in this child's life?**"

These were the questions that sparked Kavitha Krishnamoorthy, the founder of Kilikili and parent to a child with autism, to pioneer and create inclusive public play spaces for children with disabilities in India. While some parks in Bengaluru had ramps or smooth pathways for children with locomotor disabilities, none had any equipment that was specifically designed for children with disabilities, such as blindness, hearing loss, developmental disabilities, among others. This meant that children with these disabilities and their caregivers were prevented from participating in public life on equal terms. This literal separation also removed these children from the larger public and normalised a life where the segregation and exclusion of children with disabilities became commonplace.

Playing is critical to a child's development. However, for parents and caregivers of children with disabilities, the only available options seem to be to either deprive their children of the right to play or take them to special schools or therapy centres, all exclusive spaces which limit the interactions of these children to only children with disabilities, with little to no possibility of interacting or integrating with others. Further, such spaces were not available to children of all backgrounds, since for marginalised caste and lower-income households, parents may not be able to take time off their daily wage jobs to travel the long distance (and pay for transport) and take the child to such a space.

Article 31[477] of the UN Convention on the Rights of Child (1989) states: "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and

477 Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession on 20 November 1989 entry into force 2 September 1990, UNGA res 44/25 of), art 31

to participate freely in cultural life and the arts." Further, the 2006 UN CRPD[478] binds all states, including India, to take necessary measures to ensure "the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children" (Article 7)[479] and "equal basis with others in cultural life" to "theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance" (Article 30).[480]

The process

Kilikili, led by Krishnamoorthy, decided to solve this problem by creating a model public play space for children with disabilities in Bengaluru. Kilikili's process is iterative and involves extensive consultations centring on and involving children with disabilities themselves. This reflects Kilikili's core belief that it is a child's basic right to weigh in on matters that affect their own well-being.

The process begins with children with disabilities and their caregivers being consulted to understand their needs and wants from a playground. For the first such inclusive play space in 2005, Coles Park in Bengaluru was chosen for modification. A consultation was organised with children with disabilities on 1 December 2005 at the St. Germain School, where they were taken through a round of movement exercises and then guided to articulate what they liked and disliked about parks as they knew them. After this, they were taken to Coles Park where they used the existing play materials and walked around the park. After they returned, they expressed their likes and dislikes specific to Coles Park.

Then, a discussion was facilitated with the children on imagining their dream park, and they were provided clay, paints, and other materials to bring their vision to life. The next day, a group of architects, rehabilitation professionals, developmental paediatricians, occupational therapists, special educators, and disability and child rights groups met to discuss the children's consultation and start creating the dream park. The Coles Park consultation process was captured in a Kilikili report, which is available to the public.[481]

Another consultative process in 2008 produced interesting insights from children, such as, "**the watchman should not shout at us, people should not drink and smoke and come to the park…**"

478 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106)

479 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106) art 7

480 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA res A/RES/61/106), art 30(1)

481 For a Park of our own Making Coles Park Accessible (*Kilikili*)

Our Dream Park

Primarily, access for children with disabilities throughout the park that includes:

I Specific paths (for wheelchairs) around the entire park
I Broad entrance to the park
I Ramps with railing everywhere
I Non slippery and even pavement
I No steps
I Secure fence/wall around park
I Signage - including in Braille - regarding various disabilities to sensitise and create awareness

Water

- Pond
- Fountain
- Waterfall
- Swimming Pool (separate for babies and older children)

Land

- Sandpit
- Pebble pit
- Gradual mounds of grass
- Sensory walkway
- Soft sand around play equipment

Plants and animals

- Trees with fruits and a treehouse
- Plants and lots of flowers
- Birds chirping and bird feeders
- Animals - deer, dog, cat, rabbits
- Fish
- Ducks
- Butterflies

Play Area

- Rocking/spring Duck
- Giant wheel
- Hammock
- Swing (bucket type, for parent-child, for wheelchairs, age appropriate)
- Slide with the steps secured with mesh
- Merry-go-round
- See-Saw
- Jungle Gym
- Parallel beam
- Trampoline
- Rope ladder
- Train track
- Tunnel
- Rock climbing
- Large Abacus
- A maze with multiple activities
- Art activity and display area
- Music/ instruments
- Basketball
- Cricket
- Baseball
- Football
- Hockey and other games

We Would Certainly Like ....

I Easy-to-maintain toilets near play area
I Well-lit play area
I Benches
I Layout Map
I Use of colours that are sensitive to low vision
I Small bakery /eatery and drinking water facility
I Reading room facility
I First Aid Box
I Signage (tactile and pictorial) for better usage of equipment & to enhance learning
I Dustbins
I Public Address System
I Reuse of water so that there is no wastage
I Different park timings to play longer on weekends
I A support group and volunteers

And we wish for ....

