



EMPLOYMENT RIGHTS OF PERSONS WITH DISABILITIES IN INDIA



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“As I am disabled, I grew up in life without having any contact with the outside world. It is only recently that I began to go out.... I prefer not to go out too far. I don’t because I am different from the others, I look different and that’s why I feel ashamed to go out”

41-year-old female participant from Hyderabad with a mobility related disability.

“.... notwithstanding the fact that there have been significant movements in recognising the rights of differently-abled persons, much is yet to be achieved. India also has come out with various legislations and schemes for the upliftment of such differently-abled persons, but gap between the laws and reality still remains. Even though human rights activists have made their best efforts to create awareness that people with disabilities have also right to enjoy their life and spend the same not only with the sense of fulfilment but also to make them contribute in the growth of the society, yet mindset of large sections of the people who claim themselves to be “able” persons still needs to be changed towards differently-abled persons. It is this mindset of the other class which is still preventing, in a great measure, differently-abled persons from enjoying their human rights which are otherwise recognised in their favour. “

Justice A K Sikri in *Jeeja Ghosh v. Union of India* [Supreme Court of India] (2016) 7 SCC 761, at p. 768.

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We greatly appreciate the individuals with disabilities, NGOs and government representatives who have shared their insights and experiences with us as we developed and revised this report. Your time and contributions to this work have been critical to our understanding of the experiences, challenges and opportunities for employment of people with disabilities in India. We hope to continue to share knowledge and best practices to achieve our mutual goals of promoting quality employment for people with disabilities.

This report would not have been possible without the time, dedication and commitment of a team of local interviewers and analysts. This team included approximately 50 people with various disabilities who collected the data and information described in this report. We would particularly like to thank R Padma, G Sailaja, B Bujji Babu, M Narashima, Suresh Digumarthi, G Krishna, Priyanka and Abdul Sajid Ali. We would like to place on record our acknowledgments to Ms. Priti Bhama for providing the graphs used in this report. We are also particularly thankful to Sreedhar Ganta, DRPI-AWARE Country Coordinator, Hyderabad, India.

We would also like to acknowledge the foundational work of Mr Bengt Lindqvist. Bengt was the co-founder and co-director of Disability Rights Promotion International. Bengt had a singular influence on disability of the 20th and well into the 21st century as a teacher, politician, advocate, and as a UN Special Rapporteur on Disability.

CONTRIBUTORS TO THE PUBLICATION

- Marcia Rioux, DRPI Principal Investigator and Project Director, Toronto, Canada
- Viswesh Sekhar, Research Scholar, Faculty of Law, Symbiosis International University, Pune, India
- Anuradha Echambadi, Swadhikaar, Hyderabad, India
- Alexis Buettgen, DRPI Research Assistant, York University, Toronto, Canada
- Paula Hearn, DRPI Project Coordinator, Toronto, Canada
- Medapati Krishna Reddy, Admin Head, Swadhikaar, Hyderabad
- Pavan Kumar Muntha, Chief Executive Officer, Swadhikaar, Hyderabad

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York University

4700 Keele Street,

Toronto, Ontario,

Canada, M3J 1P3

Email: drpi@yorku.ca,

Website: drpi.research.yorku.ca/



ABBREVIATIONS

AIR – All India Reporter

AP HC – Andhra Pradesh High Court

AWARE - Asian Workplace Approach that Respects Equality

Bom CR – Bombay Current Reports

B.Sc. – Bachelor of Science

B. Ed. – Bachelor of Education

Bom HC – Bombay High Court

CRPD – Convention on the Rights of Persons with Disabilities

DDA – Delhi Development Authority

Del HC – Delhi High Court

DLT – Delhi Law Times

DPO – Disabled Persons’ Organisation

DRPI – Disability Rights Promotion International

DTC – Delhi Transport Corporation

DTP – Desktop Publishing

EPF – Employees’ Provident Fund

ESI – Employees State Insurance

Gau HC – Guwahati High Court

ILO – International Labour Organisation

Ker HC – Kerala High Court

LCD / LED TV – Liquid Crystal Display / Light Emitting Diode Television

LIC – Life Insurance Corporation of India

Mad HC – Madras High Court

NCICT – National Centre for Information and Communication Technology

NCPEDP – National Centre for the Promotion of Employment of Disabled People

NHFDC – National Handicapped Finance Development Corporation

NSSO – National Statistical Survey Organisation

OM – Official Memorandum

PIL – Public Interest Litigation

PSU – Public Sector Undertaking

PwD Act – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

RPD Act – Rights of Persons with Disabilities Act, 2016

SC – Supreme Court [India]

SCALE – Supreme Court Almanac

SCC – Supreme Court Cases

STD/ISD/PCO – Public Telephone Booth

Supp. – Supplementary Volume

TTC – Ticket Tallying Clerk

UDC – Upper Division Clerk

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities

UPSC – Union Public Service Commission

WP – Writ Petition

WP (C) – Writ Petition (Civil)

PREFACE

"Nihil de nobis, sine nobis" or "Nothing about us, without us" has been the clarion call of the disability movement worldwide. SWADHIKAAR Centre for Disabilities Information, Research and Resource Development, a national-level DPO based in Hyderabad (India) is an organisation that believes in this motto. It has been involved in training and capacity building for persons with disabilities and various marginalised social groups. The organisation provides education and awareness about individual and collective entitlements as well as to how to access government schemes and programmes.

In this context and through our experiences, SWADHIKAAR has realised that employment is the best way to empower persons with disabilities. This report that is in front of you, a collaborative effort between the DRPI, York University and SWADHIKAAR – The DRPI AWARE Project's report on employment rights of persons with disabilities in India – is a pioneering example of nothing about us without us. This is a report by persons with disabilities about persons with disabilities. The report looks at employment rights of persons with disabilities in India in the context of the UNCRPD and the domestic law as it stood when the report was prepared. SWADHIKAAR in association with DRPI has facilitated training to persons with disabilities to understand their human rights and their right to employment in particular.

The aim of SWADHIKAAR in associating with the DRPI AWARE project was to contribute to the growth of employment of persons with disabilities in the hospitality, services and manufacturing sectors, both in the private businesses and public undertakings. The entire groundwork for this report, the data collection, the systemic analysis and the final writing of this report has been undertaken by persons with disabilities for persons with disabilities.

Individual experiences have been collected through individual interviews or focus groups discussions. We collected information about the barriers and challenges to participate in the workforce. People with disabilities were asked by other people with disabilities to tell their own stories about when they have been left out, treated badly or prevented from participating in the workforce because of their disability. These stories give us information about the real human rights situation faced by persons with disabilities. Personal interviews were conducted in Hyderabad and Secunderabad cities in Andhra Pradesh, India. A total number of 78 people were interviewed. The data was collected, collated and interviews conducted by persons with disabilities. This report is thus truly participatory.

The systemic provisions, namely, the provisions in the Disabilities Convention, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016 were then analysed holistically and critically in the background of the collected empirical data. This study has provided a benchmark to gauge the progressive realization of the CRPD and the new RPD Act which is now in place. To measure progressive realization, we need a clear set of evidence-based indicators that enable us to understand and recognize whether governments (through law and

policy), organizations (through policies, practices and programs), and communities (through regulation, policies and programs) are moving towards the ideals of the CRPD and other national and international instruments. This report provides a starting point to monitor and track the increasing employment of persons with disabilities, and especially women with disabilities, in the coming years.

PAVAN KUMAR MUNTHA,

Chief Executive Officer, SWADHIKAAR Centre for Disabilities Information, Research and Resource Development, Hyderabad.

FOREWORD

The question we need to ask is why this report at this time? In an era of evidence based advocacy, it is important that we have facts and figures to back up our advocacy and to set benchmarks for our work. With the Convention on the Rights of Persons with Disabilities (CRPD) in place, countries and NGOs have recognized the importance of understanding and monitoring the rights of persons with disabilities as fundamental to addressing issues of poverty, of inclusion, of equality and non-discrimination and of autonomy.

The CRPD, in Article 27, spells out the expectation of rights in employment for persons with disabilities.

Article 27 - Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

When the CRPD came into effect, it created a challenge for actors in the NGO sector, both at the local level and international level as well as for governments and for employers, both corporate employers, NGO employers and INGO employers. There were limited experiences and even fewer processes or government regulation, which mandated fair and equal employment opportunities or provided the how-to to get there. Best practices were scarce and even those tended to concentrate on training and job readiness practices. There was little that explored innovative ways of hiring, new ways of providing job accommodation and adaptation, and creative initiatives to shift away from presuming the problem rested with the inabilities of a person with a disability.

New strategies were needed that shifted the focus to why employers were not hiring – recognizing that people with disabilities have skills and employers have jobs that needed to be filled. The emerging question in inclusive work and employment was how do we match those two sets of skills. The CRPD provided us with an impetus to re-think what the direction of inclusive employment meant and a mandate to design a new roadmap. The era of employment as charity was challenged. Hyderabad, through Swadhikaar, took on this challenge in its work and has taken on the challenge to develop and put in place a new model in which employment is not an add-on but fundamental to the implementation of the CRPD on the groundwork and employment. In the context of Swadhikaar, it has recognized that there were many types of jobs and many types of skills and with good, skilled job matching people with disabilities get jobs and employers get better and more diverse workplaces. A business model was crafted that placed the responsibility on the employer – recognizing that they had a key obligation to identify new ways of thinking and to act on those.

We started this process – a collaboration of Disability Rights Promotion International (DRPI) and Swadhikar – by doing this study that provided us with the baselines on the situation of employment of persons with disabilities in Hyderabad. We gleaned the knowledge and insights we needed to understand the situation and to get the facts. We undertook monitoring of both the systems, laws, policies and practices and monitoring of the way in which the voices of people with disabilities were heard and included in our monitoring. What were their expectations around work and employment and what were their experiences? This type of monitoring meets the requirement of the CRPD (in Article 33). The Hyderabad baseline study, reported here, followed a methodology for monitoring that has been developed by DRPI over more than 10 years of monitoring in over 55 countries (<http://drpi.research.yorku.ca/>). It has validity and reliability.

A guiding principle of this methodology's is that persons with disabilities and representatives of their organizations have a central role as key stakeholders in disability rights monitoring. Ensuring a participatory, transformative monitoring approach empowers people with disabilities to engage in democratic processes in a meaningful way, bridging challenging gaps such as the north-south differences and the gap between researcher and research subjects - perspectives which are often found in traditional monitoring methodologies. It also facilitates the gathering of holistic data and allows monitoring reports to speak to the lived experience of people with disabilities and the way their rights are realized (or not realized) in a unique way that speaks to the purpose of all human rights activities – for people's lives to change for the better. The DRPI monitoring methodology includes three areas of monitoring, the first two of which were used in this employment study: fact finding with respect to individual experiences, monitoring systems through analyzing legislative frameworks (laws, policies, programs); and measuring societal attitudes through media monitoring. By juxtaposing the voices of people with disabilities with the legislation, policies and practices aimed at improving their lives, this report evaluates the impact of these efforts and thus provides a powerful and empowering tool for social justice in India.

From the significant findings of this study, DRPI AWARE (Asian Workplace Approach that Respects Equality (AWARE) was provided with a baseline to engage in a collaborative five-year project that is altering the perspective on employment of persons with disabilities in India as well as Nepal and Bangladesh. DRPI methodology has been adapted to specifically target the monitoring of Article 27 – Right to Work and Employment of the CRPD. The “Workshop on the Right to Work” was held in Hyderabad, India in August 2015.

Participants with disabilities focused specifically on the issues and statistics surrounding persons with disabilities and employment. In each of the three monitoring sites (Hyderabad, Dhaka, Kathmandu), Monitors used an interview guide and focus group guide to capture a more specialized data set and analysis of violations of the right to work and employment. Both the DRPI questionnaire and focus groups were designed to capture various components of the employment process; including experiences of people with disabilities while job searching, during the interview process, during the training process, and on the job. People with disabilities themselves carried out the data collection, analyzed the data, and wrote this monitoring report ensuring these activities were by people with disabilities, for people with disabilities. Monitoring results are assisting in identifying barriers to employment, which will help direct best practices for increasing sustainable employment for persons with disabilities. The module developed during this project may be used in other regions.

A report is never carved out by one person but is the work of a team with each person contributing their knowledge and skill. Disability Rights Promotion International in collaboration with our partner Swadhikaar are pleased to present this report which provides an overview of the state of the right to employment in Hyderabad, India. It is providing us with a solid base on which to at once, highlight the strong, supportive elements, which were already in place as we began this work, and to address the changes that are needed. It is never an easy task to bring together job seekers, employers, disabled persons organizations, government officials and human rights officials to get an idea of how to push forward an innovative and critical agenda.

Getting people with disabilities jobs is important to an inclusion agenda and we need to know the facts and to have evidence-based information for this to happen. Now, Hyderabad, India truly has a powerful evidence based monitoring report on the state of employment for people with disabilities. This report represents a giant step forward for people with disabilities in India to achieve the right to work.

Marcia Rioux, C.M., PhD

Distinguished Research Professor, York University

Co- Director, DRPI and Director, DRPI Aware

LIST OF CASES

- *Anand Bihari v. State of Rajasthan* AIR 1991 SC 1003
- *Ashok M Sharmili v. State Bank of India* (2001) Supp Bom CR 132 (Bom HC)
- *Bhagwan Dass v. Punjab State Electricity Board* (2008) 1 SCC 579
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- *Dr. Jagadish Saran and Others v. Union of India* (1980) 2 SCC 768
- *Government of India, through its Secretary v. Ravi Prakash Gupta and Another* (2010) 7 SCC 626
- *Indian Railway Public Telephone Booth Holders Association (Handicapped Persons) v. General Manager* WP (C) No. 77783 and 13669 of 2005 (Ker HC)
- *Indra Sawhney v. Union of India* AIR 1993 SC 477
- *Jaswant Singh v. State of Punjab* (1996) 10 SCC 570: 1996 (7) SCALE 479 (SC)
- *Kumar Bharat Prasad Narian Singh v. Airports Authority of India* 120 (2005) DLT 545 (Delhi HC)
- *Kunal Singh v. Union of India* AIR 2003 SC 1623
- *M Sasikaumar v. Union of India* WP No, 14480 of 2007 (Mad HC)
- *Maharashtra Ektha Hawkers' Association v. Municipal Corporation, Greater Mumbai* AIR 2007 (Supp) 523
- *Narendra Kumar Chandala v. State of Haryana* AIR 1995 SC 519: (1994) 4 SCC 460
- *National Federation for the Blind v. State of Maharashtra* 2005 (I) Bom. CR 740 (Bom HC)
- *National Federation of the Blind v. Union Public Service Commission* AIR 1993 SC 1916
- *P Sharma v. Delhi Transport Corporation* 125 (2005) DLT 742 (Del HC)
- *Omvati Kalshan v. Delhi Development Authority* 125 (2005) DLT 57 (Del HC)
- *R K Sabarwal v. Union of India* (1995) 2 SCC 745
- *R Manoj Kumar v. University of Hyderabad* WP No. 70074/2002 (AP HC)
- *Rajkumar Suraj Gupta v. Western Railway* WP 2610 of 2003 (Bom HC)
- *Tami Tamiang v. State of Arunachal Pradesh* PIL No. 11 of 2007 (Gau HC)
- *Union of India and Another v. National Federation of the Blind* (2013) 10 SCC 772
- *Union of India through Western Railway v. Sanjay Kumar Jain* 102 (2003) DLT 525 (Del HC)



[L-R: PAVAN MUNTHA, (CEO, SWADHIKAAR, INDIA), SHUDARSON SUBEDI (PRESIDENT, NATIONAL FEDERATION OF THE DISABLED, NEPAL) & ABDUS SATTAR DULAL (EXECUTIVE DIRECTOR, BANGLADESH PROTIBHANDI KALYAN SOMITY)

The photograph above shows Pavan Muntha, Shudarson Subedi and Abdus Sattar (all facing the camera) seated at a round table signing certificates for the DRPI-AWARE Workshop's' Participants.



DRPI – AWARE MONITORING TRAINING PARTICIPANTS IN HYDERABAD, INDIA

The photograph is a group photograph of around 25 participants (all facing the camera) with some of them sitting and some of them standing taken at Hyderabad, India. The banner of the workshop is being held by some participants in the back row (standing) and two of the participants are in the foreground.

EXECUTIVE SUMMARY

This report presents an overview of individual experiences and systemic data concerning the right to work for persons with disabilities in India. The report is part of the AWARE Project conducted by DRPI in Hyderabad in Andhra Pradesh, India. A total of 78 people with various physical, sensory and intellectual disabilities participated in this study. The research team also consists of people with various disabilities.

Several key issues came to light through this study. We found there is a substantial lack of respect for difference and discrimination in the workplace. We also found that accessibility and reasonable accommodation are challenges for employees with disabilities, especially those who are working in the private formal and informal economy. Interestingly, participants employed in the public sector, such as banks, experienced little to no challenges with accessibility. Women with disabilities appear to experience more hostile discrimination than men with disabilities. Income security and security of employment also emerged as areas of concern.

Most persons with disabilities felt that they were excluded from the open labour market because they were different. While some had a strong desire to work and lead independent lives, they faced barriers and opposition from many quarters, including their own families. People with disabilities reported that their family members would rather keep and provide for their disabled family members rather than allow them to go to work outside the home.

Education appears to be a mitigating factor. Those participants with higher formal education levels were more likely to work at white collar jobs in the public sector, have a higher standard of living and greater awareness of disability rights. Participants with lower levels of education appear to be more likely to work in tailoring, embroidery and bag making within the informal sector.

Accessibility and reasonable accommodation continue to be challenges faced by persons with disabilities in work and employment. Lack of accessibility and reasonable accommodations can be a major disincentive to workers with disabilities in the rural areas and those employed in the informal economy.

The employment of persons with disabilities is equally impacted by general discrimination in the labour force and in families and in the ability of persons with disabilities to obtain appropriate education and skills as well as by systemic factors found in government, law policy and practice. It is the interaction of these factors that lead to the dramatic under and unemployment of people with disabilities found by this study. More open attitudes and a new law, will hopefully open opportunities.

We reviewed relevant laws, policies, programs and other schemes that impact employment for persons with disabilities. Accordingly, we have provided descriptions of the systemic barriers and opportunities. One of these opportunities is the new Rights of Persons with Disabilities Act, 2016.

The purpose of the RPD Act, 2016 is to implement the provisions of the CRPD in India. India signed the CRPD in 2007. The PwD Act, 1995 was falling short of the standards set in the CRPD. There were two Bills that were tabled before the 2014 Rights of Persons with Disabilities Bill but it was the 2014 Bill that finally was passed in 2016 and has become the law governing persons with disabilities in India now.

Our systemic review demonstrates the extent of national and international support for the employment of persons with disabilities. We have highlighted where and how disability is taken up in various laws, policies, human rights standards, rules, regulations, government schemes, etc. Our analysis indicates that the RPD Act, 2016 addresses several of the key issues brought to light in our research. We are hopeful for change if the Act is realized as promised, but recognize the need for ongoing monitoring of the implementation of the Act.

Sensitisation and awareness of the specific needs of persons with disabilities is important in all aspects of life. Reportedly, governments have been lax in addressing the concerns of persons with disabilities when they face issues in their workplaces like parity in pay. There continues to be issues in accessible public and private environments, continued discrimination and lack of respect for difference, limited provisions of reasonable accommodation and other supports to help persons with disabilities obtain and retain employment.

