



Report on Implementation of the Persons with Disabilities Act, 1995 (PWD) - Some Glimpses



**NATIONAL HUMAN RIGHTS COMMISSION
INDIA**



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(PWD) - Some Glimpses**

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Chairperson NHRC

Preface

The National Human Rights Commission has been concerned about the rights of the persons with disability. It has been making efforts to ensure that the provisions of the legislation namely, the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are being implemented effectively, so that the relevant facilities are available to these people in accordance with the Act.

In view of the above objective, the Commission had carried out a series of inspection tours through its Special Rapporteur, Shri P.K. Pincha to different States namely, Gujarat, Madhya Pradesh, Odisha, Tamil Nadu and Uttar Pradesh. The reports prepared by Shri Pincha were indicative of several gaps in the implementation of the PWD Act, 1995. These were taken up with the concerned State Governments for improvement of the prevailing situation.

A compilation of these reports has been made by Dr. (Ms.) Balbir Teja, Consultant, NHRC. Shri J.S. Kochher, Joint Secretary, NHRC provided useful inputs in the preparation of this compilation.

I hope this work will be found useful by researchers and students in the area of human rights especially, those working for the rights of persons with disabilities.

(Justice K.G. Balakrishnan)

New Delhi
10 December, 2013

1

Introduction

It is estimated that there are 600 million people with disabilities in the world and 2.13 per cent of them live in India. According to Census 2001 more than 21 million Indians suffer from one or the other kind of disability. According to other estimates, the actual number of Indians with permanent and temporary disability could be as high as 50 million. Though, persons with disabilities are entitled to the full range of human rights and fundamental freedoms like any other individual in the society, they are subjected to many forms of discrimination and denial of basic rights. As a result, they are often leading a marginalized life.

The Indian Parliament passed the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) to promote and ensure equality and full participation of persons with disabilities and protect and promote their economic and social rights. The PWD Act was notified in the Union Gazette on January 1, 1996 and came into force in India except the state of Jammu and Kashmir with effect from February 7, 1996. The enactment of the PWD Act, 1995 by the Indian Parliament was indicative of the explicit induction and institutionalization of the disability rights into the Indian legal system.

The substantive provisions of the Act relate to prevention and early detection, education, employment, affirmative action, non - discrimination/barrier free access, research and manpower development and institutions for persons with disabilities.

The institutional mechanism envisaged in the Act includes Central Coordination Committee at the National level and State Coordination Committee and State Executive Committee at the State level. The Central and State level coordination committees are entrusted primarily with the task of facilitating continuous evolution of comprehensive policy on disability in the areas of their respective jurisdiction. It also includes Chief Commissioner (Persons with Disabilities) at the national level and Commissioner (Persons with Disabilities) at

the State level. The Commissioner (Persons with Disabilities) are entrusted with the task of monitoring the utilization of funds disbursed by the State Government and to take steps to safeguard the rights and facilities made available to persons with disabilities.

This historic legislation is a corner stone of evolution of jurisprudence on the rights of persons with disabilities in India. However, within the passage of time, its weaknesses have been noticed, arising mainly from the absence of a powerful implementing instrumentality. In the meantime, the Government of India signed and ratified the United Nations Convention on Rights of Persons with Disabilities (UNCRPD) in October 2007, which came into force the world over with effect from 3rd May 2008. The UNCRPD is a legally binding instrument. The purpose of this convention is to protect, promote and ensure to persons with disabilities, the full and effective enjoyment of all human rights and fundamental freedoms on an equal basis with others and also to promote respect for their inherent dignity. The convention recognizes persons with disabilities as citizens having human rights and fundamental freedoms and not as objects needing mere medical care and social protection. The UNCRPD gives an inclusive, rather than a restrictive definition of disability. It says persons with disabilities include those who have long-term physical, mental, intellectual and sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The adoption of UNCRPD by India has brought about a significant change in the manner disability has hitherto been constructed. India is now obliged to harmonize all its relevant domestic laws and policies with the UN Convention. The Ministry of Social Justice and Empowerment, Government of India has constituted a Committee comprising both official and non-official members including the primary stakeholders to draft a new law to replace the existing PWD Act. The proposed new law is expected to be more progressive than the existing PWD Act.

The general perception that the provisions of the PWD Act are not getting fully and properly implemented in different parts of the country is due to visible lethargy on the part of those responsible for implementation of the Act. This has resulted in large scale deprivation of rights of persons with disabilities which is an

area of prime concern for the National Human Rights Commission. While the proposed new legislation which will replace the existing PWD Act will take some time to be in place, the National Human Rights Commission had taken a decision to get the implementation status of the existing PWD Act reviewed in five major states including Gujarat, Madhya Pradesh, Orissa, Tamil Nadu and Uttar Pradesh to identify the gaps in its implementation and make appropriate recommendations.

The main objective of preparing this report is to identify gaps in the implementation of the PWD Act, 1995 in these five major States of the country and make necessary and appropriate recommendations aimed at ensuring effective and expeditious implementation of the said Act. This effort is part of National Human Rights Commission's larger focus to protect, promote and monitor the status of human rights and fundamental freedoms, particularly, of persons belonging to the disadvantaged and marginalized groups of society.

In order to achieve these objectives, an attempt was made through the Special Rapporteur, NHRC, Shri P.K. Pincha through visits to each of the 5 States to review the functioning and effectiveness of various enforcement mechanisms created under the PWD, Act. Besides, implementation of various thematic areas was reviewed to identify gaps therein and makes recommendations thereon.

This status report on the implementation of PWD Act has been compiled on the basis of observations made by Special Rapporteur during his official visits to Ahmadabad (May 25 to 28, 2011); Bhopal (November 28 to December 1, 2010); Bhubaneswar (August 17 to 20, 2011); Chennai (February 28 to March 1, 2011); and Lucknow (August 17 to 20, 2010) at the behest of the National Human Rights Commission. Special Rapporteur's observations are based on his interactions with the Commissioner (Persons with Disabilities) and his officials; Members of the State Coordination Committee (both official and non official); and Persons with disabilities/primary stakeholders, Officials of the concerned departments of States Governments, representatives of various NGOs and visit to institutions run or aided by the concerned State Governments meant for persons with disabilities. Finally, it also contains recommendations to ensure effective and expeditious implementation of the said Act by bringing about systemic and other necessary and appropriate changes.

This report comprises four chapters. Chapter one spells out the brief introduction of the PWD Act 1995, incorporating the main objective and methodology. Chapter two discusses the institutional mechanism under the Act as it exists in these State of Gujarat, Madhya Pradesh, Orissa, Tamil Nadu and Uttar Pradesh along with existing gaps. Chapter three briefly covers the implementation status in respect of various thematic areas including education, employment and social security respectively in the light of the relevant provisions in the existing Act in these States. Chapter four gives recommendations for effective implementation of the PWD Act for bringing systemic and other necessary and appropriate changes in these states.



2

Functioning and Effectiveness of Monitoring and Enforcement Mechanism

The implementation of any legislation, more particularly, a social legislation like the PWD Act depends to a larger extent on the efficiency and effectiveness of its monitoring and enforcement mechanisms. The enforcement mechanism has to be such that it caters to all persons with disability across the States. The different Sections of the Persons with Disability Act, 1995 envisaged/contemplated a three-fold monitoring and enforcement mechanism at the State level which included Commissioner (Persons with Disability) (CPD), the State Coordination Committee (SCC), and the State Executive Committee (SEC). Besides, the concerned Department of the State Government serves as important additional monitoring and enforcement mechanism.

The details of this three-fold enforcement mechanism including Commissioner (Persons with Disability) (CPD), the State Coordination Committee (SCC), and the State Executive Committee (SEC), are given below:

1) Commissioner for Persons with Disabilities (CPD)

Section 60 of the Persons with Disabilities mandated appointment of the Commissioner (Persons with Disabilities) in every State. The Commissioner for Persons with Disability is expected to coordinate and monitor the implementation of different provisions of the Act; take cognizance of complaints especially those relating to deprivation of rights of persons with disability; and take steps to safeguard the rights and facilities made available to persons with disability.

The functions and responsibilities of the State Commissioners under different Sections of the Persons with Disabilities Act, 1995 include the following:

The Commissioner (Persons with Disabilities) under section 61 of PWD Act shall coordinate with other departments of the State Government for the programmes and schemes, for the persons with disabilities; monitor the utilization of funds disbursed by the State Government to various departments for disability related works; take steps to safeguard the rights and make facilities available to persons with disabilities; submit reports to the State Government on the

implementation of the Act at the prescribed intervals by the Government and forward a copy thereof to the Chief Commissioner.

Without prejudice to the provisions of Section 61, the Commissioner under section 62 of the Act may of his own motion or on the application of any aggrieved person or otherwise, look into complaints with respect to matters relating to deprivation of rights of persons with disabilities; non implementation of the laws, rules, bye laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with appropriate authorities.

The Commissioner under section 63 shall, for the purpose of discharging their functions under the Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit. The Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 65 (1) of the Act makes it incumbent for the Commissioner to prepare and submit a detailed annual report giving full account of his activities during the previous year along with his/her recommendations in the prescribed format for each financial year to the concerned State Government and a copy thereof to the Chief Commissioner.

Section 65 (2) of the Act stipulates that the concerned State Government shall place the annual report of the Commissioner on the table of the State Legislature together with an action taken report. The said action taken report must contain the action taken or proposed to be taken on the recommendations made therein in so far and the reasons for non-acceptance, if any, or any such recommendation or part.