- A friendly watchman or none at all
- Lots and lots of friends to play with
- Place to sit and rest - like a stone bench - under an apple tree!
- A ramp to reach the top of the sky
- Rooms to stay
- A boat with a fishing net
- Beach to relax!
- No restriction regarding presence of parents
- No board saying, "Only for children below 5 yrs"
- No signs that say, "Wheelchair/prams not allowed"



◀ Figure 1: Poster on the 2008 consultative process
Source: Kilikili[482]

Using the children's consultation as a frame of reference, occupational therapists, disability experts, and architects created prototype designs for play equipment manufacturers. These included ramps and adapted play equipment (such as a swing set with both bench and bucket seating, tire swings, a concave slide with higher hand grips, see-saws with safety belts, wheelchair-accessible merry-go-rounds, multisensory toys, etc.). These were all then integrated in Coles Park for all children to use without demarcating and cordoning off 'disabled' or 'special' zones with the modified equipment.

One critical reason for Kilikili's success was its willingness and ability to engage with the BBMP.[483] This process included conducting trainings for park officials, the horticulture department, and engineers about the implementation and maintenance of and the ethos behind the inclusive parks. Pursuant to this, the BBMP was able to appoint local contractors and park officials who were able to install the designed equipment, making inclusive play spaces in Coles Park a reality. As of 2021, Kilikili has installed eight public inclusive play spaces across the country, which have been extensively used by all the children in the respective neighbourhoods. The following photos show safe swing sets and a merry-go-round that offers greater safety and is designed to cater to children with disabilities.

482 Poster- Our Dream Park (*Kilikili*)

483 BBMP

▼ Figures 2 and 3: Safe swings in Gayatri Devi Park and Coles Park, Bengaluru

Source: Kilikili[484]

Quick Facts:

Age-group: 4-10 years

Manufacturer: Vinyaas Play Systems, Bengaluru

The safe swing is suitable for young children as it offers them greater security. It also ensures upper body support and better grip for children with developmental delays.



Gayatri Devi Park, Bengaluru



Coles Park, Bengaluru

484 Kilikili Technical Manual (*Kilikili*) 30

▼ Figure 4: Wheelchair-accessible merry-go-round, M N Krishna Rao Park, Bengaluru
Source: Kilikili[485]

Quick Facts:

Age-group: 3-12 years

Manufacturer: Toys & Sports, Bengaluru

The wheelchair merry-go-round specially caters to children with orthopaedic difficulties, cerebral palsy or multiple disabilities. It supports them to independently balance their body and enhances their self-confidence. The merry-go-round has a platform and a ramp through which the wheelchair can enter. It is also a vehicle for inclusion of all children as there is space for other children to stand alongwith a child who uses a wheelchair.



M N Krishnarao Park, Bengaluru

The design of this play equipment is based on Universal Design principles and includes physical infrastructure to accommodate locomotor disabilities as well as sensory elements in the park which improve children's learning. The success of Kilikili's project is based on a clear division of responsibilities between community bodies and local government agencies as set out in the table below and their ability to engage with the BBMP.

485 Kilikili Technical Manual (*Kilikili*) 62

▼ Division of responsibilities between community bodies and local government agencies

Source: Kilikili[486]

Task	Primary responsibility
Needs assessment and planning	Community bodies including groups of children and their caregivers, in collaboration with government officials, rehabilitation therapists and urban planners
Funding	Local Municipal Authority / government agency
Development of the play space	Local Municipal Authority / government agency
Maintenance assessment and supervision	Community bodies
Maintenance work	Local Municipal Authority / government agency
Training and sensitisation of park employees	Community bodies with co-operation from Local Municipal Authority

Key takeaways

1. Urban planning must always include consultation with potential users of the space to ensure that their needs are addressed.
2. Constructive engagement with local bodies/municipal authorities is crucial to the success of creating inclusive play areas in India.
3. Kilikili's model can be replicated across the country as it has developed policy guidelines for municipal authorities across states, detailing the play equipment required across various disabilities, and created a framework for local groups to implement the model via public-private partnerships.
4. The initiative must be by a local coordination committee of children, parents, and residents.
5. Ward committees may be activated as a liaison between the municipal authority and the local coordination committee.
6. Community ownership of public spaces is essential for their maintenance.
7. Clarity and transparency in the departments and officials responsible for public spaces is necessary. In their work of making public parks accessible, Kilikili found a lack of clarity in the mandate of each department. For instance, the maintenance of parks was the responsibility of the horticulture department, whereas maintenance of play equipment was the responsibility of the education department, the latter of which was already too overburdened to prioritise the needs of public parks.

486 Kilikili Technical Manual (*Kilikili*) 22

6.2 Assisted Community Living for Homeless Persons with Mental Illness by Iswar Sankalpa

Iswar Sankalpa is a non-profit organisation started in 2007 with the hope of reaching out to homeless persons with psychosocial disabilities on the streets of Kolkata.

For the subset of persons with disabilities who also live with serious mental illness that may require significant support, such as schizophrenia or bipolar disorder, long-term institutionalisation in public mental health institutions is a substantial risk. Often, for persons from lower-income and marginalised caste backgrounds, having a serious mental illness without the financial resources to support it, setting time out for rest and recovery can have very serious consequences, which may lead to homelessness and institutionalisation. It is impossible to talk about making the city accessible if such persons are compelled to be institutionalised and locked away within the city or are forced to barely get by on the margins of the city purely on the basis of their disability. Enabling community support for persons living with mental illness must be a basic and critical part of accessibility in urban planning. Without access to freedom, there is no access to built environments and the city itself.

