CHAPTER 5
ADMINISTRATIVE MEASURES

India’s institutional framework for protecting rights of persons with disabilities is complex. In February 2006, the Ministry of Social Justice and Empowerment, which has the central responsibility for disability policies within the government, adopted a National Policy for Persons with Disabilities (NPPD). The NPPD established an inter-ministerial body to coordinate matters at the national level and the State Coordination Committees at State levels. These committees coordinate various specialised institutions and agencies, including the National Rehabilitation Council and the National Trust for Welfare of Persons with Autism, Cerebral Palsy Mental Retardation and Multiple Disabilities. Prior to the adoption of the NPPD, an Office of the Commissioner for Persons with Disabilities was established under the PWD Act. The Office of the Commissioner for Persons with Disabilities, though a semi-judicial body, enabling the Chief Commissioner to investigate allegations of the deprivation of the rights and non-implementation of laws, cannot take binding decisions. India also has a National Human Rights Commission (NHRC) to look into individual petitions, initiate proceedings in the Supreme Court of India, intervene in proceedings involving allegations of human rights violations and review human rights related law including the Constitution. The Commission made recommendations to relevant ministries during the development of the NPPD and also advised the Government of India during negotiations on the Convention. This chapter would make an analysis of the administrative mechanism under the major legislation in India, schemes and programmes implemented by the Ministry of Social Justice and Empowerment in the disability sector and the current initiatives to bring them in consonance with the Convention.

I. Institutional framework in India.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 provides for the appointment of a Chief Commissioner and Commissioners for Persons with Disabilities. Both the Chief Commissioner (centrally)
and the Commissioners (at the State level) are vested with the power to safeguard the rights and facilities made available to persons with disabilities and investigate complaints with respect to the deprivation of the rights of persons with disabilities as well as non-implementation of laws and rules.¹

5.1 Ministry of Social Justice and Empowerment

The nodal agency for disability in India is the Ministry of Social Justice and Empowerment (MSJE), whose overall mandate is to promote the interest of disadvantaged and marginalised sections of the society.² The institutional support for persons with disabilities could be better understood through the following figure.

**Figure 1:** Governmental structure for policy and implementation of programs for the persons with disabilities in India.

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¹ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995
² The Chief Commissioner and Commissioners for Persons with Disabilities Chapter XII Section 57, Section 60
² This includes Scheduled Castes, Backward Classes, Minorities, PWD, aged persons, street children, victims of drug abuse and others.
The Government of India, Ministry of Social Justice & Empowerment, has a disability Division which includes and supports 7 National Institutes, 11 District Rehabilitation Centres, 4 Regional Training Centres, 107 District Disability Rehabilitation Centres, 5 Composite Regional Training Centres, approximately 1000 NGOs and 3 autonomous bodies which are the Rehabilitation Council of India, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, and the National Handicapped Finance & Development Corporation.

To address the concern of inter-sectoral coordination, the PWD Act mandates central and State-level Coordination and Executive Committees (the latter intended as the executing arm of the former). 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 six and three months respectively. Unfortunately, the track record of these coordinating institutions in States and at the centre is poor, with few exceptions.\(^3\) It thus appears that the disability field is characterised by a nodal Ministry with relatively weak convening power, and coordinating institutions which are in many parts of the country barely functional.

The above situation makes the role of the Commissioner for Persons with Disabilities (CPWD) even more crucial. It is tasked as the primary public institution with respect to regular oversight of the Act – the ‘watch dog’ for the disability sector. These offices are mandated to coordinate the work of various agencies, to monitor fund utilization on disability programs, and ‘take steps to safeguard the rights and facilities made available to PWD. An important element of the last function is the grievance mechanism of the Commissioners’ offices, which have a quasi-judicial complaints and hearing mechanism.

An area where the Chief CPWD Office has, given its staffing and other resources limitations, improved performance in recent years is grievance redressal. The number of settled cases through its quasi-judicial process has increased markedly in recent years.\(^4\) The proportion of pending cases in total registered has also fallen. Of the total cases in recent years; around half were initiated \textit{suo moto} by the CPWD office itself, though this proportion is falling, perhaps reflecting greater awareness of its grievance redressal functions. Of the cases registered in 2004-05, over half were employment related (both hiring and issues of transfers, promotions etc), with the remainder spread thinly across benefit issues, harassment claims, education and other matters.

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

\(^3\) Government of India indicates that meetings in most States happen very rarely, with a number of major States (Gujarat, Bihar, Kerala) having had only one meeting of their Coordination Committees since the passing 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.

\(^4\) It has risen from 718 settled claims in 2003-04 to 1,333 in 2005-06. 1,161 cases were registered during the year 2008-09 and 1103 cases were disposed of. In the year 2009-10 (Upto Dec 2009), 742 cases have been registered and 765 cases have been disposed off.
significant issues of low capacity to perform their mandate effectively. Evidence for the period 1999-2003 indicated several concerns related to (i) poor monitoring of use of funds; (ii) lack of clarity on grievance redressal mechanisms; (iii) limited advocacy work in a number of States. The analysis points to significant issues with lack of staff and low capacity in Commissioner’s offices.⁵ 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.

Beneath the State level, the nodal function in disability tends to be an additional charge for District or Additional Collectors and BDOs. They act as initial points of grievance redressal for persons with disabilities. Apart from these additional charges, States vary significantly in whether or not dedicated staff exists at lower levels who are specifically dedicated to PWD issues.⁶ Essentially, dedicated official functionaries cease at best at district level, below which additional charges are the mode of oversight and service delivery.

5.1.1 Schemes/programmes implemented by the Ministry of Social Justice & Empowerment in the disabilities sector.

- National Institutes:

The seven National Institutes under the support of the Disability division are apex bodies in mental retardation, visual disability, hearing handicap, physical handicap, orthopedic handicap and rural rehabilitation. They are operating training courses, service delivery programmes, research and development of books and other materials. They are the following⁷:

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⁵ 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 case of PWD since 2002. The same study also noted that full time Commissioners exist to date only in a minority of States (Bhambani:2006)

⁶ For example, in Karnataka, there are District Disability Welfare Officers, while these are not present in Rajasthan.

⁷ For more details see Annual Report 2009-10, Ministry of Social Justice and Empowerment, New Delhi.
(i) Ali Yavar Jung National Institute for the Hearing Handicapped (AYJNIHH)

The Ali Yavar Jung National Institute for the Hearing Handicapped was established on 9th August, 1983 under the Societies Registration Act, 1860. The Institute has been established for manpower development, research, clinical and therapeutic services, outreach and extension services for the persons with hearing disabilities. The Institute is responsible for development of manpower by undertaking or sponsoring the training of trainees and teachers, employment officers, psychologists, vocational counselors and such other personnel as may be deemed necessary by the Institute for promoting the education, training or rehabilitation of the hearing handicapped. The Institute sponsors, coordinates and subsidizes research into all aspects of the education and rehabilitation of the hearing handicapped. It is also developing model services for rehabilitation of the hearing handicapped.

(ii) Pandit Deen Dayal Upadhyaya Institute for the Physically Handicapped (IPH), New Delhi.

The Pandit Deen Dayal Upadhyaya Institute for the Physically Handicapped (IPH) was set up on 12th November, 1976 under the Societies Registration Act, 1860. The major objective of the Institute is to develop trained manpower for rehabilitation of persons with orthopaedically disabled persons, provide outreach services and research. The Institute offers education, training, work-adjustment and such other rehabilitative services as the society may deem fit to orthopaedically handicapped persons with associated mental retardation or such other associated handicaps as are not considered incompatible with the development of a harmonious educational, training or workshop programme. IPH also undertakes the training of physiotherapists and occupational therapists. Besides it has a facility for manufacture and distribution of such aids and appliances as are needed for the education, training and rehabilitation of the handicapped.

(iii) National Institute for Mentally Handicapped (NIMH), Secundrabad

The Institute was registered in the year 1984 under the Societies Registration Act, 1860 as an autonomous body under the administrative control of the Ministry of Social
Justice and Empowerment. The Institute has been established with the objective to prepare human resources equipped to deliver services through quality models of rehabilitation, based on life cycle needs. The National Institute for the Mentally Handicapped (NIMH) is committed to develop models of care for the mentally handicapped persons, conduct research in the area of mental handicap, and promote human resource development to work with mentally handicapped persons in the country.