This study has provided a benchmark to gauge the progressive realization of the CRPD and the new RPD Act which is now in place. To measure progressive realization, we need a clear set of evidence-based indicators that enable us to understand and recognize whether governments (through law and policy), organizations (through policies, practices and programs), and communities (through regulation, policies and programs) are moving towards the ideals of the CRPD and other national and international instruments. This report provides a starting point to monitor and track the increased employment of persons with disabilities, especially women with disabilities, in the coming years.

In the interest of brevity, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is cited as the PwD Act, 1995 or the PwD Act. The Rights of Persons with Disabilities Act, 2016 is cited as the RPD Act, 2016 or the RPD Act. The United Nations Convention on the Rights of Persons with Disabilities is cited as the UNCRPD or the CRPD.



[L-R: MONICA ACKERMANN (DRPI – AWARE CONSULTANT), SREEDHAR GANTA (DRPI – AWARE INDIA COORDINATOR) & PAVAN MUNTHA (CEO, SWAADHIKAR)

This photograph shows Monica Ackermann and Sreedhar Ganta working on their laptops while Pavan Muntha who is seated at the extreme right looks on.



D MART STORE AND HUMAN RESOURCES MANAGERS, AND WITH AN EMPLOYEE WITH DISABILITY, SREEDHAR GANTA (DRPI – AWARE INDIA COORDINATOR), PAVAN MUNTHA (CEO, SWAADHIKAR), DR. MARCIA RIOUX, (DIRECTOR, DRPI AWARE) & MONICA ACKERMANN (DRPI – AWARE CONSULTANT)

This photograph has seven people standing, facing the camera and smiling. There are the store manager and Human Resource Manager of D Mart standing at the extreme left, flanked by Pavan Muntha and employees with disability along with Dr. Marcia Rioux and Monica Ackermann on the right

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Ms. LAKSHMI (WAL-MART'S HUMAN RESOURCES MANAGER) WITH EMPLOYEES WITH DISABILITIES & MONICA AKERMAN (DRPI – AWARE CONSULTANT)

This photograph shows four people standing and smiling, facing the camera. At the extreme left is Ms. Lakshmi (Wal-Mart's Human Resource Manager) with two employees with disabilities who work with her at Wal – Mart, standing to her right. Monica Ackermann is the fourth person in the photograph and is seen smiling at the extreme right of the frame.

INTRODUCTION

This is a holistic report of individual experiences and systemic data concerning the right to work of the AWARE Project conducted by DRPI in Hyderabad and Secunderabad in Andhra Pradesh, India. The study was conducted prior to the coming into force of the Rights of Persons with Disabilities Act, 2016 and when the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter the PwD Act, 1995) were in force. There is a separate section in this work dedicated to give the reader a brief overview of the content and context of the new Rights of Persons with Disabilities Act (hereafter the RPD Act, 2016) as compared to the provisions of the PwD Act, 1995 in work and employment. Provisions of the RPD Act are also quoted to bring out the changed scenarios as compared to the situation that prevailed when the PwD Act was in place.

Individual experiences have been collected through personal interviews. Through interviews or focus groups, stories were collected about when persons with disabilities have faced barriers and challenges in participating in the workforce. People were asked to tell their own stories about when they have been left out, treated badly or prevented from participating because of their disability. These stories give us information about the lived experience of discrimination faced by persons with disabilities. Although the individual experiences are past experiences, the nature and consequences of these experiences would have differed if the RPD Act, 2016, were in place as compared to the pre-convention PwD Act. For instance, persons with disabilities have remedies under the new Act (which were absent under the old legislation) for offences of insulting and intimidating a person with disability due to the person's disability. These changed realities when compared to past experiences under the old disability law regime in India have also been highlighted at appropriate places.

Sometimes persons with disabilities do not think it will make a difference to report the mistreatment or exclusion that they experience. Sometimes people may fear that they will face more abuse if they report mistreatment or exclusion. The reality is that documenting and reporting individual cases like these that happen both in and out of the workplace, in the family and other private settings is important because it raises awareness and can lead to changing these conditions. This information may also uncover what is really going on and make it difficult for governments to claim that rights are being respected when they are not. This is an area where the RPD Act, by creating an offence of insulting or intimidating a person with disability has empowered persons with disabilities in India. Section 92(a) of the RPD Act, 2016 makes insulting or intimidating a person with disability in public an offence punishable with up to a maximum of five years of imprisonment and a fine. Chapter XIII of the new Act makes provisions for Special Courts to try offences under the Act. Such provisions were conspicuously absent in the PwD Act.

Guiding Principles

DRPI uses five general human rights principles found in the United Nations Convention on the Rights of Persons with Disabilities [CRPD] to provide guidance about how the right to employment should be understood and applied. The five general human rights principles are the following:

- a. Dignity
- b. Autonomy
- c. Participation, inclusion and accessibility
- d. Non-discrimination and equality
- e. Respect for difference.

Rather than merely recording what services are available to persons with disabilities in India or what the Indian or State Governments have promised to persons with disabilities, these five principles help to measure whether the right to employment is being respected and put in place in a meaningful way. These five yardsticks also provide a global measure to compare and contrast what is happening in different countries and regions of the country and the world.

These principles have allowed monitors not only to record if a service has been provided but to see in which way the service is being provided. For example, not just recording whether a person has some form of employment but looking further to see whether they can choose the kind of employment that they want (respecting autonomy) and whether the work is productive and takes place in conditions of freedom, equity, security and respect for the person's wellbeing (respecting dignity).

The goal of this individual experience monitoring exercise is to be sustainable, so that persons with disabilities and disabled persons organisations are able to gather information about the disabled person's right to employment and in that sense, it is an on-going process.

This is also not a onetime audit but an on-going process of collecting information, adding to it and seeing if changes are taking place. To be effective, monitoring must continue over time. The first time that monitoring information is collected provides a starting point for identifying changes that need to be made in the environment and everywhere else to ensure that persons with disabilities enjoy all their rights including that of work and employment more effectively and realistically.

It must be noted that it is only by monitoring again after certain amount of time has elapsed that we can find out if the situation has improved or deteriorated. Whether we are headed in the correct direction, has discrimination reduced, are laws and policies being implemented as they ought to be, is disrespect for people's dignity being addressed, are technological advancements helping persons with disabilities and making their lives better are all questions that only continuous monitoring will answer satisfactorily.

Persons with disabilities who have experienced discrimination have answered these questions and have to an extent engaged in self-analysis. They are the experts about their own lives and livelihoods, work and employment. As people have become empowered to view themselves as right holders, it becomes obvious that it is important to continue to monitor and track, seek penalties for abuse and attempt to bring about social change.

An attempt is made to study the individual experiences that have been monitored and bring out the holistic picture of the right to work and employment of persons with disabilities in India from the perspective of a person with disability as an expert in his own life reality.

The systemic data analysis first compares the international standards concerning the right to work, including the provisions in the UNCRPD, the Standard Rules and ILO standards. The domestic law is stated and analysed along with policies and programmes concerning the right to work of persons with disabilities. The reader must note that the domestic statute that prevailed when the study was conducted was the now repealed PwD Act, 1995. However as stated earlier, the provisions of the new RPD Act, 2016 are incorporated and analysed wherever relevant and required.

METHODOLOGY

The DRPI monitoring methodology helped us to gain a holistic understanding of employment for persons with disabilities across the region. The DRPI methodology has three broad areas for monitoring the rights of persons with disabilities. The methodology has been developed to support the goals of the CRPD and has been field tested in five continents around the world. The methodology includes: monitoring systems, monitoring individual experiences and monitoring media. Human rights monitoring has been broken down into these areas to find discrete pieces of knowledge to paint a picture of the current situation faced by individuals with disabilities. Data collected during the monitoring activities in all three areas can be used as evidence for advocacy efforts and improved government policies and laws.

The methodology for this study has been adapted to include individual experiences and monitoring systems. Individual experiences have been collected through individual interviews or focus groups. We collected information about the barriers and challenges to participate in the workforce. People with disabilities were asked by other people with disabilities to tell their own stories about when they have been left out, treated badly or prevented from participating because of their disability. These stories give us information about the real human rights situation faced by persons with disabilities.

Participant Demographics

Personal interviews were conducted in Hyderabad and Secunderabad cities in Andhra Pradesh, India. A total number of 78 persons were interviewed. The spectrum of disabilities covered ranged from mobility to multiple disabilities. Two persons interviewed had an unassigned disability while three had intellectual disabilities. No participant had any

psychosocial disability. A majority of the persons interviewed had mobility related disabilities. The table below (Table 1) shows the distribution of the disability vis-à-vis the number of persons interviewed.

Table 1: Participants' disability type

TYPE OF DISABILITY	NUMBER OF CASES
Unassigned	02
Mobility	50
Sensory (Blind / low vision)	10
Intellectual	03
Sensory (deaf / hard of hearing)	10
Multiple	03
TOTAL	78

Table 1 showing participants disability type is a table with two columns and seven rows. The first header row has “type of disability” and “number of cases” on the left and right respectively. The other five rows starting from the header, from top to bottom, rows two to seven, on the left are six types of disabilities, “Unassigned”, “Mobility”, “Sensory (blind/low vision)”, “Intellectual”, “Sensory (deaf / hard of hearing)” and “Multiple”. The respective column on the right gives the numbers of such participants parallel to the type of disability. There were two participants with unassigned disability, 50 participants with mobility related disabilities, 10 persons with sensory (blind / low vision) disabilities, three participants with intellectual disabilities, 10 participants with sensory disability (deaf / hard of hearing) and three persons with multiple disabilities. The last row lists out the total as 78 participants with these six kinds of disabilities.

Out of the 78 participants, 50 were male and 28 were female and no participant was transgender or was of an unassigned gender.

Most participants (n=62, 75%) were between the ages of 26-45 years. The age-wise distribution of participants is given in Table II below.

Table 2: Participant's age

AGE GROUP	NUMBER OF CASES
Unassigned	02
18-25	05
26-35	32
36-45	30
46-60	09
60+	00
TOTAL	78

Table 2 showing participants by age is a table with two columns and eight rows. The first header row has “age-group” and “number of cases” on the left and right respectively. The other seven rows starting from the header, from top to bottom, rows two to seven, on the left are six ranges of age, “Unassigned”, “18-25”, “26-35”, “36-45”, “46-60” and “60+”. The respective column on the right gives the numbers of such participants parallel to the age range. There were two participants with unassigned age, 5 participants in the age-range of 18-25, 32 persons between ages 26-35, 30 participants in the age group 36-45, nine participants between 46 to 60 years of age and no person who was 60 or above. The last row lists out the total as 78 participants within these age-ranges.

About one third of participants (n=26, 33%) had previous vocational training. However, more than half of all participants (n=46, 59%) were graduates, postgraduates and above. Table 3 below gives the formal education level breakdown of the participants in the personal interviews.

Table 3: Participants' level of education

LEVEL OF EDUCATION	NUMBER OF PARTICIPANTS
Unassigned	02
Primary School	03
Secondary School	15
Intermediate	17
Graduation	31
Post-Graduation	09
Above Post Graduation	06
TOTAL	78

Table 3 showing participants' level of education is a table with two columns and nine rows. The first header row has “level of education” and “number of participants” on the left and right respectively. The other five rows starting from the header, from top to bottom, rows two to eight, on the left are six levels of education, “Unassigned”, “Primary School”, “Secondary School”, “Intermediate”, “Graduation”, “Post-Graduation” and “Above Post Graduation”. The respective column on the right gives the numbers of such participants parallel to the level of education. There were two participants with unassigned level of education, three participants who had primary education, 15 persons with secondary education, 17 persons with an intermediate level of education, 31 graduates, nine post-graduates and six persons who had qualifications above post-graduation. The last row lists out the total as 78 participants with these seven levels of education.

Some participants (n=13, 17%) were interviewed with their parents. About one third of participants (n=52, 67%) were interviewed with their own families. The majority (n=70, 90%) lived in concrete structures.

About half (n=40, 51%) of all participants were employed, while 25 participants (32%) were unemployed and 13 participants (17%) were self-employed.

About half of all participants (n=45, 58%) were members of a DPO.

Analytical framework

In accordance with study's guiding principles, we analysed interview data on the basis of experiences related to:

- a. Autonomy
- b. Dignity
- c. Non-Discrimination and Equality
- d. Participation, Inclusion and Accessibility
- e. Respect for Difference

These were juxtaposed with the following parameters:

- a. Self Determination
- b. Lack of Autonomy
- c. Lack of Dignity
- d. Dignity
- e. Discrimination and Inequality
- f. Non-Discrimination and Equality
- g. Exclusion and Lack of Accessibility
- h. Inclusion and Accessibility
- i. Respect
- j. Lack of Respect

The analysis in the following pages deals with the following areas:

- a. Privacy and Family Life
- b. Education
- c. Work
- d. Social Participation
- e. Access to Justice
- f. Income Security and Support Services
- g. Health, habitation and rehabilitation
- h. Information and Communication

Findings, wherever significant in respect to the right to work and employment have been analysed and presented with inputs from the statistical data analysis and personal interviews.

The systemic data analysis is a doctrinal study of the International standards concerning the right to work consisting of an analysis of the UNCRPD principles, Standard Rules and ILO standards. Provisions in domestic statute that prevailed at the time of the study, the PwD Act, 1995 have been stated and analysed. The corresponding provisions of the RPD Act, 2016 have also been cited to bring out the change in the disability discourse in the country after the adoption of the new law. Judicial pronouncements of the Supreme Court of India and the various High Courts concerning the right to work and employment have been critically examined in this report. The systemic analysis draws conclusions from the provisions of law as enacted and interpreted by the Indian judiciary from time to time. The RPD Act at the time of writing is too new to have undergone judicial interpretation but the law laid down by the superior courts in this country will prevail in so far as the pronouncement does not go directly against or contravene the new statute. For instance, Section 47(1) of the PwD Act which provided that no government establishment shall dispense with the services or reduce the rank of an employee who has acquired a disability during his employment is substituted with a similar provision in Section 20(4) in the RPD Act. Courts in India are constitutionally obliged and are also bound by the law of precedent to apply the same principles of interpretation when it comes to treatment of a petitioner approaching the Court under Section 20(4) of the RPD Act, 2016.

The Courts in India have started relying increasingly on the CRPD principles and provisions to interpret the statutory provisions. See for example, the 2015 case of *Jeeja Ghosh v. Union of India*. It is expected that the Courts would have no hesitation to adopt in their decisions a disabled friendly, rights-based approach which is, in any case, facilitated by the RPD Act which has been enacted to bring the CRPD into full effect in India.

THE RESEARCH CONTEXT

Research for the present study was conducted in the cities of Hyderabad and Secuderabad in Andhra Pradesh, India.

Figure 1: Map of now bifurcated Andhra Pradesh

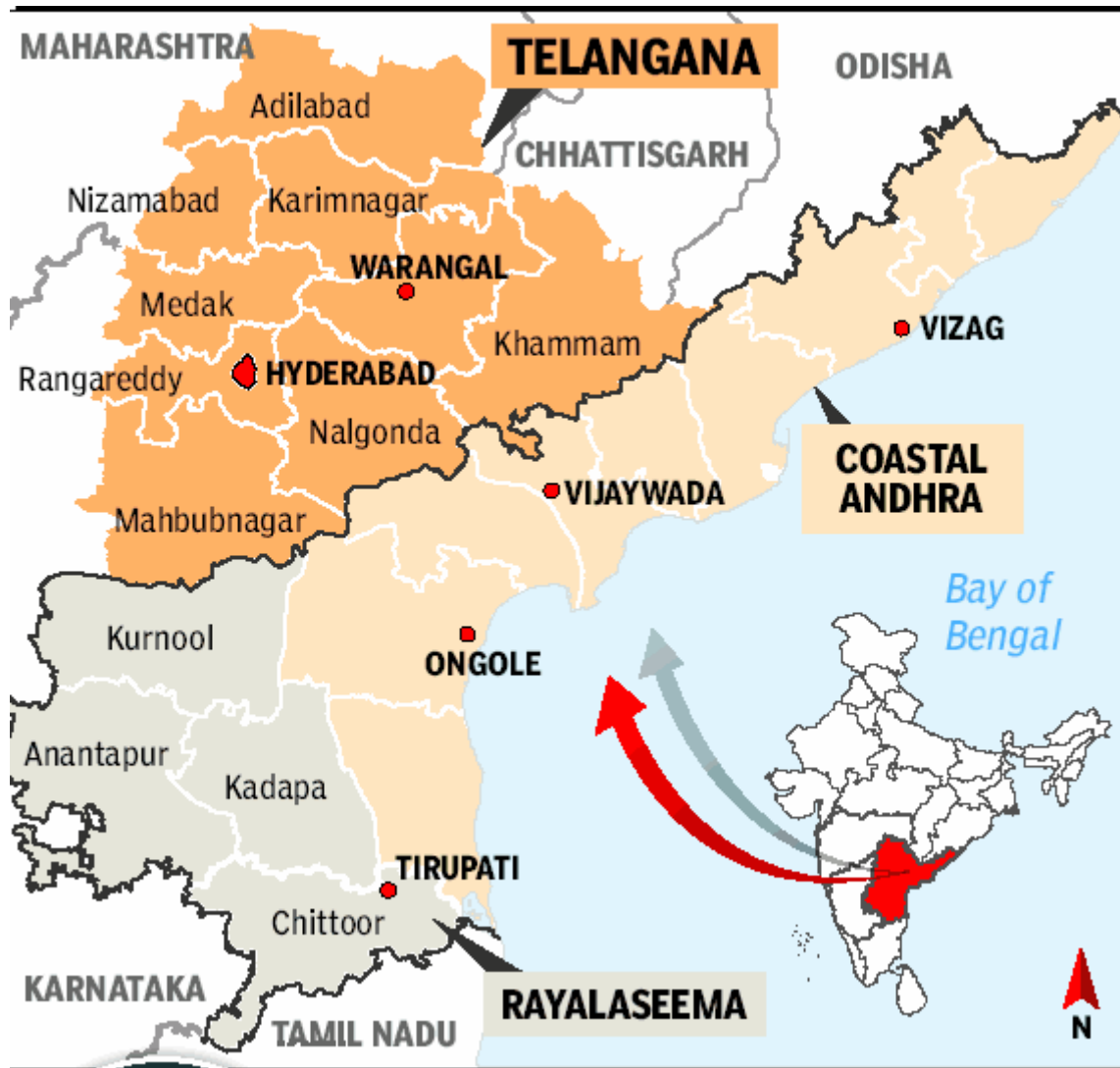


Figure One is a map of the now bifurcated state of Andhra Pradesh. Odisha, Chhattisgarh and Telangana States form the northern boundary. On the west and south are the States of Karnataka and Tamil Nadu respectively. The Bay of Bengal forms the eastern coast of Andhra Pradesh. The coordinates are 16.50° N 80.64° E. Insets show the relative position of Andhra Pradesh in India and the legend of the map.

Capital: Hyderabad / Amravati

Population: 49,386,799

Percentage of Rural Population: 70.4%

Sex Ratio: 996

Literacy Rate: 74% [Male], 60% [Female]

Working Population: 2, 6,416,893 [53.5%]

Persons with Disabilities: 2,266,607

Statistics as per 2011 Census, Current as on May 2014.

