

CHAPTER 4

PROTECTION AND PROMOTION OF HUMAN RIGHTS OF PERSONS WITH DISABILITIES IN INDIA WITH REFERNCE TO PERSONS WITH DISABILTIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

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PROLOGUE:

“It is not tragic to live in a wheel chair. Disability only becomes a tragedy when society fails to provide the things one needs to lead one’s life the design of our physical environment should reflect our understanding of the real needs of the disabled.... Let us join hands to define disability as a special ability.” --Judy Heumann

A considerable section of the Indian population experiences physical, intellectual or psychological impairment of changeable proportions, temporarily or permanently. It has been observed that their lives have been often handicapped by social, cultural, economic, infrastructural and attitudinal barricades which impede their admittance to opportunities and their ability to benefit from rights on equal terms. To characterize disability as a special ability, in the last decade India has toiled towards providing a comprehensive legal framework for its citizens with disabilities. Four landmark Acts have been espoused namely the *Mental Health Act of India, 1987*, *The Rehabilitation Council of India Act, 1992*, *The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* and the *Persons with Disabilities (Equal Opportunities, Protection of Rights*

and Full Participation) Act, 1995. The objectives of these Acts has been to even out opportunities, augment participation, deal with tribulations of discrimination and more importantly, ensure the enjoyment of all basic and fundamental rights by persons with disabilities. The passing of these laws has also marked an alteration in the acuity of disability-connected subjects, the focus changing from one based on charity to one enthused by the concept of rights. Unfortunately review of the three Acts namely the *Mental Health Act of India, 1987*, *The Rehabilitation Council of India Act, 1993* and *The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* point out that the slow and uneven implementation of these Acts has resulted in disappointment among the persons with disabilities as well as their families. The implementation of the laws has been particularly weak along with some defective provisions as discussed in the previous chapter.

India being a welfare state has got the obligation to help the downtrodden and the poor. Persons with disability also need some attention and state support. In fact the Constitution through the Directive Principles of State Policy under Article 41 demands the State to protect the disabled, within the limits of its economic capacity. Being a Directive Principle, the provision is an unenforceable one as laid down under Article 37; hence the State can put forward the plea that it does not have the sufficient economic resources.¹ Although the United Nations declared 1981 as the international year of the disabled, India enacted its comprehensive legislation in 1995 as its obligation of being a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific region, which was adopted at the meeting to launch the Asian and Pacific Decade of the Persons with Disabilities (1993-2002) convened by the Economic and Social Commission for

1. P.S. Seema, "Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995- A Critique". *The Karnataka Law Journal*, vol. (4) (2005), pp. 19 at p.1

Asia and Pacific at Beijing on 1st December, 1992. To implement the Proclamation, the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* was enacted. , the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Bill, 1995* was passed in December 1995 and was published in the Gazette of India on Monday, 1st January 1996 after receiving assent from the President of India Dr. Shankar Dayal Sharma. It became enforceable on Wednesday, 7th February 1996. The title of the Act speaks enough as to its major aims and objectives which are to enable a disabled human to attain his or her full personhood which includes an individual's dignity, creativity and opportunity as are the broader preamble objectives and directives of the Indian Constitution.² The Act treats disability as a civil right rather than a health and welfare issue, and recognizes the need to integrate persons with disabilities with the mainstream of society by some normative action. Among other things the Act intends to provide for 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; to create a barrier free environment for persons with disabilities; to remove any discrimination against persons with disabilities in the sharing of development benefits vis-à-vis non-disabled person etc.³ Despite the enactment of such a beneficial piece of legislation, various incongruities have crept in the realistic field of its execution. Various shortcomings have surfaced in the functioning as well as its implementation in the past decade. In this chapter a critical analysis of the various provisions of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* will be taken up. Assessment of the Act will be incomplete without a reference to the national

2. Ateeque A Khan, "The Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—A Plea for Early Enforcement in India", *Kashmir University Law Review*, Vol. V (1998), pp. 267-279 at p. 267

3. Justice S.B. Sinha, "Disability Law vis-à-vis Human Rights", *Supreme Court Cases*, (2005) 3 SCC, pp. 1-14 at pp. 3, 4

policy of Government of India and the disability estimates. Hence to ascertain the true picture of the major disability law an appraisal of these areas is also desirable and which shall find a place in this paper. Along with *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996* shall be referred to freeze the correct position of the Act.

A. GOVERNMENT POLICY AND NATIONAL PLAN TOWARDS PERSONS WITH DISABILITIES:

(a) Backdrop of current Disability Policy:

India has an extensive experience of policy and practice with respect to disability, together with collection of census information on disability beginning as early as 1872, and special schools and institutions operating since the 19th century. Like many countries, it too had definite provision for people with mental illness and retardation under the *Indian Lunacy Act of 1912*. Welfare of differently-abled persons is under the Concurrent List. In view of that, both the Centre (the Ministry of Social Justice and Empowerment) and the State Governments (Ministries of Women and Child Development) devise and execute welfare programmes such as provision of social education service, employment and training, and rehabilitation and social security schemes. The Constitution of India also acknowledged general state obligations to persons with disabilities in Article 41, and the State List under “Relief of the disabled and unemployable”.

Subsequently, specific measures such as employment concessions were introduced from the 1960s. However, it was not until the 1980s that policy commitment to full participation of PWD in Indian society evolved. The outcomes of this policy shift were realized in several key pieces of

legislation : (i) *the Mental Health Act, 1987*; (ii) *the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (PWD Act); (iii) *the Rehabilitation Council of India Act, 1992 and amended in 2000* (RCI Act); and (iv) *the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* (National Trust Act).⁴ As a matter of fact important initiatives took place during the Asian and Pacific Decade of Disabled Persons, which included the passage of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* while including a more fundamental shift from a welfare and charity approach to a more human rights approach. Decentralization of services for persons with disabilities was an important aspect of development during this decade.

The Ministry of Social Justice and Empowerment improved outreach considerably through adoption of a camp approach for meeting the rehabilitation needs of the persons with disabilities. The Ministry also put forward the *National Programme for Rehabilitation of Persons with Disabilities* which trains people from the grassroots level upwards in the prevention of disability recognition of its occurrence and rendering advice on appropriate referrals that can range from minor interventions available at primary and state level institutions that are able to provide sophisticated services. The Ministry of Social Justice and Empowerment is accountable to the Parliament for the implementation of the *Persons with Disability Act, the Rehabilitation Council of India Act* and the *National Trust Act*. In 2005, the Ministry of Social Justice and Empowerment developed a draft National Policy for Persons with Disabilities. The national Cabinet approved this in February 2006. Overall, the Policy follows the structure of the PWD Act.

4. People with Disabilities in India: From Commitments To Outcomes, *Human Development Unit, South Asia Region, The World Bank*, May 2007, p. 123

(b) Framework of the Policy:

The National Policy of the Persons with Disabilities, 2006⁵ has pronounced the Constitutional mandate of equality freedom, justice and dignity of all individuals and an inclusive society for all, including persons with disabilities. The National Policy for Persons with Disability, announced in February 2006, endeavours to elucidate the framework under which the state, civil society and private sector must function to facilitate a dignified life for persons with disability and support for their caregivers. The National Policy for Persons with Disability includes:

- (a) Extending rehabilitation services to rural areas
- (b) Increasing trained personnel to meet needs
- (c) Emphasising education and training
- (d) Increasing employment opportunities
- (e) Focusing on gender equality
- (f) Improving access to public services
- (g) Encouraging state governments to develop a comprehensive social security policy
- (h) Ensuring equal opportunities in sports, recreation and cultural activities
- (i) Increasing the role of civil society organisations as service-providers to persons with disability and their families.⁶

Apart from the legal framework, extensive infrastructure has been developed. Consequently seven national Institutes are working for the development of manpower in different areas namely:

Institute of the Physically Handicapped, New Delhi

5. No.3-1/1993-DD-III, Government of India, Ministry of Social Justice and Empowerment

6. Deepanjali Bhas, "National Policy for the Disabled: No clear roadmap for action", *Info Change News & Features* (August 2006), viewed at <http://infochangeindia.org/20060828251/Disabilities/Features/National-Policy-for-the-Disabled-No-clear-roadmap-for-action.html> accessed on 23.6.2008.

National Institute of Visually Handicapped, Dehradun
National Institute for Orthopaedically Handicapped, Kolkata
National Institute for Mentally Handicapped, Secunderabad
National Institute for Hearing Handicappeds, Mumbai
National Institute of Rehabilitation Training and Research, Cuttack
National Institute for Empowerment of Persons with Multiple Disabilities,
Chennai.

There are five Composite Rehabilitation Centres, four Regional rehabilitation Centres and 120 District Disability Rehabilitation Centres (DDRCs) providing various kinds of rehabilitation services to persons with disabilities. There are also several national institutions under the Ministry of Health and family welfare working in the field of rehabilitation , like the National Institute of Mental Health and Neuro sciences, Bangalore; All India Institute of Physical Medicine and Rehabilitation, Mumbai, All India Institute of Speech and hearing, Mysore; Central Institute of Psychiatry, Ranchi, etc. In addition certain State Government institutions also provide rehabilitation services. Besides, 250 private institutions conduct training courses for rehabilitation professionals. National Handicapped and Finance Development Corporation (NHFDC) has been providing loans on concessional terms for undertaking self employment ventures by the persons with disabilities through State Channelizing Agencies. Panchayati Raj institutions at Village level and District Level have been entrusted with the welfare of persons with disabilities.⁷

7. Source: National Policy for the Persons with Disabilities 2006.

(c) Implementation of the Policy:

The policy lays down a roadmap for implementation:

- The Ministry of Social Justice and Empowerment will be the nodal ministry coordinating all matters relating to policy implementation.
- An inter-ministerial body will be set up to coordinate issues concerning to execution of the national policy. All stakeholders, including prominent NGOs, disabled peoples' organisations, advocacy groups and family associations of parents/guardians, experts and professionals will also be embodied. Analogous measures will be encouraged at the state and districts levels. Panchayati Raj institutions and urban local bodies will be related with the running of District Disability Rehabilitation Centres' district-level committees to coordinate matters relating to implementation of the policy. Parenthetically, the role of Panchayati Raj institutions has been highlighted in implementing the policy, to address local-level issues and draw up appropriate programmes.
- The Ministries of Home Affairs, Health and Family Welfare, Rural Development, Urban Development, Youth Affairs and Sports, Railways, Science and Technology, Statistics and programme implementation, Labour, Panchayati Raj, and the departments of elementary education and literacy, secondary and higher education, road transport and highways, public enterprises, revenue, women and child development, information technology and personnel and training will set up required machinery to realize the policy. Each ministry/department will develop its own five-year perspective plan and annual plans setting objects and financial allotments. The annual reports of each ministry/department will specify progress accomplished during the year.

- Apart from their statutory responsibilities, The Chief Commissioner for disabilities at the central level, and State Commissioners at the state level, shall play a key role in implementing the national policy.
- Every five years, a wide-ranging review will be carried out on implementation of the national policy. A document indicating status of implementation and a roadmap for five years will be prepared based on discussions at a national convention. State governments and union territory administrations will be advised to take steps to draw up state policy and develop action plans.⁸

The Policy repeatedly replicates the general obligation of the Persons with Disabilities Act, 1995 while remains more general on concrete strategies for executing them. This major shortcoming is not for want of insight into the shortcomings of current policy and practice. For example, the Policy sets out briefly the reasons why the current disability certification process has not functioned well. However, in terms of the futuristic agenda, it simply insists on State Governments to assume “simple, transparent and client-friendly procedures”. There is no agenda as to how the position might be improved. This is one paradigm, but such lack of concrete strategies is found in many parts of the document. This is not true in all areas (e.g. health strategies are outlined in somewhat more detail). However, overall there is very limited sense in the Policy that even Government of India’s own assessments indicate serious implementation problems. Merely repeating the general assurances made by the Persons with Disabilities Act, 1995 is not likely to be satisfactory to revitalize the disability sector. There also remains limited reference to the role of Persons with Disabilities themselves in policy advancement, execution, supervision and assessment. Disabled Persons Organisations are not mentioned in the Policy, nor are persons with disabilities themselves. Practically, they remain agents who

8. Supra note 6.

act together with the public policy and delivery systems either through public agencies or at best NGOs. While the Policy notes that “PWD are an important resource for the country, and seeks to create an environment that provides them with equal opportunities, protection of their rights and full participation in society”. this significant insight is not mirrored in the main Policy.⁹

The National Policy must come out of the shadow of Persons with Disabilities Act, 1995 and frame an independent approach which shall in fact be a touchstone for the legislations dealing with the benefits of the persons with disabilities. The National Policy discussed above mostly reflects only one legislation i.e. *Persons with Disabilities Act, 1995* but the other three legislations concerning mental health, constitution of National Trust and training for rehabilitation professionals must also be taken into consideration.

(d) State Level Disability Policy:

A supplementary facet of disability policy that has remained rather neglected is development of state-level disability policies. To date, there are merely three States that have draft disability policies. They are Chhattisgarh and Karnataka, though Maharashtra has a state level Action Plan for effectuating its commitments to persons with disabilities. The draft Karnataka policy for the majority part echoes the structure and major provisions of the *Persons with Disabilities Act, 1995*. It is mostly a State-specific endorsement of different initiative for promotion of rights of persons with disabilities. In a number of cases, it replicates the Central Act’s entitlements and obligations, and repeats general directives to frame appropriate schemes (e.g. reservation in poverty alleviation programmes; education). In others, the general assurances of the Act are put in a more State-specific perspective (e.g. health). In still others,

9. Supra note 4 at pp. 129, 130

there is more precise guidance on conditions in which persons with disabilities should avail advantages under the Act (e.g. exemptions on property tax for PWD). However, principally the draft State Policy does not provide much more specific commitments or implementation guidance than the Act itself. Conversely, the Chhattisgarh draft state policy – *the Comprehensive Disability Policy Framework for Chhattisgarh* – can be considered “best practice” within India, and could present a model for potential national and state-level policy development. The Policy provides more methodical context and calculated track for disability policy, allowing for better prioritization in planning along with implementation. Regardless of being a poor and new State, Chhattisgarh has developed an inspiring draft state level policy on disability. By and large, the draft Chhattisgarh Policy provides beneficial assistance for other states in policy development. A few imperative features are:

- it has detailed discussion of different models of disability and has structured its policy consequently;
- it recognizes India’s international commitments in the field of disability policy;
- it has comprehensible account of both overall and sectoral policy objectives, indicating the overall policy stand on every key issue;
- at the next level, it provides guiding principles in endeavouring attain policy objectives;
- it recognizes that “self-representation” of Persons with Disabilities in disability policy and practice is vital;
- it categorizes particular cross-cutting areas in need of special attention, including mental illness, gender issues, and prevention and early detection of disabilities;
- it creates a State Disability Council as an institutional means both of raising the profile of disability issues and improving coordination;

- it sets explicit coverage/performance objective by the disability sector, thus moving towards monitorable indicator of improvement;
- it is clear on policy to mobilize public financing for the sector.¹⁰

In view of the above it can be aptly suggested that:

- ✓ The National Policy must be amended keeping in view the remarkable features set out by the Chattisgarh Draft State Policy. It is one of the most pertinent ways by which the National Policy shall be able to come out of the reflection of the Persons with Disabilities Act, 1995 and set out targets of achieving success in the disability sector by ensuring its equal opportunities in social, economic and cultural life as well as guaranteeing its human rights to the fullest.
- ✓ Further, States should be stalwartly encouraged to build up their own disability policies which draw out a sincere approach for meeting their obligations under the Persons with Disabilities Act, 1995 and other legislations.
- ✓ Lastly, there should be a progression for fundamental benchmarking of practicable policies and programs for people with disabilities in the areas which are presently subject to the economic capacity proviso.

B. HUMAN RIGHTS OF THE PERSONS WITH DISABILITIES UNDER THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT: A CRITICAL STUDY:

10. *Ibid* at p. 130, 131

(a) Background:

India being a welfare state has the commitment to shore up the downtrodden and the poor. Persons with disabilities too call for considerable attention and help. Though persons with disabilities do not mean persons with no worth, rather they may be more able than other persons. The concept denotes a person who runs short of something from the normal human beings and this often leads to a situation where they need the care of the society as well as the legal system, at least minimum help at the initial level. This capability of the disabled persons is more aptly their "different ability". Hence now the persons with disabilities are often identified as the "differently able persons".¹¹ Until the recent past, there was no comprehensive legislation concerning the differently able persons. The first attempt was made in July, 1980 when a Working Group was set up. A draft legislation known as "Disabled Persons (Security and Rehabilitation) Bill, 1981 was prepared. As mentioned in Chapter 2, 1981 was the International Year of Disabled Persons. In 1987-88 a Committee was constituted under the Chairmanship of Member of Parliament Shri Bharul Islam who was the former Judge of the Supreme Court. The Committee submitted its report in June 1988 and it made wide-ranging recommendations concerning the various aspects of rehabilitation, e.g., prevention, early intervention, education, training, employment etc. These recommendations unfortunately could not take the shape of a law. Moreover since the welfare of the disabled falls within the State List the parliament lacked jurisdiction to pass a comprehensive national legislation on the issue. Finally the Economic and Social Commission for Asia and Pacific (ESCAP) at its 40th Session held at Beijing in 1992 adopted its resolution 48/3 which proclaimed the period 1993-2002 as the Asia and the Pacific Decade of Disabled Persons with a view to give impetus to the implementation of the World Programme of Action in the ESCAP Region

¹¹ Supra note 1 at p. 1

beyond 1992. The Resolution laid stress on enactment of legislation aimed at equal opportunities for people with disabilities, protection of their rights and prohibition of abuse and neglect of these persons and discrimination against them. Since Article 253 of the Indian Constitution enables the Parliament to enact a law, even in respect of a subject falling within the State List in order to give effect to an international resolution; this finally paved away for the Indian Parliament to enact a comprehensive law for persons with disabilities as India was also a signatory to the ESCAP Resolution.¹²

In September 1993 a National Conference of eminent NGOs, the State Government of India was organized which inter-alia recommended enactment of a comprehensive legislation. As a result of the Government of India's commitment at ESCAP Conference, recommendation of the National Conference, recommendation of the previous Committees and strong NGO movement in that country, the process of discussion and consultation for drafting a comprehensive law was started in right earnest towards the end of 1993. Initially a draft was prepared and it was circulated to all the State Governments, eminent NGOs of the country, professionals and other concerned Ministries of the Government of India. Consequently a comprehensive Act known as *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (Act 1 of 1996) was passed in 22nd December 1995, which got the assent of the President on 1st January 1996.¹³ The Act has been in effect from 7th February, 1996. The enactment of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, commonly referred to as the PWD Act is a signal achievement of the Indian disability movement. Preamble to this Act clearly delineates its objective

12. Anuradha Mohit, "Initiatives of the Government of India to Advance Asia and Pacific Decade of Disabled Persons". View full article at www.swayam.com/?q=node/392-23k, accessed on 23.3.2008.