State-wise status of performance of Commissioners (Persons with Disabilities) in Implementation of the different sections of the PWD Act, 1995 is as follows:

Gujarat

The State Government had the monitoring and enforcement mechanism as envisaged by the PWD Act, 1995. This included Commissioner for Persons with Disabilities (CPD), the State Coordination Committee (SCC) and the State Executive

Committee (SEC). The Government of Gujarat had entrusted the responsibility of implementing disability specific schemes to the Department of Social Defense. The State of Gujarat was a late starter in appointing Commissioner (Persons with Disability) following promulgation of the PWD Act. Ever since the setting up of the office of the Commissioner (Persons with Disabilities), the position had either been held by Principal Secretary of the Department of Social Defense as an additional charge or as a full-time independent charge. The State of Gujarat must be credited for appointing a visually impaired person as a full time Commissioner (Persons with Disabilities) with independent charge. The Commissioner (Persons with Disabilities) at the time of Special Rapporteur's visit was a IAS officer.

There was no comprehensive and credible coordination and monitoring mechanism. The Commissioner lacked visible and positive pro-activism for redressal of complaints and grievances. There existed no structured and planned capacity building programmes in respect of human rights of persons with disabilities and the legislative framework on disability rights etc. for different stakeholders on regular basis. The office of the CPD needs to be educated on such critical matters relating to disability.

In Gujarat, the District Collectors had also been designated as Deputy Commissioners for persons with Disabilities. This appeared to be positive move, but the functions of Deputy Commissioner for persons with disabilities had not been spelt out explicitly to have a greater clarity about their role in the sphere of disabilities.

The State of Gujarat followed some best practices in the sphere of disability. These included the existence of a certain spirit of constructive cooperation and healthy rapport between the Government and the disability related civil society organizations; sensitivity of the Government of Gujarat towards the more marginalized and vulnerable groups within the larger group of persons with disabilities as the Government of Gujarat had lately initiated a project for the mentally ill in four districts. Moreover, there existed two Government institutions for the mentally ill persons. These two best practices may be followed by other State Governments.

Madhya Pradesh

The State of Madhya Pradesh had a three-fold enforcement and monitoring mechanism at the state level. This included Commissioner (Persons with

Disabilities) (CPD), State Coordination Committee (SCC), and the State Executive Committee (SEC). Apart from these three, the Department of Social Justice and Empowerment (SJE), Government of Madhya Pradesh had been implementing certain schemes for persons with disabilities and acted as a nodal department to coordinate disability related activities with other concerned departments.

The office of the Commissioner (Persons with Disabilities) was set up in May 1997 under section 60 of PWD Act, nearly one and half year after the Act came into force. Since then, the post of the Commissioner had been held for half the time by serving bureaucrat as additional charge and for the remaining half period by a visually impaired non-official. At the time of the visit of the Special Rapporteur it was held by a non-official. He had been holding this post for more than three years and during his tenure he held some mobile courts for the first time in the State. This indicated openness of the Government of Madhya Pradesh to appoint a suitably qualified and deserving incumbent.

There existed no mechanism, let alone a regular, solid, comprehensive and credible mechanism for the purpose of coordination and monitoring. There was lack of coordination between the Department of Social Justice and Empowerment and Commissioner (persons with disabilities) and other concerned departments.

The redressal of grievances by CPD in Madhya Pradesh was either through negotiation with the concerned authority or by following the proper process of hearing all concerned parties after registering the same as a formal complaint. The number of complaints received was 238 in 2008 and 202 in 2009 and the number of complaints disposed of during the corresponding period was 80 and 76 respectively. Most of the complaints received and disposed of appeared to be petty grievances. There was little or almost nil pro-activism on the part of CPD in taking suo moto complaints.

The Commissioner had been preparing and submitting the annual report to the Government of Madhya Pradesh as mandated by Section 65 (1), and such report had also been placed before the state legislature. But no report on action taken or action proposed to be taken had ever been laid on the table of the state legislature as mandated by Section 65 (2) of the Act. This amounted to a continuous non-compliance of section 65 (2) of the Act.

Barring some workshops or seminars, the Commissioner had not been undertaking any capacity building measures including awareness raising and

sensitization exercises and orientation for with for all the stakeholders of strategic importance on a planned and regular basis.

The constraints quoted by the CPD included shortage of budgetary resources; inadequate manpower and infrastructure and lack of technical staff etc. The Commissioner was fully dependent on the Department of Social Justice and Empowerment as he did not have the drawing and disbursement power. Too much dependence of Commissioner on the Department of Social Justice and Empowerment not only impeded the functioning of his office but also resulted in under-utilization of the available resources. Small matters like TA bills getting stranded in Department of Social Justice and Empowerment had some adverse impact on the working of this office. It was suggested by Special Rappateur, NHRC that the State Government of Madhya Pradesh may provide financial autonomy to the Commissioner (Persons with Disabilities) by granting him/her drawing and disbursement powers.

The best practices followed by the State of Madhya Pradesh included openness of the Government of Madhya Pradesh in appointing a suitably qualified and competent person with disability as Commissioner; and each text book prescribed for class one to class eight contained one page about useful information on different dimensions of disability defined by different ways and means to create awareness and sensitize future generation about disability.

The State of Madhya Pradesh did not have a dedicated Department/Ministry to deal with disability related matters. The officials of Department of Social Justice and Empowerment were not even fully aware of various disability related legislations in the country. Most of the departmental officials did not have much knowledge of disability or rights of persons with disabilities and their approach towards disability related matters was very casual and non-serious.

With some mechanism in place in the form of Commissioner (Persons with Disabilities) and the Directorate for the Welfare for disabled persons in place, the work of effective and expeditious implementation of the Act should begin in a concerted, coordinated and comprehensive manner, and not in a casual fashion.

Orissa

The monitoring and enforcement mechanisms in Orissa included the Commissioner (persons with disabilities) (CPD), The State Coordination Committee

(SCC), and, the State Executive Committee (SEC). In Orissa the Department of Women and Child Development also dealt with disability related matters/schemes.

The Government of Orissa followed a casual, cosmetic and non serious approach towards implementation of the PWD Act. The State of Orissa appointed a full-time Commissioner (Persons with Disabilities) with independent charge on March 29, 2010 almost 14 years after the PWD Act came into force. Prior to the appointment of a full-time Commissioner, the position of Commissioner (Persons with Disabilities) was held by Secretary, Department of Women and Child Development as additional charge. He could not devote enough time to disability related matters. It was reported that the incumbent holding the additional charge of Commissioner (Persons with Disabilities) could hardly devote an hour in a week to the work of the CPD. As a result, he/she could not perform the functions of Commissioner (Persons with Disabilities) including coordination amongst various departments for disability programmes and schemes, monitoring of utilization of funds for disability related work, safeguarding rights and facilities for persons with disabilities, taking cognizance of complaints of deprivation of rights suffered by persons with disabilities, etc. efficiently and effectively.

The Commissioner (Persons with Disabilities) at the time of the visit was a non-official. He had vast experience of working in the field of disability and had very good rapport with persons with disabilities. She, however, faced a number of difficulties in discharging her functions under the Act. These included extremely inadequate budgetary provision, absence of any regular staff, lack of adequate infrastructure, non-compliance of orders passed and advisories issued by the Commissionerate by Heads of other Departments etc. Though the Commissioner had been treated at par with the Principal Secretary in accordance with an order issued by the Government but the Commissioner was entitled to get an honorarium of just Rupees ten thousand per month. Under the relevant provision of the Act, Commissioner (Persons with Disabilities) was the ex-officio member of the State Coordination Committee but this was not properly reflected in the relevant record as whenever a meeting of the State Coordination Committee was held, a copy was marked to the Commissioner (Persons with Disabilities) rather than inviting him/her to attend the meeting. The majority of officials handling disability related matters were quite new as a separate Directorate for the Welfare of Disabled Persons became operational only in May 2011.

The most important functions of Commissioner to coordinate disability work amongst different departments, monitor utilization of funds disbursed for

disability related works, safeguard rights and facilities for persons with disabilities, and redressal of complaints/grievances under Sections 61 and 62 of the PWD Act had got under way only with appointment of full time Commissioner in March 2010. Therefore, there had been a continuous non-compliance of section 61 and 62 for about 14 years. Similarly, there had been a non-compliance of Section 65 requiring Commissioner (Persons with Disabilities) to prepare and submit a detailed annual report and the concerned State Government to place the report along with action taken or action proposed to be taken before the State legislature, as the Commissioner had prepared no annual report.

The Government of Orissa had designated the District Collectors as Deputy-Commissioners for persons with disabilities but there was nothing to suggest as to whether and to what extent these district collectors were playing a positive role in monitoring and enforcement of the Act; and disposal of grievances at the district level.

The Department of Women and Child Development, Government of Orissa should ensure autonomy, dignity, and independence of Commissioner (Persons with Disabilities) by empowering him suitably. The Department of Women and Child Development may also ensure that the advisories/orders issued by Commissioner to various departments are given due weightage and are complied with by other Departments. The Department of Women & Child Development may consider to give such an amount of salary to the Commissioner which is commensurate with his/her rank.

Tamil Nadu

The Directorate for the Welfare of Disabled Persons which existed prior to enactment of PWD Act was upgraded to the level of Commissionerate in June 1999. The said Commissionerate was renamed as Commissioner for Welfare of Differently Aabled Persons in 2010. The Commissioner for the Welfare of Differently Aabled Persons in the state of Tamil Nadu is entrusted with the responsibilities of both implementing various schemes meant for persons with disabilities as well as with the functions of Commissioner for persons with disabilities as envisaged in the existing PWD Act. However, it was reported that the Commissioner for persons with disabilities did not have ample powers under the Act and the orders passed by the Commissioner were not legally binding. The visible lack of teeth weakened the enforcement and monitoring aspect.

There existed a gap in monitoring and enforcement. The persons with disabilities faced problems in redressal of their grievances on account of implementing and monitoring/adjudicating agency/authority being the same in Tamil Nadu. For example, a person with disability aggrieved by an order or action of the implementing authority had to approach the same authority for redressal of his/her grievance as the implementing and the monitoring/adjudicating authority being the same.

There had been a continuous non-compliance of Section 65 of the PWD Act. It was reported that the Commissioner had been preparing and submitting his/her annual reports regularly but the said reports had not been tabled in the State Legislative Assembly as mandated by the relevant Section of the PWD Act.