As of 2011, Hyderabad had a total population of 618,000 and Secunderabad had a total population of 213,698.

FINDINGS

The following section presents the findings of our research. We begin our findings with an overview of disability law in India.

The right to work: Individual experiences

The following sections present our analysis in relation to privacy and family life; education; work; social participation; access to justice; income security and support services; health, habitation and rehabilitation; information and communication.

Privacy and family life

Some persons with disabilities have spent most of their lives inside their homes. One participant said that as a disabled person, he grew up in life without any contact with the outside world. The perception is that they are different from the others and therefore are incapable of finding work in the “outside” world – the usual labour market. They make a living by doing small odd jobs near their places of residence.

A 41-year-old female participant with a mobility related disability said

“As I am disabled, I grew up in life without having any contact with the outside world. It is only recently that I began to go out. Life is much more interesting now than earlier, as I am able to get about. I did not have a bus pass before but I have one now and that also makes my travel easier. Truth to tell, I did not even know that persons with disabilities were issued a medical certificate and most definitely do not know where such certificates are issued, as I have always remained inside my house. A few persons with disabilities who are acquaintances told me about all this and so I have also applied for them now. I do not get out of the house. I did do some small odd jobs here and there but these were also very close to my house”. The dependence of a disabled person on his or her family is strong. One subject “had hopes that his grandfather would sell his lands and help the disabled person start a business in the village as the grandfather was sure that he would not find a suitable job in the city.



Photograph above shows a woman participant, smiling and facing the camera, with a mobility related disability (lower limbs) operating machinery.

Some subjects felt “*ashamed*” to venture out because of their disability. There are instances of persons who have remained unemployed and confined to their houses for more than five years at a time.

Another person felt “*insulted and neglected*” when her family pointed out that she was disabled and they offered to “*take care of her for the rest of her life if she stayed at home instead of going out and finding work*”.

Persons with disabilities have often faced issues when called by disrespectful terms related to their disability even by their own family members and relatives. A 29-year-old male participant, in response to a question said:

“Who can I complain to about the way my relatives treated me? Even if I did, there was nothing much that will happen. There is no difference in discrimination, be it in the family or outside in society, discrimination remains the same against persons with disabilities because of their disability. The situation is so bad that we disabled have come to learn to cope, because the society will not stop abusing or discriminating persons with disabilities. It is we who have made ourselves inured to the others’ insults and abuse. How else can I live peacefully?”

This sort of experience is bound to change if Section 92(a) of the RPD Act is strictly enforced. Section 92 provides that whoever intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view shall be punished with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Furthermore, the prosecution for these offences shall be dealt with by a Special Court with a Special Public Prosecutor under the provisions of Chapter XIII of the RPD Act, 2016.

The following graph reflects the percentage of participants with disabilities who experienced dignity, self-determination, inclusion and accessibility, non-discrimination and equality, and respect (or the lack thereof) in relation to their privacy and family life. The graph indicates a range of various positive and negative experiences in privacy and family life. About half of all participants enjoyed self-determination, inclusion and accessibility. Between one third and a half of all participants experienced a lack of dignity, discrimination and inequality, and a lack of respect.

Figure 2: Experiences in privacy and family life

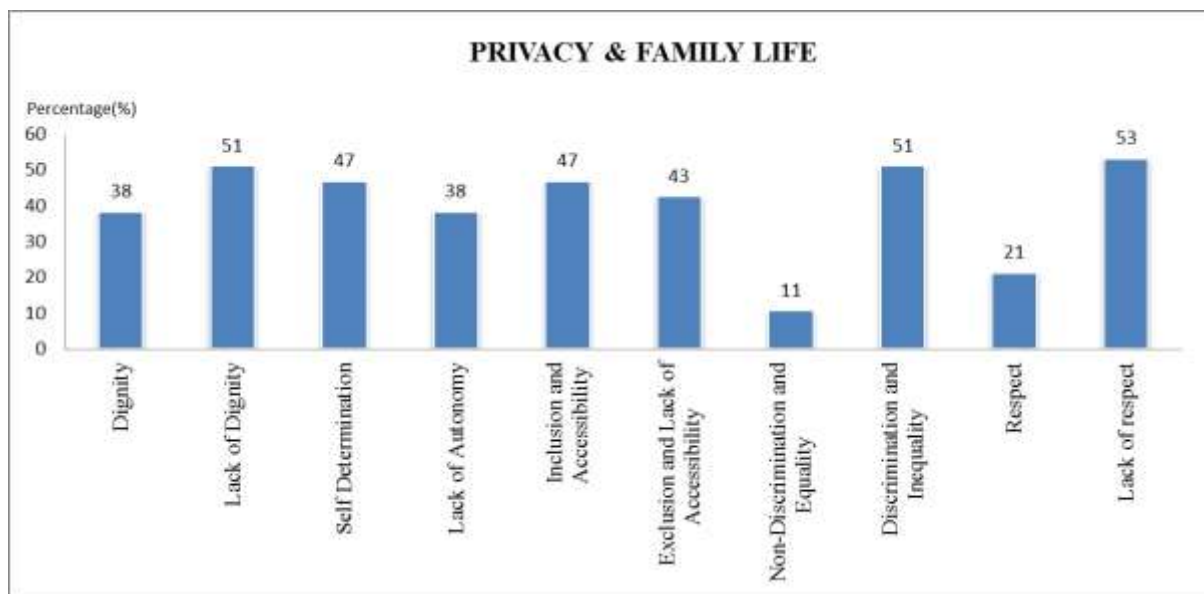


Figure Two, experiences in privacy and family life, is a bar graph with percentages (from 0-60, in divisions of ten) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that 38% of the participants reported dignity (first bar) while 51% reported lack of dignity (second bar). The third and fourth bar are figures for self determination and lack of autonomy at 47% and 38% respectively. The fifth bar is inclusion and accessibility with a reading of 47%. Exclusion and lack of accessibility were reported by 43% of the participants which is reflected in the sixth bar. The seventh and eighth bar are non-discrimination and equality and discrimination and equality showing readings of 11% and 51%. 21% of the participants felt respect as reflected in the ninth bar and the highest reading of 53% reflected in the last bar to the right is lack of respect felt by the participants.

Participants with mobility disabilities faced much discrimination and inequality. Twenty-seven participants with mobility disabilities faced this problem. Lack of respect was also reported from many participants.

Education

Many of the participants had basic education and had at least tried to pursue higher education through open universities or through other means. Most the participants were either graduates, post-graduates or had higher qualifications than a post-graduate degree. Most participants had vocational training and this helped them obtain jobs.

The level of education and the kind of job had a direct correlation. Participants with lower education had lesser paying jobs that involved labour like “weeding the garden”, “washing utensils” and were often left at the mercy of their caregivers who sometimes did not pay them any money at all. One participant with an intellectual disability confessed that she “*was not paid and needed no money as her ‘madam’ took care of all her needs*”. Another participant who was paid a salary of ₹. 1,000/- a month complained that his payments were often “*delayed*”.

The RPD Act has provisions for Skill Development and Employment in Chapter IV. Section 31 provides for free education for children with benchmark disabilities. Moreover, education of the disabled population shall be inclusive and students with benchmark disabilities will be provided books, assistive equipment and learning materials free of cost up to the age of 18 years. Provisions for adult education have also been made under Chapter III dealing with education. These measures would hopefully go a long way in ensuring better education and consequently better employment opportunities for persons with disabilities.

Persons with disabilities who were educated in mainstream educational institutions have sometimes used innovative approaches to keep at par with their classmates. A visually impaired person used to carry a small tape recorder to class so that he could record the lectures. He used to return home and listen to the lectures and could perform reasonably well in his exams.

Another 27-year-old male participant who is a post graduate had the following to say about his education,

“My studies until school completed, that is, 10th class went off well, thanks to the support of all my family members. But once I joined Junior College (Intermediate), that is when I started encountering some problems. That is when I came to realise the difficulties of being a disabled person. My Junior College where I did my Intermediate was about 3 kilometres from my house and my friends would drop me on their bicycles up to 1 ½ kilometres but from there I had to go by walk and it was the same while coming back. I used to be so tired all the time that I was unable to concentrate on my education/studies and so when the final exams came, I was barely able to get through the exams, passing only in Third Class.

The conditions when I joined my Graduation the situation became a little more worse. The room where I stayed in and the college I joined were 5 kilometres apart and there was only one public transport bus available, to and from the college. Most of the time,

I would not get a seat in the bus and so had to stand and travel. This was also one of the reasons I could not concentrate on my studies. I would miss classes regularly and because of this, I was detained from the college. Even to this day, I do not know what 'detain' means.

All this made me lose interest in studies in general. But I had the picture of my elder sister in mind and so had to continue forcibly. But I think the cause for all my problems is really the society at large and its apathy to the conditions of life of persons with disabilities like me."

Another participant who was affected with polio had difficulty in attending classes in the law college he had joined for post graduate studies as the classes "were often held on the second or third floors" and he had difficulty climbing stairs. He reported that the lift was seldom in a working condition and there was "no provision for a ramp".

The life experiences of participants like these are bound to change if the provisions of the RPD Act are implemented in earnest. Although the PwD Act in Section 46(a) provided for ramps in public buildings, the expression of what constituted a public building was not defined. The RPD Act defines a public building in Section 2(w) which includes even a privately run educational institution. These buildings are to be made mandatorily accessible. No establishment, either government or private, would be allowed to build a structure that is not accessible. In the event that the Rules regarding accessibility are not followed, no certificate of completion or occupancy would be issued. These stringent norms are stipulated in Section 44 of the new Act.

However, the concern of many participants like this one who expressed disillusionment and felt that "circumstances would not change" may ring true. Section 45 which allocates the time limit takes a step backward by providing for an unreasonable period "not exceeding five years from the date of notification of the Rules" for accessibility under the Act. The proviso is another retrograde step. It reads as follows: "Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters." Considering that the Rules are yet to be notified and this proviso may be put to mischievous use, one has to but wait and watch to see how Section 44 is really going to see the light of day.

The following graph (Figure 3) reflects the percentage of participants with disabilities who experienced dignity, self-determination, inclusion and accessibility, non-discrimination and equality, and respect (or the lack thereof) in relation to their experience with education. The graph indicates that 67% of all participants experienced exclusion and a lack of accessibility, and about one third experienced a lack of respect. Conversely, about one third of participants enjoyed dignity, self-determination, and inclusion. An analysis of education of the participants by age and gender revealed that 7 male participants and no female participants experienced lack of respect with respect to education.

Figure 3: Experiences in education

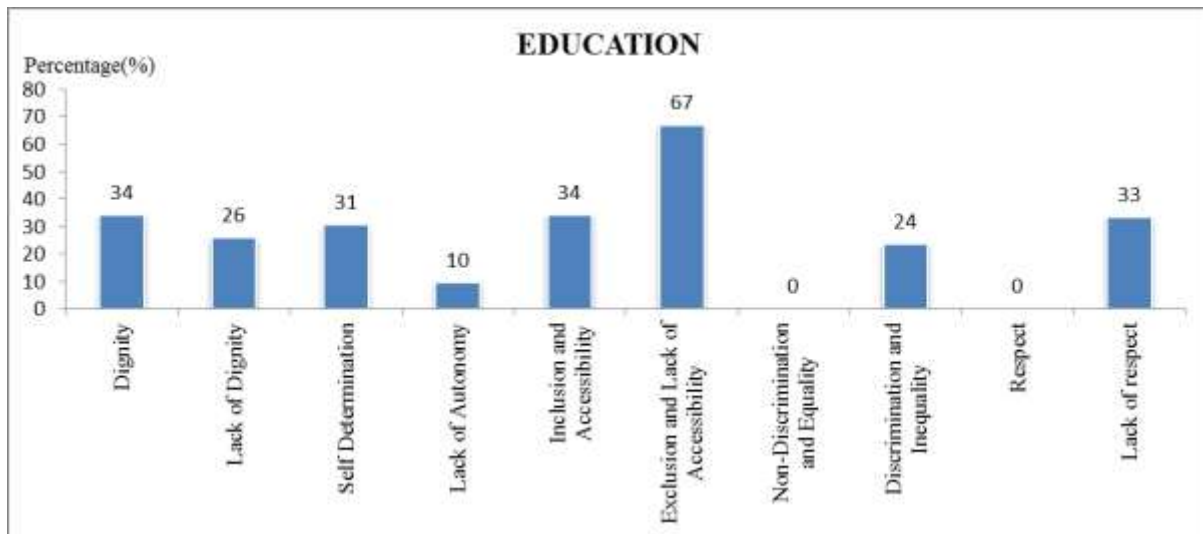
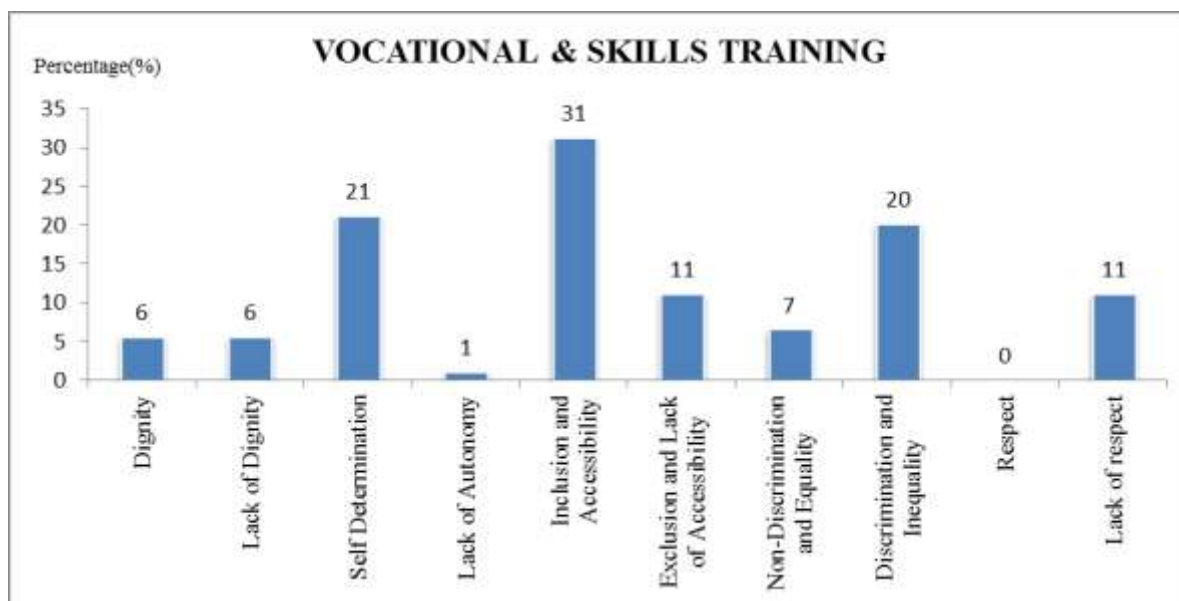


Figure Three, experiences in education, is a bar graph with percentages (from 0-80, in divisions of ten) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that 34% of the participants reported dignity (first bar) while 26% reported lack of dignity (second bar). The third and fourth bars are figures for self-determination and lack of autonomy at 31% and 10% respectively. The fifth bar is inclusion and accessibility with a reading of 34%. Exclusion and lack of accessibility were reported by 67% of the participants which is the highest figure in the bar graph as reflected in the sixth bar. The seventh and eighth bar are non-discrimination and equality and discrimination and equality showing readings of nil and 24%. None of the participants felt respect as reflected in the ninth bar and 33% reflected in the last bar to the right is lack of respect felt by the participants.

Figure 4: Experiences in vocational and skills training



The next graph (Figure 4) reflects the percentage of participants with disabilities who experienced dignity, self-determination, inclusion and accessibility, non-discrimination and equality, and respect (or the lack thereof) in relation to their experience with vocational training. This graph indicates that participants had a range of positive and negative experiences in training.

Figure Four, experiences in vocational and skills training, is a bar graph with percentages (from 0-35, in divisions of five) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that 6% of the participants reported dignity (first bar) while 6% reported lack of dignity (second bar). The third and fourth bars are figures for self-determination and lack of autonomy at 21% and 1% respectively. The fifth bar is inclusion and accessibility with a reading of 31%. Exclusion and lack of accessibility were reported by 11% of the participants as reflected in the sixth bar. The seventh and eighth bars are non-discrimination and equality and discrimination and equality showing readings of 7% and 20%. None of the participants felt respect as reflected in the ninth bar and 11% reflected in the last bar to the right is lack of respect felt by the participants.

Section 19 of the RPD, 2016 specifically provides for vocational training and self-employment via low interest loans and microcredit. These provisions were absent in the PwD Act. As such, one participant told us they had “borrowed ₹ 2 Lakh (Two Hundred Thousand Rupees) to start a tobacco shop and could not repay”. This participant discontinued his

education temporarily to venture into business and had not even “*informed his parents that he intended to discontinue his studies and start a business*”.

Work

Many participants were engaged in several jobs, depending on their education and nature of disability. Jobs included embroidery, tailoring, bag making, assistants in mechanic shops, DTP operation, work as telephone operators, rehabilitation consultants or repairing electronic goods.

Although some participants had remained unemployed for long periods of time, persons with disabilities had quit their paying jobs for various reasons. Most persons with disabilities had low-skilled and low-paying jobs. Pay raises were often denied and persons with disabilities had quit jobs because their income did not increase in spite of the fact that they had performed well in their jobs over a long period of time. In other words, they were underemployed in precarious jobs.

One participant had changed three jobs. The first one was that of a teacher. The reason for quitting that job was that the job required standing for long hours. Lack of education and colleagues telling her bluntly that her disability would make it impossible for her to find a permanent job were other reasons for quitting the job. The participant then joined a grocery store where she had to pack the grocery items into bags weighing half and one kilogram. She lost this job because packing machines were introduced in the shop. Now she does tailoring of falls and other ladies’ garments.

Some participants felt that the government was negligent to the needs of persons with disabilities. Frequent but unsuccessful visits to government offices to obtain work left them with a lot of frustration and stress.

A 23-year-old male participant revealed the following:

“The circumstances are such today that if a person with disability like me has a government job, even if it is of the lowest rank and cadre, it becomes very easy to get married and not just to a woman with disability but to a non-disabled woman and that too with her whole interest in the marriage, no one needs to force her into marrying a disabled man either. If you check the statistics of the district today, the number of men with disabilities who have crossed their 50s and are still unmarried is quite high. If this is the situation in the district, then what of the state or the country? And worse, if this is the living condition of men then imagine how bad the lives of women with disabilities must be, they cannot even speak about such things with anyone.

I did a couple of jobs before I joined the B.Ed. course. One of those was so bad, I can never forget the experience. I was given this job in an institution and looking at my plight, they gave me a place to live, a small store room but this was in the basement and my work was 5 floors above. I cannot describe the torture I experienced. If I were

to say I wanted to quit, the employer would refuse to pay my salary due to me. So, I had to continue to endure. But the end result was not good, for all my endurance, after 5 months the employer threw me out, without paying me a single paisa.

