

Right to work of persons with disability: A critical evaluation with human right perspective-

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Abstract- *Disability is a type of social construct under which persons with disability are deemed as deviated from the socially accepted norms with respect to characteristic of body. There are plethora of international laws(Binding & Non binding) to ameliorate the employment conditions of PwDs . The Notable international laws are Declaration on the Full Participation and Equality of People with Disabilities in Asia Pacific Region (2000), UNCRPD 2006, Biwako Millennium Framework 2002 & 2007, Beijing Declaration 2000, Incheon Strategy 2012 & Sustainable Development Goals 2015. In addition there are various ILO recommendations & conventions to ensure the equal opportunity of PwDs in workforce. Washington Group at international level and NSSO at national level are the responsible statistical institutions who collect the data with respect to number of PwDs including unemployment ratio among PwDs. Constitution of India enables the legislatures to empower PwDs through employment and other welfare schemes. The legislations hitherto were in the line of National Policy 2006 nevertheless Draft of New National Policy 2021 for PwDs has prepared which is basically covering the human rights approach . There is need to develop market potential by doing effective implementation of relevant enactments so as to cater employment need of PwDs.*

Introduction

Persons with disabilities are those who suffer any kind of bodily impairment that interferes with the normal functioning of one or more of their organs or senses. Physical & mental disability are the deviation from the socially valued bodily characteristics of an individual in a given society. The individual and the group of such people in the society face challenges in the society for which community at large owes duty to resolve such issues. Having failed to deal such issues, this condition severely affect the not only the Persons with Disability but even the non disabled populace of the society. Distinction may drawn between impairment , disability and handicap. Impairment is a permanent or transitory psychological or anatomical loss and/or abnormality . For example s missing of effective part, tissue organ or mechanism of the body such as an amputated limb or paralysis. Whereas in disability impairment may cause functional limitations which are the partial or total inability to perform those activities necessary for motor, sensory , or mental functions within the range and manner of which a human being is normally capable such as walking , lifting loads, seeing , speaking hearing , reading etc.¹ A handicap arises from the cumulative effects of the disability and the personal and social consequences which have a detrimental effect on the individual's functional level.²

The Physical or mental disability is a deviation from the socially accepted norms of bodily characteristics. This deviation though primarily physical or mental in nature has its repercussion on the individual and society in which he lives because the handicapped individual can not fulfill many of task in the socially accepted manner . In other words , physical or mental deviation leads to deviant behavior. Feeling of incompleteness coupled with anxiety, insecurity and frustration result into deviant behavior like withdrawal, introversion, and aggressiveness etc.. A person who is anxious about his role in society results into poor performance . The handicapped people feel themselves isolated . Considerable mass of the society think that the status/role of handicapped is impaired in family , neighborhood and the work group. The PWDs is less like to engage in social activities and they function in very limited area. Owing to very less functional outlook & flexibility of behavior , the disability results into a less coherent approach to the life situations. Aforementioned situation of PWDs is partially the result of nature of disability and partially the result of social attitudes and cultural expectancies. There are several definitions of disability . Medical definitions refers disability as a human limitation irrespective of the thing it is attributable to disease , injury or inheritance. “Whatever may be the cause , physical disability will lead to a

¹ Combined Report of the three committees recommending uniform set of definitions, authorities for certification and standard test for visual ,hearing and speech and locomotor disabilities, Ministry of welfare, government of India, No.4-2/83-HW.III ,

² Charles W.Telford, James M.Sawrey , The Exceptional Individual p.33

limitation of physical function, whether locomotor ,sensory or affecting special organs.”³As far as educational definition is concerned “ a child may be considered handicapped ,if his physical condition prevents full participation in the childhood activities of a social , recreational, educational and vocational nature”.⁴As far as vocational & employment definition is considered “ A disabled person is one who, on account of injury, disease or congenital deformity is substantially handicapped in getting or keeping suitable employment or work.”⁵The Vocational Rehabilitation Act ,1954 ,U.S.A defines a physically handicapped individual as “ One who is under a physical or mental disability which constitutes a substantial handicap to employment , but which is of such nature that vocational rehabilitation services may reasonably expect to render him fit to engage in a remunerative occupation.”⁶

As far as sociological definition is concerned “ The definition of physical handicapped must be necessarily social and economic rather than medical or anthropological . It defines the status of the individual in society. He adds: “ For our purpose , we shall confine our interpretation of the term to those individuals who have a physical defect, obvious or hidden , which limits their physical capacity to work or evokes an unfavourable social attitude.”⁷ The Dictionary of sociology defines handicapped as a “ person possessing a physical defect which reduces one’s efficiency in performing one’s personal and social obligations according to a socially determined standard. Since the degree of defect and the test of social adequacy vary with the individual and the community , no hard and fast definition of handicapped is possible.”⁸ Employment plays very vital role for becoming a social unit .Unemployed persons are deemed as incapable person to fulfill their social obligation be it matrimonial or other social relations. Therefore objective of this paper is to explore the international scenario with regard to employment of PwDs and national policy in terms various enactments to alleviate the employment needs of PwDs. In addition author will review the gap through the report of Niti Ayog which is responsible for employment crisis despite having several enactments .

Statement of Problem -

As far as global initiative with respect to statistics is concerned , the Washington Group (WG) is there to promote and coordinate of international cooperation in the area of health statistics by focusing on disability measures suitable for censuses and national surveys. The objective is to provide basic necessary information on disability which is comparable throughout the world. In national sphere data on persons with disability is collected through the Decennial Population Census and through NSSO surveys .National sample survey office (NSSO) , made its first attempt to collect information on the number of physically handicapped in its 15th round (July 1959-June 1960) which was confined to rural areas only. In NSSO 16th round(July 1960-June 1961) the coverage was extended to urban areas. The National Statistical Office (NSO) , Ministry of Statistics and Programme Implementation conducted the survey of Persons with Disabilities during July 2108 to December 2018 as a part of 76th round of National Sample Survey(NSS) . Prior to this , survey on the same subject was carried out by NSO during the 58th round(July-December 2002). The prime objective of the survey of PWDs conducted by NSO in its 76th round was to estimate indicators of incidence and prevalence of disability, cause of disability, age at onset of disability, facilities available to PwDs , difficulties faced by PwDs in accessing the public building , public transport , arrangement of regular care giver , out of pocket expenses relating to disability, etc. In NSS 76th round survey , for classification of disabilities , all the specified disabilities as stated in The Rights of Persons with Disabilities Act,2016 have been considered. The survey was spread across the country and for the central sample ,data were collected from 1,18,152 households and 5,7,569 persons following a scientific survey methodology were enumerated. In this survey ,total number of PwDs surveyed was 1,06,894 . Report of survey suggests that In India prevalence of disability is 2.2% . Prevalence of disability is higher among males(2.4%) than females(1.9%) . As far as level of education among disability is concerned report suggests that among PwDs of age 7 years and above , 52.2% were literate. Among PwDs of 15 years and above ,19.3% had highest educational level as secondary and above. Among PwDs of age 3 to 35 years ,10.1% attended pre-school intervention programme. Percentage of PwDs of age 3 to 35 years , who