The State Government had made a move to institutionalize the state board for the welfare of differently abled persons and had constituted district level committees. However, neither the said state board nor the said committees had met regularly or perhaps, they hardly met. Commissioner had not taken any suo moto action and the number of complaints/grievances received and disposed of during the last two years was very small. The first mobile court was held in 2008.

The expression 'differently abled persons' may be replaced with the expression 'persons with disabilities' for the simple reason that no two living entities under the sun can ever be uniformly abled in all respects. Each individual, regardless of her or his abilities, is unique in herself or himself.

The State Government of Madhya Pradesh may separate the implementing authority/agency from the monitoring/enforcement authority/agency to ensure objectivity and bias free functioning of the Commissioner (Persons with Disabilities). The Commissioner should be having a full time and independent charge and entrusted only with the responsibilities of carrying out the mandate as envisaged under the PWD Act in general and the mandate vide Sections 61 and 62 of the Act in particular. Implementation of disability related schemes should not form part of the Commissioner's mandate. The implementation part may be taken care of by some other authority/agency.

Uttar Pradesh

The Uttar Pradesh had a three-fold enforcement mechanism namely, Commissioner (Persons with Disabilities) (CPD), the State Coordination Committee (SCC), and the State Executive Committee (SEC). Besides, the Disabled Welfare

Department created by the State Government served as an important additional monitoring and enforcement mechanism.

The office of Commissioner (Persons with Disabilities) was set up in accordance with the mandate of Section 60 of the Act in the later part of the year 1998. The undue delay of a little less than three years in setting up the office of the commissioner created a vacuum for a fairly long period. Almost all incumbent commissioners had been holding charge of the said office as an additional responsibility till then. The Commissioner at the time of visit of the Special Rapporteur in August 2010 was holding the charge of several other departments including Principal Secretary to the Chief Minister, Vice-chancellor of Dr. Shakuntala Mishra Rehabilitation University, Principal Secretary of Disabled Welfare Department etc. As a result, he could not pay undivided and focused attention to the functions of Commissioner (persons with disabilities).

It was reported that the office of the Commissioner did not have a solid, comprehensive and credible coordination and monitoring mechanism as mandated under Section 61 of the Act to coordinate disability related work amongst different departments of the Government and keep track of disability related matters.

In accordance with the provisions of Section 62 of the Act, Commissioner was following a two-fold process for disposal of complaints. The grievances of general nature were sorted out administratively by engaging with the concerned authorities and other complaints relating to violation of rights etc. were disposed of after hearing the concerned parties. The number of grievances of general nature received and disposed of during 2008-09 and 2009-2010 were relatively higher as compared to complaints relating to violation of rights. It was also not clear whether grievances also included the petty grievances sorted out by the Deputy collector of a given district on the Tehsil Divas which was reportedly held on specified days where persons with disabilities could also go and present their grievances for on-the-spot disposal. Incidentally, the Deputy Collectors were designated by the State government as the Additional Commissioners (persons with disabilities) for their respective districts. While the deputy collector could sort out petty grievances administratively, there existed no provision of delegating quasi-judicial powers to the Additional Commissioner under the current Act.

There was very little awareness about the Act, particularly, in the rural areas, and amongst the poorer segments of the disabled population. The complaints relating to violation of rights did not even cross the double digit in the year 2008-

09 and were less than 20 in the subsequent year. The number of disposals of complaints was even lesser. The lack of pro-activism on the part of commissioner for taking suo moto action or locating and identifying grievances and ensuring their expeditious redressal deprived many persons with disabilities from relevant provisions of the existing Act. As such, they continued to remain in a state of utter disempowerment.

It was reported that the Commissioner might be preparing the Annual report of his activities of the previous year along with his recommendations as required under Section 65 (1) of the Act but there had been a continuous non-compliance of Section 65 (2) as the state Government did not table any report of the commissioner along with action taken and action proposed to be taken before the state legislature as mandated by the said Act.

It was reported that the office of the Commissioner did not undertake any capacity building measures on a regular ongoing basis for educating persons with disabilities and other stakeholders of strategic importance, such as Government officials, media persons, etc. on rights of persons with disability.

The main constraints faced by the Commissioner (Persons with Disability) in discharging his duties and functions efficiently and effectively were inadequate infrastructural, human and financial resources; absence of penal powers with the commissioner especially for contempt of Commissioner (persons with disabilities') orders.

The State of Uttar Pradesh had a separate full-fledged department dedicated to the welfare and well-being of persons with disabilities. However, this department although being in operation as a separate entity since quite a number of years but had not been fully equipped and empowered. Out of the 72 districts, only 25 districts had full time District Handicapped Welfare officers; and some district level officers of the Social Welfare Department were holding additional charge in the rest of the districts. The departmental officials were not even aware of a number of disability specific legislations which were in force in the country. Since they did not have the idea about such legislations, they might not be implementing them.

It was suggested by the Special Rapporteur that in addition to the sanction of 20 additional posts including four additional posts of the Deputy Commissioners by the State Government, the Central Govt. may sanction 18 posts of Deputy Commissioners for each of the 18 divisions of the state and that the State

Government should designate the District Handicapped Welfare Officers also as Assistant Commissioners (Persons with Disabilities) for their respective districts.

ii) State Coordination Committee (SCC) and State Executive Committee (SEC)

a) State Coordination Committee (SCC)

The coordination and monitoring as stipulated under Section 61 of the PWD Act happens to be very important functions of the enforcement mechanism and as such, they are critical to the efficient and effective implementation of the provisions of the Act.

Section 13 (1) of the Persons of Disability Act mandated that every State Government shall, by notification, constitute a body to be known as the State Coordination Committee (SCC) to exercise the powers conferred on, and to perform the function assigned to it, under the Act.

Under Section 14 (1) of the Act, a member of a State Coordination Committee nominated under clause (f) or clause (g) of sub section (2) of Section 13 shall hold office for a term of three years from the date of his nomination. Provided that such a member shall, notwithstanding the expiration of his term, continue to hold office until his successor takes over his office.

The State Coordination Committee under Section 18 (1) of the PWD Act shall serve as the state focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities. The main functions of the State Coordination Committee spelt out under Section 18 (2) of the PWD Act include review and coordination of activities of all Departments of Government and other NON – Governmental Organizations which are dealing with matters relating to persons with disabilities; develop a State policy to address issues faced by persons with disabilities; advise the State Government on the formulation of policies, programmes, legislation and projects with respect to disability; review in consultation with the donor agencies, their funding from the perspective of their impact on persons with disabilities; take such steps to ensure barrier free environment in pupil's places, work places, public utilities, schools and other institutions; monitor and evaluate the impact of policies and programmes designed for a achieving equality and full participation of persons with disabilities; and perform such other functions as may be prescribed by the State Government.

Section 17 of PWD Act mandates that the State Coordination Committee shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

b) State Executive Committee (SEC)

The State Government of each State shall constitute a State Executive Committee (SEC) under 19 (1) to perform the functions assigned to it under the Act. While nominating members of SEC under Section 19 (2) the State Governments shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes.

The State Executive Committee under Section 20 (1) of the PWD Act shall be the executive body of the State Coordination Committee and shall be responsible for executing the decisions of the State Coordination Committee and under Section 20 (2) the State Executive Committee shall perform all other functions as may be delegated to it by the State Coordination Committee.

Section 21 mandates that the State Executive Committee shall meet at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the State Government.

State - wise status of performance/functioning of State Coordination Committee and State Executive Committee in enforcing the monitoring the different sections of the PWD Act, 1995 is given below.

Gujarat

The State of Gujarat was yet to formulate a state policy on disability. A task force constituted by the Government of Gujarat for the purpose of putting together a draft state policy on disability had been functioning in a sluggish manner.

The State of Gujarat had constituted Coordination Committee and State Executive Committee in accordance with Section 13 (1) and Section 19 (1) respectively. The State Coordination Committee and State Executive Committee has, however, not been functioning properly in the State of Gujarat. The SCC and SEC had not been holding their meeting regularly as mandated by Sections 17 and

21 of the PWD Act. The number of times these two committees had met ever since their constitution fell far short of what was mandated under the said Sections of the Act. The continuous non-compliance of Section 17 and Section 21 of the Act needs to be rectified forthwith.

Madhya Pradesh

The State Government had constituted the State Coordination Committee under Section 13 (1) and the State Executive Committee under Section 19 (1) of the Act. These two committees, however, did not meet at regular intervals as mandated under the relevant provisions of the Act. Whenever they met, the meetings were attended in most of the cases by junior officers of various departments deputed by official members. The State Coordination Committee had rarely met in the earlier days. It had started meeting once a year as against mandated to meet twice a year. As per the available records, the first meeting of SEC was held in 2004 and the second meeting was held after a gap of six years in 2010. Commissioner (Persons with disability), however, stated that the SEC was also held in 2007 but the records were not available.

The Government of Madhya Pradesh claimed that it had a policy on disability in place since 1997 and annexed a document in their response to the National Human Rights Commission to substantiate its claim. However, the document was actually a plan of action rather than a policy in the real sense. Even assuming that the State had a policy, it needs to be revisited and revised comprehensively and substantively.

Orissa

The State Government of Orissa had constituted a State Coordination Committee (SCC) under Section 13 of PWD Act to serve as a focal point on disability in the state and to facilitate continuous evolution of comprehensive policy on disability in the state of Orissa. Likewise, the State Executive Committee (SEC) had been constituted under Section 19 of the Act to function as the Executive Committee of the SCC and to carry out the decisions of the SCC. However, these committees in Orissa had not been meeting regularly and the State Government had failed to furnish the minutes of meetings held by these committees to the Rapporteur of the National Human Rights Commission.