13. *Ibid*

of promoting and ensuring equality and full participation of persons with disabilities. The Act aims to protect and promote economic and social rights of persons with disabilities. Broadly, the entitlements and commitments towards PWD under the Act can be divided into two main groups: (i) entitlements which are absolute and thus in nature of legal rights. Some of these existed as rights prior to the Act but were reiterated or strengthened in the Act itself (and have in some cases been refined subsequently); and (ii) commitments that are given either in rather general terms or with the explicit proviso “within the limits of [governments’] economic capacity and development”. These can be described as “contingent entitlements” under the Act and are not unqualified rights. The division is not entirely clear cut, as subsequent jurisprudence has in some cases strengthened general commitments. In a number of cases, follow-up action is also anticipated by states or other relevant authorities. Despite the PWD Act being a ground-breaking piece of legislation, there remain a number of policy shortcomings in its design that are worth highlighting. These include both general issues which apply to several areas of the Act, and others which relate to specific sectoral heads. ¹⁴As Amy Briant puts it—“ Veiled in vagueness the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* gives with one hand what it takes away with the other. After two years of deliberation, the Act was passed hastily on the last day of the winter session of Parliament with very little discussion. Who, after all, needs to discuss a bill which promises the sun, moon and stars, but fails to mention exactly how these can be obtained?”¹⁵ These lines abundantly speak of the empty promises made by the Act. India, by ratifying this Act has simply made good its vow made at the conference, to go by a statute for the disabled persons. The Act defines the expression ‘disability’ and makes provision for introduction of commissions with a view to make certain basic rights and opportunities to

14. Supra note 4 at p. 124

15. Amy Briant. “Limping Along, Persons with Disabilities Act, 1995”. *Lawyers Collective*. Vol. XI (April, 1996), pp. 4- 11 at p. 4

persons with disabilities which consist of equality in employment, housing, access to public places and social security benefits. But disappointingly, the Act is interspersed with a liberal splash of “mays” and “ifs” and “within the limitations of”; the terms of the legislation are extremely ambiguous. In reality the Act appears more as a proposal than a statute on the subject. There are only a handful of areas where the Act stands firm.¹⁶

(c) Salient Features:

Divided into 14 Chapters, the Act as expressed in the Preamble is the result of a Proclamation on Full Participation and Equality of People with Disabilities in the Asia and Pacific region that was held in Beijing in December 1992 at the meeting to launch the Asian and Pacific decade of the disabled. The objects of the Act are to:

- a) spell out the state’s responsibility towards prevention of impairments and protection of disabled people’s rights in health, education, training, employment and rehabilitation;
- b) work to create a barrier-free environment for disabled people;
- c) work to remove discrimination in the sharing of development benefits;
- d) counteract any abuse or exploitation of disabled people;
- e) lay down strategies for a comprehensive development of programmes and services and for equalization of opportunities for disabled people; and
- f) make provision for the integration of disabled people into the social mainstream.¹⁷

The salient features of the Act include *inter alia*:

16. *Ibid*

17. *Supra* note 12.

- (i) *Definition of disability and its prevention:* In view of the fact that the beneficiaries of the Act are the persons with disabilities, the Act defines this term. It also seeks to prevent the occurrence of disability and also seeks to prevent discrimination on grounds of disability in work, education, housing, transport and access to public facilities;
- (ii) *Applicable to Central Government, State Government, and local authorities:* The mandates of the Act are applicable to both the Central and the State Government, Local authorities, and the “establishment”. The definition of the establishment makes it very clear that, any entity, which is controlled or aided or created by the State, only is considered as an establishment. Hence provisions of this Act do not address any private institution.¹⁸
- (iii) *Equalisation aspect:* It lists out the entitlements for equalizing the gaps created by disability and negative attitudes of the society and derogatory practices against persons with disabilities. The Act with a view to equalize tries to assure the following: (a) Prevention and detection of disability, (b) opportunities for education to the persons with disabilities, (c) Opportunities for employment to the persons with disabilities, (d) Making access to public facilities, (e) Provision for aids and appliances, (f) Establishment of institutions for persons with disabilities.
- (iv) *Administrative mechanism for implementation:* It lays down administrative mechanisms for the implementation of its various provisions. It casts obligations on both the Centre and the State

18. Supra note 1 at p. 2

Governments to frame schemes to promote economic, social and cultural status of persons with disabilities. The Act creates a federal type of enforcement with similar constitution, powers and functions in the Central and State level.¹⁹

- (v) *Monitoring Mechanism:* It provides for a monitoring mechanism through the Chief Commissioner and Commissioners for persons with disabilities. It is the first comprehensive law which adopts a rights based approach to person with disability.²⁰

(c) Concept of 'Disability' and 'Persons with Disability':

Since the Act examines the rights of the persons with disabilities, hence it would be worthwhile to assess the definitions of 'disability' and 'person with disability' as given in the Act. In other words the direct beneficiaries of the Act are the persons with disability, hence it becomes important to evaluate the implication of the aforesaid terms.

The concept of Disability has already been discussed in the first Chapter, where it has been seen that disabilities are conventionally defined in medical science on three scale established by World Health Organization in 1980 ranging from Impairments, Disabilities and handicap. The World Health Organization in its International Classification of Impairments, Disabilities and Handicaps makes a clear distinction between the three. The PWD Act defines "disability"²¹ to include -blindness; low vision; leprosy cured; hearing impairment; locomotor disability; mental retardation and mental illness.

19. Supra note 12.

20. *Ibid*

21. Section 2(i)

“*Person with Disability*”²² means a person suffering from not less than forty per cent of any disability as certified by a medical authority. The Act also defines each of the different kinds of incapacities that comprise disability.²³

Thus it appears that the definition of disability is flexible in allowing a number of categories of disability in the definition. But it seems that the definition does not recognize the international classification of disability, impairment and handicap given by the World Health Organization. Also though it apparently the definition may look to be inclusive but a close inspection reveals the term has been used in a very narrow sense. It has simply overlooked

22. Section 2 (t)

23. “*Blindness*” under *Section 2(b)*, refers to a condition where a person suffers from any of the conditions mentioned below:

- (i) total absence of sight; or
- (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses;
- (iii) limitation of the field of vision subtending an angle of 20 degree or worse.

Though low vision has not been specifically defined, but “*person with low vision*” has been defined under *Section 2 (u)* to mean a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive devices.

Similarly, “*leprosy cured person*” has been defined under *Section 2 (n)* to mean any person who has been cured of leprosy but is suffering from—

- (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;
- (ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity.
- (iii) Extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation, and the expression ‘leprosy cured’ shall be construed accordingly.

“*Hearing Impairment*” under *Section 2(l)* means loss of sixty decibels or more in the better ear in the conversational range of frequencies.

Section 2 (o) defines “*locomotor disability*” to mean disability of bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. “*Mental Retardation*” and “*Mental Illness*” have been separately defined. While the former has been defined under *Section 2 (r)* to mean a condition of arrested or incomplete development of mind of a person which is specially characterized by subnormality of intelligence. The latter expression has been dealt with under *Section 2(q)* to mean any mental disorder other than mental retardation.

some important categories recognized world over, such as speech disability, disability in the internal organs such as heart ailment, learning disability, thalassemia, haemophilia, filariasis, eunuchs and persons suffering from AIDS.

As per the conservative estimation, just about 6 per cent of India's population is disabled. If one goes by what the U.N. officials or various other experts have to say, the number could well be in double digits. The proportion of disabled people is very high in more affluent countries. Australia officially estimates that some form of disability affects 18% of its population. U.K.'s disabled population is estimated at 14.2% and in the U.S. it is 9%. One rationale why the figures are so high for developed countries is because their definition of disability is much wider than ours. In such countries the term disabled is understood to include people with internal or unseen conditions such as kidney disease or a severe heart ailment. In certain countries even diabetics come under the umbrella of disability. Such countries and societies view disability as a social issue and not as a medical one. Regrettably in India, the reliance is still on the bio-medical model, and disability means a person without a leg or without an arm or without eyes or to be twisted or even crooked.²⁴ They are always the butt of ridicule and contempt in the society. As a consequence the following kinds of 'disability' must also be included in the definition:

- a) Speech Impairment: Speech is the primary mode of expressing oneself or communicating. One's expressive capacities come to a halt due to this kind of disability. But it is very unfortunate that this type of incapacity has been left out of the definitional ambit. The Constitution of India guarantees the fundamental right of 'freedom of speech' and difficulty in speaking is also covered under the scope of disability by the World Health Organisation. From this it is clear that how much important is the

24. Javed Abidi, "Disability Law and Status of Disability in India Today". *Alpjan Quarterly: A Chronicle of Minorities*, Vol. 4(4). (2004- Jul- Sep). pp.5-6 at p. 5

ability to speak. But it equally surprising that why the lawmakers left this category out of the definition.

- b) Disability in the internal organs: the term disability is often associated with physical disability or disability of the external organs visible to human eye. But in reality the approach must be include internal organs also like kidneys, lungs, heart, brain or liver. Disability of internal organs refers to the situation where a person may have one kidney or one lung or serious functional disorders of heart or congenital defects as in thalassemia. The persons belonging to this category also lack the physical ability to perform a number of tasks performed by a normal health person. Hence it is desirable that disability of internal organs be included in the definition of disability.
- c) Eunuch: This category of human beings though may be physical and mentally fit, but their stigma, the disability is principally due to the fact of them being not labeled as male or female. For this section of human beings life is without dignity. They are deprived of their right to education, to decent employment, to their family property and even a decent funeral ceremony after death. Consequently, they are totally segregated from the mainstream society and often forced by circumstances to get involved in anti-social activities and crimes; which generate even more hatred for them. The potential of this section can be utilized in real sense if laws relating to their proper categorization are legislated. Some States have already opted for the category of 'third sex' which is definitely a welcome change in a conservative society like ours. Further law to provide them opportunities in different fields should be

legislated. The central point of these laws must aim to provide them a life of dignity.²⁵

- d) AIDS Patients: A person suffering from AIDS carries a social stigma in a similar way as leprosy cured person. AIDS also weakens the immune system that in turn reduces their normal working capacity. They are also prone to health hazards; hence they are in need of special care and protection. Therefore in today's world where this disease has assumed huge proportions, it is desirable that persons with AIDS be also included in the definition.²⁶
- e) Learning Disability: It is a disorder, which affects the basic psychological processes of understanding or using written or spoken language. This disorder affects development of language, speech, and reading and associated communication skills needed for social interaction. Conditions such as brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia are examples of learning disabilities.²⁷

In addition to the above the definition of hearing impairment is dissatisfactory as it covers only loss of sixty decibels or more. Ordinarily loss of forty decibels or more constitutes a hearing impairment. Moreover the definition of 'mental retardation' and 'mental illness' appear to be vague. Though mental illness has been included as one of the seven disabilities, the Act as a whole shows very little understanding of the nature of the disability and current developments in the field. It appears that the recognition is more by default than intent. The very definition of mental illness is more by elimination rather than explanation. For instance, by stating that mental illness is other than mental

25. Saurabh Jain, "Effectiveness of the Indian disability Law to enforce Human Rights of Persons with Disabilities", *AIR (Journal)* Vol. 91 (April, 2004), pp. 118-127 at p. 119at pp. 124,125

26. *Ibid*

27. Leni Chaudhari, *Disability, Health and Human Rights*, (CEHAT, Mumbai, 2006) p. 4

retardation, one is in a fix as to whether one should apply the definitional criteria to all mental disorders including epilepsy and dyslexia. Thus it is essential that each kind of mental illness or mental retardation be specifically laid down in the definition.²⁸ Also learning disability and autism must be specifically included in the definition of disability. Though pointed out in the first chapter of this work that it is very difficult to evolve a precise and comprehensive definition of the term but at the same time efforts must be taken to evolve a comprehensive and universal definition of the term so that maximum number of disabled persons can benefit from the Act. International definitions must be analysed and adopted as far as possible. Since India has ratified the Disability Convention, the definition in Article 1 of the Convention indicates change that needs to be made to the definition. As explained above, the PWD Act has strict specifications as to what counts as disability; however, the Convention includes all long-term physical, mental, intellectual or sensory impairments, which may hinder their full and effective participation in society.

So far as the definition of 'person with disability' is concerned it has been defined as a person suffering from not less than forty per cent of any disability as certified by any medical authority. Disability is a condition of a person's being unable to do something, which others can. There is no relevance to the 'percentage' of disability as mentioned in the definition. A person may have only twenty-five or thirty percent disability, but if he is not in a state to function as a normal human being, it is pointless to deny him the rights available to person with disability of forty per cent. This percentage criterion is even more ambiguous in cases of mental illness because this quantification is a mystification as such a tool is unavailable which can measure the quantum of mental disability. So if the parents/guardians of the affected individuals want to derive benefits under this Act and approaches a psychiatrist for a legally

28. Supra note 15 at pp. 5, 6 and 7.

approved disability certificate, there is none available. By being deprived of access to a certificate of disability, the discrimination to mental illness is inherent in the very definition of disability as envisaged in the Act. Hence the issue must be left to the medical authority to decide as to which per cent of disability will indeed make a person disabled. Hence the definition of the expression 'person with disability' needs to be redefined as "person with disability is a person suffering from any of the disabilities as certified by the medical authority".²⁹

(d) Rights under the Act:

(i) Prevention and Early Detection of Disability:

As the saying goes, prevention is better than cure; hence prevention must be the priority of any government in order to reduce the incidence of disability. Not all disability is from birth. A great number of them are acquired in the course of time. Accidents, illnesses, nutrition related matters, conflict situations and several other factors cause disability. This means that if the aforementioned causes can be proscribed then disability can also be prevented. A large proportion of disability is caused by illness. Because of the disability movement and the international covenants the notion of prevention has now attained an expanded meaning. It not only means control or removal of disabling factors but also commencing actions which authorize disabled people to appreciate their full potential and to lead a productive life.³⁰ In India a large proportion of disabilities are preventable, including disabilities that emerge in the conditions surrounding birth, including maternal conditions, from undernourishment, and from causes such as traffic accidents or workplace injuries. The Persons with Disabilities Act under *Section 25* envisages

29. Supra note 1 at pp. 7, 8

30. Supra note 27 at p. 36

preventive measures which include the undertakings of surveys, investigations and research concerning the cause of occurrence of disabilities and the promotion of various methods of preventing disabilities. Screening of all children at least once in a year for the purpose of identifying the “at- risk” cases; providing facilities for training to the staff at the primary health centres; to sponsor or cause to be sponsored awareness campaigns and to disseminate or cause to be disseminated information for general hygiene, health and sanitation; measures for pre-natal, perinatal and post-natal care of mother and child; educating the public through the pre-schools, schools, primary health centres, village workers and anganwadi workers; and creating awareness amongst the masses through television, radio and other mass media on the causes of disabilities and preventive measures to be adopted.

Undoubtedly prevention and detection of disability are important components of the medical model. However measures taken for these are insufficient. While Pulse Polio drive and immunization against diphtheria, pertussis and tetanus have been successful to a large extent, efforts for the prevention of other conditions such as blindness, deafness and neurological disabilities have been dismal. The incidence of developmental disabilities, for example mental retardation, autism has increased to an alarming level.³¹ In addition, the measures for prevention and early intervention incase of disability is not in sharp focus. They are considered more as health programmes rather than measures for prevention of disability. The health sector is the one where the PWD Act makes the weakest incremental commitments in public policy. This is for two main reasons. Firstly, it focuses mainly on prevention and early detection of disabilities, and raising of public awareness on these issues. It does not make specific additional commitments on treatment and rehabilitation of

31. Rubina Lal, “Disability- Background and Perspective” viewed at. <http://www.infochangeindia.org/Disabilities/lbp.jsp> accessed on 20.12.2007

PWD. Secondly – in contrast to areas such as education and employment – the Act’s provisions on health are in the form of unenforceable commitments due to the rider “within the limits of governments’ economic capacity and development”. As a result, respect to health issues and PWD, the Act remains largely aspirational even in principle with, mainly outlining the type of prevention and early detection initiatives that states should seek to implement.³²

Hence the greatest stumbling block in the Section is the insertion of the phrase “*within the limits of their economic capacity and development*”. The expression suggests that the appropriate Government and the local authority shall not carry on any activity, which will be outside their budgetary and manpower capacity. Hence the appropriate Government or the local authority is not expected to carry on any scheme, programme or activity, which they will not be able to honour due to economic and other constraints.³³ The constricted espousal of this expression has reduced the Act into nothingness. Thus the government’s focus should be towards removing the factors causing disability rather than only providing clinical corrections. Article 4(2) of the UN Disability Convention says that the maximum possible resources should be utilized for the betterment of the disabled. The limitation in the PWD Act that reforms should only be undertaken within the limits of a state’s economic capacity nullifies the Conventional stipulation.

The provision of detection of disability must be read with Chapter II of the *Persons with Disability Rules, 1996* that lays down guidelines for evaluation and assessment of various disabilities. According to *Rule 4*, a person detected with a disability can avail himself/herself of a Disability Certificate to be issued by a Medical Board duly constituted by the Central and

32. Supra note 4 at pp. 42, 43

33. Gautam Banergee, *Disability and the Law*, Commercial Law Publishers (2005), pp. 172,173

the State Government. The State Government may constitute a Medical Board consisting of at least three members out of whom at least one shall be a specialist in the particular field for assessing locomotor/Visual including low vision/hearing and speech disability, mental retardation and leprosy cured, as the case may be. *Rule 5* lays down the formalities to be observed by the Medical Board while granting Disability Certificates. It also requires the Board to mention the period of validity of certificate where the disability is not permanent or where there is a chance of variation in the degree of disability. No refusal of grant of Certificate shall be made without giving a reasonable opportunity of being heard. *Rule 6* enables the person to whom a certificate has been granted eligible to apply for facilities, concessions and benefits admissible under schemes of the Governments or Non-Governmental Organisation, subject to such conditions as the Central or the State Government may impose.