³ Harold Blame, “ The Purpose and Full Content of a Rehabilitation Service,” in Modern Methods of Rehabilitation of Adult Disabled , United Nations,P.14

⁴ Samuel M. Wischik and Romaine P. Mackie , “ Adjustment of the school programme for the Physical for the Physically Handicapped child,” American Journal of Public Health, Vol.39 , No.8, Aug.1949

⁵ Kamala Vs Nimkar page 4

⁶652 Pubic Law 565-Aug-3,1954 at <https://www.govinfo.gov/link/statute>

⁷ Henry H.Kessler, Rehabilitation of Physically Handicapped pp 12-13

⁸ John W.Mc Connel ,in Dictionary of Sociology ,edited by Henry Pratt Fairchild,p.139,cf Usha Bhatt P.196

were ever enrolled in ordinary school ,was 62.9%. As far as the Labor Force Participation Rate, Worker Population Ratio and Unemployment Rate in Usual status among PwDs is concerned , report suggests that among PwDs of 15 years and above , Labour force participation rate in usual status was 23.8%. Among PwDs of 15 years and above , worker population rationin usual status was 22.8%. Among PwDs of 15 years and above , unemployment rate in usual status was 4.2%.⁹

In India ,there is extreme diversity in all respects so the persons with disability belonging to the poor family have to be deprived from education , job and government schemes. Some times they to live helpless life and depend on family for everything. Dr N.D Gowda explain the problem of persons with disability in following words “It is to be noted that the disabled person is as much a citizen as any other and that he stands equal before law and entitled to receive equal protection under Art.14 of the Indian Constitution. Under Art.39-A of the Constitution, equal opportunities for securing justice are not to be denied to any person by reason of economic or other disabilities. However, mentally challenged people are being treated worse than animals. Such persons are prone to many onslaughts. Circumstances force them to commit petty thefts and slowly they become amenance to fellow men. It is so pathetic that several mentally ill persons are chained to trees. “Man is born free and everywhere he is in chains”, exclaimed Rousseau. It is submitted that chaining of the mentally ill in mental hospitals is unconstitutional. Similarly jailing non-criminal mentally ill persons is illegal and unconstitutional. The Supreme Court of India maintained that reservation provisions are also applicable to persons with disability”.¹⁰

The persons with disability are not equally treated and become devoid of their rights. Such inequality may be at different places namely government offices , job opportunities & in government schemes etc. Unemployment is one of the most serious problem of PwDs . Through the employment the PwDs can make their life happy and prosperous. There are implications of disability while discharging social roles in different capacity like husband , wife, brother , teacher , farmer, cleaner, player ,community leader etc.. For example being unmarried or childless or unemployed etc have negative impact on social status. The attitude towards disability may change when PwDs have the opportunity to fulfill positive social roles in their communities. Therefore inclusion of child having disability in school and inclusion of adult having disability in work can change the attitudes of society towards PwDs. Different barriers may circumscribe the social participation of PwDs. For example PwDs may have poor self-esteem and they assume that they don't deserve to take part in social activities. Family member may feel shame having disabled member which results into discouragement of social participation. PwDs will get neglected in the society because of the inaccessibility to services like transport , building etc. and lack of opportunities like health services , schools, vocational education programs, and the jobs.

Social policy does not lead social integration of PWDs and keeps them invisible. The PWDs are seen objects of pity and the same is implicit in welfare mechanism. Welfare system is generally used to compensate PWDs. But children with disability are excluded from ordinary education system & advantage of vocational training. The PWDs has almost no role in open labour market . Owing to their channelization in expensive work environment , the employment prospects for PWDs is very low. Thus the PWDs lack access to or influence public policy. Such persons are not accepted in public power and they are not deemed as master of their destiny. Thus human right perspective sees difference in positive manner. There is need to focus on specific violations , for instance violations of right to vote, the right to a fair trial, the right to education. It expedites examining pattern of violation. To remove the invisibility of PWDs there must be equal application of all human rights to persons with disability.

International perspective-

India is signatory to the ‘ Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region’ (2000). India has ratified the ‘UN Convention on the rights of Persons with Disabilities’(2006). India is also a signatory to the ‘Biwako Millenium Framework(2002) for action towards an inclusive , barrier free and rights based society. The ‘ The Biwako Plus five (2007): Further efforts towards an inclusive , barrier free and right based society for persons with disabilities in Asia and the Pacific’ . The Incheon Strategy to “Make the Right Real” for Persons with

⁹ NSS Report No 553: Persons with Disabilities in India NSS 76th round(July-Dec 2018) Ministry of Statistics and Programme Implementation at <https://pib.gov.in/PressReleasePage.aspx?PRID=159253>

¹⁰ Gowda, Dr. N.D. “A critical Study on Persons with Disability and Human Rights Issues under International and National Level”. International Journal of Legal Research and Studies. Vol.-2, Issue-4, Oct-December 2017. ISSN: 2456-608X.

Disabilities in Asia and the Pacific (2012) provides the Asian and Pacific region and the world with the first set of regionally agreed disability inclusive development goals. The Incheon strategy will enable to track progress towards improving the quality of life, and the fulfillment of the rights, of the region's persons with disability. The government of the ESCAP region gathered in Incheon, Republic of Korea, from 29 October to 2 November 2012 to chart the course of the new Asian and Pacific Decade of PwDs for the period of 2013 to 2022 and adopted the Incheon strategy which comprises 10 goals, 27 targets and 62 indicators. The Sustainable Development Goals (SDGs) (2015) pledges for 'Leaving no one behind'. Recognizing that dignity of the human being is fundamental, the SDGs wish to see the Goals and targets met for all nations and people of all segment of society and to endeavor to reach the furthest behind first. Displaying synergies with the 2030 Agenda for sustainable development and its Sustainable Development Goals, the Incheon Strategy and the Beijing declaration and Action Plan will contribute to achieving the regional vision of an inclusive society for all.¹¹ Among 10 goals of Incheon strategy, goal number 1 is with respect to the reduction of poverty and enhance work and employment prospects in persons with disability. Goal 1.A is with regard to elimination of extreme poverty among PwDs. Goal 1.B is about the increasing work and employment for persons of working age with disabilities who can and want to work. Goal 1.C is with regard to increasing the participation of PwDs in vocational training and other employment – support programmes funded by governments. The sustainable development goals (SDGs) resolve seventeen goals. In the 2030 agenda for sustainable development 'persons with disabilities' or 'disability' are specifically mentioned eleven times and 'persons in vulnerable situations' are specifically mentioned six times. Some of the SDGs are addressing issues related to disabled persons. The SDG 4 is aiming at 'Guaranteeing equal and accessible education', SDG 6 is for 'promoting inclusive economic growth, full and productive employment', SDG 10 is for 'Emphasizing the social, economic and political inclusion of disabilities', SDG 11 is for 'Creating accessible cities and water resources, affordable, accessible and sustainable transport system.