A person like me, who has such good educational qualification, B.SC and B.Ed., is finding it so difficult to get a job and my last year's struggle is a good indicator of that. But I still have to survive, so I sell handkerchiefs in a reversed umbrella at the entrance to an exhibition near the place I live. But even if I stand in the hot sun the whole day, I am not able to sell more than 5 or 6 kerchiefs per day, whereas a non-disabled person doing the same job not only sells all the products in his umbrella but goes for a refill and sells some of them too. No one will buy anything from me because they see my disability and shy away. This is the respect that the society gives to such an educated person!"

Even the male participants admitted that their female counterparts were worse off when it came to finding work and employment and felt that the government should concentrate on empowering women.

One participant was of the opinion that a government job was a panacea and he would not face *"any problems and could even marry a non-disabled person"* if he had a government job. He also stated that he is *"respected by his mother-in-law after he found a job"*, thus clearly proving that employment has a direct correlation with dignity and self-respect.



The photograph above shows a male participant with a mobility related disability, facing the camera, assembling electronic equipment.

The government cannot discriminate on the grounds of disability in giving jobs. The PwD Act which had seven disabilities reserved three per cent of posts for specified categories of

disabilities. Under the RPD Act, the number of disabilities, enumerated in the Schedule, has increased and so has the percentage of reservation. Section 34 of the new Act provides for four per cent reservation and has an elaborate mechanism stipulated for the enforcement of this Section of the new law.

The next graph (Figure 5) reflects the percentage of participants with disabilities who experienced dignity, self-determination, inclusion and accessibility, non-discrimination and equality, and respect (or the lack thereof) in relation to their experience at work. This graph indicates that about half of all participants have experienced dignity, self-determination and inclusion at work. However, lack of respect and exclusion continue to be areas of concern. Persons with mobility disabilities and those with vision impairment and low vision are the greatest sufferers. A total of 12 female participants reported lack of respect in their work environments.

Five male participants and 13 female participants felt that they faced exclusion and lack of accessibility in their work places. Five participants between the ages of 26-45 felt that there was accessibility in the work place. A total of 6 members in the same age group felt that there was lack of respect in the work place.

Figure 5: Experiences at work

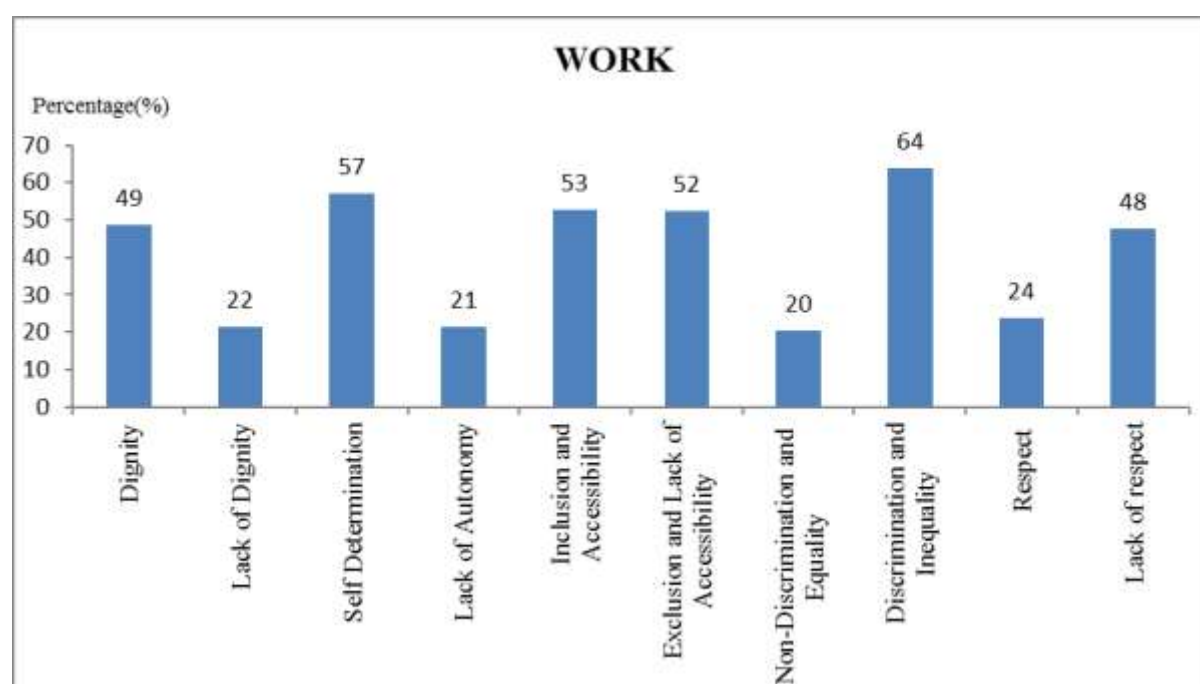


Figure Five, experiences in work, is a bar graph with percentages (from 0-70, in divisions of ten) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that 49% of the participants reported dignity (first bar) while 22%

reported lack of dignity (second bar). The third and fourth bars are figures for self-determination and lack of autonomy at 57% and 21% respectively. The fifth bar is inclusion and accessibility with a reading of 53%. Exclusion and lack of accessibility were reported by 52% of the participants as reflected in the sixth bar. The seventh and eighth bar are non-discrimination and equality and discrimination and equality showing readings of 20% and the highest at 64%. 24% of the participants felt respect as reflected in the ninth bar and 48% reflected in the last bar to the right is lack of respect felt by the participants.

Social participation

Persons with disabilities recognised that they were a part of society and had not “popped up from nowhere”. Most participants felt that there was an urgent need for reform. Sensitisation and change were elements that required urgent attention to enable persons with disabilities to participate more effectively in society.

Persons with issues of mobility, blindness and low vision and multiple disabilities continue to face hostile situations in the form of a lack of respect for difference in social participation. A total of 19 participants reported experiencing a lack of respect.

One of the participants said:

“I also think that if the government were to give greater focus on persons with severe disabilities and their issues and needs, then most of their problems could easily be solved. Politicians spend crores of money as part of their political campaigns. If even a small percentage of that money were to be spent on the welfare of persons with disabilities then our lives would be so much better. I know that this horrendous condition in which persons with disabilities are living in is because of these politicians. Otherwise, our living conditions would not be in such dire situation. I also think that a specific program should be taken up by these politicians regarding improving the lives of persons with disabilities, I wonder when God will give these politicians enough sense to think properly about the disabled? Take for example that Central Minister who walks on crutches, would he not know when he wanted to use the toilet or the bathroom, what the plight of a severely disabled person would be? He has made so many statements regarding so many issues in the Parliament sessions but has he made even a single statement regarding the disability issue? No way. These politicians are eternally hungry and greedy. When will they think of persons with disabilities, they come into politics only to become as rich as possible in the short time they are in power. Except that I am disabled, I have never had any problems in garnering the respect of others in society. But what I do not understand is why the other have so much sympathy for us. As soon as they see a person with disability, their pity and sympathy just overflow. And of course, they are respectful towards us when interacting with us? How are we to know what they say about us, out of earshot?”

Provisions that enabled social participation were absent in the PwD Act. The RPD Act, being modelled on the CRPD and having been enacted to enforce the Convention in India has many provisions that encourage participation in social life, cultural activities and sport. (Sections 29 and 30). However, it remains to be seen as to how well the new Act is implemented in these areas.

Access to Justice

Few participants knew that they could approach their elected representatives if they faced a problem. Issues of mobility and accessibility are hurdles in the entire process. Persons with disabilities often feel that they are victims. Most participants pointed to the lack of unity among persons with disabilities. There was also consensus on the opinion that complaining to the authorities would yield no results.

One participant felt that the government was getting trained in addressing issues that face the disabled population when persons with disabilities approach the governmental authorities time after time. Citing an example of getting a disability pension certificate, the participant felt that persons with disabilities were unnecessarily made to run from pillar to post a number of times to get their paperwork and entitlements. *“I had to go to the office five to six times and there was no one to help me. I feel that we (the disabled) are training the government by going to them time after time”*.

An analysis of the data gathered from personal interviews reveals that there was discrimination and inequality faced by participants in access to justice and legal capacity. There were also issues of exclusion and lack of accessibility.

When discriminated against on the grounds of disability, persons with disabilities had few avenues for access to justice. One participant told us that although he approached the agency that recruited him, there was no positive response and that the discrimination continued as the agency that recruited the disabled person failed to react in any manner whatsoever.

The next graph (Figure 6) reflects the percentage of participants with disabilities who experienced dignity, self-determination, inclusion and accessibility, non-discrimination and equality, and respect (or the lack thereof) in relation to their experiences accessing justice.

Figure 6: Experiences accessing justice

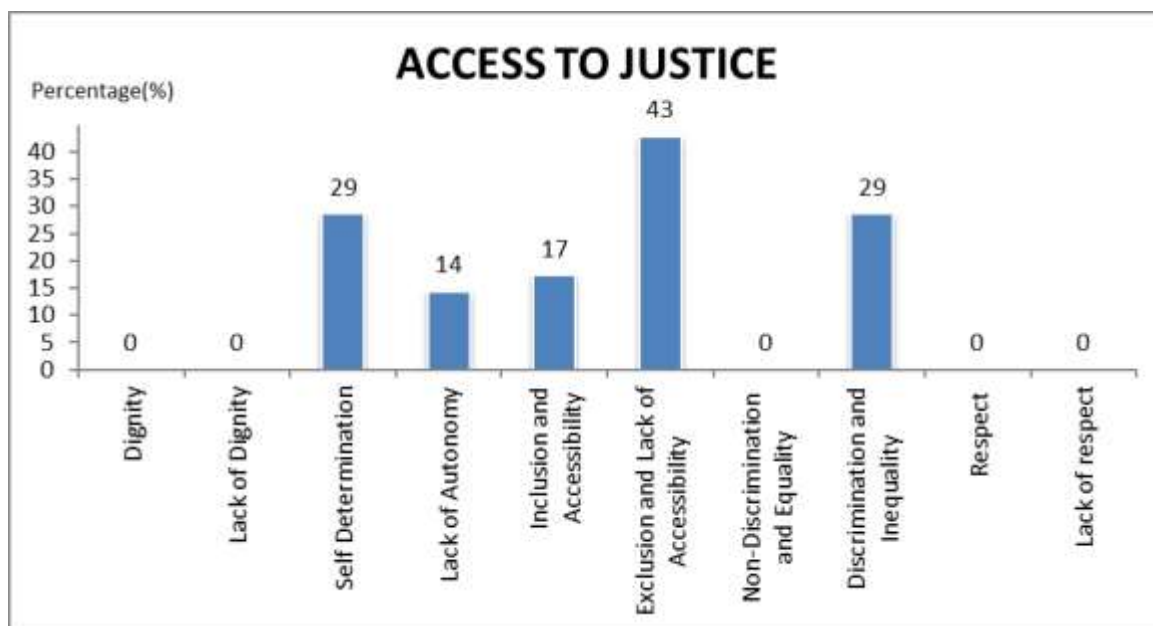


Figure Six, access to justice, is a bar graph with percentages (from 0-40, in divisions of five) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that 0% of the participants reported dignity or lack of dignity (first two bars) and respect or lack of respect (last two bars). The third and fourth bars are figures for self-determination and lack of autonomy at 29% and 14% respectively. The fifth bar is inclusion and accessibility with a reading of 17%. Exclusion and lack of accessibility were reported by a high number of 43% of the participants which is the highest figure in the bar graph as reflected in the sixth bar. The seventh and eighth bar are non-discrimination and equality and discrimination and equality showing readings of nil and 29%.

Unlike the PwD Act, the RPD Act has made specific provision for access to justice in Section 12. The Legal Services Authority shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others. The appropriate Government shall take steps to ensure that all their public documents are in accessible formats; ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.

Income security and support services

Persons with disabilities have relatively less job security than persons without disabilities. An example is a subject who quit his job as an assistant in a mechanic shop to return to his village. When he returned to Hyderabad after a gap of three years, the ownership of the garage had changed and all his colleagues had also quit their jobs. This person has been unemployed for six months now.

One participant had the following to say:

“For the last 6 months, I have been unemployed. I do have certain skills training in the vocation of repairing tape recorders and TVs but I do not have the wherewithal to fund a business to set up a repair shop on my own and I do not know of anyone else also who is willing to help me set it up. I also know how to do DTP work as well as data entry work. I am searching around for a job where I would be able to make use of the skills that I have learnt. My grandfather would tell me that once I grew up, he would sell the small half acre land that he had and would set me up a business in my village, because he said as I was disabled, I would not be able to find any paying jobs in the city. I did try for jobs in the city after my studies but when I understood that he was right and went back to my village, he was dead, my grandmother would not recognise me and the land he promised to sell and set up my business was under mortgage. When I realised that nothing much could be done with that kind of a situation, I came back to the city. My brother had said that, as my grandmother was not well, maybe if I stayed with her during her last days on earth, I might be able to get some help. I was also tempted and decided to stay but given the mental set up of my grandmother, it was impossible for me to continue to stay there, when I clearly knew she would be of no help to me. So, I came back to the city.”

The participant also said

“I did not attend any specific courses. I only learnt how to do DTP work, in order to know how to use a computer, to develop my software skills. I come from the Coastal district of Prakasham and the Department of Rural Development provided me with the training in mechanic work at my village. I was taught how to repair black and white TVs, radios and tape recorders at that time. I saved around 15 Thousand Rupees when I was working and learnt how to repair colour TVs too, in the city. But I know only how to repair TVs with picture tubes, not these latest LCD or LED TVs.”



Photograph showing a woman worker with disability (facing the camera) at the assembly line of an electronics goods factory.

Persons with disabilities working in the formal economy, like in public sector banks have good jobs and more secure incomes compared to their counterparts in the informal sector. There is parity of pay and cases of discrimination on the ground of disability are relatively uncommon.



Photograph shows a woman with disability assembling electronic goods at a factory.

Persons with disabilities are provided support services, including housing. However, participants felt that the government thoughtlessly implements these schemes by, for example, providing inaccessible housing for persons with disabilities. Persons with disabilities found it impossible to move in and out of government supported housing as no proper facilities for access were provided. This finding is reflected in the following graph as 66% of all participants reported experiencing exclusion and a lack of accessibility in income and support services. Conversely, the graph also notes that 42% of all participants also experienced inclusion and accessibility. Notably, more women than men with disabilities faced exclusion and lack of accessibility. This indicates that income and support services may be provided unevenly across the population and raises questions about government oversight and management of these supports and services.

Figure 7: Experiences with income security and support services

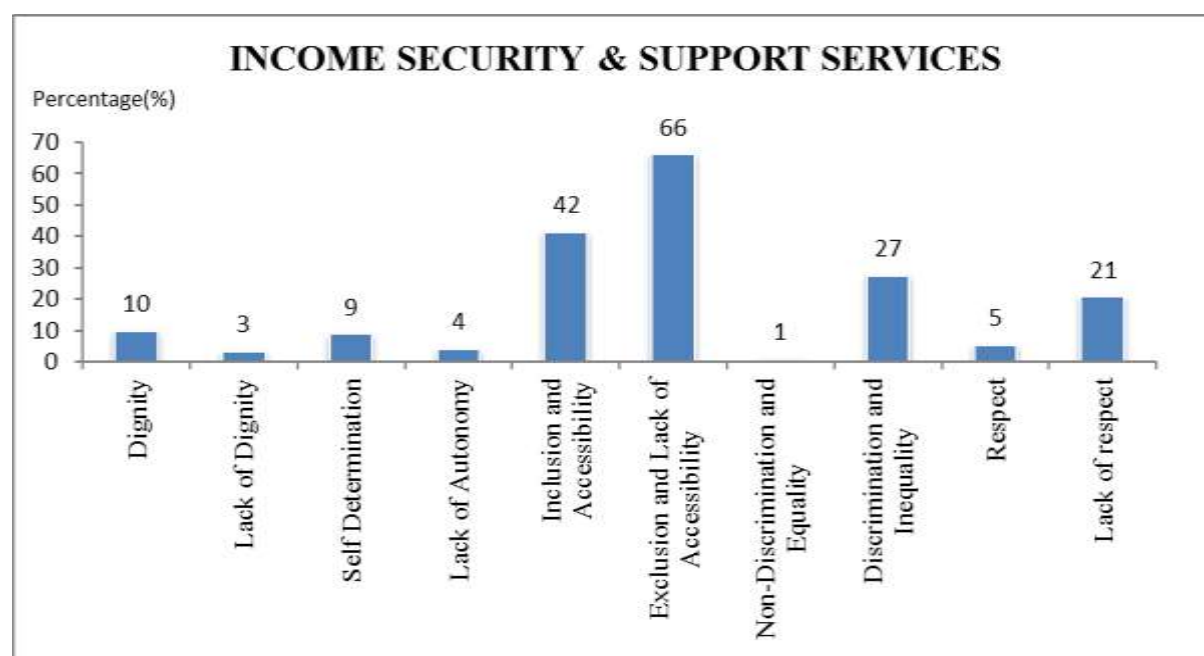


Figure Seven, Income Security and Support Services, is a bar graph with percentages (from 0-70, in divisions of ten) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that 10% of the participants reported dignity (first bar) while 3% reported lack of dignity (second bar). The third and fourth bar are figures for self-determination and lack of autonomy at 9% and 4% respectively. The fifth bar is inclusion and accessibility with a reading of 42%. Exclusion and lack of accessibility were reported by 66% of the participants which is the highest figure in the bar graph as reflected in the sixth bar. The seventh and eighth bars are non-discrimination and equality and discrimination and equality showing readings of 1% and 27%. 5% of the participants felt respect as reflected in the ninth bar and 21% reflected in the last bar to the right is lack of respect felt by the participants.

The RPD Act of 2016 unlike its older counterpart has specific provisions for social security, healthcare and insurance in Sections 24 to 27. Section 24 dealing with Social Security provides as follows: The appropriate Government shall *within the limit of its economic capacity and development* [emphasis added] formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

While the proviso stipulates that the quantum of assistance shall be 25% higher than it is for the others, the Section begins with the problematic and often misused “limits of its economic capacity and development”. This may emerge as a problem area in the future.

Health

Most persons with disabilities followed the allopathic system of medicine and had toilets in their houses with closed sewage systems. The places that they live in were by and large accessible to persons with disabilities. The health centres were close by to where they lived and ranged from fifteen to 45 minutes in terms of distance.

It was observed that persons with disabilities who had a lower level of education and were poorer used open sewerage systems. The majority of the persons interviewed had access to accessible toilets both at the home and in the workplace.

Women with disabilities faced more hurdles in accessibility and inclusion and faced problems of lack of access and exclusion in this area. Several were reported from Hyderabad and Secundarabad and persons who had mobility problems were the greatest group of those disadvantaged.

Information and communication

As displayed in Figure 8, 45% of participants felt excluded and complained of lack of accessibility in information and communication systems. Most participants felt there was frequent change in the schemes, regulations and laws for persons with disabilities in this area. One participant complained that changes to these laws and regulations were known “only to the officials” who kept persons with disabilities in the dark. This is self-defeating and corruption is one of the reasons that this scenario exists. Section 39 of the RPD Act has made it the responsibility and duty of the appropriate government to raise awareness and keep persons with disability informed of schemes, programmes, laws, regulations and rules meant for the welfare of persons with disabilities.