(iv) National Institute of Visually Handicapped (NIVH), Dehradun

The National Centre for the Blind was upgraded as National Institute for Visually Handicapped in July, 1979. It was registered as an autonomous Institution under the Societies Registration Act, 1860 in October, 1982. The objective of the Institute is to conduct, sponsor and coordinate all aspects of education for rehabilitation of persons with visual disabilities and coordinate research in these areas. The Institutes also assisted in running a Composite Regional Centre (CRC) for persons with disabilities at Sundernagar in Himachal Pradesh. This apex level Institute is engaged in education, vocational training, training of teachers and other personnel, research and development of service modules, production of Braille books, aids and appliances for the visually handicapped.

(v) National Institute for Orthopaedically Handicapped (NIOH), Kolkata

National Institute for the Orthopaedically Handicapped was established in Kolkata in the year 1978. It was registered in April, 1982, under the Societies Registration Act, 1860. The mission of the Institute is to develop human resources for providing rehabilitation services to persons with locomotor disabilities, providing of services in rehabilitation, restorative surgery, aids/appliances etc. The Institute is responsible for development of manpower for providing services, namely, training of physiotherapists, occupational therapists, orthotics and prosthetic technicians, employment and placement officers etc. NIOH also develops model services in the areas of restorative surgery, aids and appliances, vocational training etc. for the orthopaedically handicapped population. It conducts and sponsors research in all aspects, relating to the total rehabilitation of the orthopaedically handicapped people and is involved with
standardizing aids and appliances for the orthopaedically handicapped and promoting their manufacture and distribution.

(vi) National Institute for Rehabilitation Training & Research (NIRTAR), Cuttack.

NIRTAR, originally, started as an adjunct Unit of ALIMCO, Kanpur, NIRTAR was registered in 1984 under the Societies Registration Act, 1860 as a National Institute. The aims and objectives of the Institute are human resources development, implementation of service delivery programmes, research and outreach programmes. It undertakes, sponsors or coordinates training for rehabilitation personnel and conducts research on bio-medical engineering and surgical or medical subjects for orthopaedically handicapped. The Institute produces and distributes aids and appliances. It develops models of service delivery programmes for rehabilitation. NIRTAR also undertakes vocational training, placement and rehabilitation of the physically handicapped.

(vii) National Institute for Empowerment of Persons with Multiple Disabilities (NIEPMD), Chennai

The Government has set up this new Institute at the total project cost of Rs.61.90 crores comprising of land cost of Rs.39.20 crores (notional), non-recurring cost of Rs.18.10 crores and a recurring cost of Rs. 4.60 crores. Government of Tamil Nadu has provided the land for this Institute. Government of India is providing the financial support for construction of the building of the Institute and other activities. The Institute has started clinical services and short-term training programmes for caregivers from July 2005.

• Public Sector Undertakings

(i) Artificial Limbs Manufacturing Corporation (ALIMCO): A corporation that manufactures quality aids and appliances for the disabled at reasonable prices. The Artificial Limbs Manufacturing Corporation of India (ALIMCO), Kanpur, Uttar Pradesh manufactures artificial limbs, accessories and constituents thereof and also promotes their availability, supply and
distribution at reasonable cost to the disabled persons, hospitals and other rehabilitation institutions. ALIMCO is a premier organisation and is the largest manufacturer of Artificial Limbs, Components and Rehabilitation Aids for the disabled in India. The product range of ALIMCO includes orthoses, prosthesis for upper and lower extremities, spinal braces, traction kits, wheel chairs, crutches, three wheelers and special tools and equipment required for fitment of prosthetic and orthotic assemblies by limb fitting centres. The products of ALIMCO are distributed throughout the country through its Auxiliary Production Centres at Bhubaneshwar, Jabalpur and Bangalore, dealer network, the National Institutes, NGOs, etc.

ALIMCO has also been entrusted with the task of performing the role of nodal agency for handling gifts cargo received under bilateral agreements entered into by the Government of India with the Governments of USA, UK, Sweden, Switzerland and Germany.

(ii) National Handicapped Finance & Development Corporation: (NHFDC) provides loans to persons with disability for setting up small businesses in service or trading sector, small industrial units, manufacturing/ production unit of assistive devices for disabled persons and also for agricultural activities, higher studies/ professional training etc. Under a micro financing scheme loans are given to non governmental organizations for further disbursement to individual beneficiaries or through Self-Help Groups (SHGs) for starting or augmenting income generation activities. NHFDC has the following main objectives:

a. To promote economic development activities and self-employment ventures for the benefit of persons with disabilities;
b. to extend loan to persons with disabilities for up gradation of their entrepreneurial skill for proper and efficient management of self-employment ventures;
c. to extend loans to persons with disabilities for pursuing professional/technical education leading to vocational rehabilitation/self-employment; and
d. to assist self-employed individual with disabilities in marketing their finished goods.

The NHFDC operates through State channelising agencies nominated by the respective State Governments and Union Territory Administrations.

• Public Private Partnership

(i) Composite Regional Centres (CRCs)

Due to lack of adequate facilities for rehabilitation of persons with disabilities, the Ministry has set up six Composite Regional Centres for persons with disabilities at Srinagar, Sundernagar (Himachal Pradesh), Lucknow, Bhopal, Patna and Guwahati to provide both preventive and promotional aspects of rehabilitation like education, health, employment and vocational training, research and manpower development, rehabilitation for persons with disabilities etc.

(ii) Regional Rehabilitation Centres (RRCs)

Four Regional Rehabilitation Centres for Spinal Injured have been set up in different parts of the Country. Indian Spinal Injury Centre provides comprehensive rehabilitation management services to patients with spinal cord injuries and related ailments. These include intervention in the form of reconstructive surgery, stabilisation operations, physical rehabilitation, psycho-social rehabilitation and vocational rehabilitation services. There has been an increase in the number of free OPD and paid OPD patients, besides patients from India, the centre also attracts patients from foreign countries. 30 beds are earmarked for treatment of patients from poor and indigent categories, and out of this the Ministry supports 25 beds while for 5 beds the expenses are borne by ISIC itself. The Institute is able to perform very complicated surgeries with good results. The Centre has 132 beds functional and plans to increase the bed strength to 146. In its endeavor to promote research facilities at the Centre, ISIC has entered into
collaboration on research with the National Institute on Disability Rehabilitation and Research (NIDRR), Ministry of Education, USA. This centre has a building, which is barrier free for persons with disabilities.

(i) Eleven District Rehabilitation Centres (DRCs) have been set up during 1985 to provide comprehensive rehabilitation services to the rural disabled at their door-steps and

(ii) Four Regional Rehabilitation Training Centres (RRTCs) have also been set up for training and manpower development in the field of rehabilitation. Government of India provides funds for meeting recurring and non-recurring expenditure of these Centres.

• The Rehabilitation Council of India (RCI) set up in 1993 is responsible for regulating/standardising training policies and programmes for various categories of professionals in the area of disability. It also maintains a Central Rehabilitation Register (CRR) for all professionals/personnel. The Council also promotes research in rehabilitation and special education.

• Science and technology project in mission mode provide funding for developing appropriate and innovative technological appliances for the benefit of the disabled persons.

• The National Trust set up under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 with the objective of enabling and empowering persons with disability to live as independently and as fully as possible within or close to the community where they belong and to strengthen facilities to provide support to persons with disabilities to live within their own families. The Trust also extends support to registered organisations to provide need based services during periods of crisis in the family of the person with the disability and also promotes measures for the care and protection of these persons in the event of
death of their parents or guardians. Government of India has provided Rs.100 crore towards the corpus fund of the National Trust.

- A scheme for launching of an awareness campaign on prevention of occurrence of disabilities and rehabilitation of persons with disabilities in selected districts is being implemented through grant-in-aid assistance from the Ministry.

- The scheme of employment of the handicapped aims to help the persons with disabilities in getting gainful employment either through 41 special cells in regular employment exchanges or 40 special employment exchanges for the persons with disabilities.