The issue of certification remains a huge bottleneck for the disabled to claim entitlement to their rights and is subject of much concern. The authorities who are empowered to issue certificates are not equipped with the experts and equipment required to certify all disability conditions. Consequently it is found that in the absence of comprehensive testing facilities, persons with multiple disabilities usually run from one doctor to another to have each disability certified. Moreover no standard procedures exist for certifying the mentally retarded and the mentally ill, as hospitals do not have psychiatrists and psychologists. There is an urgent need for a single window for issuing disability certificates and simplification of certification procedures.³⁴ At the same time it is always desirable that the procedure of grant of Disability Certificates be imbibed in the Act itself. Besides the neither the Rules nor the Act specifically

34. Rajiv Raturi, "Disabling, Crippling, Turning Rights Lame". To view full article, visit http://www.combatlaw.org/information.php?article_id=1054&issue_id=38 accessed on 24.8.2008

point out the concessions and facilities to be available on the grant of the Certificate nor give clear guidelines as to what are the areas where concession and benefit ought to be provided and to what extent.

(ii) Education:

Education enables a person to acquire knowledge, makes him interact, communicate and lead a better life and facilitates in availing employment opportunities. Education is crucial for any individual's growth. Same is the case for persons with disability. Article 45 of the Indian Constitution enjoins state to provide free and compulsory education up to the age of fourteen years. Chapter V of the Persons with Disabilities Act, 1995 contains the provisions relating to education.

Section 26 makes provision for free education for all children with disabilities up to the age of 18 years and there is also the requirement of encouraging them to study in normal schools. The Section also directs the appropriate Government and the local authorities to set up special schools in the Government and the private sector for those in need of special education and equip them with vocational training facilities.³⁵ Prior to independence foreign

35. *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 (1 of 1996, Section 26. **Appropriate Governments and local authorities t provide children with disabilities free education, etc.***---The appropriate Governments and the local authorities shall -

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

missionaries introduced services for the disabled. The first school for the deaf and blind were started in the 19th century in Bombay and Amritsar respectively. In India, at present there are around 3000 special schools. Of them, only 900 are schools for the hearing impaired, 400 for children with visual impairment, 700 for those with loco motor disability and one thousand for the intellectually disabled. More than 50,000 children with disability are enrolled in the Integrated Education for Children, a government-sponsored programme. Only a few schools have special provisions such as resource rooms, special aids and special teachers. This is restricted only to big cities. Since there are no special schools or special education services in rural India, children with special needs either have to make do with the regular schools in the village or go without education. Pre-vocational and vocational training is provided only in specialized institutions and in select cities. Though the provision is for encouraging admission of children with disabilities into normal school, is in order to help them in the processes of life and education of such children in the least restrictive environment. This is also termed as inclusive education. The general education system is to be developed to meet the educational needs of children with disabilities and normal children.³⁶ Regrettably in spite of such an encouraging provision, education for the disabled is not part of conventional learning, but it is imparted through isolated institutions which operate on a service and charity mode.

In spite of the constitutional provision of free and compulsory education to all the children below the age of fourteen, the government has not yet included the clause of education of disabled children explicitly in the 'Education for all' program. Education for non disabled children comes under the Ministry of Education, whereas for the disabled children it comes under the Ministry of Social Justice. This shows that all the discourse around inclusive

36. *Supra* note 27 at p. 40.

education and mainstreaming the issue is only at a theoretical level, the reality reflects something else. The Act does not define the parameters of segregationist, integrationist, and inclusive education. The lack of ideological commitment of the government towards this issue is reflected in the various forms.³⁷ Educational prospects to children do not make sense when there are not sufficient primary schools admitting disabled children, schools not having enough skilled teachers and reading material not being available in Braille, and there is a lack of sign language interpreters, assistive aids and appliances.

Sections 39 and 49 are required to be read together with Section 26. *Section 39* requires all Government educational institutions and other educational institutions receiving aid from the Government to reserve not less than three per cent seats for persons with disabilities. There has been a judicial debate over the application of the provisions of Section 39. Thus, under Section 39, all government educational institutions and institutions receiving aid from the government shall reserve not less than 3% seats for persons with disabilities. However there is no pressure for compliance with this affirmative action program and much needs to be done. Procedures and technicalities should not be a deterrent to achieving these rights. The participation of the private sector in the affirmative action programs should be encouraged and even enforced, through incentives like tax reliefs, government contracts and moral persuasion. The disabled should be actively involved in planning, lobbying and campaigning.

Three decisions viz. *Binita Senapati v. State of Assam*,³⁸ *Vijay Kumar Agarwal v. State of Rajasthan*³⁹ and *Deputy Secretary (Mart), Dept. of*

37. *Supra* note 21 at p. 32.

38. AIR 2000 Gau. 1.

39. AIR 2001 Raj. 261

*Health and Family Welfare v. Sanchita Biswas & Others*⁴⁰ is worth mentioning here. In these cases petitions were filed for the activation of Section 39 of the Persons with disabilities Act, 1995. Section 39 enjoins that there shall be three per cent reservation of "seats" in government and government aided educational institutions. The Gauhati High Court in the former case turned down the petition on the ground that no mention of reservation of seats is made in the Education Chapter of the statute. Section 39 has been included in the Employment Chapter. This necessarily implies that if any reservation was being contemplated it was being done in relation to the non-teaching posts in such institutions. Further three per cent reservation has been extended to all persons with disability. This would mean that even persons with mental retardation can demand admission in medical colleges. As such a consequence was evidently undesirable; the court held that the appropriate governments had not committed any illegality, unconstitutionality or arbitrariness in not providing the reservation for persons with disability.⁴¹

In the second case, the Rajasthan High Court took a contrary view. It was held that under *Section 39*, persons with disabilities were entitled to reservation of three per cent seats in post-graduate medical courses. The Court agreed that Section 39 ought to have been placed under Chapter V but its effect could not be allowed to be nullified simply because instead of placing it under Chapter VI of the Act.

The Calcutta High Court, in *Sanchita Biswas' Case* has also held that the State is bound to provide 3% reservation of the total seats in an educational institution for the disabled candidates. In this case the High Court was required to pronounce on the reservation policy of the Government of West

40. AIR 2000 Cal.202.

41. *Supra* note 25

Bengal. The absence of reservation for persons with physical handicap in medical colleges was found by the court to be an infringement of both the Persons with Disabilities Act, 1995 and the Constitution. This ruling was first delivered by a single judge and later upheld by a division bench. The Court also provided the modalities to be adopted in selecting candidates from the handicapped category.⁴²

In view of the above three cases it can be strongly submitted that the approach of the Calcutta and Rajasthan high Courts are far more correct and convincing than the one given by Gauhati High Court. The title of a chapter cannot restrict the scope or the legislative intent of the enactment. Since the area of this reservation falls within the heading "Employment" it cannot be construed as applicable to reservation in jobs in educational institutions and not in case of admission therein. It is hoped that an amendment be initiated to rule out this confusion and secure the educational rights of the persons with disabilities.

Section 49 provides for financial incentive to universities and other institutions of higher learning, professional bodies and non-governmental research units or institutions to undertake research in special education, rehabilitation and manpower development.

In view of the ground truth and material and sociological barriers conceivably every child with disability will not be able to benefit from formal schooling. For that reason the Act chalked out an alternative course by institutionalization of non-formal education by imparting functional literacy,

42. Parmanand Singh. "Disability, Discrimination and Equality of Opportunities: A Comparative analysis of the Legal Framework". *Journal of Indian Law Institute*, vol. 45:2 (2003), pp. 173-199 t p. 196

orientation, training through open school, university and electronic media.⁴³ *Section 27* mandates the Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc. It has been witnessed that many adult disabled persons have been unable to benefit from the learning system available for school-going and academically capable children. Therefore there was a realization for need of non-formal education programmes and community based programmes in order to provide educational service to such adults, with a view to enable those to become literate as well as pursue higher education. The Section requires the appropriate Government and the local authorities to make schemes for these purposes:

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

Such distance learning system has been supported by the Indira Gandhi national Open University which has embarked on special study centres for persons with disabilities. The National Open School/ University has developed instructional material for education of quality in the case of disabled

43. Mohd. Zafar Mahfooz Nomani, "Human Rights to Development and Persons with Disabilities: Breaking new Grounds For Equality in India", *Aligarh Law Journal*, vol. XIII. (1998), pp.91-104 at p. 97

children. It has also started providing recognition to selected institutions in the country imparting education to over-age persons and improve levels of academic and vocational courses for the benefit of disabled children.⁴⁴ But the initiative is negligible compared to the huge demand. More so such steps have been confined only in the urban areas and rural areas continue to reel under oblivion and superstition. Although the Government is to make schemes for imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation; but the ground reality is that we can hardly witness any such popularized schemes in the lines of Jawahar Rozgar Yojana or the Indira Awas Yojana. Until and unless awareness of the various schemes of the Government is made, their success too is under a question-mark. So far as the issue of conducting classes for literacy, where a huge section of 'normal' citizens remain illiterate in the country which is by far based on a rural economy, expecting literacy movement for the disabled person seems to be a distant dream.⁴⁵

Section 28 obliges the appropriate Government to initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give child with disability equal opportunities in education. About 6% of the population is disabled; out of whom around 25-30% require assistive devices in their day to day life. Such devices comprise of mobility devices, braces, hearing aids, audio meters, educational aids, Braille Writing appliances and low vision aids. The Government of India under ADIP Scheme provides subsidy for the manufacture and standardization of assistive devices. Artificial Limb Manufacturing Corporation (ALIMCO), which is a Government of India Undertaking,

44. *Supra* note 23 at p. 185

45. *Supra* note 4 at pp. 56, 57, 58, 59

manufactures a large number of assistive devices ranging from modern computer parts and sub systems for orthosis, prosthesis, prosthetics using rubber and polypropylene and other rehabilitative devices such as wheel chairs, tricycles, walking systems, creches and various designs of bracers. Bureau of Indian Standards lays down the standards regarding the quality of manufacture of assistive devices. However, there is a lack of development of advanced and modern assistive devices as in the west. There is also a need to increase production base as well as manufacture of sophisticated assistive devices to make available the best of technology to the persons with disability. The available assistive devices are heavy and cumbersome in most cases. Hence, it is required that light weight prosthetic and orthetic aids and appliance using carbon fibre or composite plastic is manufactured. It is also desirable that suitable electronic or hi-tech system is used to make the assistive devices more easily usable and comfortable. Hand propelled mobility aids must be replaced with motorize one. Advanced hearing aids at reasonable prices must be made readily available for the hearing incapacity.⁴⁶ In India most of advanced equipments are available in the urban areas only and are very expensive making it difficult for such persons to afford it. Nearly each of the sophisticated equipments and parts are imported which adds to their cost. Hence the Government must take initiatives to make available all advanced, sophisticated and hi-tech equipments at reasonable rates to persons with disabilities throughout the country. The Governmental undertaking enterprise should undertake research (not only in paper as laid down in the Act, but in practice) to find substitutes to the expensive devices, which cut down the cost but not the comfort or usage.

Section 29 directs the appropriate Governments to set up adequate number of teachers' training institutions and assist the national

46. *Supra* note 33 at pp. 185, 186

institutes and other voluntary organizations to develop teachers' training programmes specializing in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

Section 30 directs the appropriate Government to prepare a comprehensive education scheme providing for –

- (a) transport facilities to the children with disabilities or in the alternative financial incentives to parents and guardians to enable their children with disabilities to attend schools;
- (b) remove architectural barriers in schools, colleges or other institutions imparting vocational and professional training;
- (c) make free supply of books, uniforms and other materials to children with disabilities attending school;
- (d) grant scholarships;
- (e) setting up of grievance redressal machinery so that parents can seek remedy regarding the placement of their children with disabilities;
- (f) suitably modify the examination system to eliminate purely mathematical question for the benefit of blind students and students with low vision;
- (g) restructure imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;
- (h) restructure curriculum to suit the requirements of children with disabilities well as for hearing impaired, so that they are able to take only one language as part of their curriculum.

In pursuance of this provision the Government of India has introduced in the year 2002-2003 a National Scholarship Scheme for persons

with disability under which 250 students either male or female will be given scholarship for pursuing higher and technical education. ⁴⁷But so far as the implementation of this beneficial legislative provision is concerned, the development is inconsequential. Hardly any Schemes can be heard of for providing the various facilities as envisaged. Mostly educational institutions do not have a barrier free environment. Narrow pathways and steep stairs are the usual picture. In fact a visit to the Commissioner's Office in West Bengal reflects the apathy of the Government towards the persons with disability. Though the Office of the Commissioner puts up a Board declaring the area to be disabled friendly and barrier free, but a visit to the place will expose the true situation. The Office can be accessed through a lift or narrow stairs and the lift is by any chance not working how the persons with disabilities will reach there is a big question to be answered. Moreover the place is to be reached through narrow passages which may be quite cumbersome even for a normal individual. If this is the condition of the Commissioner's Office it can be well imagined as to what will be the situation elsewhere. So far as the modification of curriculum is concerned, provisions of teaching science, mathematics and technical skills to disabled students in secondary and high schools must be introduced. As a matter of fact the best remedy here would be to establish a separate educational board which shall chalk out academic, syllabus and training of educational personnel to deal with persons requiring special education. In *M.C. Mehta v. Union of India*⁴⁸, popularly known as the Child Labour Abolition Case, a child labour cum-welfare fund has been instituted. The income of the fund shall be utilized for the education of child labourer to attain the objective of Article 45 of the Constitution. On this line a children with disability – welfare and educational

47. *Ibid* at p. 187

48. AIR 1996 SC 670

fund can also be considered. At least all teachers training courses should have the components of special education for children with special needs.⁴⁹

Section 31 obliges all educational institutions supported by the Government or any local authority to provide or cause to be provided amanuensis to blind students and students with low vision. Amanuensis is an assistive device that enables a blind person or a person with low vision to pursue their education. But this provision of the Act appears to be capricious. This section makes provision for availability to amanuensis only to blind students, but the question naturally arises as to why the facility should not be available to students with cerebral palsy. More so if the issue is of providing assistive devices for pursuing education why the benefit should be restricted only to blind students and not extended to all disabled students. Hence the section must be restructured so as to provide for assistive devices for educational purposes to each and every disabled student.

Justice S.B. Sinha in his article "*Disability vis-à-vis Human Rights*"⁵⁰ has highlighted a very interesting fact. He writes,

"In 1973, an American Children's Advocate Marian Wright Edelman launched the Children Defence Fund in the United States with a survey. One US Census figure haunted her. Some 750,000 American Children between the age of 7 and 13 did not attend school. She assumed they were Negro students, but then dawned an unanticipated reality, "handicapped kids were those seven hundred fifty thousand kids," she said. A similar deplorable condition prevails in India, where it is estimated, less than 1% of disabled students ever manage to receive formal education."

49. Supra note 43 at p. 98

50. Supra note 3 at p. 6

The above lines clearly speak of the education scenario of the disabled children. In spite of such encouraging provisions laid down in the Persons with Disabilities Act, 1995 the lag in their implementation has made the provisions a farce.

Though the National Policy of 1996 pointed out that it will be ensured that every child with disability has access to appropriate pre-school, primary and secondary level education by 2020. In India the education scenario for the disabled children reflects a rather grim picture Education for non disabled children comes under the Ministry of Education, whereas for the disabled children it comes under the Ministry of Social Justice. All the discourse around inclusive education and mainstreaming the issue is only at a theoretical level, the reality reflects something else. The issues which are crucial for the education of disabled children is the availability of special schools, access to schools, trained teachers and availability of special educational material. The Act does not define the parameters of segregationist, integrationist, and inclusive education. The lack of ideological commitment of the government towards this issue is reflected in the various forms.⁵¹

Efforts at integrating children with disabilities into mainstream schools have been even less successful. Under the law, 3% of seats in educational institutions must be reserved for the disabled. A countrywide survey on the enrolment of disabled children in educational institutions released in September 2004 revealed that only a fraction obtained admission. Between them, the 119 universities that responded to the survey conducted by the National Centre for Promotion of Employment for Disabled People (NCPEDP) had enrolled only 1635 disabled students. The 89 schools that responded to the

51. *Supra* note 27 at p.20

survey had enrolled 382 students with disabilities. About 18 schools cited the existence of 'special schools' as reason enough to refrain from doing so.⁵²

The situation of special schools in India is quite appalling. According to the Sixth All India Educational Survey Report, of the 6461 towns and cities in India, only 334 or 5.1 percent of the towns and cities have the facility of special schools catering to serve disabilities. In these towns, a total of 630 schools are actually functioning of which 97 admit only boys and 33 are for girls and the rest admit both. Some schools are dedicated exclusively to a particular disability, while others cater to the needs of children suffering from different types of disability. Categorization of these schools according to their specialization indicates that 215 are for the visually impaired, 290 for hearing impaired, 190 for those orthopedic problems, 173 for the mentally challenged and 60 for those with other locomotive disabilities. The facility of special education is rather skewed. Data shows that of a total number of 586465 villages in the country only 241 have facilities for special education for the disabled. A further look at the state-wise distribution of these schools shows that 83 percent of these schools are in the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Kerala, Madhya Pradesh, Maharashtra, Orissa and the Union Territory of Andaman and Nicobar Islands. Of the 272 available schools, 55 are for boys, 11 for girls and the rest offer coeducation. Categorization of these schools in terms of their specialization shows that 73 are for the visually challenged, 128 for the speech and hearing impaired, 70 are for the mentally challenged and 25 cater to various other handicaps. In the absence of adequate number of special schools, the other issue that requires discussion is the integration of education of the disabled children with mainstream education.

52. Supra note 24 at pp.5,6

In fact, the Universal Education program envisages universalizing education by educating the disabled children through the mainstream schools. This is possible only if there are adequate numbers of teachers with special training at the primary level. In the primary schools in India, the number of trained teachers is not adequate. The teacher training programs which provide disability training emphasize that specialization should be sought for a single type of disability. But this is a very expensive proposition. So the situation demands that either the training programs should offer multidisability training or the general teachers' training courses should be remodeled in a way to equip all the teachers to address the concerns of disabled children. Another critique of the integrated education system is that it is suitable only for children with moderate disabilities. The system is unable to include children with mental disability. These children are unable to attend the mainstream schools due to stigma and discrimination and also because of their inability to cope with the academic syllabus. Provision of a barrier-free environment also remains a pipe dream, though it, too, has been mandated. It is the odd public building that will have any kind of access for the physically handicapped, or signposting in Braille, even in the biggest cities. Public transport is mostly out of bounds for independent disabled travellers anywhere in India. The government clearly needs to do more than just enact legislation and announce action plans. It must put enforcing and monitoring mechanisms in place. An Action Plan for making education disabled friendly by 2020, announced by the Human Resources Development Ministry in March 2005, sets no interim targets.⁵³

Hence it is suggested that the best remedy would be pass a separate legislation in lines of Special Educational Needs and Disability Act 2001 (SENDA) in the United Kingdom. and Individuals with Disabilities

53. Supra note 27 at pp. 20, 21

Education Act 2004 (IDEA) in the U.S.A. SENDA has been enacted with a view to make provision against discrimination, on grounds of disability, in schools and other educational establishments; and for connected purposes. It specifically provides for education in mainstream schools of children with special educational needs. It also lays down the general duties of local education authorities with regard to advice and information for parents, resolution of disputes and compliance of orders. It also provides for the identification and assessment of educational needs of special children.