In 2016, the National Mental Health Survey[487] showed that West Bengal had 1.26 per cent incidence of psychotic disorders, including schizophrenia, and that the state had a cultural atmosphere that invisibilized and stigmatised persons with mental illness, using words like *paagol*, *khyapa mathakharap* (mad) to refer to these persons. Per the 2011 Census, West Bengal has the seventh highest number of homeless persons with 1,34,040 persons living on the streets.

Iswar Sankalpa has been working in West Bengal to provide vocational training, healthcare, housing, and support to persons with psychosocial disabilities including those who are homeless by engaging at various points with the police, the municipal corporation and the state government. Iswar Sankalpa's programmes have a person-centric approach with several programmes emerging organically, arising from the needs of persons they work with. Naya Daur is Iswar Sankalpa's flagship programme, providing dedicated community-assisted care to homeless persons living with mental illness in the neighbourhoods they occupy without relocating them to shelters.[488]

487 National Mental Health Survey of India Summary, 2015-16

488 Naya Daur (*Sankalpa*)

The process

The Iswar Sankalpa team has set up a network of voluntary caregivers in a community who consistently support homeless persons living with mental illness in their neighbourhood with care and treatment as required (in coordination with Iswar Sankalpa's social workers), and this supportive community also helps counter stigma. The organisation has coordinated with the Kolkata Police in each ward. They are currently active in over 60 wards in Kolkata and have reached out to over 3,000 homeless persons and 260 caregivers since inception. **On 10 June 2021, WHO recognised Naya Daur as a "good practice community mental health service."**[489]

"Not all homeless persons living with mental illness want to live in a shelter," says the former Assistant Director of Iswar Sankalpa. "Many value their freedom even if it means living on the street." Naya Daur, thus, arose out of the need to create a safety net and take services to such individuals, putting their agency at the core of the response, even if that meant that they would not be living in a conventionally monitored environment. This also prevents institutionalisation.

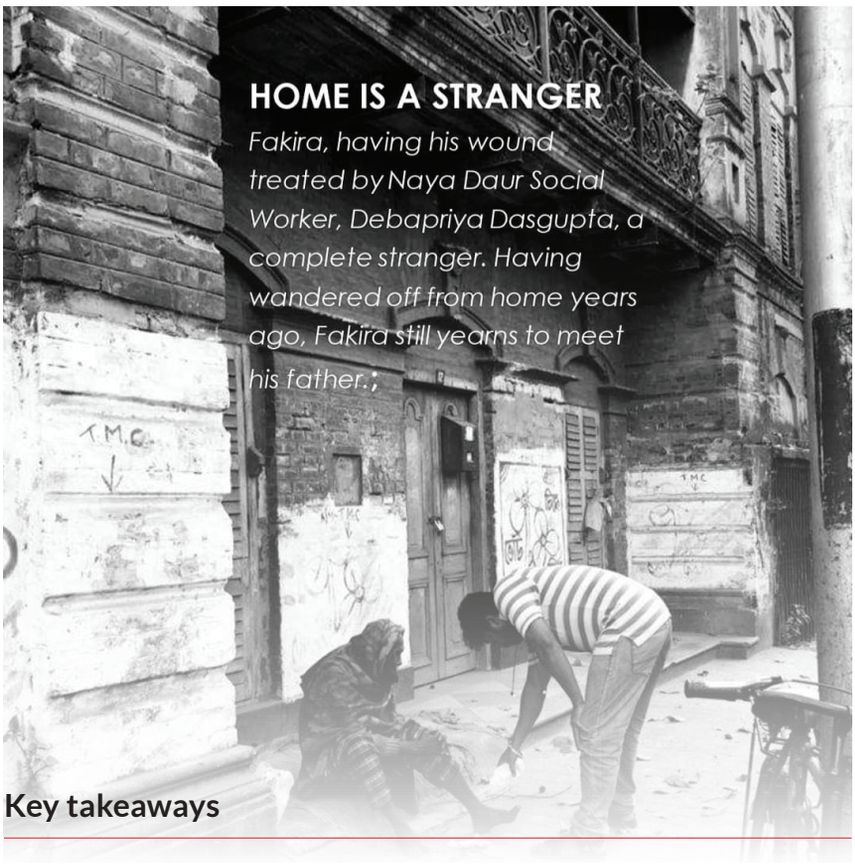
Iswar Sankalpa keeps a regular check of the people under the care of this program,[490] ensuring physical and mental healthcare, clothes, food, right to entitlements (such as Aadhar cards), and visits by counsellors and social workers. Social workers keep a lookout for people showing symptoms of mental illness at transit points, such as railway stations or bus depots, where such persons are often abandoned by families or end up themselves after leaving home. They set up a proxy family with the cooperation of small business owners nearby, who are frequently from lower-income backgrounds themselves and run small eateries or have vending carts or shops. Iswar Sankalpa also runs homeless shelters for persons living with severe mental illness, operating through a memorandum of understanding with the Social Vagrancy Department under the Social Welfare Department of the state government.