One of the earliest instrument with regard to work opportunity was framed in 1994. In a recommendation ILO stated that irrespective of the origin of person with disability, they should get full opportunity of rehabilitation, specialized vocational guidance, training and employment on useful work.¹² After four years in 1948 in universal declaration of Human Right, right of equal opportunity fastened in terms of Article 23.¹³ The Another significant instrument relating to right to work of persons with disabilities was adopted by ILO in 1955.¹⁴ In 1966 covenant recognizes the rights of everyone to work which includes the right to opportunity to gain one's living by work freely chosen or accepted, and undertake to safeguard that right.¹⁵ In 1971 another declaration of general assembly stated inter alia right to perform productive work and to engage in other meaningful occupation to the fullest extent of their capabilities.¹⁶ In 1975 ILO's Human Resources Development Convention (No 142) emphasized on the right to work of PwDs on equal basis. Convention entails about open, flexible and complimentary systems of general, technical and vocational education, educational and vocational guidance, and vocational training, including continuing employment for the person with disability.

In the pursuit of further development on June 24, 1975 another resolution concerning Vocational Rehabilitation and Social Integration of Disabled or Handicapped Persons was brought and ILO solicited international bodies & NGOs to adhere the resolution to ensure right to work for PwDs and called for a comprehensive campaign for vocational rehabilitation.¹⁷ ILO landmark Convention no 159 in year 1983 sets out different fundamental principles which aim to vocational rehabilitation and employment policies for the PwDs and endeavours to integrate the PwDs into mainstream workforce. Through the

¹¹ Incheon Strategy To "Make the Right Real" for Persons with disabilities in the Asia and the Pacific And Beijing Declaration including the Action Plan to accelerate the implementation of the INCHEON STRATEGY, United Nations Publications 2018

¹² Employment (Transition from War to Peace) Recommendation, 1944 (No.71)

¹³ Adopted Assembly on 10 December 1948

"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and protection against employment".

¹⁴ Vocational Rehabilitation (Disabled) Recommendation, 1955 (No 99)

¹⁵ International Covenant on Economic, Social & Cultural Rights adopted by the UN General Assembly on December 16, 1966 [resolution 2200 A(XXI)]

¹⁶ Right of Mentally Retarded Persons (Resolution 2856 of December 20, 1971)

¹⁷ Vocational rehabilitation is a process which enables disabled persons to secure, retain and advance in suitable employment and thereby furthers their integration or reintegration in society. (ILO 2002)

recommendation No 168 ILO suggests to promote equitable employment opportunities ,including the making of “ reasonable adaptations to workplaces , job designs tools, machinery and work organization.

World Programme of Action (WPA) which was brought in pursuance of recommendation number 99 in the year 1955 was the foundation programme for the PWDs. To review the implementation of WPA in 1987 global meeting of experts was conducted which proposed a guiding philosophy based on recognition of rights (including the right to work) for the PWDs. Global meeting recommended that general assembly should convene a conference to draft a convention on the elimination of all forms of discrimination against PWD. Owing to failure of general assembly to incorporate above mentioned convention, the non binding standard rules on the equalization of opportunities for PWDs 1993 were adopted.¹⁸ The UN Economic and Social Council projected that standard rules will become international customary rules whence apply by great number of states.¹⁹ Rule number 7 of standard rule is with regard to employment opportunity to bring uniformity among members of UN and even non members through customary international law though these provisions were already present in ILO recommendations. Vienna declaration emphasizes that “Every person is born equal and has the same right to life and welfare, education work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of disabled person is therefore a violation of his or her rights”²⁰.

In the year 1994 Committee of UN Convention of Economic, Social and Cultural Rights (UNCESCR) identified the agony of disability, discrimination which includes discrimination in the field of education, housing, transport, cultural life and access to public places and services.²¹ Committee further enunciates that employment is most focal discrimination. Unemployment rate of PWDs is 2-3 times is higher than others in majority of nations.²² Owing to physical barriers notably inaccessible transport, housing and workplaces of PWDs are not employed or are offered low paid job with little social or legal security.²³ Committee of UNCESCR recommended to states party of UNCESCR to ratify to convention number 159 developed by ILO to ameliorate the conditions of PWDs. With a view of full participation of PWDs, ILO adopted the Vocational Rehabilitation and Employment (disabled person) convention number 159 and Recommendation number 168 in 1983. The convention mandates for member states to formulate their policy on vocational rehabilitation and employment of PWDs according to their national conditions and possibilities. There are two supervisory bodies of ILO conventions number 159, the first is Committee of Experts on the Application of Conventions and Recommendations (CEACR) and second is the Conference Committees on the Application of Standards. CEACR in its report of 1998 to review the implementation of provision of convention 159 and Recommendation number 168 observed that specific attention must be given t the PWDs for the equality of opportunity and equality of treatment in employment in an environment induced by global competitions and deregulation of labour market and emphasized on application of convention in member states owing to its flexibility for attaining its objective. Committee recommended the active consultant between representative organizations of PWDs and government on vocational rehabilitation and employment matters. The committee further observed that vulnerability of PWDs residing in rural areas, committee took this situation as double vulnerability first as deprivation of facilities available to general population and secondly deprivation of facilities available to persons with disabilities living in urban centres and community emphasized on the community based rehabilitation programmes.

As regards to concern about European Union with respect to disability , there was not much attention for an active social policy under the decade of 70s. It was entry of Greece & Portugal in EU which stimulated for active social policy in the decade of 80s. In 1986 EU Recommendation urged to member states “ to take appropriate measures to promote fair opportunities for PWDs in field of employment and vocational training”. Before the treaty of Amsterdam 1997, though ministers were not competent to impose binding legal measures still non binding recommendations and resolutions were adopted many time for the PWDs.²⁴ Best known recommendation with regard to PWDs was adopted in April 1992 which

¹⁸ December 20, 1993 (resolution 48/96)

¹⁹(A/C; 3/48/L-3; 1st October 1993, P6)

²⁰ World Conference of Human Rights 1993 page 18

²¹General comment number 5

²²The right to decent work of PWDs Summary Overview, Arthur Overview, Arthur O’Reilly 2007. International Labour Office- Geneva

²³Ibid

²⁴See Denger and Quinn 2000, pp 94et seq. European Community Treaty empowers to make binding law on member states. Two types of law notably Regulation and directive are adopted of EU, former is directly enforceable and implementation of later depends

involves prevention and health education; education; vocational guidance and training ; employment ; social integration and environment; social , economic and legal protection; personnel training; information; statistics and research .²⁵

