

Status report

**On implementation of the PWD Act, 1995  
in the  
state of Uttar Pradesh**

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**Note:** *A folder containing some papers handed over to me by the Govt. of UP is being submitted with the hard copy of this report. They include, among other things, Govt. response to the NHRC format together with a Section-wise report, a booklet on important judgments by the CPD, a compendium of circulars/GOs of the Govt. of Uttar Pradesh, etc.*

## Preface

This status report on implementation of the Persons with Disabilities (equal opportunities, Protection of Rights, and Full Participation) Act 1995 hereinafter referred to as the PWD Act, or simply the Act is the outcome of a visit to Lucknow carried out by me at the behest of the National Human Rights Commission (NHRC) from the 17<sup>th</sup> to the 20<sup>th</sup> of August, 2010. Evidently, the purpose of the visit was to identify gaps in the implementation of the PWD Act in the state of Uttar Pradesh (UP) and to make necessary recommendations for bringing about systemic and other necessary and appropriate changes aimed at ensuring better and more effective and efficient implementation of the said Act.

## Structure

This report comprises three parts.

Part one spells out the objective, methodology, limitations of the review/exercise, and gives the context.

Part two discusses the functioning and effectiveness of the various enforcement mechanisms created under the Act, identifies gaps therein, and seeks to make some recommendations.

Likewise, part three briefly takes up for treatment the implementation status in respect of various thematic areas in the light of the relevant provisions in the existing Act, identifies some gaps, and makes appropriate recommendations.

The report concludes with some closing remarks.

## PART ONE:

### Objective, Methodology, Limitations & Context

#### 1.1: The Objective:

Objective of the visit to Lucknow, or for that matter, of the review was to identify gaps in the implementation of the PWD Act, 1995 in the state of Uttar Pradesh primarily by engaging with the office of the Commissioner and additionally, by interacting with the primary stakeholders, i.e., persons with disabilities, members of the state coordination Committee, and officials of the Disabled Welfare Dept. in order to make necessary and appropriate recommendations for systemic and other changes aimed at ensuring better and more effective implementation of the said Act in the state of Uttar Pradesh.

#### 1.2. Methodology:

Following methodology was adopted for the said review:

- A. Interactions with the Commissioner (persons with disabilities) and other officials functioning under his control and supervision.
- B. Interactions with primary stakeholders, i.e., persons with disabilities, officials of the Disabled Welfare Dept., and members of the State Coordination Committee constituted under the PWD Act.
- C. Visits to some institutions meant for persons with disabilities and interactions with stakeholders there.
- D. Perusal of papers submitted by govt. of Uttar Pradesh, particularly, the Govt. response/information furnished as per the format developed by the NHRC for the purpose.

#### 1.3: Limitations/constraints:

This review was carried out within a very limited time-frame with the result that it did have its own limitations.

In view of the above, it is clarified that recommendations made in this status report are only illustrative in nature, and are not at all exhaustive.

#### 1.4: Context:

The PWD Act, 1995 was passed by the Indian Parliament in December 1995 without a debate. It was notified in the Union Gazette on the 1<sup>st</sup> of January 1996, and it came into force in India except the state of Jammu and Kashmir with effect from the 7<sup>th</sup> of February, 1996.

It is common knowledge that ever since this Act came into force, there have been any number of complaints both in respect of its implementation as well as its inadequacies. A plethora of cases that have since got piled up in the various courts of the country serve to

corroborate this fact. An amendment committee was also constituted during the late nineties of the last century albeit its recommendations never really got incorporated in the existing Act.

Meanwhile, discontentment amongst persons with disabilities over very poor implementation of the various provisions of the Act kept mounting all over the country; so much so that as coincidence would have it, a protest rally was carried out by blind persons in Lucknow while this review was in progress. The said rally was held to press for their demand to fill up the backlog of vacancies, ETC.

One silver lining in the scenario is that the Govt. of India ratified a very progressive international treaty in October, 2007, namely, The United Nations Convention on the Rights of Persons with Disabilities which has come into force with effect from the 3<sup>rd</sup> of May, 2008. This explains why under the current international norms, India is now obliged to harmonize all its relevant domestic laws and policies with the said Convention. The fact of the matter is that the harmonization process has already begun with the Govt. of India setting up a committee to draft a new law to replace the existing PWD Act. The very fact that even the provisions of the existing Act are not being implemented in letter and spirit raises concerns in respect of implementation of a legislation way more progressive than the existing one. This is however not to suggest that a more progressive legislation is not required. On the contrary, there is a pronounced need for a more progressive piece of legislation having very strong and vibrant implementation and monitoring mechanisms.