The Act defines the term discrimination and prohibits discrimination against disabled pupils and prospective pupils; it prohibits substantial disadvantage to disabled pupils and accessibility strategic plans and procedures. It also lays down the establishment of a Disability Tribunal for the enforcement of the provisions laid in the Act. Apart from looking into the educational needs of the disabled pupils in schools, the Act makes similar provisions for higher education as well. The Individuals with Disabilities Education Act (IDEA) is another important piece of civil rights legislation for children with disabilities ever passed. Prior to its passage in 1975, at least one million children with disabilities in the United States were denied any public education, and at least four million more were segregated from their non-disabled peers. IDEA is the primary federal law that governs Individualized Educational Programs (IEPs) and the special education process. IDEA guarantees children with disabilities a 'Free, Appropriate Public Education' (FAPE) in the 'Least Restrictive Environment' (LRE). IDEA was reauthorized in 2004 and its implementing regulations were released in August 2006.⁵⁴ Thus it has to be accepted that India lags far behind so far as such a special legislation

54. Theresia Degener and Gerard Quinn, "A Survey of International, Comparative and Regional Disability Law Reform", for details visit http://www.dredf.org/international/degener_quinn.html, accessed on 23.12.2007.

is concerned. Thus the appropriate remedy would be to enact legislation on these lines.

Alternatively the existing Act may be amended with a view to:

- ✓ End prejudiced approach towards educating disabled people. The traditions and unfounded myths must be substituted with progressive ideas and practices supported by relevant research findings.
- ✓ Ample financial, technical and human resources as well as adequate infrastructure for providing education to children and adults with disabilities has to be ensured.
- ✓ Sufficient provisions of teaching science, mathematics and technical skills to disabled students in secondary and high schools must be taken up.
- ✓ All teacher training courses must include components of special education and for children with special needs; as well as financial and other incentives must be provided for teachers to acquire special skills and techniques to manage disabled children with special needs.
- ✓ Incentives and transport facilities needs to be made available to parents to send disabled boys and, more importantly, girls to school and to complete their education.
- ✓ Supply of suitable adequate educational materials like Braille text books, audio-visual assistive devices has to be made easily available.⁵⁵

55. Ali Baquer, Anjali Sharma, "Disability—Challenges vs Responses", <http://www.healthlibrary.com/reading/disability/3chap/html> accessed on 12.1.2008

- ✓ A Separate Educational Board and a separate curriculum to be provided to meet the needs of special education.

(iv) Employment:

That of employment closely follows the concept of education. In fact among the various rights and opportunities guaranteed to the persons with disability, the most significant is the opportunity to get an employment. Employment is one of the imperative tools, which not only empowers the individual economically but moreover contributes in his/her assimilation into social life. Chapter VI of the Act contains the provisions guaranteeing the employment opportunities.

Section 32 lays down the obligation of the appropriate Government to identify posts in their establishments which can be reserved for persons with disabilities. Once such identification has been done, the Government must review at periodical intervals not exceeding three years, the list of posts so identified as well as up-date the list taking into account the development in technologies. 'Establishment' has been defined under Section 2(k) of the Act to mean a corporation established by or under a Central, Provincial or State Act, or authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government. *Rule 36* of the Disabilities Rules 1996, provides that for the purpose of computation of vacancies for persons with disabilities in Group A, B, C and D posts, the manner of computation of vacancies shall be such as may be determined by the Government by instructions or orders in this regard.

Section 33 is by far the most promising provisions. Though the reservations for person with disabilities were in subsistence since long, these are restricted to limited number of disabilities and many a time not adhered to by the concerned authorities. The Persons with Disabilities Act, 1995 exclusively provides for taking suitable measures together with reservations for persons with disabilities in the area of employment.⁵⁶ Under Section 33 a direction has been given to every appropriate Government to reserve at least three percent vacancies in every establishment in such manner that one percent of such vacancies shall be reserved for persons suffering from blindness or low vision, one percent for persons with hearing impairment and one percent for persons with locomotor disability or cerebral palsy in the posts identified for each disability. However the appropriate Government has been empowered to exempt any establishment from such reservation of posts having regard to the nature of work in any department or establishment by a notification subject to conditions which are to be mentioned in the notification as well. The National Policy for Persons with Disabilities says that the Persons with Disabilities 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. The Policy also obliges the Government to ensure reservation in identified posts in the Government sector including public sector undertakings in accordance with the provisions of the PWD Act, 1995. Unfortunately experience has shown that these provisions are hardly given effect to. This is because of the general misconception among non-disabled that persons with disabilities are incapable of doing any job

56. Sadiq Ahmed Jilani Syed, "Legal Framework for Social integration of Persons with Disabilities in S. K. Verma, S.C. Srivastava (ed.), *Rights of Persons with Disabilities* (ILI Publication, New Delhi, 2002) pp. 154-167 at p. 163

properly. In *LIC of India v. Chief Commissioner for Disabilities*,⁵⁷ the view taken was that a person with 45% disability was incapable of performing his duties as a peon. The Delhi High Court in appeal from the decision the Chief Commissioner found no substance in it and accordingly directed LIC to employ the persons with disabilities. Despite a 3 percent reservation in public employment, as of 2003, only 10 percent of posts in public employment had been identified as “suitable” for PWD. As a result, the share of PWD in all posts thus remains negligible, at 0.44 percent. Shockingly, the jobs identified for the three categories of disabled have effectively excluded disabled persons from more than 95% of jobs available in the Government sector. A second feature of the quota policy is that it applies only to three disability types – locomotor, visual and hearing - which limit many other disabled people from accessing jobs. *Section 39* and *Section 40* must be read with *Section 33*. Though *Section 39* has already been discussed under the head ‘Education’; a brief comment is nevertheless appropriate. The Section provides for special reservation in Government educational institutions and other educational institutions receiving Government aid, a reservation of not less than 3% apart from the reservation spelt in *Section 33*. *Section 40* obliges the appropriate Governments and local authorities to reserve a minimum of three per cent vacancies in poverty alleviation schemes for the benefit of persons with disabilities. Though there are a range of public programs to promote PWD employment, but their impact has been negligible and largely confined to urban areas. This is in part due to weaknesses in design and implementation. Broader impacts on employment outcomes for people with disabilities will be dependent firstly on efforts to change perceptions on the productive contribution that disabled people can make, an effort that will require engagement of the public, private and NGO sectors.⁵⁸

53. (2002) 101 DLT 434

58. *Supra* note 4 at p. 95

Section 34 mandates the setting up of Special Employment Exchanges. Under *Section 34*, the appropriate Government is obliged to notify that every employer in an establishment must furnish information or returns about vacancies in their establishment for persons with disabilities that have fallen vacant or are about to fall vacant to the Special Employment Exchanges within whose jurisdiction the establishment will fall.⁵⁹ *Rule 37* of the Persons with Disabilities Rules provides in this respect that the following vacancies shall be notified to the Special Employment Exchanges, namely: -

- (a) Vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act, and
- (b) Vacancies which an employer may desire to be circulated to the Special Employment Exchanges outside the State or Union territory in which the establishment is situated, shall be notified to such Special Employment Exchanges as may be specified by the Central Government by notification in the Official Gazette, in this behalf. A copy of the notification of vacancies shall be sent to the Vocational Rehabilitation Centre for Handicapped concerned.

59. 'Employer' has been defined under *Section 2(j)* to mean-- in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and in relation to an establishment as defined in *Section 2(k)*, the Chief Executive Officer therein. The form in which and the intervals of time for which information or returns shall be furnished and the particulars contained therein shall be in accordance with the prescribed rules.

The Rule also provides that vacancies other than those specified shall be notified to the local Special Employment Exchange concerned. A copy of the notification of vacancies shall also be sent to the Vocational Rehabilitation Centre for Handicapped concerned. According to *Rule 38*, the vacancies shall be notified in writing to the Special Employment Exchange concerned, and the particulars as mentioned in the Rule shall be furnished in respect of each type of vacancy. *Rule 39* says that, vacancies required to be notified to the local Special Employment Exchange, shall be notified at least thirty days before the date on which applicants will be interviewed or tested where interviews or tests are held, or the date on which vacancies are intended to be filled, if no interviews or tests are held. Vacancies required to be notified to the Special Employment Exchange shall be notified at least three weeks before the date on which applicants will be interviewed or tested where interviews or tests are held, or the date on which vacancies are intended to be filled, if no interviews or tests are held. An employer shall also furnish to the concerned Special Employment Exchange, the results of selection within fifteen days from the date of selection. But a strict adherence to these Rules is hardly found.

A national network of Special Employment Exchanges for disabled people exists, but plays a negligible role in promoting their employment. Employment exchanges exist in state capitals, but overall, the link between employment exchanges and establishments in the private sector is weak. As a result, the job placement ratio is very low for both special and other exchanges, 0.9 percent and 0.7 percent of registered PWD respectively in 2003, and has roughly halved over the past decade. The downward trend reflects shrinking job opportunities in the public sector, and a general failure of exchanges to reach out to private employers.⁶⁰ *Section 35* empowers any person authorized in writing by the Special Employment Exchange to have access to

60. *Supra* note 4 at p. 95

any relevant record or document in the possession of any establishment. Such entry may be at any reasonable time and in any premises where it is suspected that such records or documents are available; as well as inspect or take copy of the relevant records or documents or ask any question necessary for obtaining any information.⁶¹

According to *Section 36*, the reserved vacancies are to be filled up by a carry forward rule on a rotation basis. The Section explicitly lays down that where in any recruitment year any vacancy under Section 33 cannot be filled up due to non-availability of suitable candidates with disability or for any other sufficient reason; such unfilled vacancies are to be carried forward to the succeeding recruitment year. If in the succeeding year also suitable persons with disabilities are not available, it may be filled up by inter change among the three categories mentioned in Section 33. The reserved seats can be filled by persons other than the persons with disabilities only when there are no persons with disabilities available for that vacancy for the successive recruitment year. Where it is found that the nature of vacancy in any establishment is such that a given category of person cannot be employed, the vacancy can be inter-changed among three categories but subject to prior approval of appropriate Government.⁶²

The earmarking of three per cent post in general employment sector especially educational and poverty-alleviated sector is a substantive guarantee to persons with disabilities. But such reservation benefits are confined to the three categories of Person with Disabilities namely, blind, hearing impairment and locomotor disability or cerebral palsy. For person suffering from disability of leprosy-cured, mental retardation and mental illness no

61. *Supra* note 33 at p. 189

62. *Ibid* at pp. 190, 191

employment avenue is being conceived. In addition, though the Act on one hand earmarks three per cent as the benchmark under Section 33 but conversely an employer must employ five per cent of the work force consisting of persons with disabilities, as general rule to be assured of incentives under Section 41.⁶³

While *Section 41* provides for incentives to employers to ensure five per cent of the work force is composed of persons with disabilities. Under this section the appropriate Government and the local authorities shall provide incentives to employers in both public and private sectors to ensure that a minimum of 5% of their work force is composed of persons with disabilities. But again this provision is also bonded with the words “within the limits of economic development” of the concerned Government and authorities, which surely mitigates the effect of this encouraging provision for employers to involve the persons with disabilities. In addition, though the Act makes provision for a private sector incentives policy, with a target of 5 percent of the private sector workforce being people with disabilities. However, neither Government of India nor States have introduced a general incentives policy (though there is a specific new incentive provided for formal sector workers in the 2007/08 budget). In the late 1990s, employment of PWD among large private firms was only 0.3 percent of their workforce. Among multinational companies, the situation was far worse, with only 0.05 percent being PWD. However, there are a number of private and public sector firms, which have far, better performance on PWD hiring, and offer good practice examples of more inclusive workplaces.⁶⁴

Section 37 obliges the employers to prepare a record of the persons with disabilities employed in the establishment in accordance with the

63. Supra note 43 at p. 98

64. Supra note 4 at p. 97

manner prescribed by rules framed under the Act. Such records will relate to applications received in reply to advertisement, comments of the selection committee, appointment letter issued, confirmation, promotion and other records involving medical leave and allied matters. These records shall be open to inspection at all reasonable hours by such persons who are authorized in this behalf by general or special orders of the appropriate Government.⁶⁵

It is to be noted here that while Section 35 provides for inspection by authorized persons of the Special Employment Exchange the present provision provides for inspection by any authorized person from the appropriate Government.⁶⁶ Further the modalities of incentives are not well documented.

Section 38 empowers the appropriate Governments as well as local authorities to formulate schemes for ensuring employment of persons with disabilities, by notification, which may provide for:

- a) training and welfare of persons with disabilities;
- b) relaxation of upper age limit;
- c) regulating employment;
- d) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and

65. *Rules 40 and 41* lay down certain obligations on the employer. Under *Rule 41* an employer shall maintain the record of employees with disabilities in Form DPER III, as may be amended from time to time. *Rule 40* requires an employer shall furnish to the local Special Employment Exchange quarterly returns in Form DPER I and biennial returns in Form DPER II as may be amended from time to time. Quarterly returns shall be furnished within thirty days of the due dates, namely, 31st March, 30th June, 30th September and 31st December, while biennial returns shall be furnished within thirty days of the due date as notified in the Official Gazette.

66. *Supra* note 33 at p. 191

- f) constituting the authority responsible for the administration of the scheme.

The National Handicapped Finance and Development Corporation (NHFDC) was established in 1997 to provide financial assistance to disabled entrepreneurs. However, between 1997 and 2005, the number of NHFDC beneficiaries was negligible - only 19,643. Even among the small client base, there is a strong gender and disability bias. In addition, disbursements have been very low, in part due to long lags between receipt of funds and loan disbursement. If NHFDC is to reach more beneficiaries, the structure of the schemes needs to be revised so as to give channelling agencies and banks better incentives to participate, together with improved accountability for channelling agencies. Equally, awareness of schemes among potential beneficiaries is very limited. Vocational Rehabilitation Centres (VRCs) have been established in state capitals to provide vocational training to disabled people. The main tasks of VRCs are to make vocational assessments of PWD and to provide short term training. Some also provide job placement services. VRCs generally do not seem to make regular efforts to update the skills imparted along with shifts in labor demand. Like other active labor programs for people with disabilities, the size of the VRC program is very small, rehabilitating only about 10,500 persons a year. In addition, there seems to be a lack of focus on placement, with no evidence to date of net positive impacts on labour market outcomes for trainees.⁶⁷ Inopportunately Section 38 also creates a problem for disabled in seeking employment. Since under Section 38 the Government is to identify the jobs which could be performed by persons suffering from various kinds of disabilities, as because of disability a person may not be in a position to undertake a particular kind of job. Cases have been filed where questions have arisen that as to whether a person suffering from a

67. *Supra* note 4 at pp. 102, 104

particular disability would in a position to take up a particular job. For instance, the Delhi High Court in *Govt. of NCT of Delhi v. Bharat Lal Meena*⁶⁸ held that persons with disabilities can be appointed as Physical Education Teachers once they have passed the qualifying examination and undergone the requisite training and the Government cannot by a subsequent clarification take away that right which has been already accrued to them. Similarly, in *Perambaduru Murali Krishna v. State of Andhra Pradesh*,⁶⁹ the Andhra Pradesh High Court has ruled that visually challenged persons who were selected for the post of Secondary Grade Teacher/School assistant but were later deprived of their legitimate right owing to their disability, were entitled to a supernumerary post as a school teacher.⁷⁰

Shapiro pointed out that unlike other minorities, disability is one minority, and “anyone can join at any time, as a result of a sudden automobile accident, a fall down from a flight of stairs, cancer, or disease.”⁷¹ Section 47 deals with a very important aspect of disability acquired during employment. It provides for non-discrimination in Government employment. Section 47 in clear terms mandates that no establishment shall dispense with or reduce in rank an employee, who acquires a disability during his service. Thus, the Section specifically secures the tenure of service of an employee without withholding or reducing his rank in case of acquired disability during his service. This part of the section uses two phrases---“dispense with” and “reduce in rank”. While the former includes simple discharge as also termination after following due process; the latter implies placing an employee in a rank which is lower than what he was holding. This is however subject to two provisos:

68. CWP.2461 of 2002

69. 2001 (II) AD (DELHI) 582

70. Supra note 3 at p. 9

71. Joseph P. Shapiro: “No Pity: People with Disabilities Forging a New Civil Rights Movement”. Universal, 1994, cited in *Ibid*

- 1) if an employee after acquiring disability is found unsuitable for the post held by him, he may be shifted to some other post with the same pay scale and service benefits enjoyed by him;
- 2) if it is not possible to adjust such employee against any post, he may be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. A supernumerary post is one which carries pay scale and benefits as the employee was enjoying but which does not fall under any of the existing categories of the post.