Figure 8: Experiences with information and communication

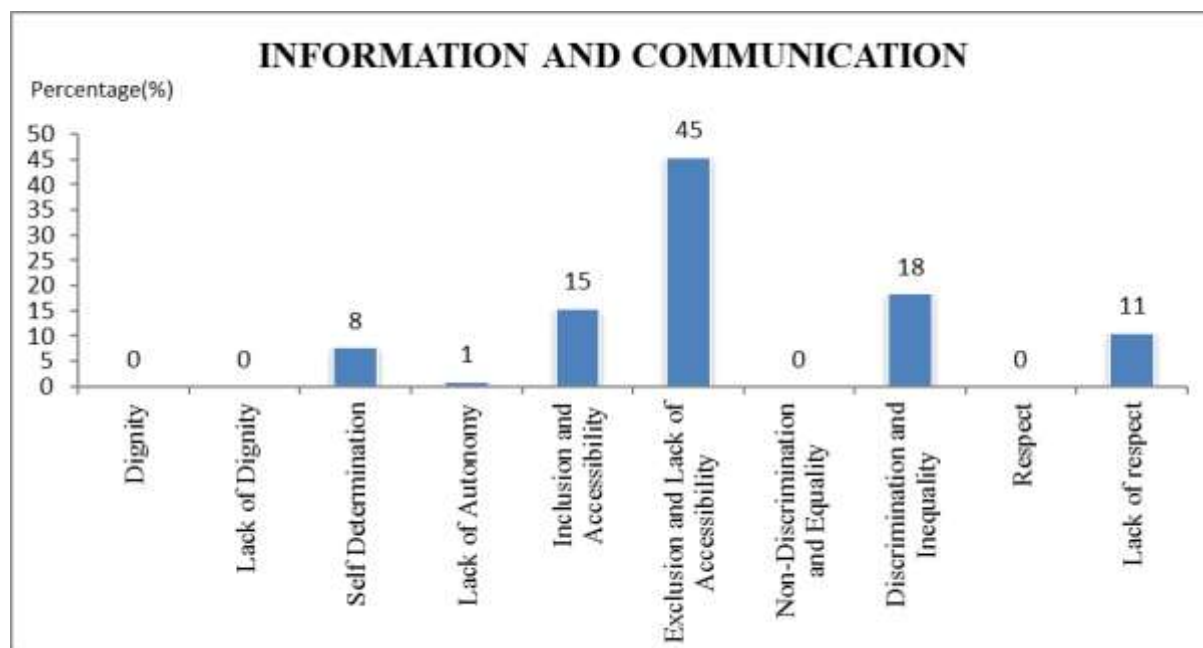


Figure Eight, experiences with information and communication, is a bar graph with percentages (from 0-50, in divisions of 5) on the x axis and ten indicators - dignity, lack of dignity, self-determination, lack of autonomy, inclusion and accessibility, exclusion and lack of accessibility, non-discrimination and equality, discrimination and inequality, respect and lack of respect on the y axis, from left to right. The graph shows that none of the participants reported dignity or lack of dignity (first and second bar). The third and fourth bar are figures for self-determination and lack of autonomy at 8% and 1% respectively. The fifth bar is inclusion and accessibility with a reading of 15%. Exclusion and lack of accessibility were reported by 45% of the participants which is the highest figure in the bar graph as reflected in the sixth bar. The seventh and eighth bars are non-discrimination and equality and discrimination and equality showing readings of nil and 18%. None of the participants felt respect as reflected in the ninth bar and 11% reflected in the last bar to the right is lack of respect felt by the participants with respect to access to information and communication.

Next, we describe participants responses to the aforementioned experiences of abuse and discrimination.

Responses to abuse and discrimination

Two graphs (Figures 9 and 10) reflect participants' responses to abuse and reasons for not reporting. While it is heartening to note that nearly 35% of the participants took recourse to legal action or reported abuse and discrimination, one-fifth of the participants distanced themselves from the entire issue. One participant stated that "*there was no use of complaining*

as there would never be any action taken”. Self-blame and corruption are also major reasons for not reporting discrimination and abuse.

Figure 9: Participants' responses to abuse and discrimination

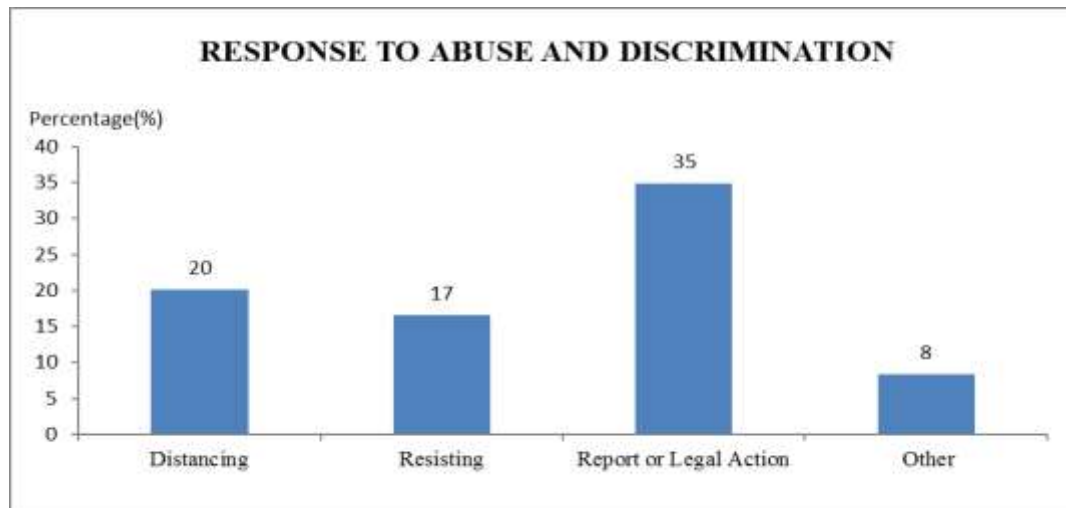


Figure Nine is a bar graph with percentage (0-40% in divisions of five) in the x axis and distancing, resisting, report or legal action and other indicated as response to abuse and discrimination on the y axis, from left to right. In response to abuse and discrimination, 20% distanced themselves while 17% resisted abuse and discrimination. 35% reported the abuse or took legal action against abuse and discrimination. 8% took other measures.

Figure 10: Participants' reasons for not reporting abuse and discrimination

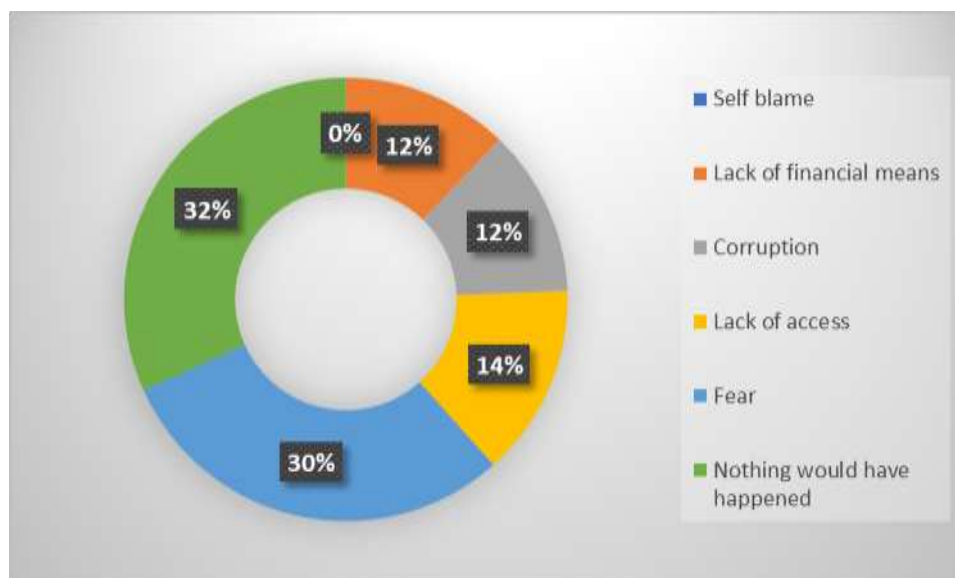


Figure Ten is a pie chart giving participants' reasons for not reporting abuse and discrimination. None felt like blaming themselves. 12% lacked the financial means to report and 12% could not report abuse due to corruption. 14% could not report abuse and discrimination due to lack of access and 30% blamed fear for not reporting the abuse and

discrimination. 32% felt that nothing would have happened if the abuse and discrimination had been reported.

The PwD Act of 1995 really did not have an effective redress mechanism and the person with a disability was left with few avenues for redress. The only avenue under the old Act was to approach the disability commissioners with a complaint and wait for a long time for redress. Under the new Act, prosecution in the Special Court is an avenue that can be explored by persons with disabilities for an effective redress. However, since the Rules for the Act have not yet been posted the Special Courts are yet to be set up. Moreover, it is the High Court that decides where and how many Special Courts have to be set up and this may prove to be a hurdle in obtaining quick and effective remedies. It should also be noted here that the new Act clearly provides that the remedies available in this Act are in addition to the remedies available elsewhere statutorily. (Section 96). Further Section 95 provides for alternative punishments. These are features that were absent in the PwD Act of 1995.

While most persons with disabilities interviewed during the course of the study took recourse to legal action, there is another aspect that causes concern when one analyses the reasons for not reporting. It is found that the main reasons for non-reporting were a feeling that nothing would have happened or self-blame. This is especially true of workplace abuse and discrimination where the person with disability is rarely treated as an equal and has lesser job security when compared to his or her other colleagues in the work place.

The situation may improve with the RPD Act which has made new provisions for offences against those with disabilities in Section 92. Section 92 provides for imprisonment up to five years and a fine. There is also a separate provision for offences by companies. Furthermore, the creation of Special Courts to try offences under the Act and the provision for special public prosecutors in these Courts may increase the chances of persons with disabilities to come forward and report abuse and discrimination and seek justice.

Photograph below shows two workers with disabilities (facing the camera) inspecting finished electronic goods at a factory.



The right to work: Systemic data analysis

One out of every seven people in the world—or more than 1 billion people—has a disability. Between 785 and 975 million of them are estimated to be of working age, but most do not work. While many are successfully employed and fully integrated into society, as a group, persons with disabilities often face disproportionate poverty and unemployment.

The following section reviews relevant national laws and policies that impact the right to work for persons with disabilities in India.

The PwD Act, 1995

The meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific region, held at Beijing on 1st to 5th December 1992, adopted the proclamation on the full participation and equality of people with disabilities in the Asian and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:

- i. to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities
- ii. to create a barrier free environment for persons with disabilities
- iii. to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons
- iv. to counteract any situation of the abuse and the exploitation of persons with disabilities
- v. to lay down strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities
- vi. to make a special provision for the integration of persons with disabilities into the social mainstream.

Being pre-convention legislation and put in place to meet the limited mandate of the Biwako Proclamation, the Act which came into force on 1st January 1996 had a chapter dedicated to Employment of persons with disabilities. The number of disabilities covered is seven in number and Chapter VI dealt with employment.

Section 32 of PwD Act, 1995 stipulates that the Appropriate Governments shall identify posts that can be reserved for persons with disabilities. Section 33 stipulates a 3% reservation in the establishments with 1% being reserved for persons with low vision, 1% for the hearing impaired and 1% for persons with locomotor disability or cerebral palsy.

Section 34 mandates that the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or are about to occur in that establishment to the Special Employment Exchange. Under Section 36, where in any recruitment year any vacancy under Section 33 cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason; such vacancy shall be carried forward in the succeeding recruitment year. Section 37 says that every employer shall maintain a record in relation to the person with disability employed in the establishment. Under Section 38, appropriate governments and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, including training and welfare of persons with disabilities; relaxation of upper age limit; regulating the employment; health and safety measures and creating a non-handicapping environment in places where persons with disabilities are employed.

Additionally, Section 40 provides that appropriate governments and local authorities shall reserve not less than three per cent in all poverty alleviation schemes for the benefit of persons with disabilities. An important provision is Section 41 which provides that 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 is composed of persons with disabilities. Section 47 of the Act states clearly that no establishment shall dispense with or reduce in rank an employee who acquires a disability during his service. However, if the acquired disability is of such a nature that he is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. Promotions cannot be denied on the grounds of an acquired disability.¹

When the Act was a Bill, the Communist Party of India had suggested the following amendment by inserting a new Section:

"State should take necessary steps to ensure that no woman with disabilities shall be discriminated against in employment and livelihood opportunities on the grounds of sex and disability. All appropriate measures, including affirmative action, shall be taken to include them in employment and all schemes and policies for employment of persons with disabilities under the present bill and any other law in force at the time, vocational training on an equal basis with others. Specific schemes for women having children with disabilities should be formulated keeping in mind that the burden on bearing such children affects their career mostly."

¹ Universal's Encyclopaedia of Important Central Acts and Rules (20 Volumes), Vol. 16, Delhi Universal Law Publishing Company Private Limited, 2005

The RPD Act, 2016

Recent developments, including the enactment of the UNCRPD, has resulted in some positive development after the disability discourse gained an international hue and countries were forced to cooperate and address the global problem of disability².

India signed the CRPD in 2007. The PwD Act, 1995 was definitely falling short of the standards set in the CRPD. There were two Bills that were tabled before the 2014 Rights of Persons with Disabilities Bill but it was the 2014 Bill that finally was passed in 2016 and has become the law governing persons with disabilities in India now. The purpose of the Act is to implement the provisions of the CRPD in India.

This study was conducted when the PwD Act, 1995 was still in place and at the time of writing of this report, the 2016 Act has been gazetted and come into force. The Rules for the new Act are yet to be notified although the Draft Rules have been put up by the Ministry of Social Justice and Empowerment for objections and comments.³

The RPD Act, 2016 is legislation that has been put in place to give effect to the CRPD. Thus, it has provisions that are rights based rather than on the charity or social model of disability. It has elaborated definitions of concepts like barriers, (Section 2 (c)), discrimination, (Section 2 (h)), Government establishment (Section 2(k)), Private establishment (Section 2(v)), reasonable accommodation (Section 2(y)) and Special Employment Exchange (Section 2(zb)). Chapter II are Rights and Entitlements and include the right to equality and non-discrimination, (Section 4) rights against exploitation and abuse (Section 7), access to justice (Section 12) etc. Section 5 makes specific provisions for women and children with disabilities. Special provisions have been made in Section 24(3)(d) for schemes for livelihood for women.

The RPD Act unlike its previous counterpart does not define disabilities and limit the number of disabilities, The RPD Act has followed the CRPD and defines a person with disability (in Section 2(s) as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. A person with benchmark disability (for whom there are specific provisions and concessions in work and employment) is a person with disability who has 40% or more of a specified disability.

While the PwD Act listed out only seven disabilities, the RPD Act has a Schedule with 21 disabilities including dwarfism and acid attack victims. There is also a residuary category in Entry Six which enables the Central Government to include other categories of disabilities.

² Shilpa Das: *Hope for the Invisible Women of India: Disability, Gender and the Concepts of Karma and Shakti in the Indian Weltanschauung, At the Interface / Probing the Boundaries*. 2010, Vol. 67, p. 129-147, at p.131.

³For the draft rules of the 2016 act please see the following weblink:

[http://disabilityaffairs.gov.in/upload/uploadfiles/files/Revised%20Rules%20\(as%20per%20Law%20Ministry\)%2010_03_2017.pdf](http://disabilityaffairs.gov.in/upload/uploadfiles/files/Revised%20Rules%20(as%20per%20Law%20Ministry)%2010_03_2017.pdf)

Apart from retaining job reservations (the percentage of which have increased) both in the public and private sectors, the RPD Act of 2016 has other provisions that are noteworthy. A summary of these provisions is described in the following 11 points.

1. The term establishment includes a private establishment as per Section 2(i). Government Establishment is defined in Section 2(k) to mean a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes a Department of the Government. Private establishment according to Section 2(v) means and includes company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify; This clearly means that the disability legislation applies with equal force to private establishments. Private establishments are also to endeavour to ensure that they employ five per cent of their work force consists of persons with disabilities.
2. A public building includes a place of employment. This would go a long way to making the lives of persons with disabilities easier as these buildings would have to be accessible to persons with disabilities.
3. Reasonable Accommodation has been defined and government employers have to provide reasonable accommodation vide Section 20(2). Reasonable Accommodation is defined in the same manner as in the CRPD.
4. There shall be no discrimination in employment by the Government. Such a clear provision did not exist in the PwD Act, 1995.
5. There shall be an Equal Opportunity Policy for every establishment vide Section 21. Section 22 mandates maintenance of records and Section 23 has made provision for the appointment of a Grievance Redressal Officer to address issues regarding problems in this area.
6. Vocational Training and Self-Employment have been given a thrust in Section 19 such that “The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons.”
7. Provision for Social Security has been made under Section 24. No such provision existed under the PwD Act, 1995.
8. Termination or reduction of rank of an employee who has acquired a disability is not possible. This provision has been retained from the PwD Act, 1995.

9. There is a horizontal reservation of 4% of government jobs and incentive based reservation of jobs in the private sector. The percentage of reservation has gone up by one per cent.
10. Section 35 provides incentives to the private sector for employing persons with disabilities. The private sector is expected to employ five per cent of its workforce consisting of persons with disabilities.
11. Provisions have been made for the setting up of special employment exchanges under Section 37

Some of these provisions have been extracted and stated below. These provisions are noted in Chapter IV of the Act.

Section 19.

(1) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

(2) The schemes and programmes referred to in sub-section (1) shall provide for—

- (a) inclusion of person with disability in all mainstream formal and non-formal vocational and skill training schemes and programmes;
- (b) to ensure that a person with disability has adequate support and facilities to avail specific training;
- (c) exclusive skill training programmes for persons with disabilities with active links with the market, for those with developmental, intellectual, multiple disabilities and autism;
- (d) loans at concessional rates including that of microcredit;
- (e) marketing the products made by persons with disabilities; and
- (f) maintenance of disaggregated data on the progress made in the skill training and self-employment, including persons with disabilities.

Section 20.

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

Section 21.

(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

Section 22.

(1) Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government.

(2) Every employment exchange shall maintain records of persons with disabilities seeking employment.

(3) The records maintained under sub-section (1) shall be open to inspection at all reasonable hours by such persons as may be authorised in their behalf by the appropriate Government.

Section 23.

(1) Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.

(2) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.

(3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.

(4) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

A person with benchmark disability is defined in Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 as follows:

“a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority”

Section 33.

The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

Section 34.

(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities** [emphasis added] of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disability.

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time.

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

Section 35.

The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability.

Section 36.

The appropriate Government may, by notification, require that from such date, the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur in that establishment to such special employment exchange as may be notified by the Central Government and the establishment shall thereupon comply with such requisition.

Section 37.

The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide:

- (a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;
- (b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;
- (c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

International and regional human rights standards

Article 27 of the CRPD provides the following guidelines to promote the right to work for persons with disabilities. As such, India has committed to:

1. Recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.⁴

Standard Rules on the Equalization of Opportunities for Persons with Disabilities

Rule 7 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities explicates the following:

States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas, they must have equal opportunities for productive and gainful employment in the labour market.

1. Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment.

2. States should actively support the integration of persons with disabilities into open employment.

This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.