5.1.2 Convergence of the Ministry of Social Justice with other Ministries.

- The Government of India, Ministry of Social Justice & Empowerment, networks closely in creating multi-sectoral linkages with the following Ministries as shown in Table 2

Table 2: Multi-sectoral linkages of Ministry of Social Justice and Empowerment

<table>
<thead>
<tr>
<th>Ministry of Health</th>
<th>For early detection, early intervention, development of guidelines for evaluation of disability, constitution of Medical Boards for medical certificates and for training of health personnel.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of HRD</td>
<td>For early intervention through mainstream pre-school system, training pre-school and primary school teachers, development of inclusive schools, development of teaching/learning materials and curriculum modification.</td>
</tr>
<tr>
<td>Ministry of Labour</td>
<td>For vocational training, placement and development of inclusive work places.</td>
</tr>
<tr>
<td>Ministry of Urban Development</td>
<td>For employment of persons with disabilities through their schemes for poverty alleviation.</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ministry of Rural Development</td>
<td>For employment of persons with disabilities through their schemes for poverty alleviation and for inclusion in their Panchyat Raj System (an institution of peoples’ representative Government at the village level).</td>
</tr>
<tr>
<td>Surface Transport</td>
<td>For ensuring accessible transport</td>
</tr>
<tr>
<td>Ministry of Railways</td>
<td>For concessional travel, accessible railway stations and railway coaches.</td>
</tr>
<tr>
<td>Ministry of Civil Aviation</td>
<td>For concessional travel by air</td>
</tr>
<tr>
<td>Ministry of Finance</td>
<td>For tax benefits and tax cover and for exemption of customs duty on assistive and mobility devices.</td>
</tr>
<tr>
<td>Department of Personnel &amp; Training</td>
<td>For creating rosters for employment of persons with disabilities.</td>
</tr>
</tbody>
</table>


### 5.1.3 Available mechanisms for Persons with Disabilities.

The mechanisms which are available for the Persons with Disabilities are diagrammatically represented below in Figure 2:
Figure 2: Available mechanisms for implementation of programmes for the persons with disabilities in India.


- Scheme of national awards for employment of persons with disabilities

Empowerment of persons with disabilities is an inter-disciplinary process, covering various aspects namely, prevention, early detection, intervention, education, vocational training, rehabilitation and social integration etc. Apart from resources, it requires dedicated efforts of persons and institutions involved in the process of empowerment. In order to recognise their effort and encourage others to strive to achieve excellence in this field, separate awards are being presented to the most efficient/outstanding employees with disabilities, best employers, best placement agency/officer, outstanding individuals, outstanding institutions, role models, outstanding creative disabled individuals and for outstanding technological innovation and adaptation.
of innovation to provide cost effective technology. Awards are also given to Government Sector, Public Sector Undertakings and private enterprises for creating barrier free environment for the persons with disabilities, the best district in the field of disability rehabilitation, best Local Level Committee of the National Trust and to the best State Channelising Agency (SCA) of the National Handicapped Finance and Development Corporation (NHFDC). Preference is given to the placement of women with disabilities, particularly, from the rural areas and self-employed women.

- Scheme of national scholarships for persons with disabilities.8

Under the scheme of national scholarships for persons with disabilities, every year 500 new scholarships are awarded for pursuing post matric professional and technical courses of duration more than one year. However, in respect of students with cerebral palsy, mental retardation, multiple disabilities and profound or severe hearing impairment, scholarship are awarded for pursuing studies from ninth standard onwards. Advertisements inviting applications for scholarships are given in leading national/regional newspapers in the month of June and also placed on the website of the Ministry. State Government/UT Administrations are also requested to give wide publicity to the scheme.

Students with 40 per cent or more disability, whose monthly family income does not exceed Rs.15,000/-, are eligible for scholarship. A scholarship of Rs. 700/- per month to day scholars and Rs. 1,000/- per month to hostellers is provided to the students pursuing Graduate and Post Graduate level technical or professional courses. A scholarship of Rs. 400/- per month to day scholars and Rs. 700/- per month to hostellers is provided for pursuing diploma and certificate level professional courses. In addition to the scholarship, the students are reimbursed the course fee subject to a ceiling of Rs. 10,000/- per year. Financial assistance under the scheme is also given for computer with editing software for blind/deaf graduate and postgraduate students pursuing professional courses and for support access software for cerebral palsied students.

• Incentives to employers in the private sector for providing regular employment to persons with disabilities

A central sector scheme of providing one-lakh jobs per annum to the persons with disabilities, with a proposed outlay of Rs.1800 crore, during the 11th Plan Period has already been sanctioned from 1.4.2008 by the Government. Under the scheme, the Government will make payment of the employer's contribution to the Employees Provident Fund and Employees State Insurance for the first three years, as an incentive, in return of employment of persons with disabilities with monthly wage up to Rs 25000/- per month.

• Models to promote awareness about accessibility features in public buildings.

Funds are being provided to Universities / Administrative Training Centres in the States/UTs and State Secretariats etc. for installing lifts etc. to provide barrier free access to persons with disabilities.

• Awareness generation programme.

A pilot project for creation of awareness on prevention and early detection and intervention of various types of disabilities has been taken up. The project envisages dissemination of information in rural areas through Anganwadi workers and covers 30 districts (17 in Uttar Pradesh and 13 in Bihar). Recently a pilot project has been taken up in 13 districts of Assam also. The programme is under implementation.

• Technology development projects in mission mode

With a view to provide suitable and cost effective aids and appliances through the application of technology and to increase their employment opportunities and integration in society of the physically disabled, the above scheme was started during 1990-91. Under the scheme, suitable R&D projects are identified and funded for developing aids and appliances. The scheme is implemented through the IITs, Educational Institutes, Research Agencies and Voluntary Organisations etc. Financial assistance is provided on
100 per cent basis. The four Technical Advisory Groups monitor the selection of the projects and also their progress at different stages in areas of disabilities, namely, Orthopaedic (including Cerebral Palsy), Visual, Speech and Hearing and Mental. All the projects those are recommended by the respective Technical Advisory Groups are placed before the Apex Level Committee headed by Secretary, Ministry of Social Justice and Empowerment.

- Trust fund for empowerment of persons with disabilities

The Supreme Court in its order dated 16th April, 2004 in the Civil Appeals No.4655 and 5218 of 2000 had directed that the banks, who had collected an estimated excess amount of Rs.723.79 crores annually from the borrowers through rounding off in collection of interest tax, should transfer it to a trust which would be used for welfare of persons with disabilities. The Court had constituted a Committee under the chairmanship of Comptroller and Auditor General of India with Finance Secretary and Law Secretary as members. The Ministry had sought directions of the Apex court for transfer of these funds to the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for purposeful utilization.

The Supreme Court is yet to take a view on the request of the Ministry but in the meantime the trust has been set up and the banks have been advised by the Banking Division of the Ministry of Finance to deposit the due amount in the Trust account. Up to 20th September, 2007, the banks have deposited an amount of Rs. 71.54 crores in the Trust account.

5.1.4 Important programmes/activities of other Ministries relating to disability.

- Ministry of Women and Child Development

The National Plan of Action for Children, 2005, seeks to ensure the right to survival, care, protection and security for all children with disability. The approach adopted includes maternal and child care for prevention and detection of disabilities, early intervention, education, rehabilitation, accessibility and full integration. It envisages
creation of effective links and quick referrals between the integrated child development scheme, primary health centres, mother and child programmes and hospitals (pediatric units) for the early detection of high risk babies and children with disabilities, including children with mental health issues and mental illness. Training is an important element of the Plan. The scheme of working women hostel is currently under revision and a clause to encourage disabled friendly buildings particularly where grant is extended to new constructions, shall be incorporated. It would be ensured that construction assistance is extended to those buildings which are disabled friendly in the revamped scheme namely ‘Swadhar and Short Stay Homes’.

- Ministry of Human Resource Development
  (i) Department of School Education & Literacy
  a. Universal access and enrolment,
  b. Free and compulsory elementary education for all children up to 14 years of age, and
  c. Substantial improvement in the quality of education to enable all children to achieve essential levels of learning.

  The policy also emphasises that education must play a positive and interventional role in correcting social and regional imbalance and in securing a rightful place for the disadvantaged. The priority area is provision of free and compulsory elementary education to all, covering children with special needs. Sarva Shiksha Abhiyan (SSA) aims to ensure that every Child with Special Needs (CWSN), irrespective of the kind, category and degree of disability, is provided education in an appropriate environment and envisages adoption of a zero rejection policy, so that no child is left out of the education system. SSA envisages a specific grant of Rs.1200/- per CWSN per year to meet “the special learning needs” of CWSN. Convergence has been established with Ministry of Social Justice and Empowerment to provide aids and appliances to CWSN under SSA. Steps are being taken to make all new school buildings and the existing schools barrier free.
Schools are being made more disabled friendly by incorporating barrier free features in their designs. About 7.18 lakh schools have been made barrier-free. Efforts are being made by all the State Governments/UTs to cover more schools in a phased manner.