The Copenhagan Declaration and Programme of Action acknowledged that PWDs are the largest minorities who faces unemployment , poverty & social isolation.²⁶As regards to employment , Head of States in this conference committed to create well remunerated employment for the PWDs. Declaration directs to state parties to take effective steps to abolish de jure & de facto discrimination taken against the people of disability.²⁷Declaration inter alia states about the creation of public awareness to negate the stereotyping conception with respect to participation of PWDs in the labour market.²⁸In this declaration state parties committed themselves to promote attitudinal , policies , law and practices change to remove the hindrances to human dignity in reference with the PWDs.²⁹The Programme of Action requires the state parties to strengthen the quality of work and employment by fulfilling the human rights obligations. Programme directs to protect the basic rights of workers which includes the equal pay for equal work , non discrimination in employment ,collective bargaining & freedom of association.³⁰European commission through social policy white paper inter alia recognized the need of making right to equal opportunity as fundamental right.³¹In the year 1996 EU social council through resolution reiterated the commitment of member states to correspond the principals and values of standard rules of UN.

There is European Social Charter which deals with the economic and social rights. It was entered into force on in the year 1965. European Social Charter is a legally binding treaty. It was substantially revised in 1996. In a significant development Council of Europe through this charter paid specific attention on the measures adopted by ILO relating to work of PWDs. There is provision of vocational training & guidance for PWDs.³²Charter talks about autonomy ,social integration and community participation of PWDs.³³Charter emphasizes on the poverty prevention and social inclusion .³⁴Inter American Convention on the Elimination of all forms of Discrimination against Persons with Disabilities was adopted in june 1999. It is this kind of first regional treaty which discards discrimination against the PWDs.³⁵Organization of African Unity (OAU) Head of state and government declared the African decade of persons with disability(1999-2009) in July 2000. Subsequently Continental Action plan was adopted in year 2002. Action plan involves different measures which includes participation of PWDs in the process of economic & social development.

The charter of fundamental right of EU was adopted in Nice European Summit in December 2000. Major relevant provision in context of employment are as follows-

Charter of fundamental right entails about the right to education & accessibility to vocational and continuing training.³⁶ Charter further states about right to engage in work and to pursue a freely –chosen or accepted occupation.³⁷Charter states about equality between men & women in all areas including employment , work & pay.³⁸Charter states that persons with disability have right to those working conditions which respect health, safety and dignity.³⁹In the year 2000 a new directive on Discrimination in employment was adopted by European Union Social Affairs Ministers which obligates the

on the discretion of member state and allows sufficient time for implementation with the passage of time. In addition Recommendation and Resolutions are also adopted which are not binding.

²⁵ Recommendation No.R (92)

²⁶Adopted by world summit for Social Development in 1995

²⁷ Para 15(i)

²⁸Para 62

²⁹Commitment 5a

³⁰Chapter 3 page 54

³¹EC 1994

³²Article 9,10 European Social Charter

³³Article 15 European Social Charter

³⁴Article 30 *ibid*

³⁵“ In the Convention discrimination means any distinction , exclusion or restriction based on disability record of disability whether present or past , which has the effect or objective of impairing or nullifying the recognition , enjoyment or exercise by a person with a disability of his or her human rights and fundamental freedoms”. (Article 12a)

³⁶Article 14.1 EU charter of fundamental right

³⁷Article 15.1 *ibid*

³⁸Article 23 *ibid*

³⁹Article 31.1 *ibid*

prohibition of discrimination on the ground of disability in all spheres of working life.⁴⁰Directive also states about “reasonable accommodation” which includes the accessibility, participation etc in employment.⁴¹To ensure the equality of opportunity Disability Action Plan 2004-2010 was brought by European Union.⁴²Inactivity ratio of PWDs is twice to that of non disability persons. Though preliminary analysis of EU commission found that to put the disability issues on mainstream had ripened into some sort of success in some areas including issue of employment with respect to disability population.⁴³In year 2003 Malaya Declaration was adopted by Council of Europe Minister for PWDs. Declaration reiterated for securing human rights for everyone . The main focal point of declaration for next decade was to ameliorate the quality of life and to encourage the community participation of PWDs. Declaration made consistent emphasis on the need of mainstreaming for PWDs in equality of opportunity.

In pursuance of Malaya declaration , council of Europe adopted Action Plan 2006 for the participation of PWDs.⁴⁴European Action Plan 2006-2015 endeavours to provide sufficient adoptability and flexibility in accordance with the circumstances of each country.⁴⁵As far as the employment , vocational guidance & training is concerned , the employment rate of PWDs is very low as compared to nondisabled persons. There is need of comprehensive policy framework to enhance the activity rate of the PWDs.⁴⁶Two principal object of action plan are respectively to promote the employment of the PWDs in the open labour market by adopting anti discrimination and positive action plan and to discourage discrimination and appreciate involvement of PWDs in vocational assessment , guidance , training , employment related services.

Vocational support makes the PWDs to secure ,retain or employment advancement & social inclusion.⁴⁷ILO Convention with respect to Vocational Rehabilitation and Employment(Disabled Person) exposes the invariable link between vocational support and employment.⁴⁸Convention asserts that each member must formulate and review the national policy according to their vocational conditions.ILO recommendation no 168 in the year 1983 suggested measures to be implemented which includes job opportunities for PWDs in open labour market, financial incentives to employers and reasonable accommodation. Recommendation further states about government support in sheltered employment , vocational training & guidance and placement services offered to PWDs by NGOs. Recommendation interalia requires the state to promote cooperatives and small scale industry and to promote research for persuading the participation of PWDs in ordinary working life. Wage subsidies is the most common instrument for employers to compensate the shortfall in productivity. Other financial support includes grants for training costs , retention bonus, grants to hire personal assistants for PWDs who are in need of assistance, special grants to encourage retention of works who acquire disability in course of employment. Practice of financial varies country to country. For example wage subsidy may be extended for four years in Sweden, Eight years in Germany . The EC Regulation on State Aid Employment (No 2204/2002)empowers to States to provide incentive to employers and sheltered workshops to recruit and retain disabled workers. Grants are provided for self business too or cooperatives. In Greece grants are provided for self employment. In Italy grants to social cooperatives are provided for social insurance contributions. In United States grants are available to establish programme of technology related training .⁴⁹ As far as reservation in employment is concerned , some provides & some are not . Notably European Union provided reservation to people who were disabled veterans after second world war.⁵⁰Waddington⁵¹divides the European reservation system for PWDs into three broad categories which are as follows-

⁴⁰EU 2000

⁴¹Ibid Para 54-56 , operative part-2

⁴²EU Disability Plan 2004-2010

⁴³(EC 2005,p.8) EC(European Commission) 1994 , European Social Policy: A way forward for the Union (Brussels)