In addition, they run an Urban Mental Health Programme to prevent homelessness due to mental health issues. This has been in operation since 2012, where they have worked with the Kolkata Municipal Corporation in out-patient department settings across five wards to provide mental health services as part of the services that the corporation is already providing. The primary unit of coordination in the case of both has been the ward health unit of each borough in Kolkata. As wards constitute the building blocks of the city, intervening at the ward level enables ground-up intervention and service delivery.

489 Community-based mental health services using a rights-based approach (*World Health Organization*, 10 June 2021)

490 Jhinuk Mazumdar, WHO recognition for city NGO which helps the homeless (*Telegraph India Online*, 19 June 2021)

▼ Figure 6: An excerpt from the photo essay 'What Is Home'
Source: Iswar Sankalpa.[491]



Key takeaways

1. There is substantive proof of concept for breaking down disability supportive services to the local community level. Iswar Sankalpa emphasises outreach with the ward as the unit of change and implementation of services.
2. There is a need for proactive outreach at the ward level to enable the care of health, food rations, medication, and accessibility needs and to ensure that support (whether a gratuity relief scheme, disability pension, registration of voter ID cards, or disaster management during incidents like cyclones) is provided to all residents of an area. Iswar Sankalpa suggests ward, district or local corporations, civil society, and government collaborations to implement this.
3. Standardisation and transparency of the processes to be followed for implementation of disability supportive services is required. While policy-level change is top-down, actual implementation involves state bodies and municipal authorities.
4. Sensitisation and capacity building at the enforcement level is crucial. Frequently stakeholders, including government officials, are unaware of the various schemes and disability protections or existing practices. This information sharing and appointment of a clear point of responsibility is critical.
5. The agency of the person living with mental illness is critical. This must form the basis of any rights-based disability intervention.

491 'Support For The Mind - Iswar Sankalpa' (*Facebook*)

▼ Figure 7: Rice grains from rations given to Sunita (name changed to protect identity) a homeless person near the Circular Railways tracks at Nimtala Ghat, Kolkata, after Cyclone Amphan

Source: Iswar Sankalpa[492]



6.3 Accessible Urban Transport Systems with the Delhi Metro Rail Corporation

The DMRC, a joint venture of the Central Government and the state government, was the first large-scale public transportation system in India to be designed with an eye towards universal accessibility, specifically considering the needs of persons with disabilities. The Delhi Metro system spans Delhi, Gurgaon, and Noida and serves a large number of people in and around the National Capital Region.

The right to travel is fundamental to education, employment, healthcare, leisure and recreation, and the right to freedom of movement itself. Inaccessible transport systems violate these rights for persons with disabilities and impede their right to equal participation in society. At the time of construction, providing for accessibility was given legal impetus by the PWD Act, which mandated non-discrimination in the built environment and transportation. Provisions of the minimum standards of accessibility for the DMRC are based on this law and its guidelines.

492 'By the tracks- Iswar Sankalpa' (*Iswar Sankalpa*- Blog)

Universal accessibility and, indeed, the concept of Universal Design is not only beneficial to persons with benchmark disabilities (>40 per cent disability per evaluation) or those traditionally recognised as having disabilities such as people using wheelchairs, or people with visual impairment, but it is also useful to vast swathes of people whose bodies need access as well. These include, for instance, people with reduced mobility, joint aches, cardio-vascular issues, senior citizens, pregnant women, families with infants and toddlers and even just people carrying heavy luggage.

Towards this, the DMRC partnered with Samarthyam, a cross-disability advocacy civil society organisation promoting universal access, on the design of the metro system in the National Capital Region. The Delhi Metro follows certain accessibility standards recommended by Samarthyam, based on which similar standards are being replicated in other states with Samarthyam as an advisor to various metro rail corporations. As per these accessibility guidelines, all stations of the Delhi Metro have accessibility features[493] including tactile paving in the metro station, space to park wheelchairs and handlebars inside the metro compartment, and the provision of an elevator for persons with disabilities. In addition, there are audiovisual indications for the opening and closing of train doors, announcements regarding the next station, and announcements for entering and exiting along the correct platform sides based on the passenger's destination. There are also Metro Sahayaks available to assist persons with disabilities if requested.

▼ **Figures 8–10: Images of the Delhi Metro** | Source: Samarthyam[494]



Tactile Paving in Metro Station



Space to park wheelchairs inside Delhi Metro Trains



Elevator provision for persons with disabilities

493 Is Delhi Metro Accessible for the Persons with Disabilities?

494 Access Audits of Delhi Metro Infrastructure (*Samarthyam*)

Per the DMRC website,[495] the features currently provided as of 2021 are detailed in the images below.