A new Scheme of Inclusive Education for Disabled at Secondary Stage (IEDSS) has been introduced from the year 2009-10, in place of the IEDC Scheme, which will cover disabled children from 14-18 years of age group i.e. the secondary schooling stage. The aim of the scheme is to enable all students with disabilities completing eight years of elementary schooling an opportunity to complete four years of secondary schooling (Classes IX to XII) in an inclusive & enabling environment and provide educational opportunities and facilities to students with disabilities in the general education system at the secondary level. The objectives of the scheme is to ensure that (i) every child with disability will be identified at the secondary level and his educational need assessed (ii)every student in need of aids and appliances, assistive devices will be provided (iii) all architectural barriers in school are removed (iv) each student with disability will be supplied learning material as per requirement (v) all general school teachers at the secondary level will be provided basic training to teach students with disabilities (vi) students with disabilities will have access to support services like the appointment of special educators, establishment of resource rooms in every block and (vii) Model schools are set up in every State to develop good replicable practices in inclusive education. The scheme is centrally sponsored under which the Central Government will assist 100 per cent to the State Governments/UTs and Autonomous bodies. Under the scheme, the assistance to State Government/UTs/Autonomous bodies will be provided at the rate of Rs.3000/- per disabled child per annum for specified components.

(ii) Department of Higher Education

UGC has a scheme for higher education for persons with special needs. The scheme is meant for creating an environment at higher education institutions including universities to enrich higher education learning experiences of differently-abled persons, including constructing facilities aimed at improving accessibility, providing special equipments etc. The main component and funding pattern of the scheme are as under: -
Component funding pattern

(i) Establishment of enabling units for differently-abled persons to inter-alia provide guidance and counselling and create awareness about the needs of differently abled persons

(ii) Rs.2.02 lakhs per annum towards honorarium of counsellors, contingency expenditure and holding awareness programme

(iii) Providing access to differently-abled persons

(iv) One time grant of Rs.10.00 lakhs

(v) Providing special equipments to augment education services, devices.

(vi) One time grant of Rs.8.00 lakh per University

The scheme is applicable subject to the condition that the institution should have a minimum of 10 disabled persons in its various courses and should be approved by UGC. Grants have been provided to approx. 269 universities and approx. 21108 colleges. The scheme also covers operational expenditure of approx. Rs.2.00 lakhs per annum per institution.

- Ministry of Health & Family Welfare

( I ) Programmes of disabilities prevention

(i) National programme for control of blindness

National programme for control of blindness was launched in the year 1976, with the goal to reduce the prevalence of blindness. The programme aims at identification and treatment of persons with blindness, development of eye care facilities in every district, develop human resources for providing eye care services, and improvement of quality of service delivery.
(ii) National leprosy eradication programme

Leprosy, a chronic bacterial disease, affects the peripheral nerves, so the patients lose sensation mainly in their hands, feet and eyes, if not properly cared for. Injuries to these insensitive parts may lead to disability. Early detection and prompt treatment of leprosy with prescribed Multi Drug Therapy (MDT) is a focus area, since it not only cures leprosy, but also interrupts its transmission to others, thereby preventing disability.

(iii) Urban leprosy control programme

To address the complex problems relating to leprosy control in urban areas like larger population size, migration and poor health infrastructure that increase prevalence of the disease, the Urban leprosy control programme is being implemented since 2005. Under this programme, assistance is being provided by Govt. of India to urban areas having population size of more than 1 lakh.

(iv) National iodine deficiency disorders control programme

Iodine is an essential micronutrient for normal human growth and development. Iodine Deficiency Disorders include mental retardation, deaf mutism, squint, and neuromotor defects. The programme includes surveys to assess the magnitude of Iodine Deficiency Disorders and the impact of control measures, supply of iodated salt in place of common salt and information, education and communication.

The Central Govt. hospitals in Delhi have made their institutional buildings barrier free and are accessible for persons with disabilities. 30 Medical Colleges are having Physical Medicine & Rehabilitation (PMR) departments. In 10th Five Year Plan, a sum of Rs. 50 crores has been allocated for “Up gradation of facilities for PMR” in medical college hospitals.

(II) Institutes – AIISH, AIIPMR, NIMHANS, RINPAS

(i) AIISH, Mysore – All India Institute of Speech and Hearing, Mysore is a premier organization in the country for training manpower in the field of
speech and hearing. It was established in 1965 as an autonomous institute functioning under the Union Ministry of Health and Family Welfare. AIISH offers courses that range from Diploma to post doctoral programs/levels. The institute is also involved in research and rehabilitation services in the area. It is affiliated to the University of Mysore for award of degrees.

(ii) AIIPMR, Mumbai – The All India Institute of Physical Medicine and Rehabilitation is a pioneer institute committed to providing rehabilitation services to persons in all categories of locomotor and associated disabilities. It functions under the Ministry of Health & Family Welfare and is involved in the following:

(a) Comprehensive quality services

(b) Academic activities including short term and long term courses

(c) Research and development activities undertaken at the institute and community levels. The AIIPMR has been recognised as a scientific and research organisation by the Ministry of Science and Technology.

(iii) NIMHANS, Bangalore – National Institute of Mental Health and Neuro Sciences is an autonomous multidisciplinary institute for patient care and academic pursuit in the area of Mental Health & Neuro Sciences. It functions under Ministry of Health and Family Welfare. It was declared a deemed University by the UGC in 1994 with academic autonomy. It mainly caters to service, manpower development and research.

Several national and international organisations are involved in collaborative projects with NIMHANS.

(iv) The Central Institute of Psychiatry, Ranchi (RINPAS) – It is directly under the control of the Directorate General of Health Services and Ministry of
Health and Family Welfare. It caters to the needs of people from all over India, Nepal & Bhutan.

It conducts post graduate courses in Psychiatry, Clinical Psychology and Psychiatric Social Work & Psychiatric Nursing. The institute is involved in providing services to the mentally ill both at international and community levels; it provides post graduate training in the field of Psychiatry and allied fields; it also conducts research in the behavioural sciences.

- Ministry of Urban Development

The Ministry of Urban Development has been designated as the nodal Ministry for providing barrier-free built environment for persons with disabilities. Model Building Bye Laws have been prepared to provide access for persons with disabilities to public buildings/places. State Governments and Union Territory Administrations take action for framing their own building bye-laws or adopt the bye-laws of Ministry of Urban Development.

The Delhi Division of Ministry of Urban Development had notified the amended Building Bye-Laws, 1983 to ensure that the public buildings were erected in Delhi to provide barrier free environment to Persons with Disabilities. These Building Bye-laws for barrier-free built environment in public buildings has been circulated to all the States and Union Territories for incorporation in the municipal building Bye-laws.
• Ministry of Housing & Urban Poverty Alleviation

Under the Urban Self service Programme (USEP) component of Swarna Jayanti Shahari Rozgar Yojna, there is 3 per cent reservation for persons with disabilities. Persons with disabilities are given assistance to set up self-employment ventures and are also given training to provide and upgrade skills for the purpose of setting up self-employment ventures or for securing salaried employment with enhanced remuneration.

• Ministry of Rural Development

All the District Rural Development Agencies are required to follow the guidelines for providing 3 per cent reservation for persons with disabilities in the major poverty alleviation programmes, under the National Rural Employment Guarantee Act, the Swarnjayanti Gram Swarozgar Yojana (SGSY) and the Indira Awaas Yojana (IAY).

The SGRY is applicable to all rural poor who are in need of wage employment. Preference is given to persons with disabilities. The self help groups formed under the Swarnjayanti Gram Swarozgar Yojana should ideally be disability-specific, wherever possible. However, in case, sufficient numbers of people for formation of disability-specific groups are not available, a group may comprise persons with diverse disabilities or a combination of persons with disabilities and able-bodied persons below the poverty line. Assistance under the SGSY, to individual Swarozgaries or Self Help Groups, is given in the form of subsidy by the government and credit by the banks. Subsidy under the SGSY to individuals is uniform at 30 per cent of the project cost subject to a maximum of Rs. 7500. In respect of persons with disabilities, the subsidy is 50 per cent of the Project Cost, subject to a maximum of Rs. 10,000.