The State Coordination Committee fulfilled its most critical functions of continuous evolution of comprehensive policy on disability by preparing and submitting a draft policy on disability for approval and adoption in 2007 but the State Government had taken no action till August 2011 on the said draft report. There existed a policy on disability in Orissa in the year 1996 but that had not been revised in the light of the PWD Act and also in the light of India ratifying the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

Tamil Nadu

The State of Tamil Nadu had constituted State Coordination Committee and the State Executive Committee under the relevant sections of the PWD Act. These two committees had not been meeting as stipulated vide Section 17 and 21 of the PWD Act. The Government of Tamil Nadu had put in place a policy on disability in the year 1994 i.e., before the enactment of the PWD Act by the Indian Parliament and revised its policy in 2009 to bring it in line with the PWD Act.

Uttar Pradesh

There was no effective and functional coordination and monitoring mechanisms in the State of Uttar Pradesh. The state Government had constituted a State Coordination committee under Section 13 (1) and a State Executive Committee under Section 19 (1) of the PWD Act. However, the State Coordination Committee and the State Executive committee were nearly defunct as they existed only on paper and seldom meet to transact their statutory business. The SCC and SEC had met only six to seven times since PWD Act came into force whereas going by the mandate of the Act the SCC should have met at least 25-30 times, and the SEC for 55-60 times by now. The Government also failed to submit the minutes of the last three meetings of the SCC as requested by National Human Rights Commission. The State of Uttar Pradesh did not have a state level policy on disability.



3

Implementation Status of Thematic Areas – Education, Employment, Poverty Alleviation, Affirmative Action, Social Security and Barrier Free Access

1. Education

Education plays an important role in all round development of persons with disabilities. It prepares persons with disability for life and brings empowerment by making them employable. Hence, the importance of right to education cannot be overemphasized as it is fundamental to a life of dignity. Chapter V of the PWD Act (Sections 26-31) makes comprehensive provisions for education of children/ persons with disabilities and covers various dimensions of education and related matters.

Section 26 mandates that the appropriate Government and local authorities shall a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years; b) endeavor to promote the integration of students with disabilities in the normal schools; c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools; d) endeavour to equip the special schools for children with disabilities with vocational training facilities.

The appropriate Government and the local authorities under Section 27 shall make schemes for a) Conducting part – time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole time basis; b) Conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above; c) Imparting non formal education by utilizing the available manpower in rural areas after giving them appropriate orientation; d) Imparting education through open schools and open universities; e) conducting class and discussions through interactive electronic or other media; f) Providing every child with disability free of cost, special books and equipments needed for his education.

Section 28 provides that the appropriate Government shall initiate or cause to be initiated, research by official and non- governmental agencies for the purpose

of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunity in education.;

Section 29 mandates that the appropriate Government shall set up adequate number of teachers' training institutions and assist the national institutes and other voluntary organizations to develop teachers' training programmes specializing in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

The appropriate Governments under Section 30 of the PWD Act shall prepare a comprehensive education scheme which will make provisions for: a) Transport facilities to the children with disabilities or provide financial incentives to parents or guardians to enable their children with disabilities to attend schools; b) The removal of architectural barriers from schools, colleges or other institutions, imparting vocational and professional training; c) The supply of books, uniforms and other materials to children with disabilities attending schools; d) The grant of scholarship to students with disabilities; e) Setting up of appropriate fora for redressal of grievances of parents, regarding the placement of their children with disabilities; f) Suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision; g) Restructuring of curriculum for the benefit of children with disabilities; h) Restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

Section 31 mandates that all educational institutions shall provide or cause to be provided amanuensis to blind students and students with low vision.

Section 39, which perhaps inadvertently forms part of the chapter on employment of the PWD Act, provides for not less than three per cent reservation for persons with disability for admission to Government and Government aided educational institutions.

The implementation of different provisions relating to education in different States under study in this report is given below:

Gujarat

The State Government had been making sincere efforts to promote and strengthen special education for students with disabilities. The State Government

had been running and managing about 11 special institutions and providing grants-in-aid to about 135 special institutions. The State Government had recognized 10 privately run special institutions. The Braille books had been made available to blind students in the State. The existing special institutions need to be strengthened and the network of these special institutions needs to be expanded.

There existed some gaps in translating the provisions of PWD Act in reality in the matter of effective implementation of the scheme of integrated/inclusive education besides providing appropriate and adequate teaching/learning material to students belonging to different categories of disabilities, implementation was also found lacking in promotion of education of girls and women with disabilities, promoting professional education, and focusing more emphatically on the education and training of children belonging to more vulnerable categories of disabilities such as children with intellectual disabilities, autistic children, children with cerebral palsy etc.

Section 27 of the PWD Act relating to imparting of non-formal education, conducting part-time classes, etc. had not been implemented as envisaged in the Act. It was reported that a case relating to implementation of the scheme of integrated/inclusive education was pending in the High Court.

The stakeholders during the course of their interactions with the Special Rapporteur emphasised the need for recruitment of more special educators across the State. They also stressed the need for imparting multi-disciplinary training to special educators. For example, it was suggested that a special educator, trained in teaching students with visual disabilities should also be trained to teach children with speech and hearing impairment to enable them to meet disability educational needs. Some stakeholders also resented a Government circular dated 27th April, 2011 restricting recruitment of persons with some specified categories and degrees of disabilities as teachers in mainstream schools and demanded the said circular to be completely withdrawn.

Madhya Pradesh

The implementation of the Sarva Shiksha Abhiyan in Madhya Pradesh was less chaotic as compared to its neighbouring states but it had a long way to go. According to official data, the total number of children with disabilities studying in the mainstream schools was more than 97 thousand from class 1st to 8th and more than 20 thousand from class 9th to 12th.

It was reported that the environment in which the children with disabilities were studying was not at all conducive, inclusive, and accessible. It was observed by the Special Rapporteur that Braille books were available in some places but neither the teachers nor the children with visual disabilities knew Braille. Children with intellectual and developmental disabilities were almost excluded from mainstream schools altogether. The available special educator being trained only in one area to handle children belonging to one category of disability could not be of much help to the children belonging to some other category of disabilities. As a result, children belonging to other categories of disabilities were deprived of proper education. The Government was somewhat alive to it and attempts were made to train available special educators in multi-category disciplines.

The Government had made some effort to make the new school buildings at least architecturally barrier-free. The understanding of accessibility amongst most of the functionaries remained limited only to putting up ramps here and there. Similarly the understanding of inclusion was also very poor.

The financial support provided to children with disabilities attending mainstream schools was extremely inadequate to take care of expenses incurred on accessible books, uniform, and transport etc.

The institutions of higher education did not have any facility for students with disabilities. There was no provision for books in accessible format, assistive devices and technologies etc.

There were only 20 special Government schools/institutions where a limited number of children were studying and many of these institutions were set up much before the PWD Act came into force.

The implementation of provisions of Section 26 (c) and (d) by the Government of Madhya Pradesh needs to be evaluated and assessed. These provisions call for setting up of special schools and strengthening them, and also making vocational training facilities available there.

The Government of Madhya Pradesh had been providing financial support to 41 schools run by various NGOs. The Special Rapporteur during his visit to Asha Niketan observed that the two Government aided schools run by sisters of a Convent were reasonably well managed. He also visited a Government school set up in 1956 where both blind and hearing impaired children were studying. The

said school not having its own building kept shifting from one place to another and the building where students were lodged collapsed once. At the time of the visit of the Special Rapporteur, both blind and hearing impaired students were lodged in the same hostel. The blind students were taken to a different place for attending their classes and the hearing impaired children attended their classes in the same place where they were lodged. They were made to sit on the floor while attending their classes. The blind and hearing impaired children were staying in appalling and utterly unhygienic conditions. Though the Special Rapporteur was told that the construction of the building for the said school was under way and was expected to be completed within a year or so, but the Special Rapporteur suggested for felt that it might take two to three years for completion of the said building and it would be inhuman to allow those children to stay in such horrifying conditions till then. The Government of Madhya Pradesh may intervene and shift students of blind school and school for the hearing impaired immediately to better accommodation to ensure proper environment and humane conditions.

The Special Rapporteur also paid a hurried visit to a Government Braille Press located near the building where classes of blind children were held. The said Braille press was also in a pathetic condition. It was run and managed by two persons and had only one regular staff and the other staff member was engaged on a fixed monthly income of Rs. five thousand only. Of late, however, the Government of Madhya Pradesh had acquired a bigger printing press. The Government of Madhya Pradesh may streamline the functioning of Braille printing press by appointing necessary staff to ensure its smooth functioning

The performance of the Government of Madhya Pradesh in implementing provisions envisaged in Section 28 relating to launching of some schemes including part-time classes etc. was dismal. The Government made no significant efforts to operationalize the provisions of Section 28 concerning research in related areas and provisions mentioned in Section 30 concerning formulation of some comprehensive schemes. Introduction of one language formula for the hearing impaired as mandated under the Act was yet to happen after so many years of the Act coming into force.

Orissa

The sections 26 to 31 envisaged in PWD Act relating to education leave much to be desired in case of State of Orissa. The performance of the State of Orissa in respect of special education as well as integrated/inclusive education

remained a matter of very serious concern. The efforts made by the State Government in the sphere of education till August 2011 had been casual and non-serious.

There existed only four special Government schools for children with disabilities in the state and not a single school had been set up after PWD Act came in force. The existing special schools were in a very bad shape. It was reported that all the sanctioned posts in one of these four special schools were lying unfilled/vacant. There was shortage of assistive devices and equipment, paucity of accessible books including Braille and talking books, etc. There was no special school for children with some more vulnerable categories of disabilities, such as cerebral palsy etc. The State Government however, had been extending grants-in-aid to some special institutions run by voluntary organizations. The Government of Orissa should fill up with immediate effect the unfilled/vacant posts in all the four special schools without any further loss of time.