Thus the first sub-section prohibits the demotion of employees who have incurred a disability during employment, unless the person can no longer do any job in which case the employee is entitled to the same remuneration. Sub-section (2) also bars denial of promotion merely on the ground of his disability. Nonetheless the appropriate Government has been empowered, having regard to the type of work carried on any establishment exempt such establishment from the provisions of this section. However such exemption shall be made by a notification and subject to such conditions as specified in the notification.⁷² In *Kunal Singh v. Union of India*⁷³ the Supreme Court of India had the occasion to deal with a case arising out of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*. The Supreme Court held:

“Section 47, which falls in Chapter VIII, deals with an employee, who is already in service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of “disability” and “persons with disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during the service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possible all those who depend on him would also suffer. The very

72. *Supra* note 33 at p. 197

73. 2003(2) Supreme 102, decided on 13-2-2002

frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of section reads “no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.”⁷⁴

A perusal of the abovementioned provisions reveals that the Act does not specifically state that no person can be denied employment solely on the basis of disability. This omission tacitly implies that all persons being equal, it is still permissible not to hire someone on the basis of a disability.⁷⁵ Without doubts, among the various rights and opportunities guaranteed to the persons with disability, the most important one is the opportunity to get an employment. But, here it becomes essential to assess the difference between assurance of equality and assurance of equal opportunity. While in giving equal opportunity the State is not to act positively, but only to give an opportunity to persons with disabilities who are equally placed, assuring of equality moves many steps backwards. In this case, the State will have to ensure that persons with disabilities are equally placed with others. For instance, where some posts are notified by the Government and 3% is reserved in accordance with section 32, the considering of applications, and allowing the persons with disabilities to attend the interview and the test will be enough for giving them equal opportunity. If nobody applies for the post, the State is under no obligation to see that some person with disability applies. But so far as assurance of equality is concerned, the State will have to see that some persons, with the required qualifications are there, for applying for the post. Thus the State is under an obligation to see that education is imparted to persons with disabilities and post is also created for them and also see that some persons with disability apply for

74. Para 9 of 2003(2) Supreme 102, at 105, 106 cited by Prof. Gurbax Singh Karkara, “Right to Continue in Employment in Acquiring Disability during Service Under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995,” *Journal of Legal Studies*, vol. XXXIII (2002-2003), pp. 1-10 at p. 5

75. *Supra* note 12 p. 8

and also get the job. But disappointingly the Act envisages only an assurance of equal opportunity and not equality.⁷⁶

The National Policy document of 2006 points out that development of appropriate skills in persons with disabilities will be encouraged for their employability in 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. Also Considering 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. But again strong reflection of the national policy can hardly be found in the legislation or its implementation.⁷⁷

Thus to assure equality of employment and not merely equality of opportunity the following suggestions may be taken into account:

- ✓ New employment opportunities must be created and identified in public and private sectors taking into account cooperative and self-employment schemes.
- ✓ Self-employment must be encouraged. Accordingly, training must be provided to persons with disabilities to begin as well as manage their own businesses. Low interest loans must also be provided so that they can set up their own businesses.

76. Supra note 1 at p. 4

77. Supra note 4 at p. 126.

- ✓ Specialized attention and training must be provided to persons born with a disability and those who have acquired it.
- ✓ Efforts must be made to prevent forcing suitably qualified candidates accept poorly-paid, low-skilled, low-status and unrewarding jobs in poor working conditions such as job security, opportunities for promotion and advancement.⁷⁸
- ✓ Awareness to be spread amongst the employers that disability, impairment and ill-health are separate concepts and a person with disability can be equally worthwhile to their 'normal' counterparts. Provision for incentives too requires to be well defined.
- ✓ The quantum of reservation of person with disabilities should be according to working population; and the persons with disabilities excluded from the quota reservation should be given priority in availing other benefits such as establishments of industry, research institution and rehabilitation centres.⁷⁹

(iv) Affirmative Action and Non-discrimination:

Equalization of opportunities and participation, only education and employment will not suffice for him/ her to lead a life of total independence. In this backdrop some affirmative actions in the form of providing aids and appliances and schemes for preferential allotment of land in favour of persons with disabilities have been enacted under Sections 42 and 43 respectively. The Disability Act gives a broader definition of access. It provides for access not only physical access, but also to education, media, communication, entertainment and technology etc. Sections 44 to 46 talks about access, to public transport, public buildings and adapted toilets, etc.

78. Supra note 55

79. Supra note 43 at p. 99

Section 42 directs the appropriate Governments to make schemes to provide aids and appliances to persons with disabilities. Accordingly the Central Government has prepared the schemes for purchasing and filling of aids and appliances, commonly known as ADIP. To improve the learning and economic potentials of the persons with disability, durable, standard, up to specification, aids and appliances are made available under this scheme. It is implemented through district and *taluk* offices and are preceded by survey and screening prior to giving assistance. Under the scheme implementing agencies are provided 100% non-recurring financial assistance and only those aids and appliances which cost between Rs. 50 to Rs. 6,000 are covered. The aids and appliances are provided free of cost if the income of the beneficiary or his guardian is up to Rs. 5,000 per month and up to 50% concession of the cost, if the monthly income is between Rs. 5,000 to Rs. 8,000.⁸⁰ This section is similar to Section 28 which deals with encouraging research for designing and developing assistive devices. Access to free aids and appliances is currently within the ambit of a social security system that functions very inadequately, not in small part due the manner in which it is designed. Thus, assistance to buy aids and appliances fall within a range of individual beneficiary schemes that often have serious implementation problems and low coverage. Due to this and other demand and supply side issues, coverage of rehabilitative services and aids is very limited. In addition, systems for support and maintenance of assistive devices remain under-developed.⁸¹

Section 43 instructs the appropriate governments and local authorities to frame schemes, by notification, for the purpose of preferential allotment of land at concessional rates for:

- i) housing;

80. *Supra* note 33 at p. 194

81. *Supra* note 4 at p. 48

- ii) setting up business
- iii) setting up of special recreation centres;
- iv) establishment of special schools;
- v) establishment of research centres; and
- vi) establishment of factories by entrepreneurs with disabilities.

Thus in terms of the above provision persons with disabilities have to be preferred and given priority in the matter of allotment of land by the Development Authorities and Industrial Development Corporations. Particularly for the purpose of self-employment and encouraging the business initiatives of the persons with disabilities this provision has been enacted. The provision also intends to allot land for educational, training and research purposes which would in turn make them self dependent. But The Act fails to include all the facets of residential and independent housing in its purview. Important issues like framing schemes, allotment criteria and other important details are left to the local authorities. Access to residential housing becomes difficult without disabled specific housing loans. Moreover the intricate web of red tapism and disability as well as gender bias has put a question on the effectiveness of this provision. Thus the Act or the Rules must specifically lay out the schemes of allotment with reference to housing purposes as well for acquiring loans for the same. ⁸²

Easy and convenient access to all public places is a very important right which is given to people with disabilities. Accessibility is elementary to the recognition and satisfaction of any right. It is beyond questioning that in order to gain from the various rights guaranteed in the Constitution and the statutory provision of the various enactments pertaining to persons with disabilities, apposite conditions have to be formed to facilitate the

82. Supra note 41 at p. 45

people with disabilities to benefit from those rights. In course of attaining education and employment such persons have to move from one place to another. For this they might have to board train, bus or other vehicles, to use bathrooms and latrines, to cross roads, to get into multistoried buildings amongst others. Though the earlier definition of access included only 'physical access' and took only architectural barriers into consideration, the modern day analysis of access is more holistic in nature. It encompasses within itself accessibility to quality education, information and communication, entertainment and technology. Originating from the Beijing Conference and the Disabilities Act, access comes across at not only as a means to attain personal economic development but furthermore as a prospect to partake in social and political platforms. A close look at access related issues brings to light that in spite of international conventions and domestic legislations, access has remained as an inadequately addressed concern.⁸³ Section 44, 45, 46 and 47 specifically contains non-discriminatory provisions; especially Sections 44, 45 and 46 deals with easy and convenient access i.e. towards creation of a barrier free environment. The greatest critique of this Act is that the entire Act does not have a special chapter on access. It provides for it in the chapters on non-discrimination. The Act fails to address that access and nondiscrimination are two different things and call for two different kinds of action. Without physical access, reservations in educational institutions, government organizations do not have any value any will not give any tangible results. Still, a large section of India's public transport system, public amenities, parks, entertainment centers etc, are disabled unfriendly.⁸⁴ Since Section 47 has already been discussed under the head "Employment", hence only Sections 45, 46 and 47 shall be discussed in this part.

83. *Supra* note 27 at p. 16

84. *Ibid* at p. 34

Section 44 provides that all establishments in the transport sector such as Railways, Airways, Roadways and Waterways have to take special measures to adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to persons with disabilities; and also adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit wheel chair users to use them conveniently. This is also subject to the economic capacity and development of the State. In India Authorities are yet to take measures to ensure the implementation of the provision for “accessibility”. The authorities are taking undue advantage the term ‘within the limits of their economic capacity and development’. This term has turned out to be complete defence to negate the right granted by the statute. To ensure strict implementation of the provision it is necessary that a deadline must be fixed for the authorities to comply with the provisions of the Act.⁸⁵

Section 45 has been framed to help the persons with disability to cross and use the public road. The act directs the appropriate Governments and the local authorities to take measures “within the limit of their economic capacity and development” to provide for installation of auditory signals at red lights for the benefit of persons with visual handicap, to make curb cuts and slopes in pavements for the easy access of wheel chair users, to make engravings on the surface of the zebra crossing for the blind, make engraving on the edges of railway platforms for the blind or persons with low vision, to provide for appropriate symbols of disability and to install warning signals at appropriate places. Thus, safety measures such as road safety, safety in residential areas, public transport system etc, should be taken up on a priority basis.⁸⁶

Section 46 deals with non-discrimination in the built environment. The Section directs the appropriate Governments and local

85. Supra note 25 at p. 125

86. Supra note 33 at p. 195

authorities to provide for ramps in public buildings, to adapt toilets for wheel chair users, provide for Braille symbols and auditory signals in elevators or lifts and to provide for ramps in hospitals, primary health centres and other medical care and rehabilitation institutions. But again this is subject to economic capacity and development. Thus it can be observed that the general approach is one of accessible design or adaptation of public facilities and to some extent the built environment, rather than universal design. Accessible design refers to buildings that are accessible by PWD, while universal design is buildings or products that are accessible by all, including PWD. The former tends to result in access channels for PWD which are separate, while the latter provides for design solutions that accommodate all people in the same manner. For example, an accessible building might have a separate ramp entrance, while a universal design building would not have steps at all. The draft National Policy for Persons with Disabilities recognizes the distinction, and commits rather ambitiously that “all future infrastructure development will ensure universal access.” In addition the provisions of the Act, and to some extent their subsequent interpretation and implementation, show a relative focus on access for people with disabilities in urban areas. This is to some extent understandable, but as a result lessens the focus on the types of access priorities of rural people with disabilities. These in many cases may be more fundamentally focused on access from the home to buildings or facilities than on access to facilities themselves. The latter clearly remains important, but does not become relevant if the person with a disability can not access the facility in the first place.⁸⁷

Easy access to transportation, public places and communication play a very significant part in availing the facilities leading to the social

87. *Supra* note 4 at p. 144

integration of the disabled.⁸⁸ Access not only to justice in courts of law, but also to various other facilities such as public buildings, housing, medical and health care, educational institutions, sports facilities, etc. The issue of access therefore encompasses ascertaining means to overcome “environmental barriers”, “institutional barriers” and “attitudinal barriers” (as discussed in Chapter 1). Things like public transport, public hospitals toilets, hospitals, government offices, public spaces like parks, educational institutions, places of worship are still inaccessible to people. So far the interventions which have been made are restricted to the physical access only. Areas like education, teaching aids, books in Braille and interpreters for the hearing and speech impaired are still not available to large sections of the disabled.⁸⁹

The dictionary definition of the word barrier is “any obstacle or circumstance that hinders or obstructs progress, access etc.” (Oxford Advanced Learner’s Dictionary) thereby implying a literal and figurative extension of its meaning. In the context of built environment, the literal barriers are the physical barriers and refer to those problems of disabled people related to access and use of buildings and mobility in the environment. While the figurative barriers are the social barriers and refer to restrictions to full societal participation imposed upon the persons with disabilities through the built environment. Apart from physical and social nature of these barriers, they have also the following characteristics:

- a) Barriers are always external to the disabled persons and their effects are not a concomitant of disability.
- b) They are normally non-transparent to those unaffected i.e. only the persons with disability are directly aware of the existence of barriers.

88. *Supra* note 56 at p. 164

89. *Supra* note 27 at p. 16

“Accessibility” is a fundamental feature of the built environment. It allows people to reach and subsequently use built facilities such as homes, places of work, educational institutions, shops, theatres and parks. Accessibility enables people to participate in the social and economic activities for which the built environment is intended. It should be understood as a fundamental environmental factor and not simply the concern of those who have a permanent or temporary-physical or sensorial disability. Barrier free environment in this context implies unhindered, obstruction free built environment to ensure free passage to and use of facilities therein. Even though barrier free design is commonly associated with the environmental needs of disabled person, it is much more universal concept in its application. As a society, we have become victims of and are controlled by our environment.⁹⁰ While India has standards on promoting access to the built Environment and basic services, it faces major challenges in implementation due to a combination of institutional coordination challenges, poor enforcement mechanisms, and lack of awareness of the needs of people with disabilities.

Although the Persons with Disabilities Act contains provisions for attainment of these objects but their non-implementation make these provisions nothing but a farce. The provisions on access for people with disabilities in the Act are framed as contingent entitlements, i.e. obligations on the authorities are subject to the proviso “within the limits of their economic capacity and development”. As such, the authorities are encouraged to take various interventions to promote access, but the nature of the legal obligations is somewhat vague. Indeed, there are no specific enforcement provisions or

90. Dr. S.C. Handa, “Understanding Barrier Free Environment” in Professor B.K.Sengupta and Basins UmaSahnkar, himangshu Garg, Haimanti Banerji (ed.) “*Proceedings of Seminar on Barrier Free Environment for the Persons with Disabilities and Elderly*”, organized by the Ministry of Social Justice and Empowerment, Government of India, in collaboration with Dept. of Architecture and Regional Planning Indian Institute of Technology, Kharagpur,(2004), pp.17-20 at pp. 17,18,19

sanctions for failure of authorities to be proactive in undertaking their obligations under the Act. Nor is a mechanism spelt out for how authorities should move to implement the Act's provision, e.g. amendment of bye-laws etc. As a result, people with disabilities have relied on a combination of general non-discrimination provisions of the Act and the specific provisions on access.⁹¹ It is unfortunate that none of our transport systems are accessible to a person with any disability. No blind person can cross the road without the help from others. No person in a wheel-chair or with locomotor disability can get into public vehicles or use the public toilets. The road crossings, zebra crossings etc. do not have audio-signals to inform the hearing and visually impaired persons. It is a pity that even most of the government buildings do not tally with requirement of Section 46. The only remedy of such violations of the Persons with Disabilities Act is seeking the solace of the Court. But the irony is even the Courts do not have ramps or other disabled friendly access.

The cases regarding accessible public transport have explicitly tried to balance the need for access with impacts on public finances. For example, the Supreme Court in 1999 ordered Indian Airlines in *Javed Abidi v. Union of India & Others*⁹² to provide ambu-lifts and aisle chairs for people with locomotor disabilities. This was phased in on the basis of Indian Airlines' claims that such installation was economically unviable. In *Disability Rights Group v. Chief Election Commissioner*⁹³ in public interest litigation, a non-governmental organization committed to the welfare of the persons with disabilities had sought the intervention of the Supreme Court to correct the wrong of the Election Commission of India in not providing adequate facilities for persons with disabilities to vote. The matter involved the right of over 45 million citizens of the country who are unable to vote effectively in various

91. Supra note 4 at p. 144

92. 1999 SC 512

93. WP (C) No. 187 of 2004

general and local elections, with their dignity and sense of confidentiality in their vote intact, due to the non-availability of ramps, disability friendly security arrangements in the polling booths and identification of their disabled status in the electoral rolls. Consequently the Supreme Court directed the Chief Secretaries of States to ensure facilities to enable the persons with disability to reach the polling stations to cast their votes in at least the cities and urban areas. But this decision of the Supreme Court is itself discriminatory as it speaks of the availability of disabled friendly polling facilities only in the cities and urban areas. Where the rural sector is anyhow backward, the decision of the apex court has exposed the discriminatory attitude and restrictive development of the persons with disabilities in the urban sector. The judiciary must have been more sensitive in giving such decisions. Thus, it is important to have both more specific policies and a supportive institutional framework if access commitments are to be realized more fully. Interestingly, very few access-related cases have been brought before the Commissioners' offices, with the few that have being *suo moto*.⁹⁴

Even though the Disability Act talks about making all public buildings and places of importance accessible to the disabled the government is far from achieving it. The government should set a dead line and immediately work upon the physical accessibility part. The Disability Act expanded the concept of access from physical access to other things like information, communication, media, entertainment etc. The spirit of the Act has to be translated into action.⁹⁵ The following suggestions can be considered in this respect:

94. Supra note 4 at p. 144,148

95. Supra note 27 at p. 40

- ✓ Complete inclusion of the disabled implies removal of the physical barriers of participation. Hence, Barrier-free designs of public places, buildings, roads, footpaths, transport facilities should be promoted and renovation of old buildings should be done to make them disabled-friendly and barrier-free by providing ramps, wide doors, convenient amenities, safe public places, etc.
- ✓ Conditions and policies that actually build physical barriers must be changed without delay. Barrier-free designs, with the specific needs of people with sensory, intellectual and physical impairments should be made an integral part of the curricula of architects, town planners and engineers, etc.
- ✓ Sign language interpreters should be available in public places for convenience of deaf persons.⁹⁶
- ✓ The Motor Vehicles Act must make wheel chair accessibility an absolute condition for manufacture of public transport.
- ✓ The Standard Rules on the Equalization of Opportunities for persons with Disabilities which were adopted in the 48th session of the United Nations General Assembly, December 1993, should be considered as a guideline and strict implementation of the same has to be done.