Under the Indira Awas Yojana, dwelling units are allotted to the persons below the poverty line. 3 per cent of the funds are reserved for the benefit of persons with disabilities below the poverty line in rural areas.
A guideline for Central assistance to persons with disabilities under the Indira Gandhi National Disability Pension Scheme (IGNDPS) as part of the National Social Assistance Programme (NSAP) has come into existence from February, 2009.

For purpose of claiming Central assistance, the eligibility criteria are as follows:

i) The age of the disabled shall be between 18-64 years.

ii) The applicant must belong to a household below the poverty line according to the criteria prescribed by the Government of India.

iii) The applicant should be suffering from severe or multiple disabilities as defined in ‘Persons with Disabilities Act, 1995’ and the ‘National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999’ revised from time to time and any other guidelines issued by the Ministry of Social Justice and Empowerment in this regard.

- Ministry of Labour and Employment

(1) Employment exchanges and special employment exchanges

Although employment exchanges under the National Employment Service are generally responsible for the placement of physically handicapped persons, special employment exchanges were also set up for their selective placement. These special employment exchanges attempt at securing for the disabled the most satisfying form of employment suitable to the residual physical and mental potentialities of persons with disabilities. Special Cells have been provided in several general employment exchanges to cater to the special needs of persons with disabilities.

In order to provide placement service to disabled ex-servicemen/Border Security Force Personnel and dependants of defence service personnel / Border Security Force personnel killed or severely disabled in action, against the vacancies reserved for ex-servicemen and earmarked for priority categories, an ex-servicemen cell was set up in the
Directorate General of Employment & Training in July, 1972. Subsequently, the scope was extended with effect from February, 1981 for the benefit of ex-servicemen disabled during peace-time as well as dependants of the defence service personnel killed or severely disabled in peace time provided that the death or disability was attributable to military service. 43 special employment exchanges exclusively for PWDs have been set up for providing registration and placement services to persons with disabilities. Besides, there are 38 special cells attached with the normal employment exchanges for providing placement services to PWDs. Normal employment exchanges and special exchanges for physically handicapped provide necessary employment assistance to the registrants and which are placed against the vacancies notified by the employers. The Employment Exchanges have been working as placement cells for Persons with disabilities in the country.

(II) Vocational Rehabilitation Centres

Twenty Vocational Rehabilitation Centers for handicapped (VRCs) are functioning in the country, one each at Ahmedabad, Agartala, Bangalore, Bhubaneswar, Chennai, Delhi, Guwahati, Hyderabad, Jaipur, Jabalpur, Kolkata, Kanpur, Ludhiana, Mumbai, Patna, Thiruvananthapuram, Vadodara, Una, Puducherry and Srinagar. Out of these, the VRC at Vadodara has been set up exclusively for women. These Centres evaluate the capacities of persons with disabilities and provide them adjustment training and skill training with a view to integrate them in the economic mainstream and make them productive citizens of the country. They also assisted in obtaining other suitable rehabilitation services, such as job placement, training for self-employment and in-plant training. Rehabilitation services are provided to the persons with disabilities living in the rural areas through Mobile camps and Rural Rehabilitation Extension Centres.

- Ministry of Personnel & Training (DOP&T)

In accordance with the provisions of the PWD Act, 1995, the Department of Personnel and Training, Government of India, from time to time issues directives providing benefits to Government employees with disabilities. The Department of
Personnel and Training has launched a special recruitment drive to fill up backlog vacancies reserved for persons with disabilities vide OM No. 36038/2/2008-Estt (Res) dated 27.11.2009 & 15.01.2010.

5.2 Role of National Human Rights Institutions in promoting and protecting the rights of persons with disabilities.

National Human Rights Commission (NHRC) since its inception in 1993 has paid special attention to the rights of the disabled. Commission has focused on policy interventions, capacity building, ensuring exercising of right to employment, arrangements to ensure access to right to education. The Commission has been involved since the formative stages of the Convention and advocated the ratification of the Convention. As a follow up action, the Commission appointed a Special Rapporteur on Disability related issues and constituted a Core Advisory Group to advise on matters connected with and incidental to the promotion, protection and monitoring of the human rights for persons with disabilities. With a view to assess whether existing Programmes and Policies for persons with disabilities are having the desired impact and to identify gaps in implementation, if any, and to suggest appropriate strategies to deal with them, the Commission organized five Regional review meetings during 2008-09 in various parts of the country (NHRC : 2010).

- Relationship between the Convention and National Human Rights Institution

The Convention requires States to establish a framework, involving one or more independent mechanisms, to promote (e.g., through awareness-raising campaigns and public education), protect (e.g., by examining individual complaints and participating in litigation), and monitor (e.g., by reviewing legislation and examining the state of domestic implementation) implementation of the Convention. The Convention refers to a ‘framework’ rather than a national human rights institution’. However, in establishing such a framework, the State is to take into account the ‘principles relating to the status and functioning of national institutions for the protection and promotion of human rights’
as agreed by the United Nations General Assembly in 1993. These Principles have become known as the “Paris Principles”.

The Special Rapporteur of the National Human Rights Commission of India was representative of the National Human Rights Institutions in the Ad Hoc Committee. During the discussion various areas including article 33 of the draft Convention and definition on general obligations, equality and non-discrimination, legal capacity, education, health and environment were discussed.

The Asia Pacific Forum requested the Commission to urge the Govt. of India to direct its representative to support during the Adhoc Committee discussion for adoption of Article 33, which supported the role of National Human Rights Institutions. In pursuance, Hon’ble Chairperson of the Commission requested the Prime Minister of India vide letter dated 23rd August, 2006 to advice Indian delegation to UN Ad Hoc Committee to inform its position accordingly and reflect India as a responsible member of international community capable of assuming an important role in international affairs and governance (NHRC: 2007)

The commission is gearing up to the role of monitoring the implementation of rights of the disabled.

- Sphere of activities of NHRC
  
  (i) Capacity building by NHRC, India

The Commission has been deeply concerned about the protection and promotion of the rights of the persons with disability and their capacity building in this regard. Further, the disability rights are a new dimension in the human rights regime and much needs to be done to develop awareness among legal practitioners and academics across the country. Towards this end, the Commission launched a project in the year 2003 in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi National Open University (IGNOU) to orient legal practitioners, academics,

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9 Paris Principles are discussed in detail under Chapter 2.
activists with domestic and international law, encouraging its creative application for better protection and promotion of the rights of the persons with disability. Under this project three key areas were identified, namely:

a) A curriculum design

b) Training and reference material

c) Trainers to teach Human Rights, disability and law course in a stand-alone mode or as part of formal and non-formal courses in law and human rights.

Under this project a Training of Trainers program, National Workshop and five outreach programmes across the country in different universities were also organised during July 2004-March 2005. On June 23, 2005, the Commission hosted a National Conference on Human Rights and Disability. The objective was to crystallise strategies for mainstreaming disability in the development agenda of the country. The conference brought together all the major stakeholders like senior officials of concerned Ministries in the Government of India, NGOs working in the Disability Sector, persons with disabilities, heads of Apex Institutions such as State Commissioners for Persons with Disability, State Welfare Secretaries and Vice Chancellors of universities. To keep disability under the spotlight, the participants endorsed establishment of independent Department of Disability and Development (DDD) on the lines of Department of Women and Child Development, Government of India. The deliberations of the Conference were incorporated in the recommendations. The recommendations are arranged in three parts: Part I recommending broad policy changes for systemic improvements and sustainable development. Part II recommending specific measures by Apex Institutions for improving capacity of public administrators, field level functionaries and other service providers. Part III recommendations are addressed to various ministries and departments of the Government for incorporating human rights awareness component in the training programmes for persons with disabilities and rehabilitation workers

(ii) Right to employment
India over the last 30 years has put in place an impressive range of legal framework and administrative mechanisms to boost employment of persons with disabilities. However, for realisation of the rights of persons with disabilities, there is a need to have a systematic effort so that the institutions and their functionaries who administer the employment are made fully conversant with the complexity of legal and administrative arrangements. Interventions by National Human Rights Commission of India have focused on;

1. Handbook on employment of persons with disabilities

The Commission published a Handbook on ‘Employment of Persons with Disabilities in Government of India’. The Handbook is expected to serve as practical guide for the administrators, legal practitioners and persons with disabilities in employment or seeking employment.