The scenario was no better in respect of integrated/inclusive education. Section 26 (b) of the Act enjoins upon the Government to promote integration of children with disabilities in the mainstream schools. The appropriate environment for students with disabilities was missing in the mainstream schools, for want of compliance with accessibility standards, shortage of accessible books, teaching - learning materials, assistive devices, and adequate number of properly trained special educators. The number of special educators was extremely low. Some non-official stakeholders also expressed concern over appointment of some teachers with fake disability certificates. The State Government should be very careful to ensure that no person gets recruited with the help of a fake disability certificate.

Tamil Nadu

The Government of Tamil Nadu had been making a number of efforts to provide formal education, special education, inclusive education and integrated education to differently abled children. There were 23 Government educational institutions, 52 Governmental aided institutions and 152 private run institutions in the state of Tamil Nadu for students belonging to various categories of disabilities.

A great deal still remains to be done in the area of promoting integrated/inclusive education in the state. The problem areas that needed to be addressed on priority basis included lack of adequate trained human resources, absence of parity of treatment between the so-called special educators and

mainstream teachers, dearth of teaching/learning material for students of various categories of disabilities, absence of proper coordination between the department for welfare of differently abled persons and the education department/Sarva Shiksha Abhiyan, etc. The biggest challenge observed during the visit of the Special Rapporteur was to ensure appropriate environment for students with disabilities both in the special school set up as well as in mainstream schools.

Uttar Pradesh

Broadly speaking, while some work had happened in respect of Sections 26 (b), 26 (d), 29, and 31, formidable concerns continued to loom large in respect of operationalization/implementation of sections 26 (a), 26 (c), 27, 28, and 30. More particularly, no benefit of the provisions of Section 30 worth the name was accruing to disabled children attending mainstream schools. The scholarship of Rs. 1200 provided by the State Government to disabled children including all expenses incurred on boarding and lodging of the hostellers/borders, books, transportation etc. was availed by disabled children (both borders and day scholars) attending special schools.

The special schools despite having an important role to play could not be set up in too many places at least within a reasonable time-frame due to prohibitive cost. In addition, the goal of education for all will remain a cry in the wilderness if these children are not imparted education on an equal basis with other children.

The integrated education component of the ongoing Sarva Shiksha Abhiyan was in utter shambles due to heavy workload on special educator and lower salaries, for example one special educator was required to look after 100 to 150 schools and cover six to seven schools every day. The situation might improve in the light of some High Court orders directing the authorities to treat the special educators at par with other teachers.

Section 26 (a) mandates that the education of the disabled child must take place in appropriate environment and appropriate environment. This has umpteen connotations, such as inclusion at all levels, accessibility etc, but the understanding of accessibility amongst officials was limited only to put up ramps here and there. Accessibility has many dimensions and most of the mainstream schools were yet not accessible, let alone genuinely inclusive.

Some good work had taken place in special schools where a limited number of students were studying. There existed 21 Government special schools

and 76 special schools/institutions receiving aid/grant from Dr. Shakuntala Mishra Rehabilitation University established under a statute of the state legislature and provided for reverse inclusion as it had opened its courses to the non-disabled students to the tune of fifty per cent of its seats.

The Special Rapporteur visited the University and during his interaction with faculty members and the students observed that the university neither had any book in Braille nor had any talking book or recording studio. The university was in its formative years and had started some courses only from 2009. The construction of its buildings was in progress and many other courses were proposed to be introduced in a progressive manner.

The State like Uttar Pradesh did not have a single Braille press. The Government owned talking book studio was also defunct at the time of the visit of the Special Rapporteur. While the Government approved setting up of a Braille printing press long back, the said press was yet to be set up. The State Government of Uttar Pradesh may activate talking book studio and expedite setting up of the proposed Braille press.

There was also a visible gap in terms of facilities and programmes for education of the hearing impaired.

2. Employment

Employment plays an important role in empowering persons with disabilities by making him/her economically independent. Employment is fundamental to life of dignity. An employed person can lead a decent life and meet suitably the needs of his family. Chapter VI of the PWD Act (Sections 32-41) is on provision of employment for PWD. While Section 39 which should have been appropriately formed part of the chapter on Education, has been erroneously inserted in the chapter on employment. Section 47 forms part of the Chapter on non-discrimination and it provides safeguards in favour of persons who acquire disability in the course of employment, and also in favour of persons who may be denied promotion on ground of disability should have been a part of Chapter on employment. The chapter on employment also provides benefits to persons with disabilities under the various poverty alleviation schemes of the Government which is being taken up separately in this report along with affirmative action and social security.

Section 32 of PWD Act mandates that the State Government shall: a.) Identify posts, in the establishments, which can be reserved for the persons with disability; b.) at periodical intervals not exceeding three years, review the list of posts identified and up-date the same taking into consideration the developments in technology.

Section 33 mandates that every State Government shall reserve in every establishment such percentage of vacancies not less than three percent, for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from blindness or low vision, hearing impairment, and loco motor disability or cerebral palsy, in the posts identified for each disability. Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

Section 38 (d) makes it incumbent on the appropriate Government to take health and safety measures and create non handicapping environment in places where persons with disabilities are employed. This has larger implications which include disabled friendly and non-discriminatory service rules/conditions to enable persons with disabilities to perform to the optimal level of their potential. Section 38 (b) stipulates relaxation in the upper age limit.

Section 41 stipulates that the appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that at least five per cent of their work force comprises persons with disabilities.

Section 47 (1) relates to an explicit ban on termination of service or reduction in rank of an employee who acquire disability during the course of his/her service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with same pay and service benefits; Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Section 47 (2) provides safeguard against denial of promotion to a person on ground of his/her disability. Provided that the appropriate Government may, having regard to the type of work carried on in ay establishment, by notification

and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provision of this section.

Going by the spirit of the Act, women with disabilities should also get a fair share of reservation, etc. as they are under-represented in matters of education and employment.

The implementation of different provisions relating to employment in different States under study is given below:

Gujarat

In State of Gujarat, there existed some gaps in the implementation of Section 32 of the PWD Act relating to the identification of jobs and updation of the list of identified jobs and Section 33 relating to reservation of jobs. The Government of Gujarat had conveniently adopted the central Government list of identified jobs but the task of modifying the central Government's list in line with the designations of posts in Gujarat suffered from a backlog which continued to increase with the passage of time and continued to harm the legitimate interests of persons with disabilities in the state of Gujarat and contributed substantially. The State Government failed to furnish details of the existing backlog and had not made any serious efforts to determine and fill the backlog of vacancies. This continuous non-compliance with Section 32 and Section 33 of the Act needs to be addressed on a priority basis.

The provisions of Section 38 which, inter alia, provides for creation of non-handicapped environment in workplaces need to be implemented with utmost seriousness in the State of Gujarat. The implementation of Section 47 of the Act which provides safeguards against reduction in rank of any person who acquires a disability in the course of her/his employment, and also safeguards against denial of promotion on ground of disability needs to be closely monitored. The representation of women with disabilities in the Government services had been negligible. This too needs to be addressed.

Madhya Pradesh

The benefits of minimum 3 per cent reservation provided under Section 33 of the PWD Act in every establishment for persons or class of persons belonging to blindness or low vision, hearing impairment, and locomotor disability or cerebral palsy categories of disabilities is available in all grades/categories of Government

service in Madhya Pradesh. Besides, recruitment against reserved quota can be made to the posts identified for persons with disabilities. Evidently, this means that if a person with a disability gets selected purely on merit, she/he can be recruited against any post, whether identified or not. A progressive clause, which finds mention in the relevant central Government notification of identified jobs comes to mind. It clearly stipulates that, that list is only illustrative, and not exhaustive.

There had been a disproportionate delay in identification of jobs for persons with disabilities in Madhya Pradesh as mandated under Section 32(a) of PWD Act. The identification of jobs had been carried out partially and in a piecemeal manner. Since identification of jobs had been done at the level of each department, some departments had already done it, some were in the process of doing, and others were yet to do it. Most of the departments had not been identifying jobs in grade A whereas under the PWD Act, benefit of reservation should be made available to persons with disabilities in all grades.

The identification of jobs had been incomplete and faulty as it had been done quite randomly without involving external experts, persons with disabilities, and NGOs. The list of identified jobs had not been revised and updated at the regular intervals as mandated under the Act. As a result of violation of Section 32 (b) of PWD Act, there had been a huge backlog of vacancies for persons with disabilities and persons with disabilities were deprived of their legitimate rights.

The Government of Madhya Pradesh claimed that it allowed six per cent reservation as against not less than three per cent mandated by Section 33 of the PWD Act, but in real terms the benefit of even three per cent had not been reaching the persons with disabilities as the Government was not through with its identification of jobs exercise, let alone its revision or updation as envisaged under the law.

The Government of Madhya Pradesh had already enhanced the upper age limit for recruitment for C and D categories of jobs but no such enhancement had been done for superannuation. The Government had announced no significant incentives as mandated under Section 41 for private and public sector undertakings to ensure that five per cent of their workforce comprised persons with disabilities.

Women with disabilities were under represented in the sphere of education and employment. Going by the spirit of the Act, they should get a fair share of reservation in education and employment.

Orissa

The performance of State of Orissa in implementing various provisions of PWD Act relating to employment of persons with disabilities was extremely bad. There was complete non-compliance of Section 32 of the Act which talks about identification of posts and their periodic updation in all categories of jobs for persons with disabilities. Identification of jobs for persons with disability in Orissa was done years after the Act came into force causing colossal injustice to persons with disabilities. The identification of jobs was done by a committee comprising only bureaucrats and no person with disabilities or any disabilities expert was associated. The total number of posts identified were 12 in Grade I, 54 in Grade II and the rest of the identified posts were in Grade III and Grade IV categories. Three per cent of posts in Grade III and IV were reserved for persons with disabilities in Orissa even before PWD Act came into force but the pre - Act list had never been revised or updated and the list of identified jobs prepared haphazardly had not been revised and updated even once.