▼ **Figures 11–16: Images of the Delhi Metro**
Source: DMRC[496]



EXTRA-WIDE AUTOMATIC FLAP GATES FOR WHEELCHAIRS



TACTILE PATHS FOR THE VISUALLY IMPAIRED



PROVISION OF WHEELCHAIRS AT STATIONS AND RESERVED SPACES FOR WHEELCHAIRS IN TRAINS



TOILETS FOR PERSONS WITH DISABILITIES



RAMPS ARE PROVIDED WHERE THERE IS CHANGE IN THE LEVEL



PROVISION OF HANDRAILS ALONGSIDE STAIRS

495 DMRC: Facilities for differently abled passengers (*Delhi Metro rail Corporation*)

496 DMRC: Facilities for differently abled passengers (*Delhi Metro rail Corporation*)

▼ Figures 17–25: Images of the Delhi Metro

Source: DMRC[497]



Signage at prominent locations are provided for disabled and mobility restricted passengers.



Seats in trains have been reserved for Divyangjan/senior citizens



497 DMRC: Facilities for differently abled passengers (*Delhi Metro rail Corporation*)

The process

Since 1995, Samarthyam has played an important role in accessibility advocacy, including conducting accessibility audits of existing buildings and training in collaboration with the School of Planning and Architecture, New Delhi, in the 2000s. They approached the DMRC during the early stages of the project to ensure that all stations were designed considering the diverse access needs of persons with disabilities.

Along with DMRC engineers and architects, an access audit to check accessibility was conducted in March 2002 for the Seelampur Metro Station, later renamed Welcome Station,[498] during the construction phase. The team included persons with diverse disabilities who went through a checklist pertaining to accessibility including:

- Drop-off lanes and parking close to the station entrance, ticket and automatic fare collection counters
- Proposed placement of guiding path and warning strips
- Lifts and stairs
- Approach to the platform and toilets proposed to be built outside the station
- Public announcement system and digital displays on the platform and coach

Samarthyam submitted suggestions and recommendations to the DMRC and conducted sensitisation workshops for policymakers and stakeholders in this period.

498 Anjlee Agarwal and others, Delhi Metro: Mobility for All (*SAMARTHYAM, National Centre for Accessible Environments, New Delhi, India*)

499 Anjlee Agarwal and others, Delhi Metro: Mobility for All (*SAMARTHYAM, National Centre for Accessible Environments, New Delhi, India*)

▼ **Figures 25–26: Samarthyam conducting accessibility audit of the DMRC and sensitisation workshop**

Source: Samarthyam[499]





The metro opened to the public in December 2002.

▼ **Figure 28: Inaugural metro ride, 25 December 2002**
Source: Image via Samarthyam. [500]



Once the Delhi Metro was operational, the DMRC implemented access audits at other stations and solicited feedback. Later improvements suggested by Samarthyam included lowering the ticket counter height/single window facility; a distinct sound beeper for orienting vision-impaired persons; and transit ramps to bridge the horizontal and vertical gap between the coach and platform, and modifications to the toilets.

It is important to note that approximately 60 per cent of the construction of Phase 1 was financed by the Government of Japan via a soft loan through the Japan Bank for International Cooperation,[501] renamed the Japan International Cooperation Agency, which contributed 54.5 per cent of the cost of Phase 2. The agency incorporated stringent clauses on accessibility in their contractual agreement with the DMRC, which would have been a motivation to implement accessibility in a direct manner. In this context, it is relevant to note that Japan is a good example of international best practices on accessibility for persons with disabilities.

500 Anjlee Agarwal and others, Delhi Metro: Mobility for All (*SAMARTHYAM, National Centre for Accessible Environments, New Delhi, India*)

501 Funding (*Delhi Metro Rail Corporation*)

Key takeaways

1. There is a need for coordination between different arms of the government whose jurisdictions overlap, and yet they operate in silos, such as the MoHUA, the TCPO, municipal authorities, and development authorities.
2. Binding contractual agreements, such as that with the Japan International Cooperation Agency, for funding or clearances for operations could have a clause specifying the need to incorporate accessibility standards in architecture and passing accessibility audits or review. This could provide the requisite impetus towards making construction projects adequately accessible.

The DMRC website also notes that the DMRC receives "80–85 requests per month through their helpline for assistance of persons with disabilities"[502] and Metro Sahayaks have been deployed to assist people with disabilities. In order to make this process informed and efficient, we can look towards an example outside India, set by the UK railways, which is described in the next section.

6.4 Easy Assistance from the Passenger App

The Passenger Assistance App,[503] launched in 2021, is an application built by Transport, a London-based technology company to democratise transport and make it accessible to all. It was undertaken on behalf of Britain's Rail Delivery Group, which oversees the operations of the railways in the UK.

In Britain, only 59 per cent of the railway stations include wheelchair access via step-free stations.[504] Boarding and getting off trains at stations where staff assistance is not readily available is a huge issue across up to 90 per cent of Britain's rail network. Assistance requests usually need to be pre-booked a day in advance and often get lost in the staff email account, leading to missed requests and passengers with disabilities being stranded on the platform as the train leaves or being unable to deboard at their stop. Instances such as these have led to passengers with disabilities associating public transport with anxiety.[505] These are problems that the Passenger App[506] tries to solve.