The handbook is in a Question and Answer form and replies almost all questions concerning the issues of employment of persons with disabilities. The handbook also advocates the importance of a barrier free environment.

Rights of Persons with Disabilities of the right to work, some fifteen hundred cases and complaints were analysed and it was found that lack of awareness and sensitivity on the part of government functionaries is the key obstacle including negative mindset. Socio-Legal Information Centre, Delhi, assisted the Commission in consolidating the findings in the shape of a Handbook on Employment of Persons with Disability in Government of India. The book has been arranged in fifteen chapters and is a response to most frequently asked questions in the light of relevant laws, by-laws, rules, executive orders and instructions. For proper consideration of court law, examples of jurisprudence have also been cited. During the course of this study, many inconsistencies in the service rules came under sharp focus, and, therefore, Central and State Governments have been asked to undertake a systematic review of service rules to ensure their compatibility with the act.
Employment related provisions comprise the core element of the Persons with Disabilities Act, 1995. However, these have been visiting courtrooms leading to the largest number of judicial pronouncements around them with the aim to identify factors leading to gross violations.

2. Intervention by NHRC India in the National Employment Guarantee Scheme

The Govt. of India through an Act introduced National Employment Guarantee Scheme. The Hon’ble Chairperson of the Commission requested the then Finance Minister to delete the reference of able-bodied persons and to make appropriate provision for employment of persons with disabilities. Accordingly, the word ‘able-bodied’ was deleted from the Act.

(iii) Right to education

According to the Census 2001, there are 21.9 million persons with disabilities in India who constitute 2.13 per cent of the total population. Today, as it stands, their rights are more a myth than reality. Fifty one per cent of them have no access to education and 66 per cent of the disabled are unemployed. Presently Commission is focusing on:

1. Project on ‘Sign language’

The Commission had received a representation from the Delhi Association of Deaf, an NGO working in the field of hearing impairment, regarding the discrimination being faced by persons with hearing impairment. The Commission was astonished to find that the deaf children generally do not receive education through the medium of sign language, reason being non-availability of child centered sign language in the country and the absence of sign language training from the teacher education programmes for the deaf. To remove this injustice, the Commission advised Ministry of Social Justice and Empowerment and the Human Resource Development to support a project for standardization of the sign language for the deaf children in the age range of 0-14. Towards this end, the Commission facilitated a series of meetings and workshops involving a number of institutions and experts. These consultations were useful in
developing a project outline in a multi-partner mode. After extensive deliberations, a project concerning development of Indian sign language was evolved, involving other project partners like National Council for Educational Research and Training, New Delhi, National Institute of Hearing Handicapped, Mumbai and British Council, New Delhi. During the project, a technical vocabulary of sign language was prepared. At the instance of the Commission, the Ministry of Social Justice and Empowerment, Government of India has extended the necessary financial and technical assistance to the Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai (NIHH). The institute has been designated as a nodal agency for the implementation of the sign language project.

2. Intervention by NHRC India at the school level

The NHRC India has been intervening in various cases to realise the Constitutional obligation of the State to provide education without discrimination. In a case of a young girl student, who has been suffering from paralysis in her lower limbs since childhood and, who is totally dependent on a wheel chair for every movement, had been facing difficulties in attending classes, as her mother had to take her wheel chair to the classroom located on the first floor of the building of the school everyday. Taking cognisance of the issue, the Commission directed the District authorities to look into the matter and submit their comments.

The matter is still under consideration of the Commission. Similarly, the Commission has intervened in the case of discrimination against a visually impaired person who had been refused admission, as he was blind. Taking cognizance, the Commission directed the Department of Education, Government of Andhra Pradesh, to look into the matter and send his comments. The matter is still under consideration.

The National Human Rights Commission of India was shocked to learn that blind students routinely receive their Braille textbooks towards the fag end of the academic session or worse still; a majority does not have access to these books at all. Upon delving deep into the matter, it was found that many States and UT administrations have not even set up a single Braille press. Recognising that children with disability have a right to
receive an education in an appropriate environment, the Hon’ble Chairperson, NHRC requested to the Chief Ministers of all the States and Union Territories and stated that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books. In order to ensure timely availability of Braille textbooks, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(iv) Future role of NHRC

1. The National Human Rights Commission of India is making efforts to sensitise the policy makers and its implementers towards the rights of persons with disabilities.

2. The Commission of India has been and will continue to take \textit{suo moto} cognizance on the various reported cases of discrimination being faced by the persons with disabilities.

3. The Commission will monitor the implementation of 3 per cent reservation in employment to the persons with disabilities as provided in the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995.

4. The NHRC will continue to monitor and if needed intervene to ensure that education is provided to all including persons with disabilities and will try to ensure that all the educational institutions are barrier free and accessible.

5. NHRC India will create a force of trainers to spread awareness and make the education imparters sensitive towards the rights of persons with disabilities.
5.3 Role of judiciary

Depending on the Constitutional structure of each State party, ratification of the Convention will either automatically result in the content of the Convention becoming part of domestic law and applicable by domestic courts (known as the monist approach to the reception of international law, common to civil-law traditions), or will require the incorporation of the rights enumerated in the Convention through domestic legislation (known as a ‘dualist’ approach, typical in common-law traditions). Even in the latter case, however, signing or ratification of the Convention alone creates a strong interpretative preference in favour of the Convention. This means that the judiciary will apply domestic law and interpret legislation in a manner that is as consistent as possible with the Convention, applying a commonly held constitutional assumption that the domestic law of a State does not intend to be inconsistent with the State’s international obligations. In addition, as evident through case law developed before the adoption of the Convention, States recognise their obligation to apply the principles of equality and non-discrimination in protecting and promoting the rights of persons with disabilities. Most of the case law considered below is that of higher, appeals courts, although some decisions by national human rights complaints or conciliation bodies are also included. To date, the judiciary has played an important role in developing the principle of non-discrimination as applicable to persons with disabilities. There are both advantages and disadvantages to the judiciary playing such a central role in the protection of rights.

5.3.1 Judicial protection of rights

Most national legal systems use a formal and hierarchical judicial process to determine rights and duties and to establish legal principles. Through the combination of tribunals and civil codes, or the application of the doctrine of Precedent, this helps to ensure that the development of law and legal principles is consistent over time. It also has the advantage of bringing ‘test cases’ before higher courts, which are composed of senior judicial officers who are capable of giving careful consideration to issues that may be complex or that might have significant policy implications. Cases at this level also normally attract high-quality legal submissions and representation of parties. A decision
on a ‘test case’ can have repercussions not only for the parties to the dispute, but also for other people who might be in the same or a similar situation. For example, the decision of the court in the ‘test case’ might lead not only to compensation for the person bringing the dispute, but also to systematic policy changes and, therefore, to an improvement in the realisation of rights for a large group of individuals. The role of the judiciary in the protection of rights is therefore extremely important.

Judges are frequently considering cases concerning any of the full range of civil, cultural, economic, political and social rights. Various intergovernmental and non-governmental institutions have called for the development of case databases on the justiciability of rights. Such mechanisms can be useful for training and increasing awareness among judges and lawyers. Even prior to the adoption of the Convention, either as a result of specialised national legislation or through the application of the principles of equality and non-discrimination, national case law concerning the rights of persons with disabilities and the enforcement of these rights has already been developed, as have corresponding jurisprudence and commentary by international and regional human rights bodies. At the same time, there are some limitations inherent in the judicial protection of rights. Litigation, particularly at the appellate level, is expensive and lengthy. The cost of court proceedings may render such recourse inaccessible or unattractive. This may be particularly relevant to persons with disabilities who rely upon social welfare and who, depending on the nature of the issue involved, may not qualify for State-sponsored legal assistance. The time involved in legal proceedings may also either discourage the pursuit of valid claims or exacerbate the situation while proceedings are pending. For persons with disabilities, this may result in continued exclusion from participation in mainstream society. The nature of formal, judicial processes may also be inappropriate for resolving disputes concerning the rights enumerated in the Convention. Again, depending on the nature of the dispute or issue involved, mediation or conciliation may be a more effective means of ensuring compliance with the Convention. The various

10 See, for example, the recommendations in effective functioning of human rights mechanisms: national institutions and regional arrangements – regional arrangements for the promotion and protection of human rights in the Asian and Pacific region. (E/CN.4/2006/100/Add.1, paras. 34 ff)
alternative grievance mechanisms might at times, provide faster, cheaper, and more accessible and appropriate means of resolving disputes.