The Government of Orissa had not been implementing provisions envisaged in Section 33 of the Act providing for reservation of not less than three percent in every establishment for persons belonging to different categories of disabilities with any semblance of seriousness. For instance persons with disabilities accounted for less than 1 per cent of Government jobs upto 2011. In view of the critical situation, the Chief Secretary of Government of Orissa ordered all secretaries to fill up the backlog of posts in 2009 but none of the department had taken any steps to fill up the posts. As a result, the persons with disabilities were deprived of their legitimate rights and remained unemployed. The Commissioner (Persons with Disabilities) reported that the Government of Orissa had not been maintaining any roster for the purpose nor did it keep an account of backlog of vacancies. She further stated that even the relevant orders of the Chief Secretary of the state were not complied and Government orders relating to a special drive for recruitment of persons with disabilities had been brazenly ignored. All this amounted to clear non-compliance of the relevant provisions of the Act.

The persons with disabilities had been deprived of their rightful employment due to Government policy of outsourcing the work of identification of posts for persons with disabilities to external agencies which did not engage persons with disabilities.

Tamil Nadu

There were certain gaps in the implementation of Sections 32 and 33 of PWD Act. The Government of Tamil Nadu had identified jobs in Category C and D for persons with disabilities in 1988 much before the Act came into force but this list had not been revised and updated. The State Government had done identification of posts in category A and B for persons with disabilities in 2005 whereas the PWD Act came into force on February 7, 1996. Moreover, the identified list of posts brought out in 2005 for persons with disability constituting roughly five percent of the total posts in the said category was yet to be updated. The delay in identification of jobs deprived persons with disability of their rights/entitlement from February 1996 till the publication of the relevant notification in 2005. This amounted to non-compliance of section 32 of the PWD Act by the State Government.

There existed a huge backlog of vacancies to be filled up in respect of all categories of posts. This backlog brought out certain gaps in the implementation of Section 33 of the Act relating to reservation of vacancies for persons with disabilities in establishments.

In accordance with the provisions of Section 38, the State Government while making recruitment had been providing relaxation in upper age limit for persons with disability but there was no such relaxation in the upper age limit of superannuation.

Although Section 40 of the Act provides for a quota of not less than three percent for persons with disabilities in all poverty alleviation schemes, it appeared that the benefits of section 40 providing for a quota of not less than 3 per cent for persons with disability did not reach all deserving persons with disabilities. The lack of awareness amongst district, block and panchayat level officials, and also amongst persons with disabilities themselves was one of the major reasons for deprivation of their genuine right.

Uttar Pradesh

There had been a violation of section 32 of the PWD Act in the State of Uttar Pradesh as there had been undue delay in identification of the jobs for persons with disabilities. Moreover, such identification had been carried out partially in a piecemeal manner and there had been no revision and updation of

the list of identified jobs for persons with disabilities at the prescribed periodic intervals of not exceeding three years. This contributed substantially to the piling up of backlog of vacancies for persons with disabilities. For example, the jobs in grade C and grade D were identified in 1999 i.e., three years after the Act came into force and jobs in Group A and B categories were identified as late as in 2007 i.e., eleven years after the Act came into force. Besides, the posts which had been identified constituted only a miniscule percentage of the total Government posts and the persons with disabilities suffered from this apathy.

In accordance with Section 38 (b) which provides for relaxation in the upper age limit for persons with disabilities, the State Government had enhanced the upper age limit for recruitment but no such enhancement had been done for superannuation.

Moreover, the State Government had not announced any significant incentives for private and public sector undertakings in accordance with Section 41 of the Act to ensure five percent of their workforce was composed of persons with disabilities.

3. Poverty alleviation, affirmative action, social security and barrier free access

Section 40 of the Act provides for not less than three per cent reservation for persons with disabilities in all poverty alleviation schemes for the benefit of the persons with disabilities

Sections 42 provides for affirmative action under which makes it incumbent on the appropriate Government to formulate scheme to provide aid and appliances to persons with disabilities.

Section 43 provides for preferential allotment of land at concessional rates in favor of persons with disabilities for residential purposes, setting up business, setting up of special recreation centers and establishment of special schools, research centers, factories by entrepreneurs with disabilities.

Sections 68 provides grant of unemployment allowance to those persons with disabilities who are registered with the special employment exchange for more than two years and have not been given gainful employment.

Sections 44, 45, and 46 provide for making transport systems, roads and public buildings etc., barrier free so that persons with disabilities can access them smoothly. It goes without saying that accessibility has many more dimensions, and the existing Act takes a rather narrow view thereof. Broadly speaking, the transport system excluding the state run buses generally do not fall within the domain of the state government, roads and buildings do. Incidentally, buildings include workplaces, recreation centers, parks, cinema and theatre, schools, colleges and universities and other public buildings.

The implementation of different provisions of poverty alleviation, affirmative action, social security and barrier free access in different States under study is given below:

Gujarat

The State Government had issued some orders pursuant to various provisions of the PWD Act in respect of Poverty alleviation, affirmative actions, social security and barrier free access but it was reported by the non-official stakeholders including persons with disabilities that the relevant provisions of the Act had not been implemented properly in many places and the benefits of these provisions had not actually percolated down to the persons with disabilities.

The provision of reservation of not less than three percent quota in the various poverty alleviation schemes in favour of persons with disabilities had not been implemented properly due to non-serious implementation of the said scheme. The concerned departments had not been maintaining proper data base of beneficiaries at various levels.

The provision of Section 43 relating to preferential allotment of land at concessional rates to persons with disabilities for certain purposes had not been implemented in Gujarat. Consequently, persons with disabilities were deprived of the benefits of the said provision.

Gap was also observed in the sphere of social security related implementation of Section 68 of the PWD Act as the Government of Gujarat was yet to introduce a scheme for unemployment allowance for persons with disabilities as mandated by the said section of the Act.

The status of implementation of provisions in respect of barrier free access (Sections 44 - 46) was no better.

Madhya Pradesh

It was reported that the benefits of the various poverty alleviation schemes had not been percolating down to persons with disabilities. Some instances of alleged large scale corruption and pilferage reported related to the implementation of the National Rural Employment Guarantee Act. It was alleged that many genuine Below Poverty Line (BPL) families did not figure in the BPL list whereas, some Non-BPL families were covered under the BPL list. There existed no solid and vibrant monitoring mechanism to keep track of the implementation of the provision specified under Section 40. It appeared that persons with disabilities were not at all getting the benefits of the National Rural Employment Guarantee Act where as some States like Andhra Pradesh were doing a better job by providing benefits of such schemes to persons with disabilities.

Despite Government orders State had no credible mechanism to keep track of the implementation of the provision relating to preferential allotments of land to persons with disabilities as provided under Section 43 of the Act.

On the social security front, most of the pension schemes cited by concerned officials from which, the persons with disabilities could benefit appeared to be of generic in nature meaning that they were not exclusively for persons with disabilities but persons with disabilities could also benefit from them. The Government of Madhya Pradesh needs to specify pension schemes implemented in the State exclusively for the benefit of PWDs.

The State of Madhya Pradesh had no scheme to grant unemployment allowance in accordance with Section 68 to persons with disabilities who were registered with the special employment exchange but were not given gainful employment.

The transport system excluding the state run buses generally do not fall within the domain of the state government whereas the roads and buildings do fall within the domain. While the state government had done a good job by issuing some positive orders in respect of public building for the purpose. Similar measures had to be taken with regard to roads and state run buses. The buildings include workplaces, recreation centers, parks, cinema and theatre, schools, colleges and universities, and other public buildings.

Orissa

In accordance of the Section 40 of the Act providing 3 per cent reservation for persons with disabilities in all poverty alleviation programmes, the State Government had already directed the District Collectors to implement the said provision. However, the primary stakeholders reported that the benefits of such schemes were not percolating down to the intended beneficiaries. The State Government had no proper mechanism to monitor the implementation of the said provision. It was also reported that job cards had not been issued at many places to adults with disabilities under MNREGA.

Section 42 of PWD Act which under affirmative action makes it incumbent on the Government to formulate schemes for making assistive devices available to persons with disabilities was far below satisfaction. Similarly Section 43 which talks about preferential allotment of land at concessional rates in favour of persons with disabilities was not implemented efficiently and effectively in the State of Orissa. There existed no scheme/programme/order for preferential allotment of land at concessional rates to the persons with disabilities and no free land had been provided to disabled person under Basundhara Yojana to persons with disabilities.

The Government of Orissa had been giving a monthly pension of Rs. 200 under Madhubabu pension scheme for social security of persons with disabilities. However this amount was not enough to maintain persons with disabilities and was also much lower than Goa paying Rs 1500, Tamil Nadu and other neighbouring States like A.P., West Bengal, Bihar, Jharkhand, Chattisgarh and Uttaranchal also giving much more than this amount.

The food security of the persons with disabilities was in a miserable condition. The Government of Orissa could not provide rice at the rate of Rs. 2 per kg to the poor and helpless persons with disabilities in Orissa.

There was violation of Section 68 of the PWD Act as the State Government did not have any scheme for providing unemployment allowance to persons with disabilities who had been registered with special employment exchange for two years but were not provided any gainful employment.

The PWD Act vide Chapter VIII (Sections 44-46) under the caption non-discrimination enjoins it upon the Government to provide barrier free access on

roads and on built environment such as, work places, recreation centers, and in transportation etc. The State Government had conducted access audit of 54 Government buildings in Bhubaneswar but the relevant access audit reports had not been implemented. The stakeholders highlighted the need for making suitable amendments in the building byelaws and emphasized the need for making bus services accessible. As far as accessibility in transportation was concerned, the State Government had made provision for giving concessions both in Government and Private buses to the persons with disabilities but these provisions could not be implemented properly as no private bus operator was not giving concessions to persons with disabilities. Many Government buses were also not giving the said concession.

Tamil Nadu

Expert Committees had been constituted for procurement of various aids and appliances.