On the app, a passenger must fill out and save a user profile, including a photo (optional) to enable railway staff to recognise them. On the day of the journey, the passenger needs to fill in the details of their starting point, destination, and time of journey to book assistance. This request is sent to the train operator who

502 Facilities for Differently Abled Passengers (*Delhi Metro Rail Corporation*)

503 What is Passenger Assistance? (*Passenger Assistance*)

504 Gus Alexiou, Transreport Rail Assistance App Alleviates Travel Misery For Disabled Passengers (*Forbes*, 24 June 2021)

505 Gus Alexiou, Transreport Rail Assistance App Alleviates Travel Misery For Disabled Passengers (*Forbes*, 24 June 2021)

506 Passenger Assistance (*Twitter*)

arranges the assistance, and the booking is confirmed. Then, the passenger books their ticket on the railway and uses the services in the station, assured of accessibility. The app also includes accessibility features such as audio instructions, enhanced colour, contrast, and font size.

The process

The design process for the app began in 2017, and it was co-designed by staff from major railways in Britain by identifying the major issues that prevented the railways from being accessible and utilising data on these issues from all railway stations. It also involved consultations and testing with an accessibility panel composed of people with a diverse range of accessibility needs.[507]

Key takeaways

The app is relatively new but promises to make travel quicker, simpler, and personalised for persons with disabilities. While it may be too early to comment on the success of the app, the use and relevance of a similar app for the Indian context may need to be assessed, given that many persons may not have ready access to smartphones or at stations where ICT infrastructure is poorly developed.

507 Meet our Accessibility Panel (*Passenger Assistance*, 4 April 2021)

CONCLUSION

Cities, as they exist in India, are built considering only the needs of a fraction of their residents, resulting in the creation of urban public spaces and services which exclude the needs of persons with disabilities, women, children and their caretakers (where necessary), elders, and those who are socially and economically marginalised. Through our conversations with numerous planners, architects, persons with disabilities, DPOs, and feminist and disability rights activists working in the field for decades, some significant structural problems have been highlighted, and these must be tackled in order to create cities that are truly equitable for everyone and not just a few.

ULBs need to be sensitised to the way cities reproduce systemic discrimination and exclusion. Examining legal frameworks of urban governance from a feminist, disability perspective is an exercise in re-imagining the city and questioning deeply held assumptions about who its claimants are and what values underpin its development. 'Planning from the margins' by centring the needs of persons with disabilities and other marginalised groups leads to the creation of cities that are designed for all, and benefits everyone inhabiting the city.

The primary issue evident upon the scrutiny of the existing legal framework is that there is a limited and narrow understanding on how disability is perceived and what accessibility to urban space means. While a wide spectrum of disabilities are recognised, the creation of accessibility standards, to the limited extent that they exist and are implemented, circles back to only physical, and largely, perceivable disabilities. Due to a lack of consideration and the participation of persons with disabilities in the process of urban planning and design, there is a pronounced lack of imagination in the conception of what urban accessibility can be and what it can achieve in the city, thus repeatedly marginalising those who are

already on the margins. Existing attempts at improving accessibility focus only on barrier-free design rather than the more progressive Universal Design approach, and thus, fail to understand the complex diversity of persons with disabilities, their varied needs and uses of urban space, and ignore how factors such as gender, age, social and economic background, among others impact them.

To this end, this paper has proposed several legal and policy changes that seek to address these concerns, which can be implemented in the state of Karnataka, and notably, in the city of Bengaluru. These include encouraging inclusive planning practices and the participation of persons with disabilities in the planning process, the revision of existing accessibility standards to expand the limited notions of accessibility, addressing challenges in the implementation of accessibility norms and finally, laying out pathways for the progressive realisation of Universal Design approaches in the city, going beyond the notion of reasonable accommodation.

While the laws examined in this paper are specific to Karnataka, the recommendations, nonetheless, are applicable to any Indian urban centre and are implementable across Indian cities. The larger goal of adopting and implementing Universal Design, by its virtue, is a participatory process and envisages that local participants will play an active role in the planning and design of their city. The benefits of Universal Design extend not only to persons with disabilities but also extend to all persons, thus significantly reducing the overall vulnerabilities our urban spaces create.

Disability is often still seen as an exceptional individual 'circumstance' to be 'overcome'. Instead, this paper showcases that it is our cities that must be transformed and designed to be welcoming to everybody and every kind of body. This paper is a step towards making this a reality.

TABLE OF RECOMMENDATIONS

This table summarises the recommendations described in Chapter 5.