(e) Other features of the Act:

(i) Mechanism of implementing the provisions of the Act:

The enforcement or implementation machinery is to be studied under two broad heads:

96. Supra note 55

1) Central and State Coordination Committees and Executive Committees—Their Constitution, Powers and functions

(Chapter II and Chapter III)

2) Chief Commissioner and Commissioners for persons with Disabilities (Chapter XII)

I. Constitution, Powers and Functions of the Central Coordination Committee and Executive Committee:

Constitution of Central Coordination Committee--- *Sections 3 to 8* deal with the Central Coordination Committee. *Section 3* provides for the constitution of the Central Co-ordination Committee by the Central Government, which consists of the Minister in charge of the Department of Welfare as well as the Minister of State in that Department in the Central Government. The Minister (Chairperson) and Minister of State-in-charge (Vice- Chairperson) of Department of Welfare, Secretaries to the Government of India-in-charge of the Departments of Welfare, Education, Woman and Child Development etc., the Chief Commissioner, Chairman, Railway Board, three members of Parliament, four nominated members to represent the State Governments and Union Territories, five persons as far as practicable, being persons with disabilities to represent NGOs etc., are some of the members of the Central Co-ordination Committee. It is to be noted here that at present the Ministry of Social Justice and Empowerment deals with welfare, which was earlier being looked after by the Department of Welfare. The persons who are appointed by virtue of the offices that they are holding as *ex-officio* members will cease once they give up the offices they are holding; consequently their membership of the Central Coordination Committee will also cease. Rules 7, 8 and 9 of the

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 have to be read with this section.⁹⁷

Section 4 provides for the term of office of those members in the Central Coordination Committee who are nominated by the Central Government.⁹⁸ *Section 5* provides for the disqualifications which prevent a person to become a member of the Central Coordination Committee.⁹⁹ *Section 6* provides that if a member of the Central Coordination

97. *Rule 7* says that the Central Government shall nominate four members – three from the State and one from the Union territories under clause (k) of sub-section (2) of section 3 of the Act, by rotation, in such a manner so as to cover all the four regions of the country, every year. *Rules 8 and 9* lays down the functions of the member Secretary. *Rule 8* says that the Member Secretary shall keep a record of names of Members and their addresses; and *Rule 9* provides that if a Member changes his address, he shall notify his new address to the Member-Secretary, who shall thereupon enter his new address, in the official records (but if he fails to notify his new address, the address in the official records shall for all purposes be treated as his correct address). It is to be noted that under *Rule 19*, no proceeding of the Central Co-ordination Committee shall be invalid by reasons of existence of any vacancy in or any defect in the constitution of the Committee.

98. The appointment of such members shall be for a period of three years. It may be mentioned that a casual vacancy occurs when a member dies, resigns, is removed from his membership or fails to attend three consecutive meetings of the Central Coordination Committee. Any person who is nominated to fill the casual vacancy in the Central Coordination Committee shall hold office only for the remainder of the term for which the member in whose place he was so nominated was to serve. *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, Rule 10* provides that Non-Official members of the Central Co-ordination Committee, resident in Delhi, shall be paid an allowance of rupees seventy five per day for each day of the actual meetings of the Central Co-ordination Committee. While, non-official members of the Central Co-ordination Committee, not resident in Delhi shall be paid daily and travelling allowances for each day of the actual meetings at the highest rates admissible to a Grade I Officer of the Central Government. However, in case of a Member of Parliament who is also a Member of the Central Co-ordination Committee, the said daily and travelling allowances shall be paid at the rates admissible to him as Member of Parliament, when the Parliament is not in session and on production of a certificate by the Member that he has not drawn any such allowance for the same journey and halts from any other Government source. So far as an official member of the Central Co-ordination Committee is concerned he /she shall be paid daily and travelling allowances, at the rates admissible under the relevant rules of the respective Government under whom he is serving on production of a certificate by him that he has not drawn any such allowance for the same journey and halts from any other Government source.

99. The expression “adjudged insolvent” under Section 5 has to be seen in reference to the provisions of the Presidency Insolvency Act under which a person who fails to pay his creditors is declared insolvent. It is possible for such person to compound with his creditors and clear the debts of his creditors in which circumstance his disqualification will stand removed. The disqualification relating to “unsound mind” has to be seen only if such unsoundness has been

committee becomes disqualified by virtue of any of the provisions of Section 5 the seat shall become vacant. According to *Section 7* the meeting of the Central Coordination Committee shall take place at least once in every six months in accordance with the rules or procedures prescribed by the Central Government.¹⁰⁰

declared by a competent court. Under the *Mental Health Act, 1987*, a District Judge is competent to declare a person to be of unsound mind relying on the medical investigation report and similar factors. "Moral turpitude" implies acts of corruption, bribery, commission of fraud involving the integrity of a person.

100. *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, Rule 11* provides that the meetings of the Central Co-ordination Committee shall ordinarily be held in New Delhi on such dates as may be fixed by the Chairperson. The Chairperson has been empowered to call a special meeting of the Committee upon the written request of not less than ten members of the Central Co-ordination Committee. The rule also lays down the period of notice to be laid before a meeting is held. Fifteen clear days' notice of an ordinary meeting and five clear days' notice of a special meeting specifying the time and the place at which such meeting is to be held and the business to be transacted thereat, shall be given by Member – Secretary to the members. Hence this is another function of the member-Secretary in addition to the ones mentioned in Rules 8 and 9. Notice of a meeting may be given to the members by delivering the same by messenger or sending it by registered post to his last known place of residence or business or in such other manner as the Chairperson may, in the circumstances of the case think fit. However, no member shall be entitled to bring forward for the consideration of the meeting any matter of which he has not given ten clear days' notice to the Member-Secretary, unless the Chairperson in his discretion, permits him to do so. The Central Co-ordination Committee may also adjourn its meetings from day to day or to any particular day. But, where a meeting of the Central Co-ordination Committee is adjourned from day to day, notice of such adjourned meeting shall be given to the members available at the place where the meeting which is adjourned if held by messenger and it shall not be necessary to give notice of the adjourned meeting to other members. Where a meeting of the Central Co-ordination Committee is adjourned not from day to day but from the day on which the meeting is to be held to another date, notice of such meeting shall be given to all the members. *Rule 12* declares the Chairperson as the presiding Officer and in his absence the Vice-Chairperson as the same, but when both the Chairperson and the Vice-Chairperson are absent from any meeting, the members present shall elect one of the members to preside at the meeting. *Rule 13 inter alia* provides that one-third of the total members shall form the quorum for any meeting and no quorum shall be necessary for the adjourned meeting. *Rule 14* deals with the minutes. *Rule 15* declares that the presiding officer shall maintain order at the meeting. However under *Rule 16*, except with the permission of the presiding officer, no business which is not entered in the agenda or of which notice has not been given by a member under *Rule 11*, shall be transacted at any meeting. *Rule 17* deals with the change in the order of business as entered in the agenda. As per *Rule 18* all questions considered at a meeting of the Committee shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson or in the absence of the Chairperson, the Vice-Chairperson or in the absence of both the Chairperson and the Vice-Chairperson, the member presiding at the meeting, as the case may be shall have a second or casting vote.

Powers and functions: *Section 8* provides the functions of the Central Coordination Committee as under:

- a) The Central Coordination Committee is to serve as the national focal point on disability matters and facilitates the continuous evolution of the policies towards solving the problems faced by the persons with disabilities. The policies have been guided by the declarations/resolutions of the United Nations and the International Treaties and Conventions that have been developed from time to time by the United Nations and its various Commissions and Committees. As a matter of fact the provisions of the present Act reflect the national policy on disability.
- b) Review and co-ordination of the activities of departments which deal with matters relating to persons with disabilities.
- c) Develop national policy to address issues faced by persons with disabilities.
- d) Advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability.
- e) Take up the cause of persons with disabilities with the concerned authorities and the international organizations with a view to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies.
- f) Review the funding policies with the donor agencies, from the perspective of their impact of the persons with disabilities.
- g) Take appropriate steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions.
- h) Monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities; and such other functions as may be prescribed by the Central Government.

Constitution of Central Executive Committee-- The Central Executive Committee has been constituted under *Section-9* of the Persons with Disabilities Act of 1995. It is the executive body of the central coordination committee and is responsible for carrying out the decisions of the central coordination committee. The Executive Committee is constituted by the Central Government and consists of a Chairperson, eleven ex-officio Members, ten nominated members and a Member-Secretary.¹⁰¹

But practical experience reveals that hardly any officer of the level of a secretary or joint secretary attends these meetings. Most often officials, who are of the level of a director or sometimes section officers of the various ministries, attend these meetings. These junior officials are not empowered enough to voice their ministry's activities and are mute participants. They do not contribute even a bit during the deliberations. It is questionable whether they even communicate to their seniors who matter about the decisions taken in the meetings. Participation continues to be confined to officers below the rank of joint secretaries. It is imperative that senior officers, who are aware of the workings of their respective ministries and are empowered to take decisive action, represent the ministries. In

101. The Chairperson and member-secretary shall be ex-officio, and *inter alia* the Secretary to the Government of India in the Ministry of Welfare (now the Ministry of Social Justice and Empowerment) who shall be the ex-officio Chairperson; the Chief Commissioner; the Director General for Health Services; the Director General of Employment and Training; six persons not below the rank of a Joint Secretary to the Government of India to represent the Ministries or Departments of Rural Development, Education, welfare, Personnel, Public Grievances and Pension and urban affairs and employment, Science and Technology; the Financial Advisor, Ministry of Welfare, Advisor(Tariff) Railway Board ---ex-officio Members; ten nominated members by the Central Government consisting of---four persons representing the States and Union Territories, one person representing the interest , which in the opinion of the Central Government ought to be represented and five persons representing the NGOs. The Joint Secretary to the Government of India in the Ministry of Welfare dealing with the welfare of the handicapped shall be the ex-officio Member Secretary.

addition, none of the NGO representative members are persons with disabilities. Even more disappointingly, not even a non-disabled NGO member represents the people with mental disabilities.¹⁰² As the chairperson of the Central Executive Committee also happens to be the secretary of the Ministry of Social Justice and Empowerment, the pivotal ministry for ensuring implementation of the provisions of the Act, there is a clear duplicity of roles. In this context it will be more productive that the chairperson of Central Executive Committee is clearly de-linked from the Ministry of Social Justice and Empowerment. The role of the Chief Commissioner Disabilities, who is also ex-officio chairperson of the Central Executive Committee, is far from satisfactory. The Chief Commissioner generally plays an extremely passive role in these meetings as bureaucratic protocol positions the Chief Commissioner under the secretary Ministry of Social Justice and Empowerment and one cannot expect the Chief Commissioner to toe a line which is not in conjunction with the Ministry of Social Justice and Empowerment. This conflicting position of the Chief Commissioner also needs to be examined as the chief Commissioner is mandated under the law to be an independent body and under no circumstances should be subordinate to the Ministry of Social Justice and Empowerment.¹⁰³

The Role of the Central Executive Committee is to implement policy decisions taken by the Central Coordination Committee and this is by way of regular meetings. Under *Section 11* the Meetings of the Central Executive Committee shall be held at least once in three months and such rules of procedure shall be observed in regard to the transaction of business as may be prescribe by the Central Government. The phrase “at least

102. Vandana Bedi, “Disability of Will”. View full article at http://www.combatlaw.org/information.php?article_id=1055&issue_id=38, accessed on 2.10.2008.

103. *Ibid.*

once in three months” only means that the Committee shall meet once in three months in the minimum. There is no contravention if more than one meeting is held. Simply speaking there must be at least one meeting quarterly and four meetings annually. In reality though these meetings are convened but not enough time is devoted. The minutes of the meeting of the Central Coordination Committee have never been circulated in any of the Central Executive Committee meetings.¹⁰⁴ *Section 12* deals with the temporary association of persons with the Central Executive Committee for some particular purpose/purposes. The Central Executive Committee is empowered to associate with itself in such manner and for such purposes as may be prescribed by the Central government any person whose assistance or advice it may desire to obtain in performing any of its functions under the Act. The expression “may associate with itself” has to be seen with reference to the assistance or advice that the Committee may require from such associated persons in performing any of its functions as assigned under this Act. The chief object of enacting this provision is to enable the Committee to avail of the contributions of the experts in the field of disability. Such persons though included in the Committee shall have no right to vote in the meeting of the said Committee and shall not be a member for any other purpose. Such persons shall also be enabled to such fees and allowances for attending its meetings and for attending to any other work of the Committee.

Function-- The principal function of the Central Executive Committee as constituted under *Section 9* is act as the executive body of the Central Coordination Committee and is responsible for carrying out the decisions of the latter. It shall also perform such other functions as delegated by the Central Coordination Committee.¹⁰⁵

104. *Ibid*

105. *Supra* note 33 at p. 177

II. Constitution, Powers and Functions of the State Coordination Committee and Executive Committee: -

Constitution of State coordination Committees--- According to *Section 13* the State Coordination Committee is constituted by the state Government and performs functions similar to that of the Central coordination Committee at the State level. The Committee consists of the Minister in-charge of the Department of Social Welfare in the State Government (Chairperson, ex-officio); the minister in-charge of the Department (Vice-Chairperson, ex-officio); Secretaries to the State Government in-charge of the Departments of Welfare, Education, Woman and Child Development, expenditure, Personnel Training and public Grievances, Health, rural Development, Urban Affairs and Employment, science and Technology, Public enterprises; Secretary of any other Department which the State Government considers necessary; Chairman Bureau of public Enterprises (Members, ex-officio); five members, being persons with disabilities to be nominated from the NGOs by the State Government; three members of State Legislature; three persons to be nominated by the State government to represent agriculture, industry or trade or any other interest which the State Government opines to be represented; the Commissioner and Secretary to the State Government dealing with Welfare of Handicapped shall be the Member Secretary. The Section also makes clear that no State Coordination Committee shall be constituted in respect of any Union Territory and the Central Coordination Committee shall perform the function relating thereto. *Section 14* provides for the terms and conditions of service of Members.¹⁰⁶ *Section 15* provides for the disqualifications which are

106. Section 14 provides that the nominated members shall hold office for a period of three years and shall continue to hold office even after the expiry of his term until his successor enters into office, even though a term of three years might have expired. Such nominated members may resign his office by writing to the State Government or may even be removed by the State

akin to the Disqualifications of the Central Coordination Committee Members under Section 5. The only difference being that the order of removal shall be made by the state government instead of the Central Government. If a member becomes subject to any of the disqualifications his seat shall become vacant (*Section 16*).

Section 17 says that the Meetings of the State Coordination committee shall be held at least once in six months and the prescribed rules of procedure shall be observed with regard to the transaction of business.

Functions of State Coordination Committees--- *Section 18* deals with the functions of the State Coordination Committee, which is the same as the Central Coordination Committee. The chief difference is that while the State Coordination Committee works at the State level, the Central Committee works at the national level. Along with the only matter with which the Central coordination Committee has power is to take up cause of persons with disabilities with the international organization to provide for schemes and projects of the disabled. As in the case of Central Coordination Committee, the State Coordination Committee will also have to serve as the focal point on disability matters within the State and evolve a progressive policy towards solving the problems faced by persons with disabilities. However such policy must be in consonance with the provisions of the Act as well as the comprehensive policy developed by the Central Coordination Committee.¹⁰⁷

Government after giving him a reasonable opportunity of showing cause against the same. A nominated member is also eligible for re-nomination and is entitled to such allowances as may be prescribed by the State Government. So far as the ex-officio members are concerned, their term of office shall end as soon as he ceases to hold office by virtue of which he had been appointed/ nominated. In case of any casual vacancy the person nominated shall hold office only for the remainder of the term for which the Member in whose place he had been nominated.

107. *Supra* note 33 at pp. 180-181

Constitution and functions of State Executive Committees--- *Sections 19 to 22* deals with constitution, functions, meeting and temporary association of members of the State Executive Committees respectively. The State Executive Committee is the executive body of the State Coordination Committee. The Committee consists of the Secretary, department of Social Welfare (Chairperson, ex-officio); the Commissioner; nine persons not below the rank of a Joint Secretary to the State Government, to represent the Departments of Health, Finance, Rural Development, Education, Welfare, Personnel Public Grievances, urban Affairs, Labour and Employment, Science and Technology (Members, ex-officio); one nominated member by the State Government representing the interest of those who ought to be represented in the opinion of the State Government; five member to be nominated from amongst the persons with disabilities from NGOs; and Joint Secretary dealing with disability division in the Department of Welfare shall be the Member-Secretary, ex-officio. The functions are similar to that of the Central executive Committee and so is the frequency of meetings. The provisions regarding temporary association of persons with State Executive Committee under *Section 22* is also the same as in case of Central Executive Committee.

Section 23 provides that the Central Coordination Committee shall be bound by the written directions of the Central Government and State Coordination Committee by the Central coordination committee or the State Government. However if any direction of the State government is inconsistent with the directions of the Central Coordination Committee, then the matter shall be referred for decision to the Central Government. The provision of this Section reflects the hierarchical control of the Central as well as State Governemnts over the Committees. *Section 24* provides that no act or proceeding of the Central Coordination Committee, Central Executive Committee. State Coordination Committee and State Executive Committee

shall be questioned by reason of any vacancy or defect in the constitution of such Committees.

To address the concern of inter-sectoral coordination, the PWD Act mandates Central and State-level Coordination and Executive Committees. Together, these Committees are intended as “focal points on disability matters” and to be key institutions in development of comprehensive disability policy development. They should meet every 6 and 3 months for the Coordination and Executive Committees respectively. Unfortunately, the track record of these coordinating institutions in states and at the centre is poor, with few exceptions. Government of India Reports indicate that meetings in most States happen very rarely, with a number of major states (e.g. Gujarat, Bihar, Kerala) having had only one meeting of their Coordination Committees since the passage of the Act, and others such as Rajasthan and Orissa reporting no meetings at all. Similar lack of action seems to apply to State Executive Committees. It was found that the shortfall in meetings of these core committees as of end-2003 was between 43 and 100 percent at state level and 50 percent at the national level. It is unclear if the situation has improved in the meantime. It thus appears that the disability field is characterized by a nodal Ministry with relatively weak convening power, and coordinating institutions which are in many parts of the country barely functional.¹⁰⁸

III. Chief Commissioner and Commissioners for Persons with Disabilities:

Chapter XII of the Persons with Disabilities Act spells out one of the chief aims of the Act. As revealed, the persons with disabilities have suffered through the ages and have been subject of discrimination and injustice. To ensure the enjoyment of their fundamental rights and other

108. Supra note 4 at p. 133

human rights, the office of the Chief Commissioner for persons with disabilities was visualized. The office seeks to deal with discrimination, deprivation and non-implementation of laws and regulations made by the appropriate governments along with the local authority for the wellbeing and protection of the persons with disabilities. In addition it was also perceived that persons with disabilities can be advantageous only if they are made conscious about the privileges, rights and amenities available to them under the Act.¹⁰⁹The Indian disability law envisages the appointment of Chief Commissioner as a watchdog on the rights of the disabled people. He has powers of a Civil Court. A simple application by and aggrieved person with disability will set the law in motion and the Commissioner has the power to investigate it and take necessary safeguard the rights. He has the power to monitor the utilization of funds disbursed by the central government. He/she is required to submit his/her report to the Central government on the implementation of the Act. The report has to be laid before the Parliament, which is the highest law making body. Similar provisions have been made at the State level as well. Now an appraisal of the sections dealing with the appointment, powers and functions of the Chief Commissioner and State Commissioner shall be taken up.