⁴⁴ (Rec(2006)5)

⁴⁵“ It provides roadmap for policy makers to enable them to design , adjust, refocus, and implement appropriate plans, programmes and Innovative Strategies.” (Para1.1.2)

⁴⁶Action line No 5

⁴⁷ILO 2002 Managing Disability in the workplace :ILO Code of Practice(Geneva)

⁴⁸(No 159) 1983

⁴⁹The right to persons with disabilities Arthur O’Reilly , ILO Geneva ,2007

⁵⁰ibid

⁵¹Waddington L,1996, “ Reassessing the employment of people with disabilities in Europe : From Quotas to antidiscrimination laws”, in comparative labour law journal, vol 18, No 62, pp62-101

- (1) Legislative recommendation with no sanction
- (2) Legislative obligation without effective sanction
- (3) Legislative obligations with sanctions

German reservation system of Pwds is the model for other countries which came into existence in 1974. The quota of 6 percent in all public & private employers with minimum 16 employees has been reduced to five percent⁵² with minimum 20 employees. As according to the Waddington European Reservation system for PWDs is based on the assumption that without legislative intervention the PWDs will not constitute the workforce in adequate proportion. The Reservation is provided in Europe because the employers will not hire at first the PWDs unless they are required through the statute. Secondly major number of PWDs are not able to fight competition with the non disabled persons.⁵³ It has been found in the study of European Commission that in eight industrialized countries, reservation has not achieved the required target.⁵⁴ Some countries of Europe notably Denmark, Finland and Sweden as well as other including Australia, Canada, South Africa and United States did not provide reservation for PWDs rather they focus on vocational training and rehabilitation with anti discrimination laws. As against the reservation system for PWDs anti discrimination laws advocate that the PWDs are competent to pursue the job provided that they get positive environment and not discriminated out of their disability.⁵⁵ It has been cited in the year 2000 that more than 40 out of 189 UN member states has adopted anti discrimination legislative policy in place of quota system.⁵⁶

The persuasive measures are also adopted to promote employment of PWDs though they are not obligatory. These measures includes information and awareness raising campaigns. This task can be performed through seminars, publications, newspaper radio & television, websites etc.. The country like Belgium, Canada, France, Japan and Portugal do so in order to achieve this objective.⁵⁷ Award policy is offered by government or employer networks/associations.⁵⁸ It is very difficult to assess the utility of persuasive measures in influencing attitude. It is found in the survey of European Union of policy assessment that the competing interests always undermines the efficacy of policy with regard to employment of PWDs.⁵⁹ The ILO Code of Practice on Managing Disability in the Workplace was adopted in year 2001 with a view to guide employers. The code states that government is having key role for creating legislations and social policy. The Code is based on the principle to promote international instruments and other initiatives. It is not legally binding document and is to be applied in accordance with national law & Practice.⁶⁰ The Code recommends the measures with respect to employees who attain disability in employment and suggests rehabilitation. Job retention, early intervention are gaining attention in many countries⁶¹ In some cases insurance industry assumes that job retention is less costly than losing the work. Till date very few countries in promoting disability management and incorporating this into national policies relating to vocational rehabilitation and employment of PWDs.

ILO convention no 159 states about the consultation mechanism. It entails that there must be representation of organizations of PWDs, workers and employers in consultative process for the implementation of national policy on vocational rehabilitation and employment. Recommendation no 168 further enunciates that these representative

⁵²(European Industrial Relation Observatory) 2001, "New laws seek to improve employment prospects of workers with disabilities", EIRO online: <https://www.eurofound.europa.eu/eira/2001/02/study>

⁵³Waddington L, 1996, "Reassessing the employment of people with disabilities in Europe: From Quotas to antidiscrimination laws", in comparative labour law journal, vol 18, No 62, pp62-101

⁵⁴EC (European Commission) 2000, Benchmarking employment policies for people with disabilities (Brussels)

⁵⁵The right to persons with disabilities Arthur O'Reilly, ILO Geneva, 2007

⁵⁶Degener; Quin.G.2000. A Survey of international, comparative and regional disability law reform paper presented at the "From principles to practice" symposium, Washington; D.C.

⁵⁷Supra note 185

⁵⁸idid

⁵⁹Supra note 184

⁶⁰ILO 2000, Resolution concerning human resources training and development: Report of a European Conference, Warsaw-ConstaninJeziorna; 23-25 Oct 2003(Geneva)

⁶¹Thorton, P.1998. International Research Project on Job retention and return to work strategies for disabled workers (Geneva, ILO)

organizations should be competent on advising the policies to establish the organization and to develop vocational rehabilitation services with other recommendations so as to ensure the participation of PWDs.⁶² One of the basis of the survey of national legislations and other information provided by the governments , the committee of experts on application of Convention and Recommendation of ILO has identified that consultation in different forms are increasing in number of countries.⁶³Permanent council & committees involving DPOs have been established to consult on the implementation of national policy in Austria, Crech Republic , France, Mauritius, Sweden, United Kingdom.⁶⁴In some countries like Argentina , Costa Ria, Ethopia, Iceland , Suriname, Thailand, Zambia, only organizations of PWDs are consulted.⁶⁵UNCRPD also recognizes the significance of consultation between state parties & representatives of PWDs but there is no direct reference of the representative organization of workers and employers in consultative process relating to rehabilitation of PWDs.⁶⁶

With a view of dignified & respectful life the United Nation General Assembly adopted the Convention on the Right of Persons with Disabilities and its optional protocol in year 2006. Before the enactment of the Convention , there were also other instruments addressing the disability which the author has discussed in previous detail. Therefore they were underlying reasons despite the other instruments already were into existence-

(1)- Persons with disability were taken as indirect recipient of assistance rather than rights holders. People with disabilities were not adequately visible in society and their marginalized status always led the human right abuse.

(2) There was a need of legally binding instrument to address the issues of persons with disability to promote the rights of persons with disability . In a study conducted by OHCHR it was found the PWDs were not getting sufficient attention . Therefore to pursue the human rights approach there was a need to evolve certain concepts to replace or clarify previous standards. This study also found that the PWDs were not using existing available mechanism i.e petition system under the treaties of human rights.⁶⁷

(3) The Convention was brought in pursuance by different organizations of PWDs, Civil Society and States. For the comprehensive development of PWDs it was the view that all relevant stake holders must participate rather than the State only. Preceding role of PWDs organization on international forum became the instrumental in preparing the path for different approach enshrined in the Convention.

The Convention guarantees all the rights for PWDs which are available to persons not having disability. State must ensure the realization of these rights by taking some additional steps because of the vulnerability arisen by Social Construct. The basic purpose of the Convention is to promote , protect and ensure the full and equal enjoyment of all human rights and fundamental freedom of PWDs. This basically includes awareness , conducive laws and policies and providing remedies in case of infringement of rights. Inherent dignity is the basis for the development of human rights. Therefore in being failure to give proper respect to the PWDs is the failure to respect an individual dignity.