3. States' action programmes should include:

⁴<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

- (a) Measures to design and adapt workplaces and work premises in such a way that they become accessible to persons with different disabilities;
 - (b) Support for the use of new technologies and the development and production of assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for persons with disabilities to enable them to gain and maintain employment;
 - (c) Provision of appropriate training and placement and on-going support such as personal assistance and interpreter services.
4. States should initiate and support public awareness-raising campaigns designed to overcome negative attitudes and prejudices concerning workers with disabilities.
 5. In their capacity as employers, States should create favourable conditions for the employment of persons with disabilities in the public sector.
 6. States, workers' organizations and employers should cooperate to ensure equitable recruitment and promotion policies, employment conditions, and rates of pay, measures to improve the work environment in order to prevent injuries and impairments and measures for the rehabilitation of employees who have sustained employment-related injuries.
 7. The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market.
 8. Measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sectors.
 9. States, workers' organizations and employers should cooperate with organizations of persons with disabilities concerning all measures to create training and employment opportunities, including flexible hours, part-time work, job-sharing, self-employment and attendant care for persons with disabilities.⁵

The ILO and employment of persons with disabilities

Decent work is the ILO's primary goal for everyone, including persons with disabilities. The ILO has worked for over 50 years to promote skills development and employment opportunities for people with disabilities based on the principles of equal opportunity, equal treatment, mainstreaming into vocational rehabilitation and employment services programmes and community involvement. The principle of non-discrimination is increasingly emphasized as disability issues have come to be seen as human rights issues. The ILO works to achieve this goal through promoting labour standards, advocacy, knowledge-building on

⁵ <http://www.un.org/esa/socdev/enable/dissre00.htm>

the training and employment of people with disabilities and technical cooperation services and partnerships, both within the ILO and externally. A strategy of including consideration of persons with disabilities in the training and employment promotion policies and programmes of the ILO and of constituents is currently being developed.⁶

Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159, 1983 was adopted at the start of the United Nations Decade of Persons with Disabilities, the Convention requires member States, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. The Convention has now been ratified by 80 countries. Recommendation No. 168, 1983 accompanies Convention No. 159 and gives advice on its implementation.

Human Resources Development Recommendation No. 195, 2004 calls on member States to develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. More importantly, it aims to extend national systems of services, information and guidance to all, including persons with disabilities.

Vocational Rehabilitation (Disabled) Recommendation No. 99, 1955 was a standalone recommendation considered to be before its time in proposing mainstreaming vocational guidance, training and placement of people with disabilities, where appropriate.

The Code of Practice “Managing Disability in the Workplace”, 2001 adds to the range of standards which the ILO uses in its work to promote the employment of persons with disabilities. It reflects the significant changes which have taken place in the understanding of disability, and in legislation, policies and services concerning people with disabilities since 1983. While it is a non-binding document, if employers accept the code they should be willing to implement all of the rules and procedures it contains.⁷

The first ILO Recommendation containing provisions relating to the vocational rehabilitation of workers with a disability was Workmen’s Compensation (Minimum Scale) Recommendation No. 22. This recommendation, *inter alia*, provided for the following:

Where incapacity for work results from the injury, the national laws or regulations should provide for the payment of compensation at rates not lower than those hereinafter indicated:

- (1) In the case of permanent total incapacity, a periodical payment equivalent to two-thirds of the workman's annual earnings;
- (2) In case of permanent partial incapacity, a proportion of the periodical payment due in the event of permanent total incapacity calculated in reference to the reduction of earning power caused by the injury;

⁶ <http://www.ilo.int/skills/areas/inclusion-of-persons-with-disabilities/lang--en/index.htm>,

⁷ www.hpod.org/pdf/facts-on-disability.pdf

(3) In case of temporary total incapacity, a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation;

(4) In case of temporary partial incapacity, a proportion of the daily or weekly payment payable in the case of temporary total incapacity calculated in reference to the reduction of earning power caused by the injury.

Where compensation is paid in a lump sum, the sum should not be less than the capitalised value of the periodical payment which would be payable under the foregoing paragraphs.

Where the injury is such that the workman requires the constant help of another person, additional compensation should be paid to the workman, which should not be less than half the amount payable in the case of permanent total incapacity.⁸

Of particular note is the Discrimination (Employment and Occupation) Convention 1958 (ILO Convention no. 111) which defines 'discrimination' as:

“[A]ny distinction, exclusion or preference [made on any of the grounds specified in the Convention itself or specified by the State concerned] which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

The Convention also specifies, in Article 5, that special measures, including affirmative action, for people with disabilities may be introduced. These may not be considered as discrimination against other workers.

The article provides:

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination⁹.

Other relevant domestic laws

The Constitution of India, 1950. Article 16 (1) of The Constitution of India, 1950, states that there will be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 39 (1) states that the policy of the State

⁸http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312360

⁹ *Disability Manual, India*: New Delhi: National Human Rights Commission, First Revised Edition, 2011 at p. 148.

shall be directed towards securing to all its citizens, men and women, the right to an adequate means of livelihood. Article 41 states that the State shall within the limits of its economic capacity and development make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and other cases of undeserved want. Article 42 says that the State shall make provision for securing just and humane conditions of work and for maternity relief.¹⁰

The Workmen's Compensation Act, 1923. This act was the predecessor to Section 47 of the PwD Act, 1995. Under the said Act, a workman was entitled to compensation only if the injury occurred during the course of employment but the security of rank and posting to some other suitable job were not provided for under the Workmen's Compensation Act, 1923¹¹.

Employees' State Insurance Act, 1948. Section 46(c) of the Employees' State Insurance Act, 1948 says that periodical payment shall be made to an insured person with a disability as a result of an employment injury sustained as an employee. Section 51 of the same Act mentions the disablement benefits for temporary disablement and permanent disablement (whether total or partial).

The Section 51 of Employees' State Insurance Act, 1948 prescribes the payment to insured employee in the event of his or her temporary or permanent disablement due to injury caused in the course of employment. The basis for deciding the entitlement and quantum of disability benefit under this section is largely linked with the loss of earning capacity. Thus, this provision is premised on the assumption that a person with a disability does not have the capacity to continue in productive employment. This assumption not only militates against the right to work granted under the ICCPR, but also contravenes the letter and spirit of the new disability legislation. The statutory framework both under the old and the new legislation prohibits termination or reduction in rank due to an acquired disability. Moreover, discrimination in employment on the ground of disability is expressly prohibited under Section 20(1) of the RPD, 2016.

Payment of Gratuity Act, 1972. As per Section 4 of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment, on his death or disablement due to accident or disease, if he has rendered continuous service of five years.

The Factories Act, 1948. This act regulates the matters connected with the choice of place being used as a factory and also for maintenance of health, safety and other welfare measures. As per Section 6 of the Act, it is obligatory upon an owner of a factory to submit the plan of construction or addition for the intended factory site to the State Government or the Chief Inspector appointed in this behalf. Such a plan is to be examined by the concerned authority before granting approval and registration of the factory. Therefore, if the Factories Act, 1948 is read along with Sections 38, 42, 44, 45 and 46 of the PWDA Act, 1995, put in place fair

¹⁰ Mahendra P. Singh [Ed.]: *V N Shukla's Constitution of India*, Lucknow: Eastern Book Company, 12th Edition, 2012

¹¹ Universal's Encyclopaedia of Important Central Acts and Rules (20 Volumes), Vol.20, Delhi: Universal Law Publishing Company Private Limited, 2005 (rp.), p.20.976 *et seq*

conditions of work that could no doubt have been achieved even for workers with disabilities. The vacuum was that it did not create a mechanism for the effective operation of complimentary legislation.

The Directorate General, Factory Advice Service & Labour Institutes (DGFASLI), Mumbai, which is an attached office of the Ministry of Labour, functions as a technical arm of the Ministry in regard to matters concerned with safety, health and welfare of workers in factories and ports/docks as per the requirements of the Factories Act, 1948 and the Dock Workers (Safety Health & Welfare) Act, 1986. It assists the Central Government in formulation and review of policy and legislation on occupational safety and health in factories and ports, and maintains a liaison with Factory Inspectorates of States and Union Territories in regard to the implementation and enforcement of provisions of the Factories Act, 1948.

The Factories Act, 1948 regulates health, safety, working hours, leisure and work processes as well as work sites, which are being used as factories. Chapter III of the Act deals with health requirements of workers in a factory whereas Chapter IV deals with the safety of the workers. Chapter V of the Act makes provisions for undertaking welfare activities for workers. Chapter VI deals with the matters pertaining to working hours, leisure, etc.

Although the Factories Act, 1948 and the Dock Workers (Safety Health & Welfare) Act, 1986 do not incorporate any provision for workers with disabilities, reading their relevant sections along with the new 2016 Act, it is clear that workers with disabilities are better protected. While Section 38(d) of the PwD Act merely provided for schemes to ensure safety and non-disabling conditions at the workplace, the RPD Act which lays emphasis on accessibility and reasonable accommodation would make factories and docks more conducive for employees with disabilities.

Industrial Disputes Act, 1947. The right to have just and favourable conditions of work also includes the right to continue in employment unless terminated or retrenched by due process of law. In general, Industrial Disputes Act, 1947 deals with various aspects of conditions of service of a worker including the procedure to be adopted for dismissal and retrenchment. Section 2(A) declares the dismissal from service and other connected matters to be a deemed 'industrial dispute' to be adjudicated upon in accordance with the provisions of the Industrial Disputes Act. Section 33 of the Industrial Disputes Act deals with the conditions of service and provides that the employer cannot alter them during the period of any proceeding for the settlement of an industrial dispute either before the Conciliation Officer, or before a Board or Labour Tribunal. This protection applies to a workman with a disability, even in cases where the disability is acquired during the course of employment and an industrial dispute is raised with regard to the termination or retrenchment under the Industrial Disputes Act.

Further, Section 33(2) (b) mandates that the employer will have to get the approval of the Labour Tribunal for its order of dismissal from service in respect of a worker. Thus, the worker cannot be dismissed or discharged from service without complying with the procedure laid down in the Act for adjudication of an industrial dispute. The Industrial

Disputes Act, 1947 also provides for the procedure for retrenchment in Section 25(F). Adequate safeguards have been provided for ensuring that employers do not resort to arbitrary retrenchment of workmen and workwomen. Retrenchment is also regarded as an industrial dispute and therefore the procedure for adjudication of industrial dispute applies to the action of retrenchment as well.

These legal safeguards almost failed to afford equal protection in the event of disability. In fact, physical or mental disability was viewed as a valid ground to dispense with the services of an employee. Rule 38 of the Central Civil Service (Pension) Rules is a classic example of this trend. Arbitrary dismissal from services is now explicitly prohibited under Section 47(1) of the PwD Act, 1995. The government can under no circumstances discriminate on the grounds of disability and dismiss a person on the ground of disability as is clearly stipulated under Section 20(1) of the RPD Act, 2016.

Rules and regulations

Section 3(1) of the All-India Services (Special Disability Leave) Regulations, 1957 provides that special disability leave may be granted to a member of the service who suffers (a disability) as a result of risk of office or special risk of office.

The Central Civil Services (Pension) Rules, 1972 and the Central Civil Services (Extraordinary Pension) Rules, 1939 provide for disability pension on account of disablement of a government servant.

Similarly, the Railway Services (Extraordinary Pension) Rules, 1993 provide for disability pension on account of disablement of a railway servant. There are other specific rules and regulations (including state government rules and regulations) regarding posting and transfer of disabled employees.

Section 20(5) of the RPD Act, 2016 confers powers on the appropriate government to frame policies for the posting and transfer of employees with disabilities.

Policies and programmes

In 2006, the National Policy for Persons with Disabilities was launched and continues to be in force today. Economic rehabilitation of persons with disabilities was to comprise both wage employment in organized sector and self-employment. Supporting structure of services by way of vocational rehabilitation centres and vocational training centres were to be developed to ensure that disabled persons in both urban and rural areas have increased opportunities for productive and gainful employment.

The following strategies for economic empowerment of persons with disabilities are chalked out in that legislation and they were:

1. *Employment in Government Establishments* The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides for 3% reservation in employment in the establishments of Government of India and Public-Sector Undertakings (PSUs) against identified posts. The status of reservation for Government in various Ministries/ Departments against identified posts in Group A, B, C & D is 3.07%, 4.41%, 3.76% and 3.18% respectively. In PSUs, the reservation status in Group A, B, C & D is 2.78%, 8.54%, 5.04% and 6.75%, respectively. Government will ensure reservation in identified posts in the Government sector including public sector undertakings in accordance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The list of identified posts, which was notified in 2001, will be reviewed and updated.

With the passage of the new Act, the reservation has gone up to 4% and the list is to be revised and modified accordingly.

2. *Wage employment in Private sector* Development of appropriate skills in persons with disabilities will be encouraged for their employability in the private sector. Vocational rehabilitation and training Centres engaged in developing appropriate skills amongst persons with disabilities keeping in view their potential and abilities will be encouraged to expand their services. Considering rapid growth of employment opportunities in service sector, persons with disabilities will be encouraged to undertake skill training suitable to the market requirement. Pro-active measures like incentives, awards, tax exemptions etc. will be taken to encourage the employment of persons with disabilities in the private sector

Section 35 of the new Act (2016) has now made specific provision for reservation in the private sector. The private sector is expected to have a workforce consisting of five per cent of persons with disabilities.

3. *Self-employment* Considering the slow pace of growth in employment opportunities in the organized sector, self-employment of persons with disabilities will be promoted. This will be done through vocational education and management training. Further, the existing system of providing loans at softer terms from the NHFDC will be improved to make it easily accessible with transparent and efficient procedures of processing. The Government will also encourage self-employment by providing incentives, tax concessions, exemptions from duties, preferential treatment for procurement of goods and services by the Government from the enterprises of persons with disabilities, etc. Priority in financial support will be given to Self Help Groups formed by the persons with disabilities.¹²

However, the policy has nothing specific for the employment of women with disabilities. There is dual stigmatization of disabled women as they are affected by negative stereotypes of both women and people with disabilities. There are vast disparities in the labour force participation rates of women with and without disabilities, and between women with

¹² See: <http://www.socialjustice.nic.in/nppde.php>,

disabilities and men with disabilities. Stereotypes frame disabled woman as unable to fulfil either the traditional role of homemaker or the newer role of wage earner. Due to the double stereotyping, they are denied work even in the areas traditionally occupied by women, like nursing, teaching, etc. Due to the fact of disability, they are thought of as unequal for jobs like secretary, receptionist, model, etc. At the same time, they are denied jobs traditionally occupied by males and are thought of as sexual and lacking intelligence. Thus, some disabled women cannot gain access to traditional female jobs because of employers' attitudes towards their disability and cannot access traditional male jobs because of employers' sexist attitudes. Further, in employment, women with disabilities often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation.¹³

Under the 2016 Act, there are specific provisions for self-employment and vocational training.

It is evident from the “People with Disabilities in India: From Commitments to Outcomes” (2007)¹⁴ report that there had been a 5% drop in the employment rate of people with disabilities in the decade leading up to 2002. The fall in the employment rate of working age disabled people has been from 42% in 1991 to 37% in 2002. The differences in the estimates of the disabled population as well as differences in definitions of disabilities adopted by the Census of India 2001 and the National Sample Survey 58th found serious implications for national policies and initiatives on essential issues concerning issues of employment of persons with disabilities. Among the various factors that restricted the enforcement of legislative provisions for the empowerment of people with disabilities has been the lack of follow-up procedures. In many cases this had been primarily left to the courts. This also highlights loopholes in the legislative measures both in principle and practice with regard to requirement of specific post identification. The list of identified jobs is restricted, often arbitrary and based on the assumption that the characteristics of impairment are exclusive determinants of an individual’s ability to hold a position at a particular skill level. This signifies the tendency to ignore the potential influences of individual characteristics, access to employment services, and the characteristics of the workplace and the labour market. This problem is likely to continue under the new Act as well. Although the new Act is a rights-based legislation, this problem will persist

While the data is dated, it reflects a significant fall in job opportunities in the public sector between 1999 and 2004. A 1999 survey by the National Centre for Promotion of Employment for Disabled People (NCPEDP) in 100 major companies found that the average employment rate of the disabled in the public sector was 0.54%, 0.28% in the private sector and a mere 0.05% in multinational companies. This indicates that despite the increase in

¹³ M V Reina and Peter Blanck *Defying Double Discrimination*, Georgetown Journal of International Affairs, Issue 8, Volume 95, 2007, p. 104

¹⁴World Bank: *People with disabilities in India: From Commitments to Outcomes*, World Bank: Human Development Unit, South Asia Region, 2007. This report can be accessed at <http://documents.worldbank.org/curated/en/2007/05/8746167/people-disabilities-india-commitments-outcomes>

figures during the last eight years there is still a long way to go before the Disability Act's (2016) recommended 5% rate of employment can be achieved. The National Sample Survey Organisation (NSSO) report on Disabled Persons, 58th round, July-December 2002 also shows a dismal picture of the employment of disabled persons in India in various professions and sectors. As far as the promotion of self-employment among persons with disabilities is concerned, the number of the National Handicapped Finance and Development Corporation (NHFDC) beneficiaries between 1997 and 2005 has been very low, i.e., 19,643. Apart from this even the disbursements have been very low ranging between 23% and 26% of the available funds in 1997-2002 partly due to long gaps between receipt of funds by the State Channelizing Agencies (SCAs) and the loan disbursement. Moreover, with nearly 80% of the beneficiaries being male and nearly 90% of them being persons with orthopaedic disabilities it is apparent that disbursement is driven more by institutional factors rather than the size of the disabled population, or the limitations in the credit markets, etc.¹⁵

Government schemes and other efforts

To encourage employment of persons with disabilities, the Central Government had launched a scheme from April 1, 2008 to incentivize the private sector. Under the scheme government reimburses the employer's contribution for Employees Provident Fund (EPF) and Employees State Insurance (ESI) for 3 years, for physically challenged employees employed in the private sector on or after 01.04.2008, with a monthly salary up to ₹. 25,000.¹⁶

Association of Rehabilitation under National Trust initiative of Marketing is a marketing federation set up by National Trust in September 2008, for undertaking marketing initiatives of products made by persons with disabilities and build capacities. Its mission is to facilitate enterprises that can offer products and services to cater to the domestic and overseas markets while ensuring self-sustenance and equality especially for people with developmental disabilities.¹⁷

Vocational training and loan on concessional rates through National Handicapped Finance and Development Corporation (NHFDC), established under the Ministry of Social Justice and Empowerment functions as an apex institution for channelizing the funds to persons with disabilities through the State Channelizing Agencies (SCAs) nominated by the State Government(s). It has several schemes in place to provide financial aid to persons with disabilities.

National Centre for the Promotion of Employment of Disabled People (NCPEDP) advocates and promotes equality for persons with disabilities in all spheres of life, through education, communication, appropriate training and a barrier-free environment for gainful employment.

¹⁵ Ranjita Dawn: *Challenges in the Employment of Disabled Persons*, Economic and Political Weekly, September 8, 2012, Vol. XLVII, No. 36, pp. 20-22, at p. 20

¹⁶ www.epfindia.com/circulars.html.

¹⁷ www.thenationaltrust.co.in/nt/images/.../schemes%20programmes.pdf.

The key objective of this organization is the promotion of employment in organized and unorganized sectors¹⁸.