Appointment: *Section 57 and 60* deals with the appointment of Chief Commissioner and Commissioners respectively. While the Chief Commissioner is appointed by the Central Government the Commissioners are appointed by the State Governments. A person to be appointed as the Chief Commissioner or Commissioner must have special knowledge or practical experience in matters relating to rehabilitation of persons with disabilities. It is for the respective Government to prescribe the salary and allowances and conditions of service (including pension, gratuity and other

¹⁰⁹. Supra note 33 at p. 204

retirement benefits) and also determine the nature and category of officers and other employees required to assist the Chief Commissioner or Commissioner in the discharge of its functions. The officers and employees shall discharge their functions under the general superintendence of the Chief Commissioner/Commissioner and their salaries and allowances and other conditions of service shall be prescribed by the Central Government/ State Government.¹¹⁰

Functions: *Sections 58 and 61* deals with the functions of the Chief Commissioner and Commissioner respectively. Section 58 stipulates that the Chief Commissioner shall have the following functions to perform:

- (a) To coordinate the work of the Commissioners for the States;
- (b) To monitor the utilization of funds disbursed by the Central Government;
- (c) To take steps to safeguard the rights and facilities made available to persons with disabilities; and
- (d) To submit reports to the Central Government on the implementation of the Act at such intervals as prescribed by the Central Government.¹¹¹

Similar powers have been conferred on the State Commissioner under *Section 60* except that the area of operation of the State Commissioner or Union territory shall be within their respective States and Union Territories. Also the State Commissioner shall coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons

110. *Rule 43*--- The Chief Commissioner for Persons with Disabilities shall be entitled to salary, allowances and other perquisites as are available to the Secretary to the Government of India.

111. According to *Rule 44* the Chief Commissioner shall submit to the Central Government on the implementation of the Act at the interval of six months in such a manner that at least two reports are sent in one financial year.

with disabilities, which is unlike the Chief Commissioner which coordinates the Commissioners of the States; and the reports on the implementation of the act has to be submitted to the State Government.

Apart from the above functions the Chief Commissioner and Commissioner have to prepare Annual Reports giving full account of his activities during the previous financial year in such form as may be prescribed by the Central/State Government and forward a copy thereof to the respective Government who shall have the same laid before each house of Parliament/State Legislature along with its recommendation made in so far as they relate to Central/State Government, under *Sections 64 and 65* respectively.¹¹² The respective Government must also state the reasons for non-acceptance of any recommendation or part thereof in the said report.

Powers: *Section 59* of the Act confers on the Chief Commissioner the following powers:

“Without prejudice to the provisions of *Section 58* the Chief Commissioner may of his motion or on his application of any aggrieved person or otherwise look into complaints with respect to matters relating to---

- (a) deprivation of rights of persons with disabilities;
- (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate

112. As per *Rule 45*, the Chief Commissioner shall as soon as possible after the end of the financial year but not later than the 30th day of September in the next year ensuing, prepare and submit to the Central Government an annual report giving a complete account of his activities during the said financial year. In particular, the annual report shall contain information in respect of each of the following matters, namely: names of officers, staff of the Board and a chart showing the organizational set-up; the functions which the Chief Commissioner has been empowered under *Section 58 and 59* of the Act and the highlights of the performance in this regard; the main recommendations made by the Chief Commissioner; progress made in the implementations of the Act State wise; and any other matter deemed appropriate for inclusion by the Chief Commissioner or specified by the Central Government from time to time.

Government and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.”

Hence it is seen that under *Section 59*, the Chief Commissioner in addition to the functions that it has to perform under *section 58* of the Act, has the obligation to look into complaints with respect to deprivation of rights of persons with disabilities and take up with the appropriate authorities all matters relating to non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioner may take such steps either suo moto on his own knowledge based on any information received or on the basis of any complaint of any aggrieved person bringing to the notice of the Chief Commissioner any matter relating to deprivation of rights of persons with disabilities or non-implementation of laws etc. The Chief Commissioner not only has the task of looking into the complaints about deprivation of rights and non-implementation of laws etc., but also to take up the matters suitably with the appropriate authorities. *Section 62* confers similar power on the State Commissioner whereby he shall look into the complaints with respect to matters relating to deprivation of rights of persons with disabilities in the identical manner as the Chief Commissioner.

For discharging the functions provided under the Act, the Chief Commissioner and State Commissioners have been conferred certain powers of the Civil Court under *Section 63*. Under this Section the Chief Commissioner and State Commissioners have the same powers as are vested in a Civil Court under the Code of Civil procedure, 1908 while trying a suit. However, these powers will be related to

- a) summoning and enforcing attendance of witnesses,

- b) requiring the discovery and production of any document in the custody of any person,
- c) requisitioning any public record or copy thereof from any Court, or office,
- d) receiving evidence on affidavits, and
- e) issuing commissions for the examination of witnesses or documents.

The Section also specifically lays down that the proceedings before the Chief Commissioner and State Commissioners shall be judicial proceedings within the meaning of Sections 193 and 228 of the Indian penal Code and also be regarded to be Civil Court for the purposes of Section 195 of Chapter 26 of the Code of Criminal Procedure, 1973.¹¹³

An Appraisal of the Role of the Disability Commissioners:

Under the Act, the Chief Commissioner and Commissioners for Persons with Disabilities are envisaged to be the watchdog bodies with the powers of a civil court. However very few facilities have been provided to these offices and they thus remain ineffective. It is disheartening to note that the Office of the Chief Commissioner and State Commissioners has failed to live up to its expectations as visualized under the Act. The institution mandated with monitoring compliance with the Act – the Office of the Commissioner – has weak powers. It is also argued that the Chief Commissioner and State Commissioners are not needed. The protection of the rights of the persons with disabilities is essentially a matter of protection of human rights. When there is already a machinery called the National Human Rights Commission which principally aims into looking at complaints concerning human rights violation and non-implementation of laws, rules etc. relating to the protection of human rights. Consequently the creation of the office of the Commissioner for the same

113. *Rule 42 of the Disability Rules, 1996* lays down the procedure to be observed by the Chief Commissioner for entertaining complaints.

purpose appears to be of no use. The creation of the Office has caused multiplicity in the enforcement mechanism on the same subject matter and unnecessary burden on the State Exchequer.¹¹⁴ The Commissioners' office has authority to look into deprivation of Persons with Disabilities rights and on-implementation of various rules, laws etc. which have been developed to promote the welfare and rights of PWD. The fundamental limitation of the office is that its only legal sanction in case of a breach is to "take up the matter with the appropriate authorities". The Office does not itself have enforcement powers of a court or administrative tribunal. It can and does make orders, but can not enforce compliance. As such, its effective powers are either "naming or shaming" or encouraging referral to the court system. While these have been effective remedies in some cases, there are clear limitations.¹¹⁵

The World Bank in its Report states: -

"There is little detailed analysis of the performance of the Commissioner system outside its own reports. However, the most recent Government of India report suggests significant issues of low capacity to perform their mandate effectively. CAG evidence for the period 1999-2003 indicates several concerns related to: (i) poor monitoring of use of funds; (ii) lack of clarity on grievance redressal mechanisms; and (iii) limited advocacy work in a number of states. The analysis points to significant issues with lack of staff and low capacity in Commissioners' offices. These concerns are supported by field work for this report in Rajasthan and Karnataka (two states considered to have better functioning offices), which found skeletal staff in both offices. In Rajasthan, the Commissioners' office consisted of one Additional Commissioner (there has been no Commissioner since end-2003) and his PA, with no support staff. The office had failed to register any grievance cases of persons with disabilities since 2002. The same study also noted that full time Commissioners exist to date only in a

114. Supra note 1 at pp. 8, 9

115. Supra note 4 at p. 125

minority of states. An additional generic concern is the lack of legal expertise in the Commissioners' offices, particularly at state level, despite the importance of their quasi-judicial role in enforcement of the Act."¹¹⁶

In view of these the best remedy would be to abolish the Office of the Chief Commissioner and Disability Commissioner in the States and instead either establish a Commission for Welfare of Persons with Disabilities akin to the Women's Commission or Minorities Commission or a Disability Tribunal to meet the requirements of the Act with regard to the functions performed by the Commissioner in the present Act.

(ii) Research, Manpower Development and Recognition of Institutions for Persons with Disabilities and Severe Disabilities:

Section 48 obliges the appropriate Governments and local authorities to promote and sponsor research for prevention of disability, rehabilitation including community based programmes, development of assistive devices including their psycho social aspects, job identification for persons with disabilities and modifications in offices and factories.

Though the Chief Commissioner and Commissioners are supposed to submit reports to the Central Government and respective State Governments. However research is hardly done and reports never submitted. A strong research agenda is required to study the ways and means of better realizing the rights of the disabled. The reports bring in more accountability.¹¹⁷

Sections 50 to 55 deal with the *recognition of institutions of persons with disabilities*. *Section 50* empowers the State Government to appoint a competent authority as it deems fit for the purposes of this Act. In most of the

116. *Ibid* at p. 134

117. *Supra* note 25 at p. 127

Sections it is noted that both the Central and State Government have been entrusted with a number of powers. But the power to appoint the competent authority regarding the recognition of institutions for persons with disabilities has been given to the State Government only. *Section 51* contains a direction to all persons or bodies who intend to establish or maintain any institution for persons with disabilities.¹¹⁸ *Section 52* deals with the grant of registration certificate on an application made by any person for setting up or for carrying on nay institution for persons with disabilities.¹¹⁹ *Section 53* deals with the factors which lead to the revocation of certificate of registration. The Section provides that the competent authority may revoke the certificate issued under *Section 52* if the competent authority has reasonable ground to believe that such certificate has been obtained by a false statement in the application, whether grant or renewal of grant; or where the holder of the certificate has committed any breach of the rule or any conditions subject to which the certificate was granted. However such revocation may be made after appropriate enquiry as

118. According to *Section 51*, no such institution shall be established or maintained except under and in accordance with a certificate of registration issued by the competent authority in this behalf. However the proviso adds that any such institution set up prior to the commencement of the Persons with Disabilities Act, 1995 may continue such an institution for a period of six months. The application so made may be disposed of by the competent authority after the period of six months and till such disposal, the institution can be maintained by virtue of the provisions of this section.-- See *Supra* note 33 at p. 199.

119. As per *Section 52*, the competent authority appointed by the State Government under section 51 is to make such enquiries as deemed necessary and if on sufficient enquiry the authority is satisfied that the applicant has complied with the requirements of this Act and the rules made there under in so far as setting up such institution, it shall grant a certificate of registration to the applicant. It must to be noted that prior to making any order refusing to grant certificate the competent authority shall give a reasonable opportunity of being heard to the applicant, and every order of refusal shall be communicated to the applicant in the manner prescribed the State Government for the purpose. It is necessary that before issue of the certificate of registration the institution must be in a position to provide such facilities and maintain such standards as may be prescribed by the State Government by rules made in this behalf. So far as the certificate is concerned it shall remain in force for such period as may be prescribed by the State Government unless it revoked under *Section 53*. It may be renewed from time to time for a similar period and shall be in such form and be subject to such conditions as may be prescribed by the state Government. Further, where a certificate so granted is due to expire: an application for its renewal has to be made sixty days before the expiry of the valid period. It is essential that the registration certificate shall be displayed by the institution in a prominent place of its establishment.-- See *Ibid* at pp. 199, 200

deemed fit by the competent authority and no order of revocation can be made unless an opportunity is given to the holder to show cause as to why the certificate should not be revoked. Thus the principles of natural justice must be strictly followed. Once a certificate has been revoked by the competent authority in respect to the institutions for persons with disabilities, such institution shall cease to function from the date of revocation. However a provision of appeal has been provided under Section 54¹²⁰. Thus it has been provided in the Section that where no appeal has been preferred immediately on the expiry of the period prescribed for the filing of such appeal, or where such appeal has been preferred, but the order of revocation has been sustained from the date of the order of appeal. The competent authority also has to give directions that upon revocation of a certificate of registration issued in respect of an institution all inmates of such institutions may be restored to the custody of their parents, spouses or lawful guardians as the case may be or they may be transferred to such other institution as may be specified by the competent authority. It is also the obligation of every institution which holds a certificate of registration that has been revoked under this section to surrender such certificate to the competent authority immediately.¹²¹

Thus the above Sections deal more with formalities of recognition of institutions for persons with disability. According to Section 53, the competent authority appointed by the State Government under Section 51 is

120. *Section 54* says that where there has been a refusal of grant of certificate of registration or revocation that has aggrieved any person who has applied for grant, the appeal has to be made before the State Government within the prescribed period against such refusal or revocation. The order of the State Government in such appeal shall be final and no further appeal before any authority or the Central government will be allowed. *Section 55* firmly says that the provisions of Chapter X of the Act shall not be applicable to institutions for persons with disabilities whether established or maintained by the Central or the State Government. In short any institution set up by a non-Government organization will come under the provisions of this Chapter. However if any such non-Governmental organization has received any aid from the Central Government or State Governments, it shall not be exempted under this Section.

121. *Supra* note 33 at p. 201, 202

to make such enquiries as deemed necessary and if on sufficient enquiry the authority is satisfied that the applicant has complied with the requirements of this Act and the rules made there under in so far as setting up such institution, it shall grant a certificate of registration to the applicant. But neither the Act nor the Rules lay down any general requirement to be complied by the institutions to register themselves as an institution for persons with disability. The sections do not speak of the activities to be taken up therein. Hence it is desirable that while filing the application for certificate of registration the organizations must clearly specify the nature of facilities which they are to provide to the persons with disabilities, whether they intend to rehabilitate them through proper vocational training and special education at least up to the primary level, whether the place identified for setting up the institution is easily accessible and the building barrier free. In addition, apart from revocation, the Sections do not even lay down any penalty if any institution swerves from the conditions under which they were granted the certificate of registration and consequently harm the well being of this vulnerable group of people.

Chapter XI consists of a single section i.e. *Section 49* dealing with institution for persons with severe disabilities. While the terms 'disability' and 'person with disability' have been defined in Section 2(i) and 2(t) respectively, of the Persons with Disabilities Act, 1995. The Act nowhere defines 'person with severe disability'. However *Section 49(4)* says that for the purposes of *Section 49*, 'person with severe disability' denotes a person with eighty per cent or more of one or more disabilities. Whereas Section 2(t) indicates a person with disability as a person suffering from not less than 40% of any disability as certified by the medical authority; *Section 49(4)* deals with one or more disabilities affecting a person with 80% or more of such disability, but it does not speak of any certificate by the medical authority and is applicable for the purposes of *Section 49* only. Again the Act has defined the disability in

terms of percentage which is not acceptable at all, and it has also not been pronounced as to who will declare a person to be affected with severe disability as such. Under *Section 49* the appropriate Government has been empowered to establish or maintain institutions for persons with severe disabilities. If the appropriate Government opines that the institution is fit for rehabilitation of persons with severe disabilities, the Government may also recognize such institution as an institution for the persons with severe disabilities to meet the purposes of this Act. However no such institution shall be recognized if it has failed to comply with requirements of this Act or the rules made there under. As a matter of fact every institution established for the persons with severe disability shall be maintained in such manner and abides by such conditions as may be prescribed by the appropriate Government.

This section too does not lay down any requirement to be complied with by an institution, to be called an institution for persons with severe disabilities. A person with severe disability implies a person with 80% or more disability. Thus such a person requires a lot of care and attention; therefore whether an institution shall be able to undertake this kind of responsibility must be assessed with clear cut precision and not vaguely. In addition it is desirable that a clear definition of “persons with severe disability” must be framed. The institutions must also make provisions of right to avail residential facilities to the spouse and care of the person with severe disability.

(iii) Social Security:

For persons with disability social security measures are extremely important because they provide the opportunity for greater mental and physical well-being. They provide the opportunity for vocational rehabilitation, protection against unemployment, other facilities like insurance,

compensation, loans, maintenance of dependants etc.¹²² Chapter XIII deals with social security for disabled persons. It consists of three sections, namely Sections 66, 67 and 68. *Section 66* states that the appropriate Governments and local authorities shall to the best of their economic ability, undertake programmes for the rehabilitation of disabled persons. This section also grants financial assistance to all non-governmental organizations dealing with persons with disabilities who may also be consulted in the course of formulating rehabilitation schemes and policies by the appropriate Governments and local authorities.¹²³ *Section 67* stipulates the creation of an insurance scheme for disabled government employees to be arranged according to the governmental capabilities. If an insurance scheme cannot be arranged then an alternative social security scheme may be framed instead. But this provision is applicable only to the Government employees.¹²⁴ An important instrument for addressing the risk of disability and smoothing consumption is insurance. As in the majority of countries, most disability insurance provision in India is provided publicly and in the form of a mandated benefit tied to the retirement income scheme. Only formal sector workers are covered by the mandated disability insurance schemes, although some voluntary provision exists. It is suggested that workers from the private sector too are brought within the scope of insurance either through insertion of sections in this Act or a separate Act. *Section 68* makes provision for unemployment benefits to be given to anyone who cannot find employment after getting himself registered in the Special Employment Exchange for more than two years. But the Act does not say what will be the plight of the person who remains unemployed for those two years after getting himself/herself registered with the Special Employment Exchange.

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122. Supra note 27 at p. 41

123. Supra note 2 at p. 9

124. *Ibid*

125. Supra note 33 at p.210

In India most of the social security measure are available to all those who are employed and that too in the organized sector. Large sections of the disabled are not only unemployed but also in the unorganized sector. These people are any way left out of the chain of social security. The once who really need it are the most vulnerable. The government should take it as a priority that all disabled people are brought within the network of social security. Moreover though Chapter XIII enunciates social security measures, but it does not lay down any blueprint as to how the policy is to be implemented. Granting of financial aid, insurance scheme, alternative security scheme and unemployment allowance are definitely upbeat measures but at the same time the concept of sustainable, cost-effective, community oriented infrastructure support mechanism needs to be evolved.¹²⁶

Section 69 lays down the punishment for fraudulently availing or attempting to avail any benefit meant for persons with disabilities, which shall be punishable with imprisonment for a term of up to two years or with fine up to Rs. 20,000 or with both. The complaint before the Magistrate may be made against such persons and prosecution is sought for under the provisions of this section in addition to other provisions affecting his conduct under the *Indian Penal Code, 1860*. If the fraud is confirmed to the consequence that the person charged is availing or trying to gain any advantage meant for persons with disabilities such person shall be put on trial and punished under this section.¹²⁷

The discussion of social security guaranteed under the Act will remain incomplete without a reference of the case of *Indian Banks' Association*

127. *Supra* note 43 at p. 101

126. *Supra* note 33 at p. 212

v. *Devkala Consultancy Service and Ors.*¹²⁸ where the Apex Court opined for the creation of a fund for the benefit of the disabled people. The Court said that despite the PWD Act came into force in 1996, very little had been done to implement the beneficial provisions. Since India possesses a huge disabled population a lot needs to be done, hence it may not be possible to achieve the legislative target for the Central Government or State Government alone. Since the disabled are victims of discrimination in spite of the beneficial provisions of the Act, therefore in the larger interest it ordered for the creation of a fund to be created with the amount at the hands of the Union of India and the Appellants and other concerned banks to be managed by the Comptroller and Auditor General of India.