In the light of the foregoing, this review process of the implementation status of the existing PWD Acts was carried out in the state of Uttar Pradesh as a part of NHRC's larger focus to protect, promote and monitor the status of human rights and fundamental freedoms, particularly, of persons belonging to the disadvantaged, excluded and marginalized groups of society.

## PART TWO

### Enforcement mechanisms - Their functioning and effectiveness:

Uttar Pradesh is a fairly large state with some 72 districts and as per census 2001 the population of persons with disabilities stands at nearly 35 lakhs albeit many people feel with a measure of justification that the census figures on disability across the country are under-estimations for various reasons.

The existing PWD Act envisages a three-fold enforcement mechanism for the states, namely, the Commissioner (persons with disabilities), the State coordination Committee, and the State Executive Committee. Besides, the Disabled Welfare Dept. created by the state Govt. serves as an important additional mechanism.

Be that as it may, the outreach of the enforcement mechanisms has to be such that it caters to all persons with disabilities across the entire state.

For one thing, the Govt. of Uttar Pradesh must be complimented on four counts, namely - -- that unlike any other state of India, UP has a separate, full-fledged ministry/department dedicated for the welfare of the disabled; that the state has been rated well by the Chief Commissioner (persons with disabilities); that the state is well ahead of many other states in the matter of issuance of Govt. orders pursuant to the various provisions of the existing Act; and, that the state extends a range of concessions to persons with disabilities.

However, despite the aforesaid encouraging scenario, there exist areas of huge concerns, particularly, when one takes into account the modus operandi and effectiveness of the various enforcement mechanisms, and the overall implementation status. As one non-official stakeholder and himself a person with a disability puts it: "there exists the shuttering, but not the roof" implying thereby that there exist structures which are ineffective and in many cases, even non-functional.

Moreover, my interactions with a range of stakeholders, both official and non-official, leave me convinced that the information/response furnished by the Govt. of Uttar Pradesh vide the relevant NHRC format conceals more than it reveals. In fact, the concerned Govt. has failed to submit copies of certain documents which the relevant NHRC format required them to submit, such as, minutes of meetings of the state coordination and the state Executive committee, and also copies of the annual report of the Commissioner for the last two years. On the contrary, copies of certain documents which were not required and hence not asked for were submitted, such as, copies of some internal correspondence that happened between the concerned departments regarding my visit --- this only served to increase the volume of the stuff without qualitatively altering or adding value to the substance of the response/information.

#### 2.1: Commissioner (Persons with disabilities):

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. Evidently, this undue delay of a little less than three years in setting up of the commissioner's office did create a vacuum for a fairly long spell as the Act came into force in February 1996. Since then

on, almost all the incumbent commissioners have been holding charge of the said office as an additional responsibility. Even the current incumbent commissioner is no exception as he holds the charge of several other departments which include the responsibility of the office of the Principal Secretary to the Chief Minister, the office of Vice-chancellor, Dr. Shakuntala Mishra Rehabilitation University, the office of the Principal Secretary, disabled Welfare Dept. ETC. Naturally, therefore, he is not in a position to pay undivided and focused attention to the functions of Commissioner (persons with disabilities) (CPD). Since similar situation exists in many other states, the demand for a full-time commissioner with independent charge continues to gain momentum throughout the country with the result that a few states now do have full-time commissioners without any additional charge. Referring to the difficulty of one bureaucrat to proceed against another in the event of violation of any provision of the Act by the other, some people suggest that the commissioner should be a non-official committed to, and passionate to the cause of persons with disabilities.

#### *Coordination and monitoring:*

Coordination and monitoring, as stipulated vide Section 61 of the Act, happen to be very important functions and as such, they are critical to the efficient and effective implementation of the provisions of the Act. Sadly, however, no effective and truly functional coordination and monitoring mechanisms are doing the job. The State Coordination committee and the State Executive committee are nearly defunct as they exist only on paper and seldom meet to transact their statutory business. Even the office of the commissioner does not seem to have any solid, comprehensive and credible coordination and monitoring mechanisms and tools to keep track of matters. Not much is known about the modus operandi and effectiveness of the so-called State Advisory committee which, I guess, has also been referred to in another place in the govt. response to the NHRC format as the Social Audit Committee. I suspect, both the references are to the same entity.