To bolster employment of persons with disabilities in rural area the PwD Act, 1995 mandated that 3% budget in the poverty reduction schemes be earmarked (Section 40). This has been increased to five per cent in the 2016 Act with priority for women with benchmark disabilities. Marginal benefit has reached the rural disabled. There are a few examples of good practice. The states of Gujarat, Karnataka, Tamil Nadu and Andhra Pradesh have been successful in utilizing the budget allocated for people with disabilities under Swaran Jayanti Punarvas Yojna. However, the overall failure of the scheme can be attributed to lack of knowledge about disability among the field functionaries and the cumbersome procedures¹⁹.

The Ability Foundation, established in 1995, offers a range of services both to the employers and jobseekers, designed to promote equitable employment opportunities thereby sensitizing employers about the need to offer unbiased, equal opportunity employment, placing candidates with disabilities on par with others. It also works with qualified persons with disabilities to enhance their employment opportunities in accordance to current market needs. It also offers employment oriented soft skills through National Centre for Information & Communication Technology (NCICT) that imparts state-of-the-art computer education and offers holistic and comprehensive job-oriented training to graduates with disabilities in the form of spoken English, mathematics and preparing for aptitude tests, training in personality development, techniques of communication and facing interviews.²⁰

Enable India trains and counsels persons with disabilities and prepares them to join the mainstream workforce as confident individuals. It works towards making persons with disabilities a part of every corporate hiring plan thereby dispelling both sympathy and apathy towards persons with disabilities and building awareness for the creation of a supportive environment. Enable India has goals to empower persons with visual, physical and hearing impairment, rehabilitate persons with disabilities through supplemental education, extensive training and providing assistive aids designed for daily living, education and for the work place; enable employment and thus make persons with disabilities a part of the workforce²¹.

Judicial pronouncements

Justice V R Krishna Iyer, speaking for the Bench in *Dr. Jagadish Saran and Others v. Union of India*²² had ruled that equality is not degraded or neglected where special portions are

¹⁸ www.dnis.org/Employment.pdf

¹⁹ Anuradha Mohit, Meera Pillai and Pratiti Rungta: *Rights of the Disabled*, New Delhi: National Human Rights Commission, 2006, pp.: 39-40.

²⁰ www.abilityfoundation.org/ .

²¹ www.enable-india.org/about_us.html

²² (1980) 2 SCC 768.

geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit.

The Supreme Court and the High Courts in the country have time and again come to the aid and provided much needed assistance to persons with disability. Positive judicial intervention in the area of employment of persons with disabilities has been observed in cases and is the rule rather than the exception.

Union of India and Another v. National Federation of the Blind (2013) 10 SCC 772. In a recent landmark verdict, a three-judge Bench headed by the then Chief Justice of India, Chief Justice P. Sathasivam²³, the Court ruled that India as a welfare state is committed to promoting overall development of its citizens including those who have disabilities in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to citizens with disabilities in our country could be traced in Part III and Part IV of the Constitution. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (superseded by the 2016 Act) empowered persons with disabilities and ensured protection of their rights.

The three judges unanimously observed that it is clear that the scope of identification comes into consequence only at the time of appointment of a person in the post identified for disabled persons and is not necessarily relevant at the time of computing the 3% reservation under Section 33 of the 1995 Act. In succinct, it was held in *Ravi Prakash Gupta's* case²⁴ that Section 32 of the Act is not a precondition for computation of the reservation of 3% under Section 33 of the Act, rather, Section 32 is the following effect of Section 33. Apart from the reasoning of this Court in *Ravi Prakash Gupta*, even a reading of Section 33, at the outset, establishes the intention of the legislature viz., reservation of 3% for persons with disabilities should have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts. There is no ambiguity in the language of Section 33 and from the construction of the said statutory provision only one meaning is possible.

The Court observed that admittedly, the 1995 Act is social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfil its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the statutory provision. In the present case, the plain and unambiguous meaning of Section 33 of the 1995 Act is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy. The Court further ruled that the Union of India, the State Governments as well as the Union Territories have a categorical obligation under

²³Justice Ranjana Prakash Desai and Justice Ranjan Gogoi, along with him.

²⁴ *Government of India, through its Secretary and Another v. Ravi Prakash Gupta and Another*, (2010) 7 SCC 626

the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.

Thus, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., “computing 3% reservation on total number of vacancies in the cadre strength” which is the intention of the legislature, the three judges ruled.

It must be noted that the ratio laid down in this case would hold good for interpretation of the analogous provisions in the 2016 Act except that the quantum of reservation is now 4% in the public sector under the new Section 34.

Further, the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, Indra Sawhney v. Union of India²⁵ is not applicable with respect to the disabled persons. We also reiterate that the decision in R.K. Sabharwal and others v. State of Punjab and others²⁶ is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal, the Court concluded.

The following directions were also made:

(i) We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court’s Order within three months from the date of passing of this judgment.

(ii) We hereby direct the “appropriate Government” to compute the number of vacancies available in all the “establishments” and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

(iii) The appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of nonobedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

Consequent to this order Official Memoranda dated April 17, 2014 was circulated and all departments were to provide the details which was informed to the Court. After the final judgement by the three-judge Bench, the concerned ministry passed an order stating that reservation for the persons with disabilities in Group 'A' or Group 'B' posts shall be computed based on total number of vacancies occurring in direct recruitment quota in all the Group 'A'

²⁵ AIR 1993 SC 477.

²⁶ (1995) 2 SCC 745

posts or Group 'B' posts respectively, in the cadre. This government order still holds good and has not been superseded after the new Act has come into place.

Other relevant cases. In *Kunal Singh v. Union of India*²⁷ the Apex Court while holding that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was a social, beneficial statute ruled that the provisions of Section 47 were mandatory in nature.

In *Bhagwan Dass v. Punjab State Electricity Board*²⁸ the Supreme Court has criticised the “highly insensitive and apathetic attitude of those who lead normal healthy lives towards those who have fallen victim to some incapacitating disability”. Coming down heavily on the Participants who had terminated the services of the Petitioner after he had applied for voluntary retirement under the misconception that his failing vision and subsequent blindness would automatically cost his job, the Court pointed out that the Petitioner was protected under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and reinstated him with all consequential benefits.

However, it is to be noted Courts in India have been sensitive to the needs of persons with disability even prior to the passage of the PwD Act, 1995 or the adoption of the United Nations Convention by India. A case in point is a 1993 decision of the Supreme Court of India in the case of *National Federation of Blind v. Union Public Service Commission*.²⁹ The Writ Petition was filed as a PIL in the pre-disability legislation period, under Articles 32 and 21 seeking directions to the Union of India & UPSC to provide facilities to visually disabled persons for writing the civil services exam in Braille-script or with the help of a Scribe; and for reservation in Groups A & B posts in Government and public sector undertakings.

The Supreme Court held that the question of providing reservation/preference to people with disabilities on an identified post was a matter for the Government of India to decide. The Court further noted that since the present Petition, the Standing Committee of the Government had already identified Groups A & B posts suitable for disabled persons, though the matter has been pending for several years, for the final say of the Government. Under such circumstances, the Supreme Court allowed visually disabled persons to write the civil services exam and apply for such posts that have been identified as suitable by the Standing Committee. However, if in the hierarchy of promotional posts, it was found by the Government that a particular post is not suitable for a visually disabled person, there shall not be any right to claim the said post. Thus, the Petition was partly allowed and directions were issued to Government of India to expeditiously decide on the findings of the Standing Committee, along with directions to Government and UPSC to permit visually disabled (blind & partially blind) eligible candidates to write and compete in the civil services examination in Braille-script or with the help of a scribe.

²⁷ AIR 2003 SC 1623

²⁸ 2008 (1) SCC 579

²⁹ AIR 1993 SC 1916

This being a pre-convention judgement and a case decided before the 1995 Act, the approach of the Court was noteworthy. However, after adoption of the CRPD and the passage of the 2016 Act, any discrimination on the ground of disability in employment especially by the Government is expressly barred.

In the case of *Jaswant Singh v. State of Punjab*³⁰, the Apex Court held that the choice between taking alternative appointment or compensation shall be of the workmen acquiring disability. In this case, the Appellants were drivers who became blind as a result of their service and were consequently removed, despite having worked for several years with the same corporation. The High Court had dismissed their prayer for alternative appointment within the Corporation itself. In the Appeal, the Supreme Court cited the judgment in the case of *Anand Bihari v. Rajasthan*³¹, to propose the same social security scheme outlined in that case for the Corporation. Accordingly, the participants were directed to provide alternative appointments for the appellants when vacancies arose or to pay compensation computed on the basis of the number of years the individual had worked. The scheme proposed in the *Anand Bihari* case was formulated before the Persons with Disabilities Act was passed in 1995. Post-disability legislations, the Supreme Court has laid down on several occasions that an employee/workman acquiring disability is entitled both to compensation as per rules and to the protection under section 47 of the PwD Act.

Anand Bihari is a 1991 decision. Both the PwD Act and now the RPD Act of 2016 have provisions (in Sections 47 and 20 respectively) to protect employees in the public sector from termination of service or reduction of rank on acquiring a disability.

In 1995, in the case of *Narendra Kumar Chandla v. State of Haryana*³², the Appellant, a Sub-Station Attendant of the Haryana State Electricity Board, was operated on for Chondrosarcoma resulting in the amputation of his right arm. After this operation, he was reinstated but as a Carpet Attendant. Dissatisfied with his post on reinstatement, the Appellant approached the High Court where his petition was dismissed. He appealed to the Supreme Court, by whose orders a Medical Board assisted by two Engineers was constituted for assessing whether the appellant could perform the duties of his original post or equivalent posts. As the appellant could write, the Medical Board recommended that he be considered for any clerical or non-technical post. The Supreme Court while rejecting the Appellant's pleas to order his appointment as Upper Division Clerk (UDC), which carried the same pay scale as his earlier post, directed the participant to appoint him as Lower Division Clerk at the pay-scale of UDC employees.

The High Courts on employment of persons with disabilities. In the case of *Ashok M. Shrimali v. State Bank of India*³³, Central Government statutorily obliged employers to identify and update the list of posts suitable for persons with disabilities and to ensure 3% reservation. The Petitioner, who was blind, sought to be accommodated as a bank officer in a

³⁰ (1996) 10 SCC 570; 1996 (7) SCALE 479 (SC)

³¹ AIR 1991 SC 1003.

³² AIR 1995 SC 519; (1994) 4 SCC 460

³³ 2001 (Supp) Bom CR 132 (Bom HC)

suitable position. The participant bank stated that certain posts have been identified for visually challenged persons, however, posts beyond level II are not suitable for such persons as they require verification of vouchers, etc. The Court expressed its grief on the absence of a representative of the Union Government to appropriately assist the Court in adjudicating the issue, despite them being issued notice before the admission of the Petition.

In the circumstances, the Court proceeded to state that there was no constitutional protection when the Central Government fails to discharge a statutory obligation by not identifying posts suitable for persons with disabilities as required under section 32 of the Disabilities Act (1995). The Central Government was directed to carry out identification of posts in favour of persons with disability as contained in section 32 and reservation of posts in favour of such persons as required by section 33 of the PwD Act, 1995 within a period of six months from the date of order. Furthermore, the Court granted the petitioner liberty to move the court after the process of identification and reservations of posts is completed. In the interim, the participants were directed to appoint the petitioner to a post consistent with his qualifications and results in appropriate examinations.

In another case³⁴, the same High Court held that Sections 33 and 37 which were not being complied, the Petitioner approached the Court for reliefs as the government did not take any measures to implement sections 33 and 37 of the Act. The High Court admitted the Petition and directed the re-constitution of the Committee for the purposes of identification of posts in various government and semi-government organisations which the Court directed was to be headed by a person who is closely connected to one of the leading disability institutions or by a person with a disability. It was further directed that the Government undertake the job of identification of the posts for the categories of disabled persons which including the blind, the deaf and persons with orthopaedic disabilities. Three members from an NGO carrying on work in the field of physically handicapped to be included. It was particularly directed that while doing so, the Commission shall not restrict the identification of the post only to the lower categories such as lower division clerk and upper division clerks but they have reservation at higher levels and at every stage where there is recruitment to be effected.

In another case³⁵, the Petitioner had moved, by way of writ, against the Government of Arunachal Pradesh. The petition sought identification and reservation of jobs for persons with disabilities on the grounds that the Government of Arunachal Pradesh had not provided for 3% reservation as required by the Persons with Disabilities Act (1995). The Government identified posts in Groups A, B, C and D for reservation subsequent to filing of petition. Pursuant to the filing of the Petition, the Government of Arunachal Pradesh constituted an Expert Committee to identify posts for persons with disabilities and a notification was issued reserving 3% posts in the A, B, C, and D groups for persons with disabilities. The Petition was disposed of accordingly.

³⁴ *National Federation for the Blind v. State of Maharashtra*, 2005 (1) Bom CR 740 (Bom HC)

³⁵ *Tami Taniang v. State of Arunachal Pradesh*, PIL No. 11 of 2007 (Gua HC)

In *R. Manoj Kumar v. University of Hyderabad*,³⁶ the Participant-University had issued an advertisement for 27 posts of Lecturer, without making any reservation under section 33 of the Disabilities Act. Before the High Court, the university sought to justify its action on the pretext that the matter of identification and notification of post for reservation was pending with the Executive Council of the University. The Court held that the provision does not require, for its effectuation, any administrative instructions or order of the academic or executive council. Therefore, the decision of the academic or executive council of the University was required only for pragmatic facilitation of this mandate. A social welfare legislation could not be subverted by the leisurely approach of an University, which fails to put its affairs in consonance with the mandate of the legislation. The High Court directed the University to stay further recruitments till it identifies and declares the 3% reservation for persons with disabilities, in the total posts advertised.

In *Chandrakant Tadi's case*³⁷, the Petitioner, a 100% blind employee of LIC had joined the services of the Participant as a telephone operator. He applied for a promotion after having completed over five years of service as per the eligibility norms under the LIC Rules. The Petitioner was not selected for the promotion despite being eligible although he repeatedly applied for the same. By two separate letters, the Petitioner was informed that he was not eligible for the promotion to the cadre he had applied for as per the rules. For about ten years from his entitlement, the Petitioner was continuously denied his promotion. The Petitioner challenged the action of the Participant by filing a writ petition in the Bombay High Court. Thereupon, the LIC decided that the Petitioner would be considered for the promotion and issued instructions to treat the Petitioner as eligible for the promotion as per the rules. The Petitioner was subsequently promoted.

The Delhi High Court in *Union of India through Western Railway v. Sanjay Kumar Jain*,³⁸ held that disability is not a ground for denial of promotion. Seeking to fill up Group B posts by promotion of persons from Group C positions, the Participant held a written test for its Group C employees. The Participant's name appeared in the list of successful candidates but he was not called for the interview because he had Retinitis Pigmentosa and he was specifically denied the chance to participate in the interview by an order made pursuant to a circular of the Railway Board. The Central Tribunal quashed the said order of the Participant. The Petitioner challenged the order of the Central Tribunal before the Delhi High Court, which confirmed the order of the Central Tribunal and further directed the Participant to interview the Petitioner and appoint him to the said post or a suitable equivalent post if the Participant fared better than the other candidates.

In *Omvati Kalshan v. Delhi Development Authority*,³⁹ the Petitioner, a DDA employee, had been certified as visually impaired and likely to encounter problems with deskwork due to her deteriorating eyesight. Consequently, she was offered a post at a lower grade, which was resisted by her but which she finally accepted as her refusal would have resulted in her being

³⁶ WP No. 70074/ 2002 (AP HC)

³⁷ W.P 1184 of 2006 (Bom HC)

³⁸ 102 (2003) DLT 525 (Del HC)

³⁹ 125 (2005) DLT 57 (Del HC)

retired on medical grounds. Her bad eyesight was admittedly the only ground for downgrading her. The Petitioner was placed on a separate seniority list that did not have any avenue for promotion. The Petitioner was also denied conveyance allowance. The Participants submitted that the Petitioner was not entitled to conveyance allowance, as that was available only to persons who had a minimum of 40% disability of both limbs.

It was held that the authority's action of demoting the Petitioner and placing her on a separate seniority list was contrary to the provisions of section 47 of the Act and the Participant was directed to treat the Petitioner as eligible to the next higher grade, subject to her being otherwise qualified. Further that denying her conveyance allowance was arbitrary as the Petitioner had been certified to be a person with 75% low vision and hence was within the ambit of a person with disability entitled to the benefits under the Persons with Disabilities Act. The DDA's subsequent appeals were dismissed.

In the case of *O.P. Sharma v. Delhi Transport Corporation*⁴⁰, the Petitioner, a physically disabled conductor with the DTC, had a paralytic attack, which led to severe impairment of his leg. He was thereafter subject to medical treatment, and found to be medically unfit for the job. The Petitioner requested an alternative job and was assigned the job of a Ticket Tally Clerk (TTC). He was however prematurely retired from his post at the age of 39 on the ground of being medically unfit to perform his job.

The Court held that the Petitioner was entitled to reinstatement and directed the Participant to assign him suitable alternative duties with pay protection and continuity of service as per the provisions of section 47 of the Person with Disabilities Act. The Participant was also ordered to provide the Petitioner with other benefits that he was entitled to like annual increments, promotion etc. The Petitioner was further awarded costs.

In the case of *Dilbag Singh v. Delhi Transport Corporation*⁴¹ the Delhi High Court has held that under Section 47 alternative employment has to be provided even where disability is less than 40%, although the employee has accepted compensation. The Court also held that the orders of the Disability Commissioner are not purely recommendatory

The Petitioner, a DTC driver, was surrounded by a mob that pelted stones on the bus and set the bus on fire. The Petitioner was hit by lathis and suffered injuries on his head. By an order, the Petitioner was given premature retirement on medical grounds by the Participants and the Petitioner approached the High Court for quashing of the same. The Petition was disposed of with liberty to approach the office of the Commissioner of Disabilities. The Commissioner rejected the Petitioner's complaint on the ground that the Petitioner's disability was less than 40% and hence that section 47 of the Act had no application. The order of the Commissioner was challenged before the High Court.

The High Court in construing the scope of section 47 of the Persons with Disabilities Act (1995) held that the provision did not use the term 'person with disability' but used the words

⁴⁰ 125 (2005) DLT 742 (Del HC)

⁴¹ 123 (2005) DLT 318 (Del HC)

‘an employee who acquires a disability’. The term ‘disability’ had a wider definition than the term ‘person with disability’. Hence the fact that the disability was less than 40% was of no relevance for section 47.

The High Court also observed that a perusal of the provisions of sections 59 and 63 of the Act give a sufficient indication that the orders of the Chief Commissioner were not recommendatory but that the office enjoyed full adjudicatory powers granted by statute.

The order of the Chief Commissioner was quashed and the Petitioner was ordered to be reinstated to a suitable post of equivalent rank with arrears and continuity of salary and increments. Further costs were awarded to the Petitioner.

In *Kumar Bharat Prasand Narain Singh v. Airports Authority of India*,⁴² expanding the ambit of Section 47 the Court held that a person acquiring a heart ailment during service is included within the ambit of the section.

The Petitioner, during his tenure as a co-pilot with the Participant suffered a heart attack while on duty and as a result was declared unfit to fly. He was given a fresh appointment as an Aerodrome Officer at a lower pay scale. The Petitioner accepted the new appointment but made repeated representations requesting that his pay scale be at par with that of a co-pilot. On the Participant’s failure to act on the said representations, the Petitioner approached the High Court.