C. ISSUES TO BE ADDRESSED:

As of 2006, the Ministry has proposed a number of amendments to the PWD Act which are under consultation. The general areas for proposed revision are:

- *revision of definitions of a number of disabilities, including mental illness, cerebral palsy, low vision, mental retardation and other impairments.*
- *revised provisions on the institutions responsible for various areas of implementation and oversight of the Act.*
- *instructions to states and local authorities to develop strategies and schemes.*
- *other sectors such as employment attempt to spell out more precise obligations of employers and mandates of institutions*
- *strengthened provisions on regular gathering of data on the socio-economic status of PWD.*

126. MANU/SC/0355/2004, JT 2004 (4) SC 587

A perusal of the Act makes it clear that the Act is informed by approaches beyond a pure medical model, in that many aspects of PWD lives are addressed, including societal attitudes. At the same time, the direct linkage in the Act between definitions of disability and entitlements necessitates a definition of disability, which derives from threshold levels of physical and mental impairment which are defined in a largely medical sense. While the philosophy of the Act therefore represents a major step forward in disability policy in India, its underlying philosophy can be considered a hybrid between medical and social models of disability.¹²⁹ Although the aforementioned amendments have been put forward for approval, but it is opined that the best remedy to guarantee the various rights envisaged by the Act and as reiterated by India by its being signatory to the international instruments and more specifically the UN Disability Convention, the revision of the entire Act may be undertaken in the following manner:

Chapter I

- The definitions of disability, person with disability are revised along with the definitions of mental illness, cerebral palsy, low vision and mental retardation.
- Introduction of the definitions of learning disability, dyslexia, autism, person with severe disability, disabled person's organizations and non-governmental organizations.

Chapters II and III

127. *Supra* note 4 at pp. 124, 131

- Minimize Government representation from the Central and State Coordination Committees and Central and State Executive Committees.
- Increase the representatives of disabled persons organizations and non-governmental organizations.
- Constitution of District Executive Committees along with the State Executive Committee.

Chapter IV

- Instead of a single section five new sections must be introduced which shall explicitly deal with the issues of
 - a. Undertaking surveys, investigation and research concerning the reasons behind the occurrence of disabilities.
 - b. Promoting various methods to prevent disabilities including health issues and public awareness.
 - c. Screening of children at least once a year mentioning specifically the various medical tests to be undertaken to detect at-risk cases.
 - d. Proper training for primary health centre staff to be provided by a specific institution/recognized institutions to be set-up/recognised for the particular purpose of prevention and early detection of disability.
 - e. Devise specific measures for what actions are to be taken for pre-natal, perinatal and post-natal care of mother and child.
- Strike out the expression ‘within the limits of their economic capacity and development’.
- Impose civil and criminal liability on the person responsible for causing disability by either refusing to take a step which would lead to disability or causing something which would result in disability.

- Inclusion of provisions laying down guidelines for evaluation and assessment of various disabilities and grant of Disability Certificates.

Chapter V

- Special educational needs to be specifically defined.
- Appointment of a specific educational authority to look into the educational needs of the persons with disabilities.
- Provisions for education of children with disabilities in mainstream school without any discrimination and punishment for violation of this non-discriminatory provision.
- Section 39 must be removed from the 'Employment Chapter' and placed in this Chapter.
- Reservations for admission to educational institutions, specifically to technical and professional institutions amounting up to 4% and must be distributed evenly amongst all the categories of disability.
- Reservations to exist in government aided as well as private educational institutions.
- Inclusion of provisions for a specific curriculum for the education of the persons with disability.
- Measures to devise specific schemes for introduction of specific programmes in open schools and open universities, for the education and training of the persons with disability.
- Inclusion of disability education as an integral part of teacher's training programmes.
- Insertion of specific learning disabilities to be taken special care of, in imparting education.
- Section 31 to be specifically amended so that aids and appliances are to be provided for educational purposes not only to blind students or those

with low vision. But specific devices to be given free of cost to each and every person with disability to assist him/her to attain the highest levels of education.

- Residential/ non-residential girl's Special School to be set up, at least one in every district.

Chapter VI

- Increasing the percentage of reservation to a minimum of four per cent and not limiting it to only three categories as laid down in Section 33 but also extending to persons with autism, mental retardation and cerebral palsy.
- The quantum of reservation of person with disabilities should be according to working population; and the persons with disabilities barred from the quota reservation should be given priority in availing other benefits such as establishments of industry, research institution and rehabilitation centres.
- Insertion of a section specifically dealing with self-employment. Accordingly, training must be provided to persons with disabilities to begin as well as manage their own businesses. Low interest loans must also be provided so that they can set up their own businesses.
- Provision for incentives for employers for employment of persons with disability requires to be well defined.

Chapter VII

- Amendment of Section 42 to include the repair and maintenance of aids and appliances.
- Criterion for preferential allotment of land must be categorically laid down.

Chapter VII

- Chapter should be renamed as 'Barrier-free Environment.'
- Sections 44, 45 and 46 to be placed under the above-named Chapter.
- Section 47 to be moved in Chapter VI relating to 'Employment'.
- The expression 'within the limits of their economic capacity and development' should be struck out.
- Insertion of freely accessible airports and bus terminus for persons with disabilities.

Chapter IX

- Specific standards to be laid down for research and manpower development.
- District Executive committee to be entrusted the responsibility to look into the application of this provision and the standard to be maintained in relation thereto.

Chapter X

- Insertion of provision laying down general requirement to be complied by the institutions to register themselves as an institution for persons with disability.
- Provision to include the activities to be taken up therein.
- Inclusion of penalty provision if any institution swerves from the conditions under which they were granted the certificate of registration.

Chapter XI

- Specific requisites including medical facilities to be available for person residing in such institutions.
- Inclusion of residential facilities for spouse and person in care of severely disabled person.
- Special concessions to be made available to persons with severe disabilities, particularly in availing treatment.

Chapter XII

- Abolish the Office of the Chief Commissioner and Disability Commissioner in the States and instead either establish a Commission for Welfare of Persons with Disabilities akin to the Women's Commission or Minorities Commission or a Disability Tribunal to meet the requirements of the Act with regard to the functions performed by the Commissioner in the present Act.
- In case of retaining the office of the Commissioner:
 - (a) Define the powers of the Chief Commissioner/ Commissioners in exactitude.
 - (b) Lay down the conditions of eligibility of the Chief Commissioner/ Commissioners.
 - (c) Access audits by Commissioners' offices.
 - (d) Review of human resource and financial capacity of Central and State Commissioners' offices is also needed, and guidelines on minimum staffing levels introduced.

Chapter XIII

- Insurance schemes for employees in the private sector as well.
- Unemployment allowance to be paid to every unemployed person with disabilities who has registered himself/herself with the Special Employment Exchange leaving repealing the provision of two years unemployment.
- Contributory pension scheme.
- Creation of a fund in consonance with the decision in *Indian Banks' Association Case*.

Chapter XIV

- Provision for free legal aid to every person with disability.
- Specific concessions to be available to the persons with disabilities.
- Specific schemes for public awareness to be introduced.

In addition to the above two separate Chapters must be introduced laying down specifically about Non-governmental Organizations and Disabled Persons Organizations---their powers, functions and specific role in effectuating the provisions of the Act and specific welfare provisions for women with disability and child with disability.

A SUM UP:

The world for and of the disabled is shifting at a fast pace and the hopes and desires of people are also changing as fast. Progress in medical and surgical sciences, advancement in technology, better perception of the causes of disability and enhanced techniques of dealing with it, rising awareness of civil

rights and the emergence of people with disabilities flaunting skills and knowledge to develop their own lives, are some of the aspects which have added to the new thinking that the disabled are worthy of a dignified standing in society on the same terms as the non-disabled. Disabled people are a huge minority group which has been subjected to direct and indirect unfairness for centuries in most countries of the world, including India.¹³⁰

Over the years, India has been witness to series of legislations that have endeavoured to tackle the problems faced by the disabled. Some of these actions have been daring, venerable steps; but the fallout is not observable yet. Whatever the provisions on paper, India's approach towards the rehabilitation of the disabled reflects the confused state of mind of a person who wants to be emancipated and modern while preserving age-old traditional values. Government policy, legislative actions, schemes and provisions for the disabled give the impression of a State that is committed to human rights and equal opportunities. But the ground reality is quite different.¹³¹

Of all the legislations aimed for the betterment of the disabled population, the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995* has often been considered to have unique position: that of an overarching legislation, with supporting roles from the others. India has also put forward a national policy. The National Policy of the Persons with Disabilities, 2006 has manifested the Constitutional mandate of equality freedom, justice and dignity of all individuals and an inclusive society for all, including persons with disabilities. The *National Policy Statement* recognizes that Persons with disabilities are important human resource for the country and look to create an environment that endows them with equal opportunities, protection of their rights and full participation in society. But

130. Supra note 55

131. Supra note 27 at p. 2

sadly, The Policy over and over again replicates the general obligation of the Persons with Disabilities Act, 1995 while remains more general on actual strategies for accomplishing them. Overall there is very restricted sense in the Policy, that even Government of India's own evaluation signifies serious implementation problems. Simply reiterating to the general assurances made by the Persons with Disabilities Act, 1995 is not likely to be satisfactory to revitalize the disability sector. There also remains inadequate reference to the role of Persons with Disabilities themselves in policy progression, execution, supervision and assessment. Disabled Persons Organisations are not mentioned in the Policy, nor are persons with disabilities themselves. Practically, they remain agents who act together with the public policy and delivery systems either through public agencies or at best NGOs. The State policies also need to evolve.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is a significant landmark and a noteworthy step in the path of ensuring equal opportunities for people with disabilities and their full participation in the nation building. The Act provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, job reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc. The Act addresses the issues related to the education of the disabled persons and imposes several duties on the Government and the Local Authorities to ensure free and compulsory education of the disabled persons. The Act provides for a quota of 3% seats for persons with disability in Government educational institutions and other educational institutions receiving aid from government. It seems clear that the Act is conversant by approaches

further than a pure medical model; in that many aspects of Persons with Disabilities' lives are addressed, including societal attitudes. Simultaneously, the straight relationship between definitions of disability and entitlements, calls for a definition of disability which originates from threshold levels of physical and mental impairment which are defined in a largely medical sense. Though the thinking of the Act consequently represents a major step forward in disability policy in India, its core philosophy can be considered a hybrid between medical and social models of disability. Notwithstanding the Persons with Disabilities Act being a pioneering piece of legislation, there remain a number of policy shortcomings in its design that are worth highlighting. These include both general issues which apply to several areas of the Act, and others which relate to specific sectoral heads.¹³²

To begin with, little has been done to raise awareness about prevention and detection aspect of disability, across the country. The majority populace continues to consider that disability is either an irretrievable medical condition or an act of destiny. Myths and delusion about disability flourish, causing the disabled to be detested, secluded and marginalized. The definitions view disability strictly from the medical and/or psychometric viewpoint. This results in strengthening a medical model of intrusion rather than the much-needed community-based rehabilitation.¹³³ The definition of a 'person with disability' under the Act has been criticized for its imprecise nature. Section 2 (t) requires that a medical authority needs to certify that a person suffers not less than forty percent disability. Particularly for mental health problems such as cerebral palsy or autism, such a determination becomes difficult in the absence of any guidelines. It has also been criticized as a purely 'medical understanding' of disability. A better understanding would require disability to be seen from

132. *Supra* note 4 p. 124

133. *Supra* note 27 at p. 2

social as well as human rights perspectives. Moreover in view of Article 1 of UNCRPD the definition of disability needs to be changed.

Further, although prevention and early detection are important components of the medical model, measures taken for these are insufficient. Diverse schemes have been presented for the welfare of the disabled population, but due to deficiency of sufficient information about them, the stakeholders -- disabled people, their families and organisations that work for them -- are either ignorant or cannot benefit from the provisions therein. Every so often the process of availing of the benefits of schemes is so cumbersome and prolonged that most people choose to sidestep them. Often, the government department chosen for executing a scheme is not notified of its particulars and their role in it. On the other hand, when the department concerned is notified, the officers assume a patronising outlook towards impending beneficiaries and holdup the process of implementation.¹³⁴

Though education for the disabled has also been adequately provided for under existing legislation. In India, education for the disabled is not part of mainstream learning, but it is imparted through isolated institutions which operate on a service and charity mode. Here again, only a few schools have resource rooms and employ special education teachers to assist retain children with special needs in their system. Despondently, these services are found in very few cities. There are almost no special schools or special educational services in rural India. Efforts at incorporating children with disabilities into mainstream schools have been even less successful.¹³⁵ Very few organisations are penalised for not providing barrier-free environments. In fact, this basic requirement is seen more as a voluntary gesture -- if an organisation provides a ramp it's touted as a praiseworthy achievement. No one considers the

134. *Ibid*

135. *Ibid* at p. 23

fact that, according to the 1995 Persons with Disability Act, the provision is mandatory by law.¹³⁶ Hence the need is to

- ✓ Stop discriminatory approach towards educating disabled people and provide ample financial, technical and human resources as well as adequate infrastructure for education to children and adults with disabilities.
- ✓ Sufficient provisions of teaching science, mathematics and technical skills to disabled students in secondary and high schools must be taken up.
- ✓ Include components of special education and for children with special needs in all teacher training courses.
- ✓ Incentives and transport facilities needs to be made available children with disability to school.
- ✓ Supplying necessary assistive devices and requisite educational materials.
- ✓ Set up a separate educational board and curriculum for persons with disabilities.

So far as the employment scenario is concerned, the Act provides for employment to only those people who come under loco motor, hearing impaired and visually impaired acknowledged categories of disability. The persons with mental illness and mental disability are specifically left out of it irrespective of the degree and severity of their illness. On the one hand, the Act provides for the employment of the disabled persons in government sector on the other hand provides for an “exemption clause”. Even though 3% jobs in the government are reserved for persons with disability, and a Special Employment Exchange has been created for the persons with disability, only 1,00,000 disabled persons have been employed since the first Special Employment

136. Supra note 6

Exchange was set up in Mumbai in 1955. The emphasis on self-employment too is almost an admission of failure in ensuring private and public sector employment, despite a 3% quota in the public sector (according to the PWD Act). The increased emphasis on self-employment poses the threat of further alienating PWD from mainstream society.¹³⁷ Therefore,

- ✓ New employment opportunities must be created and identified in both public and private sectors.
- ✓ Opportunities for proper training and loan facilities must be created to encourage self employment.
- ✓ Preventing disabled persons from taking up low status and unrewarding jobs as a consequence of their disability.
- ✓ Employers to be made aware that disabled persons can be as competent and skilled as their so called normal counterparts.
- ✓ The quantum of reservation must be increased as well as new categories should be introduced.

Along with a shortage of government servants attuned to the peculiar nature of disability is a definite setback for the Office of the Commissioner of Disability. Some State Coordination Committees and State Executive Committees have not yet been set up. Only a few people with disability are represented in the administrative bodies. This shows that the responsibilities of the government under the Act, particularly under Chapter IX, have been ignored, with no obvious results from any initiatives on research and manpower development.¹³⁸

Despite growing universal awareness of the rights of people with disabilities, bold political decisions and practical actions taken in several countries, including India, in the form of the enactment of appropriate laws, the

137. *Ibid*

138. *Supra* note 15 at p.5

plight of most disabled people remains serious. Disabled people are, undeniably, the victims of discrimination, marginalisation and of a vicious cycle of multiple deprivation. Their situation is "the silent emergency" of our times because they are prevented from participating in the mainstream activities of society.¹³⁹ Perhaps the greatest defect of the existing legislation has been its non-implementation. Hence the need is to fortify the disability movement and empower people with disabilities. Both National and State policies on promoting access for people with disabilities should be required to include consultation with disabled people in setting priorities. First, there should be serious consideration given to broadening the categories of disabled people included in the Persons with Disabilities Act. Second, Ministry of Social Justice and Empowerment and Central and State Commissioners' offices should expand programmes in alliance with Disabled Persons Organisations and NGOs for awareness rising of officials, service providers, Panchayati Raj Institutions representatives and communities on programmes for people with disabilities. As a final point, there should be a practice for fundamental benchmarking of practicable policies and programmes for persons with disabilities in the areas which are currently subject to the proviso of economic capacity.¹⁴⁰

So far as the Persons with disabilities Act is concerned, amending the Act on the suggested guidelines is the remedy to address the want of equality of opportunity, full participation and guarantee of human rights. The best therapy is of course revamping the existing coordinating mechanism into a National Commission for Persons with Disabilities which would have the standing and organizing authority, and is currently under-developed in the sector. It is imperative that such a body be a management and supervisory agency, and not be viewed as a separate "silo" for disability. However, such an enterprise would only make sense if the structural problems of coordination

139. Supra note 55

140. Supra note 4 at p. 142, 143

within and between levels of government, and between the public and non-governmental sectors are attended to. It would also necessitate a switch if the current Commissioners' Offices are to be merged into a future Commission, so that there is not simply duplication of responsibilities. The enforcement mechanisms for the Act need to be elucidated and reinforced. One alternative would be a Disability Tribunal with direct enforcement powers. NGOs should also be brought more actively into both policy and implementation, but with strengthened financial accountability and monitoring of program outcomes. Finally, there needs to be more direct engagement between both public and NGO sectors with Persons with Disabilities themselves and their families.¹⁴¹ In a country like India, it is also indispensable that various departments of the government, such as education, health, transport, building works and employment, work in conjunction. It also means that the world's largest democracy must listen to the voice of people who have been on the margins, and bring them into the mainstream. In this Chapter the focus has mainly been on the disability policies and legislative approach to protection of human rights. But the discussion will be incomplete unless judicial role is also taken into account. A little reference as to the role of the judiciary has surely been appended in the discussion, but a revamp of the Act does require weightage of the judicial pronouncements in that connection. Hence in the following Chapter, role of the judiciary in upholding and guaranteeing the rights of the persons with disability shall be taken up.

¹⁴¹. *Ibid*