The above scenario, therefore, calls for putting in place, credible, comprehensive, and vibrant coordination and monitoring systems and tools. These may include, periodic meetings with various departments, designation of a focal person on disability in each concerned department, periodic submissions of returns in department specific prescribed format to the commissioner (persons with disabilities), surprise field visits to ascertain whether the benefits of various Govt. schemes and programmes are actually reaching the beneficiaries, ETC. such systems should be in place at various levels in each concerned department.

#### *Complaints in respect of deprivation of rights:*

Section 62 of the Act empowers the Commissioner to take cognizance of complaints in respect of deprivation of rights suffered by persons with disabilities, or complaints relating to the violation of disability related provisions of any law, byelaw, rules, regulations, ETC. He may do so of his own motion, or on a complaint lodged by the affected person, or by any other person.

A two-fold process for disposal of complaints is followed by the Commissioner in the state of Uttar Pradesh, namely, grievances of general nature are sorted out administratively by engaging with the concerned authorities; and, other complaints relating to violation of rights ETC. are disposed off after hearing the concerned parties.

While complaints of the second category did not even cross the double figure in the year 2008-9, it was way below 20 in the subsequent year. The number of disposals was even lesser, and understandably so.

The number of grievances received and disposed of during the same period was relatively higher. It is however, unclear as to whether this relatively higher figure includes the petty grievances sorted out by the Deputy collector of a given district on the Tehsil Divas which is reportedly held on specified days where persons with disabilities can also go and present their grievances for their on-the-spot disposal. Incidentally, the Deputy Collectors are designated by the state govt. as the additional commissioners (persons with disabilities) for their respective districts. While the deputy collector can sort out petty grievances administratively, which is fair enough, there exist no provision relating to delegation of the quasi-judicial powers of the commissioner under the current Act.

All this serves to highlight the fact that there is very little awareness about the Act, particularly, in the rural areas, and amongst the poorer segments of the disabled population. This further underscores and accentuates the need for *suo moto* action, and for vigorous and visible pro-activism on the part of the Commissioner in locating and identifying grievances, and in ensuring their expeditious redressal. This pro-activism, I am afraid, is sadly missing which is why many persons with disabilities, more particularly, those who continue to live in a state of utter disempowerment and disarticulation have not benefited from the relevant provisions of the existing Act. Not one instance, over the last so many years where any Govt. official/employee was ever pulled up for violating any provision of the existing Act was cited.

#### *Non-compliance:*

Section 65 (1) of the Act makes it incumbent for the Commissioner to prepare a detailed annual report of his activities of the previous year and send copies thereof to the Chief Commissioner, and also to the concerned state Govt.

Subsection (2) of Section 65 stipulates that the concerned state Govt. must table the said annual report before the state legislature together with an action taken report or a report on action proposed to be taken on the recommendations of the Commissioner. It further stipulates that the state Govt. should also record the reasons for not accepting any recommendations of the Commissioner.

The annual reports of the Commissioner for the last two years as requested for by the NHRC do not appear to have been actually annexed with the Govt. response which says they have been annexed. However, I presume that the reports do exist.

Be that as it may, one big concern in respect of the matter is that there has been a continuous non-compliance of Subsection (2) of Section 65 as the state Govt. does not appear to have tabled before the state legislature one single annual report of the commissioner as mandated by the said Section. While the written Govt. response is silent

about this non-compliance despite a relevant/specific question in the NHRC format, the officials verbally admitted this lapse during my interactions with them.

*Capacity building of stakeholders:*

Sadly, the office of the Commissioner do not appear to be undertaking any capacity building measures on a regular ongoing basis for educating persons with disabilities and other stakeholders of strategic importance, such as Govt. officials, media persons, ETC. Such capacity building measures should be aimed at educating the primary stakeholders and other stakeholders of strategic importance on disability rights. It is not enough only to put up a few posters or distribute some pamphlets and think that sensitization has taken care of itself. To begin with, officials/employees of the relevant departments need to be educated on disability rights issues on priority basis.