5.3.2 Case law on the rights of persons with disabilities

Persons with disabilities have brought cases before the courts in many countries and also before regional human rights courts, such as the European Court of Human Rights. In deciding on these cases, the courts have clarified what States must do to protect the rights of persons with disabilities and have provided remedies to people who have suffered violations of their rights. Listed below are some of the cases which ascertain the rights of persons with disabilities.

- Air carriers should provide a wheelchair for use between the check-in counter at an airport and boarding the aircraft as part of their service to customers. Requiring payment to use such equipment would be unlawfully discriminatory (Ryanair v. Ross [2004] EWCA Civ 1751)
- In medical settings, a lack of reasonable accommodation, in the form of sign language interpretation for a person who was born deaf and needs to use sign language to communicate, is incompatible with anti-discrimination legislation (Eldridge v. British Columbia [Attorney General] [1997] 3 SCR 624)
- A university had discriminated against a graduate student by refusing her access to a building after hours on the basis that she was suffering from depression, while other graduate students were granted access. The court held that access was part of services customarily available to the public and that the denial of access based on the student’s mental health amounted to discrimination (University of British Columbia v. Berg [1993] 2 SCR 353)
- Isolation and segregation of individuals with disabilities are a serious and pervasive form of discrimination. This is particularly relevant to the exclusion of children with disabilities from the mainstream schools (Olmstead v. L C [1999] 527 US 581)
- The delay of 40 months in providing a disability benefit was held by the Constitutional Court of South Africa to amount to not just a breach of social-
welfare law but, because of the impact on the capacity of the person to sustain herself, also a breach of her dignity (Department of Welfare v. Nontembiso [March 2006] Case No. 580/04, at 32).

II. Legal & policy framework

5.4 National Policy for Persons with Disabilities.¹¹

The government has come out with a National Policy for Persons with Disabilities, in February 2006, aimed at providing social security and enhancing the dignity and self respect of such people with a special focus on women and children. Under the Policy, there are mechanisms for promotion and protection of rights of persons with disabilities and providing them equal opportunity to participate fully in the society.

- Focus of the policy

(I) Prevention of disabilities, rehabilitation measures and addressing rural needs.

Since disability, in a large number of cases, is preventable, there is strong emphasis on prevention of disabilities. Rehabilitation measures are classified into 3 distinct groups (i) physical rehabilitation, which includes early detection and intervention, counseling and medical interventions and provision of aids and appliances. It also includes the development of rehabilitation professionals (ii) educational rehabilitation including vocational education and (iii) economic rehabilitation for a dignified life in society.

The policy recognises that at present rehabilitation services are largely available in and around urban areas, with no coverage of large majority of persons with disability in rural areas. Hence, it states that services run by professionals will be extended to cover uncovered and unserved areas. Further, new District Disability Rehabilitation Centres (DDRC) will be set up with support from State Governments. The availability of devices (prostheses and orthoses, tricycles, wheelchairs, surgical footwear and devices for

everyday activities, learning equipments like Braille writing machines, dictaphones, CD players/tape recorders, low-vision aids, special mobility aids like canes for the blind, hearing aids, educational kits) will be expanded to cover uncovered and unserved areas.

(II) Importance of service sector and self-employment

On reservation in government employment (3 per cent in government undertakings and PSUs in identified posts), the policy states that the list of identified posts, notified in 2001, will be reviewed and updated. It also recognises the growing importance of the service sector and the potential for employment of persons with disability, for which incentives like tax exemptions and award to the private sector will be considered.

Self employment too has been emphasised since it is most often the avenue of choice for persons with disability. The existing system of providing soft loans through the National Handicapped and Finance Development Corporation will be improved to make it easily assessable, with transparent and efficient processing procedures. The government will also encourage self-employment by providing incentives like tax concessions, exemption from duties, preferential treatment for the procurement of goods and services by the government from the enterprises of persons with disability, etc. Priority in financial support will be given to self-help groups formed by persons with disability.

(III) Women with disabilities

With 93.01 lakh women with disabilities, who constitute 42.46 per cent of total disabled population the policy states that special programmes will be undertaken for education, employment and providing of other rehabilitation services to women with disabilities keeping in view their special needs. Programmes to rehabilitate abandoned disabled women/girls by encouraging their adoption in families support to house them and impart them training for gainful employment skills. Keeping in note that women with disabilities have serious difficulty in looking after their children, Government has emphasised to take up a programme to provide financial support to women with disabilities so that they may hire services to look after their children.
(IV) Children with disabilities

Taking into view that children with disabilities being the most vulnerable group who need special attention policy emphasises that Government would strive to:

(a) ensure right to care, protection and security for children with disabilities,

(b) ensure the right to development with dignity and equality creating an enabling environment where children can exercise their rights, enjoy equal opportunities and full participation in accordance with various statutes.

(c) ensure inclusion and effective access to education, health, vocational training along with specialised rehabilitation services to children with disabilities; and

(d) ensure the right to development as well as recognition of special needs and of care, and protection of children with severe disabilities.

(V) Barrier-free environment

The policy also addresses one of the biggest obstacles persons with disabilities face in carrying on a normal life-an environment that prevents or hinders access to public spaces. It reiterates that to the maximum extent possible roads, highways, buildings/places/transportation systems for public use should be made barrier free.

(VI) Issue of disability certificates

The government has notified guidelines for the evaluation of disability. Disability certification procedures will be simplified so that persons with disability are able to obtain disability certificates easily.

(VII) Social security-tax relief and unemployment allowance

Given the additional expenses incurred by caregivers, the policy states that State governments will be encouraged to develop a comprehensive social security policy for persons with disability and their guardians. A system of regular review of tax relief
policies granted to PWD will be put in place, and State governments will be encouraged to rationalise pension and unemployment allowances for PWD.

(VIII) Promotion of non-governmental organisations

The policy stresses the importance of the NGO sector as a crucial institutional mechanism to provide affordable services to complement the efforts of the government and the significant role NGOs have played in the provision of services for persons with disability. The policy states that interaction with NGOs will be enhanced on various disability issues regarding planning, policy formulation and implementation. Networking, exchange of information and sharing of good practices amongst NGOs will be encouraged and facilitated.

(IX) Collection of regular information on Persons with disabilities and creation of a website

Policy emphasises that the differences in the definitions adopted by the census and NSS will be reconciled. A comprehensive website for PWD will be created under the Ministry of Social Justice and Empowerment; private and public sector organisations will be encouraged to make their websites accessible to the visually impaired.

- Responsibility for implementation

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 is set up to coordinate matters relating to implementation of the national policy. All stakeholders, including prominent NGOs, disabled people's organisations, advocacy groups and family associations of parents/guardians, experts and professionals are also represented on this body. Similar arrangements are encouraged at the State and district levels. Panchayathi Raj institutions and urban local bodies are associated with the functioning of District Disability
Rehabilitation Centers, district level committees to coordinate matters relating to implementation of the Policy. Incidentally, the role of Panchayati Raj institutions has been highlighted in the implementation of the policy, to address local-level issues and draw up suitable 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 have necessary mechanisms to implement the policy. Each ministry/department has evolved its own five-year perspective plan and annual plans setting targets and financial allocations. The annual reports of each ministry/department will indicate progress achieved during the year.

The chief commissioner for disabilities at the central level, State commissioners at the State level, shall play a key role in implementing the national policy, apart from their statutory responsibilities.

Every five years a comprehensive review will be carried out on implementation of the national policy. A document indicating status of implementation and a road map for five years will be prepared based on deliberations at a national convention. State governments and union territory administrations will be urged to take steps to draw up State policy and develop action plans.

- Criticism and inherent lacunae

A glaring example of insensitivity in the national policy is that the ‘responsibility for implementation’ section states that infrastructure created during the course of implementation must be maintained and effectively used for a long period. The policy adds “The community should take a leading role in generating resources within themselves or through mobilisation from private sector organisations to maintain the infrastructure and also to meet running costs. This step will not only reduce the burden on
state resources but will also create a greater sense of responsibility among the community and private entrepreneurs."

The meaning of community here includes public works departments, panchayati raj institutions and civil society organisations, a ministry official clarified. He add that it was not as though the government was withdrawing from its responsibilities, it was only trying to create a sense of ownership among the community.