Relying on the case of *Narendra Kumar Chandla v. State of Haryana*⁴³, the High Court found that a person with a heart ailment could be extended the benefits of the law and that there was no reason to conclude that a person suffering from a heart disease was kept beyond the statute. Consequently, the Participant was directed to place the Petitioner on the pay scale of a co-pilot and also pay him the arrears at that scale. It was further directed that the Participant was obligated to identify promotional avenues for the Petitioner.

In *M. Sasikumar v. Union of India*,⁴⁴ STD/ ISD/ PCO booth operators in railway stations who were persons with disabilities filed a Writ Petition before the Madras High Court seeking a direction against the Participants’ decision to cancel the licence granted to persons with disabilities to run STD/ISD/PCO booths at railway stations and platforms after 27th April 2007. The Petition also sought a scheme for individuals running such booths in railway stations under section 38 of the Persons with Disabilities Act. An interim order restraining the Participants from vacating the disabled persons holding a valid licence to run an STD/ISD/PCO booth after the said cut-off date was also sought. By an interim order, notice was issued by the High Court and the Participants were directed not to demolish the telephone booths or interfere with the possessions of the allottees of the booths in any matter until further orders. In a similar case, the Kerala High Court in *Indian Railway Public Telephone Booth Holders Assn. (Handicapped Persons) v. Sr. Divisional Commercial*

⁴² 120 (2005) DLT 545 (Del HC)

⁴³ (1994) 4 SCC 460.

⁴⁴ WP No. 14480 of 2007 (Mad HC)

Manager,⁴⁵ ruled that upon being informed that the contract executed by them for operating the booths was to stand terminated after 27th April 2005 shall not be terminated. Upon filing the Writ Petition, by telephone booth operators, the Participants decided to extend the contracts that were expiring for a further period up to 27th April 2007 provided the working of the allottees was satisfactory. In view thereof, no grievance subsisted and the petition was disposed of accordingly. In the other Petition, the Petitioners challenged a clause in the agreement on the ground that the Railways had a right to terminate the agreement and require the licensee to vacate the booth by giving one month's notice. It was however pointed out by the Railways that the previous agreement also contained an identical clause and the Court therefore recorded that the license is to be subject to the same terms and conditions contained in the previous agreement.

In *Rajkumar Suraj Gupta v. Western Railway*⁴⁶, in February 2003, a group of blind hawkers selling their wares in railway platforms and foot over-bridges, who were being harassed by the Railway Police approached the High Court for relief. A detailed enquiry and report was submitted by India Centre for Human Rights and Law, Mumbai before the Court which recorded constant and excessive police brutality ranging from verbal abuse, goods being thrown onto the tracks or in front of approaching trains to hawkers being locked up and severely beaten for hawking in the Railway premises. Taking cognizance of the Study Report, the Bombay High Court directed the blind hawkers to form themselves into an association and ordered the Railways to issue identity cards to them. Owing to the pending petition on hawking zones in Mumbai before the Supreme Court, the Petition was adjourned sine die. It should be mentioned here that in *Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai*,⁴⁷ the Apex Court has observed that an exception is carved out for the benefit of disabled hawkers by the Supreme Court in the judgment and order pertaining to the policy and demarking of hawking and non-hawking zones in Mumbai. The Supreme Court had constituted a Committee for the designation of hawking zones in Mumbai. Unauthorised hawkers had been directed to be removed from Non-hawking zones. With regard to disabled hawkers however, the Court permitted those hawkers with disabilities who had been granted a license for running Public Call Offices (PCO) /Aarey/Sarita stalls to continue to run those stalls even in non-hawking Zones. However, it was noted that no further or new licenses could be granted to any other person including to a disabled person in non-hawking zones. It was further clarified that a license to run the PCO stalls would mean running a PCO stall only and no other activity could be carried out from the PCO stall. Similarly, that even in respect of other stalls, only the activity permitted by the license could be carried on at the stall.

The principles laid down in the above cases would hold good even while interpreting Section 20 of the RPD Act, 2016. Section 47 was the only provision in the PwD Act, 1995 that protected a person who acquired a disability in the course of employment. The ratio of the

⁴⁵ WP (C) No. 7783 and 13669 of 2005 (Ker HC)

⁴⁶ WP 2610 of 2003 (Bom HC)

⁴⁷ AIR 2007 SC (Supp) 523

cases analysed above would hold good in the future interpretation of Section 20(4). Section 20(4) reads as follows:

“(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:”

While at first reading, it appears that this Section has been watered down when compared to Section 47, if one reads the clear non-discrimination mandate of Section 20 along with the other safeguards it provides, it is clear that Section 20 is a provision that gives better protection to the employee who acquires a disability. The consistent line of protection granted by the Courts in the above cases would no doubt be extended in the interpretation of the provisions of the RPD Act.

GENERAL OBSERVATIONS

The report argues that basic education and other facilities are more urgently needed before persons with disabilities can reap the benefit of accessibility as far as job opportunities are concerned. It is also noticed that entrepreneurship is given a greater thrust in India rather than preparing persons with disabilities for paid wage employment. There are several schemes and programmes for persons with disabilities and the government through the mechanism of the PwD Act, 1995 that has taken upon itself the responsibility of employing persons with disabilities as required by the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. The government has also distributed incentives in the form of higher interests for ESI and Provident Fund deposits to the employer of a person with a disability. There is scope for significant improvement in this area. Persons with disabilities are no doubt protected by the PwD Act, 1995 and under the 2016 Act in so far as job reservations are concerned in employment but the important issue as to what jobs are to be reserved remains inadequately addressed. The reservation is a mere quantitative safeguard and leaves the question as to what jobs for whom unanswered. This is especially true of the 2016 Act wherein both the number of disabilities and the percentage of reservation has gone up. The concern expressed by several persons with disabilities that there is always a gap between the letter of the law and its implementation has to be viewed seriously. Persons with disabilities also expressed concern over the gap in communication and information with regard to new laws and policies. These two areas would remain areas of concern even with the 2016 Act.

The Government of India and the NGOs and private sectors should jointly review the draft private sector incentives policy for people with disabilities developed by National Centre for Promotion of Employment for Disabled People and Federation of Indian Chambers of Commerce and Industry and the 2016 Act and the UNCRPD to assess financial and administrative feasibility and adopt how those measures will become workable into policy. There should be dissemination by the Commissioners' offices of good practice in public and private sector enterprises in hiring and promotion of inclusive workplaces for people with disabilities.

In securing a fair standard of living, three aspects, namely employment, security and non-precarity of jobs are important factors. While it should be remembered that the country as a whole is still developing its economic potential, and many millions are denied an adequate standard of living and exist in poverty, it cannot be forgotten that persons with disability have yet again got a raw deal. There are really no accurate indicators of the actual numbers of employment disadvantaged, and even the World Bank finds it difficult to make a precise study of the labour market and the demand and supply factors. Often the assumption is that the issue is about the job seekers and their skills rather than recognizing that the crucial issue to be addressed is the demand side in which employers are not hiring people with disabilities. This has a direct bearing on their standard of living. As a solace, most state governments have come out with monthly pension schemes for the benefit of persons with disabilities. The

amounts given by the State governments are in the range of ₹ 200/- to ₹ 750/- and by any standards this amount is inadequate. The Vikalangata (Disabled Persons') Pension Scheme in Andhra Pradesh was ₹ 500/- The lack of jobs, the indifferent attitude of the government and the poverty that comes along with disability have contributed to a diminished standard of living amongst persons with disability.

While it is true that the RPD Act, 2016 has finally made it to the statute book, Rules and Regulations that are required for its implementation remain as draft rules and have not seen the light of day yet. It is also not very clear as to how the Act is going to be effectively implemented. The CRPD being a charter of rights for persons with disabilities, high standards have been set. Mere replication of these provisions in the domestic statute would not suffice. Such replication is only lip service and does not really serve the needs or fulfil the aspirations of persons with disabilities in India if the Act is not effectively implemented.

Persons with disabilities who felt they had been discriminated against and approached higher authorities and complained about discrimination were often disappointed with the outcome of such interactions. They felt a lack of sensitivity and sensitisation when they approached the authorities with complaints. Most persons with disabilities had to approach the authorities and various government offices on more than one occasion to have their concerns addressed.

The research also found that persons with disabilities preferred to discuss the problems that they had with other persons with disabilities. Most participants gave importance to the sharing of information among the persons with disabilities and felt that the government should also encourage such information sharing and work on the shared information to bring out schemes for people with disabilities.

With respect to feedback on how workplace environment and the labour force could be made better for the persons with disabilities, the responses were varied. While a majority of the persons with disabilities were satisfied with the facilities for people with disabilities at the workplace, suggestions included holding review meetings, treating persons with disabilities with more sensitivity and improving facilities for persons with disabilities came to the fore.

Persons with disabilities felt that their disability contributed to efficiency. Most participants felt that persons with disabilities are able to concentrate better and were by and large not “the kinds who would run from one job to another”. Persons with disabilities felt that their disabilities contributed to better quality of work. For instance, a participant with a disability related to mobility pointed out that he was not taking as many coffee breaks as his counterpart who had no disability and thus was more efficient. However, persons with disabilities felt that they were not rewarded sufficiently for their ability to concentrate and for their greater efficiency. They often saw their incomes stagnate and this was one of the most prominent reasons for their changing jobs or quitting their employment. While the RPD Act has no specific provision to ensure income stability especially in the private sector, the Act has made provisions for social security. Section 24 has made provision for schemes to ensure persons with disabilities have an adequate standard of living. Section 26 has provided for insurance schemes for employees with disabilities.

Some persons with disabilities felt that they were facing problems in the area of education. Mainstream colleges lacked facilities for those with sensory impairments and the persons with disabilities faced challenges in areas like finding a scribe and in attending lectures where the board was being used extensively. A participant uses a tape recorder in class to help him keep track of the lecture being given. Some participants faced issues when they asked for assistive devices and software to be used and the answer given was that these aids and assistive devices and software were costly or unstable.

There is considerable improvement in this area under the newly incorporated Chapter III of the 2016 Act. Chapter III dealing with education now makes specific provisions in Section 16. Section 16 provides for accessible campuses and facilities, reasonable accommodation, education in appropriate languages and modes of communication (for the blind and deaf) and for provision of necessary individualized or other support that maximise academic development.

Persons with disabilities who approached higher authorities and complained about discrimination were often disappointed with the outcome of such interactions. They felt a lack of sensitivity and sensitisation when they approached the authorities with complaints. Most persons with disabilities had to approach the authorities and various government offices on more than one occasion to have their concerns addressed.

This continues and will continue to be a problem area although Section 39 makes it the duty and responsibility of the appropriate government to have awareness campaigns and sensitisation programmes. Section 39(2)(b) clearly states that such awareness and sensitisation programmes will be aimed to advance recognition of skills, merits and abilities of persons with disabilities and their contribution to the workforce and labour market. Sensitisation can neither be statutorily enforced nor can the lack of sensitisation have penal consequences. This makes the provision an ambitious prescription that will prove difficult to enforce.

It was found in the study that persons with disabilities preferred to discuss the problems that they had with other persons with disabilities. Most participants gave importance to the sharing of information among the persons with disabilities and felt that the government should also encourage such information sharing and work on the shared information to bring out schemes for the disabled.

This is another area that is aimed to be resolved by the ambitious Section 39. It is the duty and responsibility of the appropriate government to spread awareness campaigns to ensure that the rights of persons with disabilities are protected and orientation and sensitisation towards the human condition of disability is ensured. However, it remains to be seen as to how this Section will be implemented and what effect it will have as far as ground realities are concerned.

SUGGESTIONS AND RECOMMENDATIONS

Most of the persons with disabilities who had lower levels of education were unaware of the schemes and policies of the government. They felt it was a political issue and did not desire to express their views on the subject. It is understandable that many would not yet be familiar with the new Act of 2016 as it is very recent and many of the regulations have not yet been promulgated.

Persons with disabilities who were relatively well educated felt that the governments were not doing enough. The schemes for the welfare of persons with disabilities were reported by participants to be randomly implemented without sensitivity. To cite an instance, while housing, an entitlement under the PwD Act, 1995 was provided to some participants, these houses were not accessible or wheelchair friendly. Participants who were given such houses were facing difficulty in getting in and out of their homes and complained that the government lacked sensitivity.

Sensitisation and awareness of the specific needs of persons with disabilities is important. Reportedly, governments have been lax in the area of addressing the following areas when it comes to the needs of persons with disabilities and introspection and action are required in the following areas:

- a. Addressing concerns of persons with disabilities when they face issues in their workplaces like parity in pay,
- b. Issues in accessible environments,
- c. Discrimination and lack of respect for difference,
- d. Providing reasonable accommodation and
- e. Transportation and other support to help persons with disabilities to commute to and from their places of work.

The approach of government officials across levels reflects apathy and lack of sensitisation to the needs of persons with disabilities. Most persons with disability have had to approach offices on multiple occasions over a single issue with disappointing results. This is an area of concern and the authorities should act and ensure that the deliverables to persons with disabilities, which are now rights and entitlements, are given to persons with disabilities without them having to run from pillar to post.

Persons with disabilities also felt that there has to be a drastic change in societal attitudes towards those with disabilities, especially in the area of work. The general misconception that a person with disability is inefficient and cannot work as efficiently and effectively as others needs to be addressed and replaced with a more positive image. Denial and exclusion have for too long been what has faced persons with disabilities in looking for work. The negative and inaccurate assumption that persons with disabilities are unable, due to their disabilities, results in the on-going exclusion from the labour market and lack of opportunities. It is in this context that the importance of equality and ensuring a level playing field becomes important

for persons with disability. Substantive equality and the equal outcome of jobs has to emerge as the norm rather than the exception.

Accessibility and lack of respect for difference along with the lack of reasonable accommodation continue to be issues of concern. Although participants who were working in the organised or public sector had fewer problems in the above areas, persons with disabilities (especially women) continued to face these issues on a large scale on a day to day basis. This is an issue that also requires urgent attention and remedial measures.

Reasonable accommodation, the denial of which is discrimination should be provided. Universal Designs should be adopted in all spheres of society. Affirmative action and efforts to ensure full participation of persons with disabilities in all areas of life has to be enforced to ensure social justice to persons with disability.

The emergence of the rights-based paradigm in the disability discourse, a direct fallout of internationalisation, has gone a long way in obliterating the distinctions between the able-bodied and persons with disabilities in many areas. Realities however indicate that a lot more needs to be achieved in this area and employment is key to that happening.

There must be sea change in the perceptions of persons who work with persons with disabilities. A change in the perceptions of employers when they consider the employment of persons with disability would go a long way in solving problems related to the employment of persons with disabilities in India. Sensitisation and awareness-raising are urgent needs of the hour to ensure persons with disabilities are given their due share of statutory and Constitutional benefits and that social justice is ensured.

CONCLUSIONS

Several key issues came to light through this study. We found there is a substantial lack of respect for difference and discrimination in the workplace. We also found that accessibility and reasonable accommodation are challenges for employees with disabilities, especially those who are working in the private formal and informal economy. Interestingly, participants employed in the public sector, such as banks, experienced little to no challenges with accessibility. Women with disabilities appear to experience more hostile discrimination than men with disabilities. Income security and security of employment also emerged as areas of concern.

Most persons with disabilities felt that they were excluded from the open labour market because they were different. While some had a strong desire to work and lead independent lives, they faced barriers and opposition from many quarters, including their own families. People with disabilities reported that their family members would rather keep and provide for their disabled family members rather than allow them to go to work outside the home.

Education appears to be a mitigating factor. Those participants with higher formal education levels were more likely to work at white collar jobs in the public sector, have a higher standard of living and greater awareness of disability rights. Participants with lower levels of education appear to be more likely to work in tailoring, embroidery and bag making within the informal sector.

Accessibility and reasonable accommodation continue to be challenges faced by persons with disabilities in work and employment. Lack of accessibility and reasonable accommodations can be a major disincentive to workers with disabilities in the rural areas and those employed in the informal economy.

Participants also told us about their experience of stagnation and lack of pay parity at work, particularly in the private formal and informal economy. According to participants, a lack of unity and solidarity among persons with disabilities themselves is a major hurdle in seeking and obtaining solutions to these challenges and barriers to employment.

Having a disability places people within a significantly excluded minority group. As the population ages, this figure is expected to increase. Eighty per cent of persons with disabilities live in developing countries, according to the UN Development Program (UNDP). The World Bank estimates that 20 per cent of the world's poorest people have a disability, and tend to be regarded in their own communities as the most disadvantaged. Statistics show a steady increase in these numbers because of the emergence of new diseases and other causes of impairment throughout the life cycle; increasing life expectancy; armed conflict and violence.

In India, 26,810,557 persons with disabilities were enumerated according to Census 2011. Around 44% of this figure constitute women. The country's disabled population has increased by 22.4% between 2001 and 2011. The number of people with disabilities rose in 2011 to 26.8 million—15 million males and 11.8 million females. Rural areas have more disabled people than urban areas. Thus, the opportunity now is to promote a better quality of life, full participation and inclusion of people with disabilities as an untapped pool of labourers who can significantly contribute to the economy and the labour market.

Unfortunately, persons with disabilities have historically been marginalised and excluded from all aspects of society. In India disability has been attributed to *karma*. It was believed that bad *karma* in your previous birth contributed to disability in your present life.⁴⁸ This is part of the reason social justice has been denied to persons with disability. This discrimination based on disability status is heightened when combined with gender discrimination of women with disabilities. Thus, we have seen women with disabilities experiencing more unemployment, exclusion and isolation.

There has been a change in thinking after India's acceptance of the CRPD in 2007 that may move us further away from the charity model. Human rights jurisprudence and the provisions being implemented under the new RPD Act, 2016 require equal treatment of people with disabilities. This is fundamental when we consider social justice implemented in areas such as accessibility, education and employment of persons with disabilities. Having to go to Court or another authority to secure a guaranteed right to work is not easy, and should not be expected of a group who have been marginalized and excluded for so long.

We are seeing some change. Judicial attitudes appear to be moving in a positive direction as noted in the cases above and particularly in the finding of the Supreme Court in October 2013 in *Union of India v. National Federation of the Blind*. So too, we have hope in the introduction of the RPD Act, 2016. Now we must wait to see what happens, and continue to monitor its implementation and its impact.

People with disabilities are gaining more access to practical advances in access to employment via the DRPI AWARE⁴⁹ project. The project begins with the assumption that people with disabilities have the skills and the capacity to work in all areas of the labour force. The project simply aims to match job opportunities with the skills and abilities of job seekers with disabilities. Employers are beginning to discover the hidden talents of people with disabilities and the unexplored potential of people with disabilities. Many other employment initiatives in the region are grounded in the charitable approach to employment of persons with disabilities. However, the business community recognizes that there is an underutilized and successful business model that capitalizes on the skills and abilities of persons with disabilities.

⁴⁸ Jagadish Chander *Disability Studies in India – Global Discourses, Local Realities* “Renu Addlakha: *Disability Studies in India – Global Discourses, Local Realities*, New Delhi: Routledge, 2013. See pp.: 61-77, at p. 62.

⁴⁹ For more information please visit: <http://drpi.research.yorku.ca/asia-pacific/drpi-aware/>

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