*Infrastructural/budgetary and other constraints/hindering factors:*

During my interactions with the officials, it was pointed out that infrastructural and resource constraints, both human and financial are a stumbling block in the discharge of the functions and duties of the office of Commissioner. However, it was further pointed out that of late, the state Govt. has sanctioned some 20 additional posts which include four additional posts of Deputy Commissioners as against the existing one. Currently, the staff strength of the office of the commissioner is six excluding the Commissioner. It was also suggested that the central Govt. should sanction for the state 18 posts of deputy commissioners for each of the 18 divisions of the state, and that the state Govt. should designate the District Handicapped Welfare Officers also as Assistant commissioners (persons with disabilities) for their respective districts.

Absence of penal powers with the commissioner and absence of penal provisions for contempt of Commissioner (persons with disabilities) are also cited as factors hindering efficiency and effectiveness.

**Recommendations:**

1. Appoint a full-time Commissioner (persons with disabilities) with independent charge, and without any additional responsibility.
2. Put in place credible and comprehensive coordination and monitoring mechanisms and tools which may include, among other things, periodic meetings with the Commissioner (persons with disabilities) of each concerned department; submission by each concerned department of periodic returns as per department specific format to be prescribed by the Commissioner (persons with disabilities); developing by each concerned department of a data base relating to its work on disability under the provisions of the existing Act; designation by each concerned department of a focal person/authority on disability. Surprise field visits; ETC.
3. Demonstrate visible and vigorous pro-activism in the matter of taking suo moto action in respect of violation of any provision of the Act, or for that matter, in respect of deprivation of rights suffered by any person with disability; also raise awareness on a massive scale about the provisions of the Act including about a disabled person's right to lodge a complaint with the commissioner.

4. Ensure compliance with the provisions of Section 65 (2) of the Act by tabling before the state legislature the CPD's annual report together with action taken report as stipulated.
5. Ensure adequate resources, both human and financial with proper infrastructural support for the office of the CPD.
6. CPD must undertake, on a regular basis, capacity building measures for educating persons with disabilities and other stakeholders of strategic importance including members of the bureaucracy and media persons on rights of persons with disabilities.

#### 2.2: State coordination and State Executive Committees:

The state Govt. has constituted a State Coordination committee under Subsection (1) of Section 13, and a State Executive Committee under Subsection (1) of Section 19 respectively.

While the state coordination committee (SCC) under the relevant provisions of the Act is to serve as a focal point on disability and also to facilitate continuous evolution of comprehensive policy on disability, the State Executive Committee (SEC) is to implement the decisions of the SCC.

Section 17 of the Act mandates that the SCC must meet at least once in six months, whereas, Section 21 mandates that the SEC must meet at least once in three months. Shockingly, however, going by the Govt. version itself during interactions, these two committees have met only six or seven times over all these years since this Act came into force. Going by the mandate of the Act, the SCC should have met at least 25-30 times, and the SEC should have met at least 55—60 times by now. The Govt. also appear to have failed to submit the minutes of the last three meetings of the SCC as requested for. The above is a sad commentary on the modus operandi/functioning and effectiveness of the SCC and the SEC. let us not lose sight of the fact that the statutory functions entrusted to these committees are critical to the cause of furtherance of rights of persons with disabilities. The state of Uttar Pradesh does not even have a state level policy on disability.

#### Recommendations:

1. Ensure that the SCC and the SEC meet regularly as mandated by the Act to transact their statutory functions and responsibilities.
2. Expedite finalization and adoption of the state level policy on disability.

#### 2.3: Disabled Welfare Department:

It is a happy augury that the state of Uttar Pradesh has a separate full-fledged department dedicated to the welfare and well-being of persons with disabilities. It has been quite a few years since this department has existed as a separate entity. Yet, it appears; it has not been fully equipped and empowered. Out of the 72 districts, only 25 districts have full-time District Handicapped Welfare officers; and, some district level officers of the Social

Welfare Dept. are holding additional charge in the rest of the districts. This, by all manner of means, is a sad scenario.

There is also a visible need for massive capacity building of the officials of the Disabled Welfare Dept.

When asked to tell the number of disability specific legislations currently in force in the country, the departmental officials kept quiet since they did not know much about such legislations. This happened in the presence of the Principal Secretary of the Dept. who, incidentally, is also the Commissioner (for persons with disabilities). If one does not have this basic idea, what is one going to implement?

**Recommendations:**

1. Strengthen the Disabled Welfare Dept. and also put in place District Handicapped Welfare Officers in all the 72 districts of the state on a full-time basis.
2. Adopt serious and time-bound measures for building capacity of the departmental officers on rights of persons with disabilities. Such capacity building measures should not be a one-off event; but should be an ongoing activity.