It would appear as if the State were absolving itself of its major duty and responsibility, placing the onus of generating resources on the community itself. This is unfair. The Indian State and its people have a responsibility towards persons with disability that they cannot ignore.

Further, the absence of accurate data on the actual number of persons with disabilities, the extent of their disability and their requirements is a huge constraint. Collection of information on persons with disability through the census began only with the Census 2001. Though the policy states that the NSS will have to collect information on PWD at least once in five years, and differences in definitions adopted by the two agencies will have to be reconciled, the veracity of the actual data generated will have to be assessed.

The emphasis on self employment too is almost an admission of failure in ensuring in public and private sector employment, despite a 3 per cent quota in the public sector (according to the PWD Act). The increased emphasis on self employment poses the threat of further alienating PWD from main stream society.

Finally, the biggest impediment in translating the national policy into achievable goals with a timeline is the plethora of ministries and departments; the nodal ministry itself seems more pre-occupied with issues related to scheduled castes and tribes.
Suggestions for change

As things stand, persons with disability encounter huge difficulties in interacting with government officials and making out applications. Although laws exist, they lack teeth. 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 fact that according to the 1995 Persons with Disability Act, the provision is mandatory by law.

Besides, even government organisations have not managed to meet the 3 per cent job reservations for persons with disability. Inclusive education too has largely been a failure. Mainstream schools do not have facilities for children with disability thereby effectively excluding them from the first level of social interaction that would help towards developing a more sensitised and aware population.

In the light of this, it remains to be seen whether the National Policy for Persons with Disability 2006, that admittedly looks good on paper, will ever be effectively implemented on the ground. It is time for the Ministry of Social Justice and Empowerment to go full throttle and prepare a timeline for implementation of key deliverables, with departmental accountability. It’s time now for real action.

5.4.1 Review of policies and programmes

From the Ninth Five Year Plan there was a slight shift from a welfare-based approach for the disabled to a rights-based approach. The Tenth Plan took serious note of the slow pace of implementation of the enabling legislations and advocated a multi-sectoral and multi-collaborative approach to make the provisions of the Persons with Disabilities Act more effective. It was felt that it would be possible only through clear-cut

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12 The 1995 Act and 1999 Legislation was enacted. Both these enabling legislations cover a wide range of activities, which include issuance of disability certificates and prevention and early detection of disabilities; promoting the integration of disabled students in main stream schools and removal of architectural barriers from schools, colleges, and universities; providing incentives to private sector employers to ensure that persons with disabilities constitute at least 5 per cent of their workforce; and framing a scheme for payment of an unemployment allowance to those disabled people who have been registered with a Special Employment Exchange for over two years but could not be placed in any gainful employment.
delineation of responsibilities to the concerned Ministries/Departments. It was however recognised that the Ministry of Social Justice and Empowerment, being the nodal Ministry, should play a lead role in ensuring the objectives of the Act. The concerned Ministries/Departments were expected to formulate detailed rules and guidelines for effective implementation of the Act, besides monitoring/reporting the progress on a regular basis. To ensure adequate financial support to the disabled, the Tenth Plan advocated the introduction of a ‘Component Plan for the Disabled’ in the budget of various Ministries/Departments.

As per the provisions of the Persons with Disabilities Act, 1995, 3 per cent reservation in employment is being provided to the disabled people. For vocational training, 852 government-run and 105 privately run Industrial Training Institutes (ITIs) provide 3 per cent reservation in seats for persons with disabilities. The SGSY, Indira Awaas Yojana (IAY), National Rural Employment Guarantee Act (NREGA) and Sampoorna Grameen Rozgar Yojana (SGRY) provide for 3 per cent reservation/benefits to disabled people. The National Handicapped and Finance Development Corporation provide loans on concessional terms to self-employed persons with disabilities. Aids and appliances are provided to the disabled under the Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances (ADIP). To enhance the economic potential of disabled people, by the end of the Tenth Plan, 128 District Disability Centres have been made operational. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability has, so far, registered 731 NGOs. Under the scheme to promote voluntary action for persons with disabilities during 2005-2006, 1533 VOs were supported financially for providing services to 1.8 lakh disabled persons. The government has been encouraging education among persons with disabilities. Five hundred scholarships were provided every year during the Tenth Plan for higher and professional courses. The Ministry of Health and Family Welfare has initiated a number of programmes for the prevention and reduction of the incidence of various disabilities.\(^\text{13}\)

\(^\text{13}\) See Eleventh Five Year Plan 2007-12, Vol 1, Inclusive Growth, Planning Commission, Government of India.
5.5 Summing up

India has one of the more developed disability policy frameworks of developing countries, but there remain a number of policy shortcomings in its entire design, right from the PWD Act to the nodal agency for disability. The entitlements under the PWD Act are often legally framed in a general manner, which does not facilitate enforcement, and are not linked to any sanctions for non-compliance. This is compounded by a rather weak enforcement mechanism; with no direct enforcement authority granted to the Act’s watchdog—the Central and State Commissioners for Persons with Disabilities, which has quasi-judicial powers. Further, the approach of the Act has rather limited roles for actors outside the administrative framework, including NGOs/ DPOs, PWD themselves and PRIs.

The National Policy on Persons with Disabilities which was approved by the Government in early 2006 was indeed a welcome measure which did more to propose concrete strategies for realising the entitlements of persons with disabilities, in the light of India’s obligations as a result of its accession to the Convention. But there continues to be very limited reference to the role of people with disabilities themselves as active participants in realising the objectives of the policy. To date, the only States that have draft disability policies are Chattisgarh and Karnataka. The latter largely mirrors the structure and provisions of the PWD Act, without in most areas providing more specific commitments or implementation guidance.

Implementation is also constrained by the complex institutional framework for operation of disability sector in India. There are inherent challenges for the nodal ministry, particularly in the areas of special education and early identification of disability, where the MHRD and Ministry of Health together with Women and Child Development Ministry are the appropriate lead agencies. In addition, there is a broader challenge of convening power of MSJE relative to ministries which it must coordinate. Finally, in addition to no direct enforcement authority, the CPWDs have limited capacity to perform their watchdog function effectively, in many States having skeletal staff levels. The ‘Disability Division’ of the Ministry of Social Justice and Empowerment will
have to be strengthened by converting it into a separate department, so that it can liaise effectively with all the other concerned Ministries/Departments and fulfill its responsibilities towards the disabled.

Since the National Institutes play a pivotal role in the empowerment of people with disabilities, it is essential that these Institutes be strengthened as Centres of Excellence on par with international standards for undertaking the following tasks: (i) training of professionals, (ii) capacity building and (iii) technology transfer and research. To promote greater accessibility and a barrier-free environment to the disabled, a new National Institute of Universal Design is expected to set up in the Eleventh Plan.

To enhance the economic potential of persons with disabilities, 199 DDRCs for comprehensive service in community setting have been sanctioned, but only 128 were made operational by the end of the Tenth Plan. The Eleventh Plan will therefore ensure that the remaining 71 centres are also operationalised. Also a concerted effort will be made to extend the scheme to another 101 districts so that at least 300 districts are covered by the end of the Plan period. In the selection of the additional 101 districts, special care will be taken to cover backward areas where the prevalence of disability is higher and where services as well as facilities for them are inferior to those in other parts of the country.

Due to lack of awareness very few people were able to get the benefit from the scheme of ADIP. Endeavor should be made to create awareness about ADIP and other such schemes. The income ceiling for availing assistance will be raised to Rs.10000 per month. Moreover, the ceiling for purchase/fitting aids and appliances should also be enhanced to Rs.25000 per month. In the period 1998-2003, just Rs 1042 crore was spent by MSJE on the disability sector. This represents a negligible portion of total budgetary spending. For manufacturing these aids and appliances, there is need to enhance the production capacity and ALIMCO should not be a monopoly supplier. The approach should be to provide the best possible assistive devices by encouraging multiple manufacturers, and even through imports.
All Commercial Banks, Regional Rural Banks (RRBs) and Cooperatives should provide loans to disabled people on concessional terms for undertaking self-employment ventures. Such credit should be included in the priority sector and NABARD should ensure appropriate refinancing mechanisms. Though the public implementation institutions are relatively weak and under-resourced, NGOs have developed some promising approaches. The disability NGO movement has contributed greatly to promoting the interests of persons with disabilities. The next chapter will concentrate on the role of civil society in the implementation process.