The Government of Tamil Nadu had empowered the District Collectors to allot land equal to less than five acres to the NGOs, which had been taking care of the persons with disabilities. Besides, house site pattas were given on priority basis to the differently abled persons. While allotting land it was ensured that 3 per cent of the total beneficiaries were persons with disabilities. The state Government had also been maintaining minimum 3 per cent reservation for persons with disabilities in Indira Awas Yojana.

The Metropolitan Transport Corporation of Tamil Nadu had introduced 100 low floor buses and redesigned two buses to provide for easy access of wheel chair bound persons. The Director General of Police, Traffic Tamil Nadu installed auditory signals in 12 traffic intersections with the funds provided by the Government of Tamil Nadu. Seats have been reserved in all buses for the benefit of PWDs. A booklet containing detailed instructions of free/concessional travel along with strict instructions of Chief Secretary to Government to follow the provisions scrupulously had been sent to Managing Directors of State Transport Corporations. Staff had been trained to conduct access audit in public buildings and to suggest suitable remedies in providing barrier free environment for all categories of the persons with disabilities.

Uttar Pradesh

It was reported that the benefits of various poverty alleviation schemes were not reaching the persons with disabilities. Some instances of alleged large scale corruption and pilferage, particularly, relating to the implementation of the national rural employment guarantee scheme were also reported. It was alleged that many genuine Below Poverty Line (BPL) families were left out of the BPL list whereas, some Non-BPL families figured in the BPL list.

There existed no solid and vibrant monitoring mechanism to keep track of the implementation of Section 40 of the Act providing for not less than 3 per cent reservation in all poverty alleviation schemes for persons with disabilities.

Despite some Government Orders being issued for allotment of shops etc. to persons with disabilities, it appeared that Section 43 relating to preferential allotment of land at concessional rates to persons with disabilities was not implemented.

On the social security front, Government's pension scheme is providing pension to seven lakh persons with disabilities at the rate of Rs. 300 per month.

There is violation of Section 68 as the State Government did not have any scheme for providing unemployment allowance to persons with disabilities who have been registered with special employment exchange for two years but not provided any gainful employment.

The State Government had done a good job by amending the relevant building bye laws and similar measures also need to be taken with regard to roads and state run buses. Work on ensuring barrier free access needs to be picked up in the state.



4

Conclusions and Recommendations

The implementation of any legislation, more particularly, a social legislation like the Persons with Disabilities (PWD) Act, 1995 depends to a large extent, on the efficiency and effectiveness of its monitoring and enforcement mechanism. In addition, the implementation of PWD Act also depends to a large extent on the role played by Department of Education, Department of labour and employment and social welfare departments in implementing various provisions of PWD Act in their respective domains.

The implementation of PWD Act, 1995 across the country was found to be far from satisfactory due to inefficiency and ineffectiveness of enforcement mechanism and shortcomings in the functioning of Government officials. This called for a closer scrutiny and review of these mechanisms. Among five states visited by the Special Rapporteur, Orissa's performance had been especially disappointing as per his report. With the setting up of a separate Directorate for the Welfare of Disabled Persons and also the Commissionerate for Persons with Disabilities in Orissa, things are expected to improve. The performance of Tamil Nadu was comparatively better. The State of Uttar Pradesh had made efforts to implement the PWD Act but its achievements were less than its potential.

The Government of Gujarat adopted a twin track approach to implement PWD Act, which implied that that the State Government was implementing disability specific schemes as well as making efforts to mainstream disability rights in its general development work. This twin track approach needs to be further carried forward in Gujarat and adopted in other states.

In view of huge potential for work relating to rights of persons with disabilities, the State Governments need to strengthen, streamline, and expand their work. They need to develop a better understanding of the PWD Act and also the UN Convention on the rights of persons with Disabilities which India has since ratified; and gear up for implementing the new law, which expectedly, would be more progressive than the existing legislation. To exploit the full potential, the State Governments may implement the recommendations made in this report with utmost

seriousness and in the right earnest for effective and expeditious implementation of the Act in concerted, coordinated and comprehensive manner.

The recommendations made here are only illustrative and not exhaustive. The recommendations pertain to the enforcement and monitoring mechanisms, and some thematic areas covered by the existing PWD Act. While the enforcement and monitoring mechanism comprises the Commissioner for the Welfare of Persons with Disabilities, State Coordination Committee (SCC), and the State Executive Committee (SEC), the thematic areas include education, employment and poverty alleviation schemes, affirmative action/non-discrimination/social security which needs to be taken up by the concerned Departments.

1. Commissioner (Persons with Disabilities)

Coordination and monitoring happens to be important functions of the State Commissioner (Persons with Disabilities) and are critical to the efficient and effective implementation of the provisions of the Act. The above scenario, therefore, calls for putting in place a credible, comprehensive and vibrant coordination, monitoring and enforcement mechanism and tools. To accomplish this task, the following measures may be taken at different levels:

- i) The Commissioner (Persons with Disabilities) must hold periodic review meetings at regular intervals with each concerned department to evaluate the progress made by each department in fulfilling its obligation under the PWD Act.
- ii) Each concerned department may designate a focal person on disability at various levels;
- iii) Each concerned department needs to submit periodic progress reports in the specific prescribed reporting format at regular intervals to the Commissioner (Persons with Disabilities);
- iv) The concerned departments should develop and maintain a comprehensive data base relating to work done on disability at various levels as well as details of beneficiaries with disabilities and other activities etc. under the provisions of the existing PWD Act;
- v) The Commissioner (Persons with Disabilities) should undertake surprise field visits to ascertain whether the benefits of various Government

schemes and programmes for persons with disabilities are actually reaching the deserving beneficiaries etc.

- vi) In accordance with Section 62 of the PWD Act, the Commissioner (Persons with Disabilities) may demonstrate visible and vigorous proactivism by taking cognizance of complaints/grievances lodged by person with disabilities or someone else on their behalf or suo moto action and ensure speedy disposal of matters. He may also raise awareness on a massive scale about various provisions of the PWD Act, rights of persons with disabilities and other legislative and programmatic/schematic measures amongst persons with disabilities and other stakeholders including members of the bureaucracy, legal and judicial fraternity, media persons etc.
- vii) The Commissioner (Persons with Disabilities) must organize mobile courts from time to time to enable persons with disabilities to have justice with ease.
- viii) The Commissioner (Persons with Disabilities) should undertake capacity building measures in a planned and structured manner on regular ongoing basis. Such orientation programmes should be conducted on priority basis for sensitizing and educating persons with disabilities and other stakeholders. These should include not only Government officials/functionaries at various levels but also media persons, elected representatives, persons belonging to the legal and judicial fraternity, and police functionaries etc., on rights of persons with disabilities.
- ix) The State Government of Madhya Pradesh and Uttar Pradesh should appoint a full time Commissioner (Persons with Disabilities) with independent charge. While making such appointments, preference may be given to an official/ non-official having knowledge and practical experience of working in the field of rights of persons with disabilities.
- x) The State Governments in consultation with the Commissioner (Persons with Disabilities) need to make adequate budgetary provision, put in place necessary infrastructure and provide regular trained staff for the office of the Commissioner (Persons with Disabilities) to facilitate implementation of the disability schemes and programmes.

- xi) Commissioner (Persons with Disabilities) of different States should initiate efforts to get rights of persons with disabilities inducted in all aspects of public policy.
 - xii) To ensure compliance with Section 65 of the PWD Act, Madhya Pradesh should place Commissioner (Persons with Disabilities) annual report together with action taken/proposed to be taken before the State legislature. Commissioner (Persons with Disability) of Orissa should prepare a detailed annual report and the Government should table the same before the state legislature. Government of Tamil Nadu and Uttar Pradesh need to place annual report prepared by their Commissioners (Persons with Disability) along with action taken/proposed to be taken before their respective State Legislatures.
2. State Coordination Committee (SCC) and State Executive Committee (SEC)

The State Coordination Committee and State Executive Committee can play a very important role in furtherance of rights of persons with disabilities to ensure proper and effective coordination, monitoring, enforcement and implementation of relevant provisions of the Persons with Disability Act. Accordingly, the following should be ensured:

- i) The State Governments need to ensure that their State Coordination Committees and the State Executive Committees meet regularly as mandated by Sections 17 and 21 of the PWD Act to transact their statutory functions and responsibilities. These meetings should be attended by their respective members themselves rather than deputing their subordinate officials. The State Governments may fix accountability for any lapse in holding such meetings in accordance with the provisions of the Act and also for failure in attending such meetings.
- ii) The State Government should expedite the finalization of a progressive and forward – looking State policy on disability in line with the UN Convention on Rights of Persons with Disabilities (UNCRPD) signed and ratified by India. The State Governments need to adopt the revised and updated policy on disability without any further loss of time.

- iii) The State Governments may examine the composition of the State Coordination Committees and State Executive Committees to bring it in harmony with the relevant provisions of the Act. These committees must be represented by at least one woman with disabilities, one member from the Scheduled Cast or the Scheduled Tribe communities. The members nominated to State Coordination Committees under subsection (2) (1) and (h) of Section 13 and to State Executive Committees under subsection (2) (e) of Section 19 should be replaced after completion of their three years term as required by the relevant provisions of the Act.

3. Education

The State Governments should make proper arrangements for education of person with disabilities in both special as well as regular schools with inclusive orientation to ensure full participation of persons with disabilities in all aspects of social and economic life; full development of human personality and sense of dignity; strengthen their human rights and fundamental freedom; and address gender discrimination. To accomplish this task, the state Governments may take action on the following:

- i) The State Government may ensure strict compliance of provisions of Sections 26, 27, 28 and 29, 30 (g), 30 (h) and 39 of the PWD Act which includes provisions for free education to every child with disability in an appropriate environment in special as well as mainstream schools till she/he attains the age of eighteen years; non-formal education and conducting part time classes; research to design and develop new assistive devices, teaching aids, special teaching materials to give children with disabilities equal opportunity in education; launching of required number of teachers' training institutions and develop, expand, streamline and modernize teachers training programmes specializing in disabilities and add comprehensive input in syllabi of mainstream teachers training programme on disability; transport facilities for children with disabilities or financial support to parent/guardians to enable their children to attend schools; restructuring curriculum for children belonging to other categories of disabilities; introducing one language formula for hearing impaired students; and ensuring not less than three per cent reservation of seats in schools/educational institutions for students with disabilities respectively within a specified timeframe.