## PART THREE

### Thematic areas - Implementation status

#### 3.1: Education:

Education brings empowerment. Therefore, the paramount importance of education in the all round development of persons with disabilities can better be imagined than described. Chapter V of the Act (Sections 26—31) makes elaborate provisions for education of children/persons with disabilities. Besides, Section 39 of the Act provides for reservation of not less than three percent seats for admission to Govt. and Govt. aided educational institutions.

Broadly speaking, while some work has happened in respect of Sections 26 (b), 26 (d), 29, and 31 relating to the so-called special schools, teachers' training, and allowing amanuensis to blind and low vision students, formidable concerns continue to loom large in respect of operationalization/implementation of sections 26 (a), 26 (c), 27, 28, and 30 relating to ensuring free education in an appropriate environment till a child attains the age of eighteen years, integration of children with disabilities into mainstream schools, schemes for non-formal education ETC., promotion of research to design and develop assistive devices, and preparation of a comprehensive scheme for education for children with disabilities. Besides, there has to be a mechanism to keep track of compliance with the seats reservation related provision envisaged in Section 39. More particularly, no benefit of the provisions of Section 30 worth the name is yet accruing to disabled children attending mainstream schools. Besides, The benefit of scholarship the tune of Rs.1200 is availed only by disabled children both borders and day scholars, attending the so-called special schools. The said sum of Rs.1200 includes all expenses including board and lodging of the hostellers/borders. Expenses for books, transportation, etc. are also to be met from this amount.

It is common knowledge that while the so-called special schools do have a role to play, the cost of setting up such schools is prohibitive with the result that they can not be set up in too many places, at least within a reasonable time-frame. This also serves to highlight the urgency of integrating/including disabled in the mainstream schools as well. In addition, the goal of education for all will remain a cry in the wilderness if children, who are essentially and primarily children are not imparted education on an equal basis with other children.

My interactions with stakeholders revealed that the integrated education component of the ongoing Sarva Shiksha Abhiyan is in utter shambles. I was informed that one special educator is to look after anything between 100 to 150 schools, and that she/he has been asked to cover six or seven schools each day. Thus if the special educator starts from school A, it will take him about a month to come back again to the disabled children of that school A. this is a big joke; and, as if all this is not enough, these special educators are badly underpaid. I understand there now exist some High Court orders directing the authorities to treat the special educators at par with other teachers.

It is also important to remember that Section 26 (a) also mandates that the education of the disabled child must happen in appropriate environment. Appropriate environment has umpteen connotations, such as, inclusion at all levels, accessibility, etc, etc. Sadly, for example, the understanding amongst officials on accessibility is limited to putting up of ramps here and there. Accessibility has many dimensions. Thus most of the mainstream schools are yet not accessible, let alone genuinely inclusive.

While some good work has happened with regard to special schools where only a limited number of students can study, these schools need to be updated and upgraded on modern and scientific lines. As per information furnished by govt. there exist 21 govt. special schools, and some 76 special schools/institutions are receiving aid/grant from the Govt.

Dr. Shakuntala Mishra Rehabilitation University established under a statute of the state legislature provides for reverse inclusion as it has opened its courses to the non-disabled students to the tune of fifty percent of its seats. While a section of people do not endorse the setting up of such a university, there are others who are favourably disposed towards it. However, without getting into this debate, it would be in the fitness of things for us to emphasize the need for ensuring that this university is well-equipped and that it is run nicely on modern and scientific lines. Among other things, this university can also serve as a research hub/centre. Here, it would also be appropriate to suggest that other mainstream universities also set up disability study and resource centres for the benefit of disabled students as has been done by a few universities elsewhere in the country.

I did visit the said university and had brief interactions with faculty members and the students. To my surprise, the university does not have one single book in Braille nor does it have any talking book or recording studio. The university is in its formative years and it started some courses only from the last year. Many other courses are proposed to be introduced in a progressive manner. The construction of its buildings is in progress.

The Govt. owned talking book studio is also currently defunct and it has its own history. While Govt. approved setting up of a Braille printing press long back, the said press is yet to be set up. It is surprising that a state like UP does not have a single Braille press. The standard response which I got from the authorities to some of my questions was that the process was on.

There is also a visible gap in terms of facilities and programmes for the education of the hearing impaired. Much needs to be done in this regard. There is also a need to introduce one language formula for the hearing impaired as required under Section 30 (h) of the Act.