The Convention precisely without any ambiguity clears the Rights of PWDs. These PWDs should enjoy rights on equal basis. Convention emphasizes on the identification of steps which States must take apart from merely asserting rights. Convention recognizes that disability is a social construct . It is the society itself which can deconstruct the barriers preventing the development of PWDs. Convention promotes the accessible development tending inclusive development of PWDs. In addition development promotes accessing goods & services which consequently leads the way for more effective development strategies & policies. Convention establishes the national & international mechanism to support implementation.⁶⁸Convention does not provide the definition of disability , yet manifests the social model of disability as impairments are the result of social barrier which hinders their participation in the society. Convention identifies disability as an evolving concept resulting out social construct. However Convention does not provide the exhaustive definition but illustrates that the PWDs “ include those who have long term physical ,

⁶²ibid

⁶³ ILO 1998. Vocational rehabilitation and employment of disabled persons : General survey on Reports of Vocational Rehabilitation and Employment (Disabled Person) Convention (N0 159) and Recommendation (No 168) ,1983. Report III (Part 1B) of Committee of Experts on Application of Conventions & Recommendations, International Labour Conference, 86th session, Geneva ,1998 (Geneva)

⁶⁴ Supra note 192

⁶⁵ ibid

⁶⁶ Art 4(3) UNCRPD

⁶⁷World Report on Disability 2001,WHO Library Cataloguing –in Publication Date

⁶⁸Art. 1 UNCRPD 2006

mental , intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in the society on equal basis with others.”⁶⁹Convention indicates that disability is not as a medical problem but is a result of interaction between an impairment and surrounding environment. Key objective to bring Convention is to transcend disability from a charity or medical model to social/human rights approach.

State parties are under obligation to provide on equal basis the right of work for their living. They must have right to choose their work and they must be accepted in labour market equally with open work environment readily accessible to PWDs. State parties shall ensure the appropriate legislative framework for persons who have acquired disability during the course of employment which should interalia include non discrimination in employment policies , equal basis of remuneration and other condition of work, to ensure their labour and trade union rights, to provide the technical, vocational guidance and placement services etc., to help them in finding , obtaining ,maintaining and returning them to place of employment, to promote self employment , entrepreneurship etc., to ensure their participation in private sector though appropriate policies and programmes, to ensure the reasonable accommodation, to promote the acquisition work experience earned by PWDs in open labour market & to promote the job retention , their rehabilitation in profession and vocation.⁷⁰

National Perspective-

Constitution of India is based upon the principle of social justice and human rights. Directive principle of state policy in part IV envisages that State will play pivotal role in upliftmentof disadvantaged group. For example article 41 states “ State shall within the limits of its economic –capacity and development make the effective provision for securing the right to work , to education and to public assistance in cases of unemployment , old age , sickness and disablement”. Article 46 states “the State shall promote with the special case the educational and economic interests of the weaker sections of the people and in particular of the Schedule Castes & Schedule Tribes and shall protect them from social injustice and all forms of social injustice and all forms of exploitation”. In addition to this the Preamble and Fundamental rights are committed for social & civil rights of the people. However rights under PartIII (F.R) are justiciable whereas rights in Part IV are directives and are not theoretically justiciable. Article 37 of the Constitution clearly says that directive principles are fundamental in the governance of the country and it shall be duty of the State to apply these directives while making laws. After the independence of the country ten five years plan worked marginally for PWDs. Few notably examples are reservations for PWDs in year 1977 and the formulation of the scheme of integrated education for disabled children in the year 1976.

There is a unanimous judicial opinion is that fundamental rights and directive principles are interrelated and interdependent . In a case S.C declared , “ The directive principles , contained in part IV constitute the stairs to climb the high edifice of socialistic State and the fundamental rights are the means through which one can reach the top of the edifice.” In famous Keshavanandan Bharti Case 1973 it has been observed by the Supreme Court that for doing social justice some times the fundamental right may subordinate to D.P.S.P .. Article 249 of the constitution further empowers the parliament to make the law on any subject irrespective of falling in any list to fulfill its International obligations. In the pursuance of its constitutional obligation, parliament enacted the law named as The Persons with Disabilities (Equal Opportunities, Protections of Rights and Full Participation) 1995. Though this Act has been repealed after coming into the force the Act of year 2016.

The National Policy for PWDs was brought by Ministry of Social Justice and Empowerment 2006 fulfilling the Constitutional objective of equality, freedom, justice and dignity of all individual which implicitly include the PWDs.Draft of New National Policy for PwDs 2021⁷¹ has been issued by Department of Empowerment of PwDs Ministry of Social Justice with a view to inviting comments by general public. After Signing UNCRPD 2006 in the year 2007 and Education Policy 2020 there was inevitable need to bring the New Policy in the line of above mentioned instruments. The Core areas of intervention under the existing policy are early-identification, human resource development, rehabilitation, barrier-free environment , education, employment ,social protection, research, sports, recreation and cultural activities.

Act 2016 mandates the all government institution of H.E receiving aid from government shall at least provide 5 % reservation of the total number of seats to the PWDs having benchmark disability . In addition to this , in admission the persons having benchmark disability shall be given five year relaxation of the upper age which is

⁶⁹Art.1 purpose UNCRPD

⁷⁰Art.27 UNCRPD

⁷¹

prescribed for general category. Act 2016 entrusts responsibility to governments to identify the post for reservation for the respective category of persons with benchmark disability with a view to fulfill specifications provided in the section 34. Appropriate government shall constitute an expert committee with the representation of persons with benchmark disability to identify the post for such PWDs. The appropriate government shall do periodic review to identify such post at least in the interval of three years.⁷²The appropriate government owes responsibility to give at least 4 % reservation of total number of vacancies in the each group of persons with benchmark disability. The reservation specification shall be as follows-

1% post shall be reserved for persons with blindness/low vision

1% post shall be reserved for persons who are deaf or hard of hearing

1% post shall be reserved for the persons with locomotors disability

1% post shall be reserved for the persons having autism, intellectual disability, learning disability, mental illness or multiple disabilities.

Though the reservation in promotion shall be as according to the instruction issued by appropriate government.⁷³

The appropriate government with the consultation of chief commissioner or state commissioner as case may be considering the type of work may exempt any department to fulfill the provision of this section. If because of the nature of vacancies certain PWDs can not be employed in those position, vacancies may be filled by an interchange from the remaining categories. The government may also through notification increase the upper age limit for the employment of persons with benchmark disability. ⁷⁴Appropriate government and the local authorities are under the responsibility to give incentives to employers in the private sector so as to ensure that at least five percent of their work force is comprised of people with benchmark disability.⁷⁵Special employment exchange shall be established by appropriate government through notification. The appropriate government through notification may fix a date that employer in every establishment shall provide such information to special employment exchange as prescribed by central government with regard to vacancies for the persons having benchmark disability.⁷⁶Appropriate government and local authorities shall make schemes through notification in favour of persons with benchmark disability. Scheme shall be comprised with five percent reservation in the allotment of agricultural land and housing , five percent reservation in all poverty alleviation programs and development schemes & five percent reservation in allotment of land on concessional rates.⁷⁷

Other Relevant Laws-

Author analyses the following laws in respect of employee with disability.