- ii) The State Government should create appropriate and accessible environment for students with disabilities in both special as well as mainstream schools. These among other things will require creation of assessable environment, proper sensitization of teachers particularly in the main stream schools, availability of teaching learning materials for students with different categories of disabilities, availability of aids, appliances, equipment, and other assistive devices, books in accessible formats etc.
- iii) The state Government of respective States should strengthen and upgrade the existing special schools/institutions for children with different categories of disabilities. These schools/institutions should be run and managed on modern and scientific lines by introducing latest equipment, assistive devices, teaching aids, and computer education. The living conditions of inmates/students including their health, hygiene, sanitation, recreation and sports facilities and nutritious diet need to be improved. The network of such schools/institutions should be expanded across the states by opening more special schools/institutions so as to cover the remotest areas of the states. The new special schools may include schools for girls with disabilities and children with intellectuals and developmental disabilities etc.
- iv) The State Governments need to take steps towards intensive, extensive, and effective implementation of the scheme of integrated/inclusive education in their states. To accomplish this task, state Governments should ensure proper coordination amongst the Department of education, Sarvashiksha Abhiyan, civil society organizations, recruit more special educators and train them in multiple disciplines etc., treat special educators at par with other teachers in terms of their salaries, allowances, and other facilities, constitute a thematic group on education to oversee implementation of education related provisions of eh Act, provide adequate trained human resources and teaching learning materials.
- v) The State Governments should provide adequate and appropriate teaching learning material, books in accessible format, uniforms and other need based assistive devices to students with disabilities studying in special as well as main stream schools. The books should also be made available to students with disabilities in accessible formats. While providing such materials, the State Governments should keep in mind the need of students belonging to more severe/profound/vulnerable disabilities.

- vi) A scheme for developing a cadre of resource teachers in each school may be prepared. This may entail introduction of compulsory and comprehensive component on disability in the B-Ed and M-Ed courses.
- vii) The state Governments besides consolidating and expanding the ongoing efforts for vocational training/education should initiate schemes/programmes for promoting professional and technical education by setting up of coaching centres for persons with disabilities. The States may also set up coaching centres for persons with disabilities to prepare them for competitive State Administrative Services on similar lines of SC and ST communities.
- viii) The State Governments should pay focussed attention and give priority to work relating educational needs of children with more marginalized/vulnerable categories of disabilities, such as, children with intellectual disabilities, and children with cerebral palsy etc.
- ix) The education of girls and women with disabilities needs focussed attention. Special drive should be launched from time to time for admission of girls with disabilities in the schools and to promote education and training of girls/women with disabilities.
- x) The Board of Secondary and Higher Education, Universities must issue clear cut guidelines in respect of amanuensis/scribe and allotment of extra time for students with visual disabilities during exams.
- xi) The State Governments may constitute a thematic group on education to oversee implementation of education related provisions in the Act. This group should have representatives of the departments of Education, Department of WCD, Sarva Shiksha Abhiyan, and also of persons with disabilities, etc.
- xii) The State Governments should take steps to set up disability study centres with appropriate facilities in various colleges and universities for students with disabilities. To empower students with disabilities to pursue their higher education at par with normal students, the college library should have Braille, large printed books and talking books section. There should also be a provision of well equipped computer lab along with JAWS screen reading software, zoom ex instant reader, scanner, Braille printer and other assistive devices with unlimited internet access.

- xiii) The financial support for children with disabilities attending mainstream schools should be enhanced adequately to enable them to meet their expenses on transport, books, uniforms and assistive devices.

4. Employment

The State Governments need to take concrete and comprehensive steps by drawing up schemes and programmes to enhance employability of persons with disabilities in their respective states. The Department of Personnel and Public Grievances, Labour and Employment, Industry and Rural Development etc. should take the following steps for effective implementation of sections 32 to 41 as well as 47 of PWD Act.

- i) The State Governments may launch a special drive to complete the process of identification of jobs for people with disabilities in all grades by engaging experienced expert/professionals within in defined time frame. The work of identified/to be identified posts for persons with disabilities may not be outsourced or alternatively the Government should issue specific and mandatory directives to the outsourced agencies to involve persons with disabilities for identification of jobs. The list of identified jobs should be revised and updated every three years by keeping in view the developments in the field of science and technology and incorporating the clause that the list is only illustrative and not exhaustive on the lines of the relevant notification of central Government. The Government may compute the backlog of vacancies with effect from the date on which PWD Act came into force and take credible steps to expedite the process of filling up the backlog of vacancies within a defined time-frame.
- ii) The State Governments should not impose any ban on recruitment to posts identified for persons with disabilities. Necessary steps should be taken to ensure that nobody gets recruited against posts reserved for persons with disabilities on the strength of fake certificates.
- iii) The States may implement Section 38 by providing an appropriate and disabled friendly environment in workplaces and put in place non-discriminatory service rules/conditions to enable persons with disabilities to work and contribute to the optimal level of their potential.

- iv) The implementation of Section 47(1) and 47 (2) of the Act should be closely monitored to provide safeguards against reduction in rank of any person who acquires a disability in the course of his/her employment, and also safeguards against denial of promotion on ground of disability.
 - v) The State Governments should take steps to ensure implementation of Section 41 of PWD Act by announcing incentives for those public and private undertakings whose 5 per cent of total workforce comprises persons with disabilities.
 - vi) The State Governments may consider upper age limit for recruitment of persons with disabilities in to Grade A and Grade B posts and also raise upper age limit for superannuation of persons with disability.
 - vii) In view of the minimal representation of women with disabilities in the Government jobs, a special drive should be launched from time to time for recruitment of women with disabilities to provide them a fair share of reservation.
 - viii) State Governments should enforce the provision of reservation of not less than three per cent quota in poverty alleviation schemes with utmost strictness and maintain a database of beneficiaries with disabilities at various levels to facilitate monitoring of implementation of this provision. It should also raise awareness about the provision of reservation amongst all stakeholders including middle level and ground level functionaries as well as persons with disabilities.
 - ix) An exclusive and high power group/committee needs to be constituted to oversee the implementation of employment and poverty alleviation schemes related to provisions of the Act. The said high power group/committee may, among others, include Commissioner (Persons with Disabilities), other relevant departments, representatives of persons with disabilities and professional.
5. Social Security, Poverty Alleviation, Affirmative Action and barrier free access
- The office of the Commissioner (Persons with Disabilities) Department of

Panchayat, Rural Development, Land and Revenue, Urban Development, etc. must initiate the following actions for the effective implementation of the Act:

- i) A proper awareness need to be created amongst primary stakeholders as well as middle level and ground level functionaries for effective implementation of poverty alleviation schemes. A focal person on disability should be designated at the district level in the office of the Deputy Collector/Deputy Commissioner to coordinate and keep track of implementation of poverty alleviation, affirmative action programmes/provisions, and social security related provisions enshrined in the PWD Act.
- ii) A solid and vibrant monitoring mechanisms needs to be put in place to cross check and verify whether persons with disabilities are getting the benefits of minimum reservation of 3 per cent in all poverty alleviation schemes/programmes as mandated by Section 40 of the Act. A credible database of beneficiaries needs to be developed at various levels by concerned departments such a Panchayats and rural development etc. for this purpose.
- iii) A culture of shared learning amongst various states of the country for mutual benefits should be encouraged and promoted to enable one state to lean from the experience of others. For example, the best practice of Andhra Pradesh of involving persons with disabilities in the national rural employment guarantee scheme followed in Andhra Pradesh should be followed by other states which do not know how exactly to involve persons with disabilities. The States should organize exposure visits and exchange programmes for middle and lower level functionaries of the relevant departments to promote a culture of shared learning and cross-hybridization of ideas.
- iv) State Government needs to take immediate steps to ensure implementation of provision of preferential allotment of land at concessional rates in favour of persons with disabilities including women with disabilities as envisaged in Section 43 of the Act.
- v) The persons with disabilities registered with special employment exchanges, if not provided gainful employment should be provided unemployment allowance as stipulated under Section 68 of Act.

- vi) The State Governments may evolve flexibility in the matter of people covered under the Below Poverty Line (BPL) category and consider persons with disabilities living in rural areas and urban slums as belonging to BPL category.
- vii) A comprehensive scheme for providing assistive devices, aids and appliances, etc. to persons with disabilities needs to be consolidated, streamlined and expanded.
- viii) The provisions of Section 47 of the PWD Act relating to safeguards to persons who acquire disability while in Government service and also relating to denial of promotion on grounds of disability needs to be implemented more strictly.
- ix) The state Government should provide barrier free access to persons with disabilities in transportation, on roads, and in built environment by introducing appropriate changes in the building bylaws incorporating accessibility standards and features; access audit of various public buildings should be conducted on regular basis in a phased manner by involving persons with disabilities and other experts to make recommendations to concerned authorities and such access audit reports should be acted upon.
- x) Awareness on accessibility need to be raised amongst general public and Government functionaries by organizing routine training for concerned functionaries on access and accessibility. Accessibility had larger connotation and it should not be restricted only to ramps which constitute an important but very small component of accessibility. Steps should be taken to make the websites accessible.
- xi) The free bus service needs to be made accessible to persons with disabilities as it comes within the purview of the State Government.
- xii) A comprehensive accessibility component may be included in the Syllabi of engineering and architectural courses.
- xiii) Provisions of Sections 44, 45, and 46 of the Act needs to be implemented under a properly conceived plan.





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