Compliance with Section 30 (g) of the Act requiring restructuring of curriculum for persons belonging to other categories of disabilities also has to be ensured. Focused work relating to education of persons belonging to more marginalized categories of disabilities, such as, children with intellectual and developmental disabilities, etc. must also receive priority.

Education of girl child with disability also deserves focused attention.

Professional courses, such as those for entry into civil services must also be started for persons with disabilities.

### Recommendations:

1. Ensure free education to every child with a disability in an appropriate environment including in the mainstream schools till she/he attains the age of eighteen years.
2. Ensure compliance of the provisions of Section 26 (a), Section 26 (c), Section 27, Section 28 and Section 30 of the Act.
3. Attend to the transportation and other needs of disabled children attending mainstream schools. This should also include provision for books in accessible format.
4. Substantially increase the number of special educators under the Sarva Shiksha Abhiyan and treat them at par with other teachers including in terms of their salary and allowances, and other facilities.
5. 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.
6. Put in place mechanisms to keep track of compliance of relevant provision for reservation of seats for admissions to educational institutions.
7. Update and upgrade the existing special schools/institutions including, among other things, by introducing latest equipment, assistive devices, teaching aids, and computer education.
8. Activate the defunct facilities, and expedite setting up of the proposed Braille press.
9. Intensify work on education of the hearing impaired and introduce one language formula for them as required under the relevant provision of the Act.
10. Facilitate restructuring of curriculum for children belonging to other categories of disabilities.
11. Introduce professional courses for persons with disabilities on the lines of the SCs, STs, and the minority communities in the state of Uttar Pradesh.
12. Launch a drive for admission into schools, for girls with disabilities.

### 3.2: Employment:

Chapter VI of the Act (Sections 32 ---41) is on Employment. while Section 39 which appropriately should have 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. The chapter on employment also provides benefits to persons with disabilities under the various poverty alleviation schemes of the Govt. which is being taken up separately in this report along with affirmative action and social security.

Section 33 of the Act stipulates reservation of not less than three percent in Govt. jobs, one percent each for persons with blindness or low vision; persons with hearing impairment; and, persons with locomotor disabilities and cerebral palsy. Benefit of reservation to persons belonging to these categories of disabilities is available in all

grades/categories of Govt. service. 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 Govt. notification of identified jobs comes to mind. It clearly stipulates that, that list is only illustrative, and not exhaustive.

Section 32 makes it incumbent on the appropriate Govt. not only to identify jobs for persons with disabilities, but also to revise and update the said list at periodic intervals not exceeding three years. Such revision/updation, the Act stipulates, should keep in mind the developments in the field of science and technology.

In the course of my interactions with stakeholders and on the basis of the Govt. response to the NHRC format, I found that there has been disproportionately delayed identification of jobs; that such identification has been carried out partially, i.e., in piecemeal; and, that there has been no revision and updation so that to this extent, there has been a manifest violation of Section 32 of the Act. This hugely contributed to the piling up of backlog of vacancies in relation to persons with disabilities.

To corroborate the above, it needs to be mentioned that while jobs in grade C and grade D categories were identified in 1999, i.e., three years after the Act came into force, jobs for A and B categories were identified as late as in 2007, i.e., eleven good years after the Act came into force. Who is accountable for the utterly undeserved deprivation of their legitimate due suffered by persons with disabilities as a consequence of such apathy? Besides, the posts which have been identified constitute only a miniscule percentage of the total posts of the govt. of Uttar Pradesh.

Among other things, Section 38 (d) makes it incumbent on the appropriate Govt. to ensure non-handicapping environment for persons with disabilities in the workplace. This has larger implications which include enabling persons with disabilities to perform to the optimal level of their potential, and also disabled friendly and non-discriminatory service rules/conditions. Likewise, Section 38 (b) stipulates relaxation in the upper age limit. While the Govt. has enhanced the upper age limit for recruitment, no such enhancement has yet been done for superannuation.

Moreover, no significant incentives have been announced by the state govt. vide stipulation of section 41 for private and public sector undertakings to ensure that five percent of their workforce comprises persons with disabilities.

Besides, there is a serious need to implement the provisions both under section 47 (1), and section 47 (2) which provide safeguards to persons who acquire disability during service, and also prohibit denial of promotion on ground of disability.

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.