S. No.	**Summary of recommendations**
I.	Encouraging inclusive and participative planning and the representation of persons with disabilities
A)	Amendment to the Karnataka Town and Country Planning Act, 1961 i) Section 81C to be amended to divest the BDA of its planning and regulatory functions and to assign this to the BBMP for the city of Bengaluru ii) Section 4C (constituting planning authority) to be amended to require the representation of persons with disabilities, particularly women with disabilities, among members of the authority iii) Section 12 (pertaining to the contents of the master plan and development of a planning area) to be amended to incorporate principles of inclusive and participatory planning. This will include tools such as community charrettes, focus groups, accessibility audits, and the collection of disaggregated data on disability as part of the master planning exercise.
B)	Amendment to the Bangalore Development Authority Act, 1976 Section 3 (dealing with the composition of the BDA) to be amended to include persons with disabilities, notably women with disabilities and representatives of local DPOs (till such time the BBMP is designated as the planning authority for the city of Bengaluru under the KTCP Act)
C)	Amendment to the Karnataka Municipal Corporation Act, 1976 i) Sections 113H (governing composition of ward committees) to be amended to include the representation of persons with disabilities, notably women with disabilities and local DPOs, who are active in the ward, as members in the ward committee ii) Section 113H(7) to be amended to remove the extraordinary veto power conferred on the councillor in regard to ward committee meetings, which undermines the fundamental principles of community participation in the wards iii) Section 113I (functions of the ward committees) to be amended to endow ward committees with greater functions, such as preparing ward plans for their respective wards
D)	Amendment to the Bruhat Bengaluru Mahanagara Palike Act, 2020 i) Section 83 (governing the composition of ward committees) to be amended to include representation of persons with disabilities, notably women with disabilities and representatives of local DPOs ii) Section 86 (functions of the ward committee) to be amended to endow ward committees with greater functions, such as preparing ward plans for their respective wards

II.	Revising accessibility standards to ensure better understanding of accessibility
A)	Regular review and updating of existing accessibility standards after consultation with all stakeholders i) Harmonised Guidelines to be reviewed periodically by MoHUA and made more comprehensive to include, at a minimum, all categories of disabilities currently listed under the RPWD Act (specifically persons with 'invisible' disabilities) ii) Mechanism of periodic review and assessment be set up to ensure that rules and regulations at the municipal level (such as KMC Act Bye-Laws, KM Act Bye-Laws and BBMP Bye-Laws) are updated in line with changes in national accessibility standards
B)	Review and notifying additional accessibility standards for transportation DEPWD, in consultation with the relevant nodal ministries, to review the Harmonised Guidelines for Passenger with Disabilities over Indian Railways by the Ministry of Railways, and the Handbook on Barrier Free Space Standards for Built Environment for Persons with Reduced Mobility by the Ministry of Civil Aviation and notify them (as well as the Civil Aviation Requirements) as additional accessibility standards for transportation under Rule 15 of the RPWD Rules
C)	Extending accessibility standards on information and communication technology i) The Central Government to amend the Guidelines for Indian Government Websites to reflect that mobile apps and webpages of private entities must also follow the accessibility norms prescribed under the said Guidelines ii) The DEPWD, in coordination with other relevant ministries/ departments at the central level, must initiate the process of identifying facilities and services to be provided to the public in urban areas, commence the preparation of accessibility standards for the specific facility or service, and notify the same under Rule 15 of the RPWD Rules.
III.	Undertaking training, sensitisation and capacity building measures i) Where bodies required to be set up by the state government under the RPWD Act, i.e. the state advisory board and the district-level committee (as applicable to the city of Bengaluru), have not been set up, it must be done so at the earliest. ii) Officers at multiple levels of the government are to be trained bi-annually in addition to being provided regular orientation sessions on disability laws and their functions for institutional knowledge building. iii) Specifically for personnel at the level of state government and municipal authorities, in the short term, well-known NGOs working in the space of disability rights may be empanelled as trainers whose mandate would be to train such personnel periodically, on issues concerning disability rights and accessibility. In the longer term, it is suggested that disability awareness cells staffed with experts in the field of disability laws and accessibility and other allied fields be created (at both levels) so that they can develop the institutional capacity to adequately train such personnel.