Employee's State Insurance Act ,1948-

Section 46(c) of the Employees' State Insurance Act,1948 says that periodical payment shall be made to an insured person with a disability as a result of an employment injury sustained as an employee. Section 51 of the same Act mentions the disabled benefits for temporary disablement and permanent (whether or partial).Companies are under obligation to register themselves under the Employee State Insurance Act 1948 for the workers who are earning less than Rs.21,000. Under this law the employee is empowered to take compensation if he acquires the disability under the course of employment. In case of temporary disability ,compensation is provided not less than 70% of the wages. In case permanent disability takes place & as a result of such disability there is loss of permanent earning capacity, in such cases periodical payments are provide for life. Rehabilitation & reemployment of employees also is done through the ESIC. Employees can not be dismissed or reduced in rank on account of disability arisen in course of employment. Moreover ,discrimination in employment on the ground of disability is expressly prohibited under 20(1) of the RPWD Act,2016.

Employees Compensation Act,1923- If the case falls in the categories of employees specified under Employees Compensation Act 1923, Company has to pay compensation for the disability arisen in the course of employment . The list generally includes the factory workers & other blue collar workers. Under the said Act , a employee is entitled to

⁷²Sec 33 RPWD Act 2016

⁷³Sec 34 ibid

⁷⁴ ibid

⁷⁵ Sec 36 ibid

⁷⁶Sec 37 ibid

⁷⁷ibid

compensation only if the injury took place during the course of employment but security of rank and posting to some other suitable job were not provided under Employee's Compensation Act 1923.⁷⁸

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

The Shops & Establishment Act,1948

Each state has its own statute relating to shops and establishments. The specifics of law differ from state to state, but the essential principles and provisions are similar. This law is relevant to the disability sector particularly with regard to white collar employees acquiring disability during work. Under this Act , in case of injuries , the compensation will be guided by the provisions of the Employees Compensation Act.

Factories Act, 1948-

Every employer has to equip the factory premises with certain safeguards to avoid the chance of accident in workplace. For example there will be fencing around the hazardous machinery; there shall be adequate and well maintained hoists & lifts. The Act regulates the matters connected with the choice of place being used as factory and also for the maintenance of health , safety and other welfare measures. As per section 6 of the Act , it is obligatory upon an owner of a factory to submit the plan of construction or addition for the intended factory site to the State Government or the Chief Inspector appointed in this behalf. Such a plan is to be examined by the concerned authority before granting approval and registration of the factory. Therefore , if the Factories Act,1948 is read along with Section 38,42,44,45 and 46 of the PWD Act,1995, put in place fair conditions of work that could no doubt have been achieved even for workers with disabilities . The vacuum was that it did not create a mechanism for the effective operation of complimentary legislation.

The Factories Act, 1948 regulates health, safety , working hours, leisure and work processes as well as work sites , which are being used as factories. Chapter III of the Act deals with health requirements of workers in a factory whereas Chapter IV deals with the safety of the workers. Chapter V of the Act makes provisions for undertaking welfare activities for workers. Chapter VI deals with the matters pertaining to working hours, leisure ,etc.. Although Factory Act,1948 and the Dock Workers(Safety, Health & Welfare) Act 1986 do not incorporate any provision with disabilities , it is clear from the relevant provisions of RPWD Act 2016 that rights of PwDs are protected in a better way. Whereas the section 38(d) of the PWD Act 1995 merely provided the provisions for the schemes to ensure safety and non-disabling conditions at the place of work, the provisions of RPWD Act 2016 lay emphasis on the accessibility and reasonable accommodation with a view to make factories and docks more conducive for PwDs.

Industrial Dispute Act 1947-

Right to continue in employment unless terminated or retrenched by due process of law comes in the domain of the right to have just and favourable conditions of work . Generally, Industrial Dispute Act 1947 deals the different aspects of service conditions of worker which includes the procedure of dismissal and retrenchment. Section 2(A) of the Act 1947 states that dismissal from service and other related matters shall be deemed as 'Industrial Dispute' which is to be adjudicated in accordance with the provisions of Industrial Dispute Act 1947. Section 33 of the Industrial Dispute Act 1947 deals with the conditions of service and provides that the employer can not vary them during the course of any proceeding for the settlement of an industrial dispute either before Board , or labour tribunal or conciliation officer. This protection applies to a workman with a disability , even in cases of disability where it is acquired during the course of employment and an industrial dispute is raised with respect to termination or reterenchment under the Industrial Dispute Act 1947.

Again, Section 33(2) requires that the employer will have to take approval of the Labour Tribunal for its order of dismissal from the service in respect of a worker. Therefore without complying of the procedure of adjudication prescribed in the Act 1947, the worker can not be dismissed or discharged. The retrenchment procedure is given in the section 25(F) of the Industrial Dispute Act 1947. To avoid arbitrary retrenchment adequate safeguards have been provided in the Act 1947. Retrenchment is also a type of Industrial Dispute , therefore procedure of adjudication of Industrial dispute will apply on the retrenchment process too.

It can be said that abovementioned safeguards are failed to afford equal protection in the event of disability . It is pertinent to say that infact the mental & physical disabilities are taken as valid ground to discharge from the services of

⁷⁸ Universal's Encyclopedia of Important Central Act & Rules (20 Voulumes), Vol.20, Delhi: Universal Law Publishing Company Pvt Limited ,2005 (rp.), p.20.976 et seq

employee. Whereas Rule 38 of the Central Civil Service(Pension) Rules is the classic example of this trend. Old repealed Act 1995 under section & RPWD Act 2016 explicitly prohibits the arbitrary dismissal . The Government can under no circumstances discriminate on the ground of disability and dismiss a person on the ground of disability.⁷⁹It can be suggested the provision of section 20 should be extended on the Industries as well through the amendment in relevant Labour Laws & RPWD Act 2016.