#### Recommendations:

1. Revise and update the list of identified jobs for all categories within a defined time-frame incorporating the clause that the list is only illustrative, and not exhaustive on the lines of the relevant notification of the central Govt.
2. Take credible steps to fill up the backlog of vacancies within a defined time-frame.

3. Ensure disabled friendly environment in workplace and put in place non-discriminatory service rules/conditions.
4. Enhance the upper age limit in respect of superannuation.
5. Implement the provisions of Section 47, among other things, by ensuring that promotion is not denied on ground of disability.
6. Launch, from time to time, special drive for recruitment of women with disabilities.
7. Implement relevant Govt. orders in respect of reservation in promotion in favour of persons with disabilities.

3.3: Poverty alleviation/affirmative action/social security:

Section 40 of the Act provides for three percent reservation for persons with disabilities in all poverty alleviation schemes. Likewise, Sections 42 and 43 under affirmative action makes it incumbent on the appropriate Govt. to formulate schemes for assistive devices/aids and appliances, and allotment on land at concessional rates on preferential basis. Sections 66 to 68 seeks to make provisions for social security.

Non-official stakeholders pointed out that the benefits of the various poverty alleviation schemes are not percolating down to persons with disabilities. They also shared with me some instances of alleged large scale corruption and pilferage, particularly, relating to the implementation of the national rural employment guarantee scheme. Many genuine BPL families, they alleged do not figure on the BPL list; whereas, some NON-BPLs do. There exists no solid and vibrant monitoring mechanism to keep track of the implementation of the provision under Section 40.

Similarly, although there exist some GOs for allotment of shops etc. to persons with disabilities, it appears that Section 43 relating to allotment of land for certain purposes at concessional rates and on preferential basis is not getting implemented.

On the social security front, the pension scheme of the Govt. must be commended which is currently benefiting about seven lakh persons with disabilities albeit the amount of pension (Rs.300 per month) is very less and needs revision. Besides, Section 68 provides for grant of unemployment allowance for those persons with disabilities who are registered with the special employment exchange and who have not been give gainful employment. However, the state Govt. has no such scheme.

Recommendations:

1. Put in place solid and vibrant monitoring mechanism to keep track of implementation of the provisions of Section 40 relating to reservation in all poverty alleviation schemes. Also develop credible data base at various levels of the concerned departments, such as, Panchayat and rural Development, ETC. for this purpose.
2. Evolve flexibility in the matter of considering persons with disabilities as belonging to the BPL category. Such persons living in rural areas and in urban slums may be considered as belonging to that category, for example.
3. Increase the amount of pension for persons with disabilities.
4. Provide unemployment allowance as stipulated vide Section 68 of Act.

5. Ensure preferential allotment of land to persons with disabilities at concessional rates as provided for vide Section 43 of the Act.

#### 3.4: Barrier free access:

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, while transport systems, excluding the state run buses generally do not fall within the domain of the state govt., roads and buildings do. While the state govt. has done a good job by amending the relevant building byelaws, similar measures also need to be taken with regard to roads and state run buses. Incidentally, buildings include workplaces, recreation centres, parks, cinema and theatre, schools, colleges and universities and other public buildings.

Work on ensuring barrier free access needs to pick up in the state.

#### Recommendations:

1. Conduct access audits in a phased manner and make recommendations to concerned authorities.
2. Impart training to concerned functionaries on accessibility.
3. Include comprehensive accessibility component in the syllabii of engineering and architectural courses.
4. Implement provisions of Sections 44, 45 and 46 of the Act under a properly conceived plan.
5. Make the websites accessible by complying with Web content accessibility Guidelines 2.0.

#### 3.5 Miscellaneous:

It would be in the fitness of things for us to remember that there is a pronounced need for focusing on persons belonging to more marginalized categories of disabilities. Issues of women and children with disabilities merit special attention.

I also feel tempted to reiterate that many departments have an equally critical role to play in the implementation of the Act and hence, it would be unfair to pass the buck only to one department, namely, the Disabled Welfare Department.

## Concluding Remarks

I wish to compliment the state of Uttar Pradesh for the good work it has done in its efforts to implement the Act. However, most certainly, I feel, its potential is way greater than what it has, over the years achieved. Strengthening and streamlining of the various enforcement mechanisms merits top priority. Evidently, expectations from a state like Uttar Pradesh are far higher, more particularly, at a time when India is poised to give to herself a legislation way more progressive than the current one in the wake of ratification of the UN convention on the Rights of Persons with Disabilities.

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