IV.	Incorporating accessibility norms in public procurement policies
	i) Amend Section 6 of the KTPP Act to expand the preferential policy in tendering to include persons with disabilities. Similarly, amend Rule 27(A) of the KTPP Rules to expand the preferential policy in tendering to include persons with disabilities in construction works. This is to encourage disability inclusion by incentivising tenderers to employ persons with disabilities and to ensure representation of persons with disabilities in public procurement processes that are beneficial to the goals of accessibility integration. iii) Amend the KTPP Act and the KTPP Rules to create a provision for incorporating accessibility criteria in public procurement. This provision can provide for the development of an accessibility policy for municipal public procurement, enabling the integration of accessibility standards as well as Universal Design concepts in the procurement process. This provision could also be framed so as to ensure the creation of sector-specific accessibility policies for the procurement of specialised services or goods such as ICTs.
V.	Ensuring better implementation of existing legal frameworks on accessibility
A)	Implementing accessibility standards in built environment i) Definition of 'empanelled professional' under the KMC Act Bye-Laws and KM Act Bye-Laws (Bye-Law 2(49)) to be amended to include persons with disabilities (including DPOs) as well as a separate sub-category under Appendix-IA (pertaining to responsibilities of 'empanelled professionals'). ii) Appendix-V in both Bye-Laws must be amended to reflect the process for empanelment and selection of such persons. iii) Chapter III of both Bye-Laws must clearly stipulate that the municipal corporation or the municipal council must require the inspection and certification of all public buildings (to which the accessibility standards apply) by persons with disabilities who are empanelled professionals at the instances mentioned under the KMC Act and the KM Act (in addition to any inspection carried out by other empanelled professionals). iv) All empanelled professionals as well as stakeholders who are involved in the development of buildings and are required to be registered with the municipal authorities must also have requisite qualifications, knowledge and/or experience in relation to rights of persons with disabilities and accessibility standards in urban spaces. The KMC Act Bye-Laws and KM Act Bye-Laws may add this as a prerequisite to registration and Appendix-IA may be revised accordingly. v) BBMP Bye-Laws are to be revised on similar lines, as mentioned above. vi) At the national level, the MBBL and the NBC may be amended to reflect inspection or audit by persons with disabilities to determine whether public buildings are barrier-free while issuing a building permit or a completion or occupancy certificate.
B)	Implementing accessibility standards in mobility and transportation i) Create an overarching regulatory authority for mobility and transport planning, i.e. UMTA, which would be vested with control and oversight over transportation in the city as well as over various bodies, such as the BMTC and the BMRCL. In this regard, it is recommended that the BMLTA Bill be passed as soon as possible. ii) Ensuring harmonisation between transportation policies and land use. In this regard, the state government must mandate that the various agencies governing the planning and development of the city as well as its transportation system work in tandem and ensure integration of transportation needs into the master plan.

VI.	Making progress towards the implementation of Universal Design i) If the principal legislation dealing with rights of persons with disabilities i.e. RPWD Act makes Universal Design an underlying theme, then it can slowly be brought into all aspects of urban spaces, such as built infrastructure, transportation, and services, and not just be limited to ICTs and consumer goods. ii) Universal Design may be eventually adopted in the URDPFI Guidelines and Harmonised Guidelines, followed by the NBC, MBBL and KMC Act Bye-Laws, KM Act Bye-Laws, and BBMP Bye-Laws. This will ensure that Universal Design is implemented at national level and, if subsequently adopted by states (through their town and country planning laws such as the KTCP Act) and municipalities (through their building bye-laws), its impact may be felt at all levels. iii) This, along with corresponding changes to procurement laws as well as capacity building, training, and awareness generation will go a long way in implementing Universal Design as an approach to urban planning in India.

ANNEXURE A

The Accessible India Campaign has set out the following targets:[508]

Accessibility of built environment

- Completing an accessibility audit of at least 25–50 per cent of the most important government buildings in 50 cities and making them fully accessible by March 2020
- Making 50 per cent of all government buildings of the National Capital Territory of Delhi and all state capitals fully accessible by March 2020
- Completing an accessibility audit of 50 per cent of the government buildings in the 10 most important cities/towns of states not covered in targets above and making them fully accessible by March 2020

Accessibility of transport systems

- Completing an accessibility audit of all international and domestic airports in the country and making them fully accessible
- Ensuring that A1, A, and B categories[509] of railway stations in the country are made fully accessible by December 2018
- Ensuring that 50 per cent of railway stations in the country are converted into fully accessible railway stations
- Ensuring that 25 per cent of government-owned public transport carriers in the country are converted into fully accessible carriers by March 2019

Accessibility of knowledge and information and communication technology ecosystem

- Conducting an accessibility audit of 50 per cent of all government (both central and state) websites and converting them into fully accessible websites
- Ensuring that at least 50 per cent of all public documents issued by the Central Government and state governments meet accessibility standards
- Training and developing 200 additional sign language interpreters
- Developing and adopting national standards on captioning and sign language interpretation in consultation with national media authorities and ensuring that 25 per cent of all public television programmes aired by government channels meet these standards

508 *See* Compendium of Schemes for the Welfare of Persons with Disabilities, (DEPWD 2020)

509 Minister of Railways directs to re-categorize railway stations taking into account earnings, passenger footfall, strategic importance' (*Press Information Bureau, Government of India, Ministry of Railways*, 28 December 2017)

ANNEXURE B

THE PRINCIPLES OF UNIVERSAL DESIGN[510]

Principle 1: **Equitable Use**

The design is useful and marketable to people with diverse abilities.

Principle 2: **Flexibility in Use**

The design accommodates a wide range of individual preferences and abilities.

Principle 3: **Simple and Intuitive Use**

Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.

Principle 4: **Perceptible Information**

The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.

Principle 5: **Tolerance for Error**

The design minimises hazards and the adverse consequences of accidental or unintended actions.

Principle 6: **Low Physical Effort**

The design can be used efficiently and comfortably and with a minimum of fatigue.

Principle 7: **Size and Space for Approach and Use**

Appropriate size and space is provided for approach, reach, manipulation, and use regardless of the user's body size, posture, or mobility.

510 Connell, B. and others 'The Principles of Universal Design' (Center for Universal Design, North Carolina State University, Raleigh, NC, 1997)