Other Rules & Regulations-

Section 3(1) of All-India Services (Special Disability Leave) Regulations ,1957 states that special disability leave may be granted to a member of the service who suffers (a disability) as a result of risk of office or special risk of office. The Central Civil Services (Pensions) Rules 1972 and the Central Civil Services (Extraordinary Pension) Rules,1939 provide for disability pension on account of disablement of a government servant. The Railway Services (Extraordinary Pension) Rules provide for the disability pension on arising disability of railway servant. There are other specific rules and regulations (including state government rules and regulations) regarding posting and transfer of employees of disability. There has been amendment in Central Civil Service (Leave) Rules ,1972 with the vide Department of Personnel and Training Notification No. 13026/1/2002-Estt(L) dated the 15/16 January ,2004 in pursuance to section 47 of PWD Act 1995 which states that service of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso of this section lays down that if such an employee is not suitable for the post he was holding , he could be shifted to some other post. However , his pay and service benefits will remain same. Further second proviso states that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation , which is earlier.

Employment analysis of PwDs -Niti Aayog Research Division Government of India conducted the research study in 2016 to identify skill developmental activities for people having various forms of disabilities and to assess their present status and trends for their skill enhancement activities based on the needs of the persons with disabilities. Universe of the study was the people affected by any form of physical disability i.e Visual, Hearing , Speech. And locomotors disability in the selected study areas. All the states of the country have been distinctly sorted according to the population of PwDs and 9 states having highest population of PwDs were selected for the study namely Andhra Pradesh (6.23%) , Bihar(8.62%) , Madhya Pradesh(6.43%), Maharashtra(7.16%) , Orissa(4.8%), Rajashthan (6.45%), Tamil Nadu(7.5%) , Uttar Pradesh (15.76%) and West Bengal(8.43%) based on the census data 2001. All the 9 selected states having around 71.38% of total population of PwDs of the country.

Sample Size-

si	State	No of districts	No of Blocks	No of towns	No of villages	No of wards	No of NGOs/Institutes	Respondents		total
								Rural	urban	
1	Andhra Pradesh	2	2	2	8	4	2	120	60	180
2	Bihar	2	2	2	8	4	9	123	65	188
3	Mahrashtra	2	2	2	8	4	3	122	62	184
4	Madhya Pradesh	2	2	2	8	4	8	121	60	181
5	Orissa	2	2	2	8	4	5	122	60	182
6	Rajashthan	2	2	2	8	4	5	121	60	181
7	Tamilnadu	2	2	2	8	4	4	127	63	190
8	Uttar Pradesh	2	2	2	8	4	4	120	60	180
9	West Bengal	2	2	2	8	4	6	120	61	181
	Total	18	18	18	72	36	46	1096	551	1647

⁷⁹ Section 20 RPWD Act 2016

As far as employment status in this report is concerned, 40 percent of the respondents were unemployed or doing nothing. Maximum of this category was among the visually impaired persons (63%), followed by speech and hearing & speech disabled persons with 55 percent and 54 percent respectively. Hearing and Locomotors –stands at 33 percent and 36 percent respectively. While 17 percent were students, 18 percent and 14 percent were into labour work and business respectively. 5 percent were engaged in Agriculture and private job, and just 1 percent in government sector. The average annual income of respondents was INR 30,579/- where the lowest average income was INR 26,800/- among hearing & speech impaired persons and average highest was INR 31,239/- among locomotors impaired persons. 38 percent of respondents mentioned about facing problem at work place. However majority (62%) did not face problem at work place. Report suggests Overall market potential plays a very important role in shaping the process of self reliance of PwDs. Providing them skill development and vocational training merely does not mean that persons with disability have become self reliant or empowered though it is one of the step to make them empower. The analysis of the opinion towards overall market potential and employment opportunities provides information that, 75 percent (out of 12 institutes) opined that market potential and employment opportunities is average compare to 17 percent opined that it is 'very low' and 8 percent 'low'. However not even 1 percent opinion came in favour of 'High and Very High' market potential.

In *Union of India and Another v. National Federation of the Blind*⁸⁰ In a landmark verdict, a three-judge Bench headed by the then Chief Justice of India, Chief Justice P. Sathasivam²³, the Court ruled that India as a welfare state is committed to promoting overall development of its citizens including those who have disabilities in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to citizens with disabilities in our country could be traced in Part III and Part IV of the Constitution. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (superseded by the 2016 Act) empowered persons with disabilities and ensured protection of their rights. The three judges unanimously observed that it is clear that the scope of identification comes into consequence only at the time of appointment of a person in the post identified for disabled persons and is not necessarily relevant at the time of computing the 3% reservation under Section 33 of the 1995 Act. *Jeeja Ghosh Vs Union of India*⁸¹ noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. In *VIKASH KUMAR v. UPSC*⁸² Hon'ble Supreme Court explained that the principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016. In *Depal Girishbhai Vs United India Insurance Co. Ltd*⁸³ Hon'ble Supreme Court held that Section 33 does not have exhaustive list of all categories of disabilities and these are only illustrative. Further If separate quota will not be provided to every distinct category, it is probable that whole quota will be exhausted by only one category & other group may be deprived. Intention of the legislature in section 33 is to provide minimum 3% reservation setting apart one percent each to three enumerated categories. And whole objective of the Act does not confine the state's responsibility to provide reservation to only three categories, there is possibility for others as well. Hon'ble Supreme Court in *RAJEEV KUMAR GUPTA & ORS. V. UNION OF INDIA*⁸⁴ held that once the post is identified, it must be reserved for PwD irrespective of

⁸⁰(2013) 10 SCC 772

⁸¹ (2016)7SCC761

⁸² 2021 SCC OnLine SC 84

⁸³ AIR2004 SC 2107

⁸⁴(2016) 13SCC 153

the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision. Same view on promotion in services in government establishment was reiterated in the following cases namely UMA PRASAD v. CEO Employees Provident Fund Organisation, 11133/1021/2019; CG, SATHYAN v. DIRECTOR AIIMS, 12376/102 1/2020; SRI RAJES Vs DIRECTOR_AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MAN MOHAN BAJPAI Vs_KHADI & VILLAGE INDUSTRIES_COMMISSION, 12485/1011/2020

Conclusion-

Among other employment barrier like Low Literacy Level, Lack of access to skills and technology, Ignorance , Misinformation and prejudice on the capability of PwDs which manifests them as unproductive, lack of the access to information for PwDs, market potential is the major threat in attaining employment of PWDs. The author suggests vocation and skill development training will not achieve its objective unless there is market potential and employment opportunities should be made available to PwDs. There is the need of effective integration process. The PWDs often feel embarrassed by their fellow workers. Inclusive policy does not mean that it is only for the employer level rather it must be for all the level including on the level of fellow workers. The minds of fellow workers and the people around them have to be ready with regard to inclusion of PWDs. PWDs are victim of development plateau. They are not offered for challenging assignments and responsibilities . PWDs commonly perform the same kind of work as they get only on the entry level . This is because of the perception of the society as well as employer that they can not pursue difficult role. Organizations must invest in the skilling of PWDs so that their task with the course of time with the advent of technology may not be redundant. For example at one time PWDs were trained and hired for data entry job but with the subsequent development of new system rendered their task redundant.