

# RPWD Act, 2016: Fostering a Disability-friendly Workplace in Indian Organizations

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*Significant number of Indians have disabilities of one form or the other. Recently in India Rights of Persons with Disabilities Act (RPWD), 2016 has been enacted which makes both public and private sector organizations accountable for ensuring disability-friendly workplaces. This article discusses in detail how organizations can inculcate disability-friendliness. In order to draw holistic implications on disability management in certain places the article has gone beyond RPWD Act and has taken note of recent developments in foreign countries contexts. Successfully creating a disability-friendly work environment is a complex issue, but even attempting at it is a noteworthy move towards addressing some of the barriers that a disabled individual faces during their work life.*

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## Introduction

According to 2011 census, over 2.68 crore people (approximately 2.21% of the total population of 121 crore) in India are suffering from some forms of disabilities (Government of India, 2016). Category wise disabilities are: seeing (18.8%), movement (20.3%), mental illness (2.7%), mental retardation (5.6%), speech impairment (7.5%), hearing impairment (18.9%), and multiple disabilities (7.9%). According to the same census nearly one-third of total disabled individuals (approximately 36%) are employed.

One of the first legislations with respect to disability related issues was American with Disabilities Act, 1990 (ADA). In UK there is Disability Discrimination Act, 1995 (DDA). Unlike developed nations, India's disabled are socially vulnerable due to lack of support in terms of education, accessibility, medical facility, and overall attitudinal barriers towards acceptance and inclusion (Kothari, 2012). In India, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (PWD), 1995 was enacted twenty years

back and meanwhile there were number of changes in the disability sector, in terms of different forms of disabilities and rehabilitation. Thus, in order to make Indian disability legislation in-line with other progressive disability laws recently Rights of Persons with Disabilities Act (RPWD), 2016 came into force from 19<sup>th</sup> April, 2017. This Act is in-line with the UN Convention of the Rights of Persons with Disabilities (UNCPRD) Treaty, which India signed and ratified without any reservation. The primary philosophy of RPWD is to ensure non-discrimination, equal opportunity, respect and dignity of individuals having disability. In order to ensure non-discrimination and equal opportunity of disabled RPWD has mentioned the roles and responsibilities of different stakeholders like government, both public and private sector organizations, care-givers, disability based organizations, and society at large. Based on RPWD and literature review the present article focuses on how Indian organizations can build a disability-friendly work environment by being sensitive toward employees, suppliers, customers and society at large.

### **Definition of Disability**

Legal definition of disability varies from country to country. In the Indian context earlier PWD Act, 1995 defined disabilities under seven categories, which in RPWD got extended to twenty-one categories of disabilities, by including many new ones like acid attack victims, dwarfism, thalassemia, parkinson's disease, sickle cell disease etc. Though there are still some missing disability cat-

egories (for example, AIDs, cancer etc.) but the law has kept the provision to include other categories as and when it will be specified by the Central Government. As per RPWD only persons with benchmark disabilities, having not less than 40% disability would be considered for reservation in posts/services of government organizations. Certificate from competent authority is a must for getting disability related benefits.

### **Dealing with Disability**

Theoretically, there are four existing disability models that try to answer how to deal with disability. Charity Model of disability is based on pitying disability, assuming that disabled are helpless, and dependent on others. Sometimes disabled individuals themselves may assume or reinforce this concept of self-pitying. Medical Model of Disability is based on the assumption that disability is something not "normal" and thus needs to be treated or cured. Social Model of Disability is the one where it gets acknowledged that a person is disabled due to social barriers (physical, attitudinal and institutional). Rights based Model of Disability, similar to Social Model of Disability, recognizes rights of disabled as basic human right, and attempts to work on empowerment and full participation of disabled individuals in the society.

Previous PWD Act, 1995 was critiqued for it being inclined more to Medical Model of Disability (Ghosh, 2016). RPWD, 2016 is prone toward Social and Right based model of disability. Before we move into how organizations can cre-

ate affirmative action programs and reasonable accommodations for disabled employees we need to focus on rationale for such programs.

### **Affirmative Action Programs**

There is substantial critique of disability laws for putting undue burden on employers for “reasonable accommodation”. Reasonable accommodation may require employers to make certain modification/adjustments for disabilities in an individualized manner and thus changing the so called “neutral” policies, which is based on an assumption that all employees have the same ability. Bagenstos (2003) had put number of interesting arguments in favor of affirmative action and reasonable accommodation for disabled in his article on “rational discrimination”.

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First, that affirmative action creates a “reverse discrimination” for the non-disabled is based on a narrow conceptualization of equality. Disability related affirmative action programs need to ensure not only that disabled individuals are treated no worse than the non-disabled, but also that in certain cases they are treated differently and arguably better than the non-disabled to achieve a truly equal status.

Second argument which goes against disability related accommodation is that

it may restrict legitimate desire of employers to save money, since “reasonable accommodation” can be costly to employer. There are three counter-arguments toward this. (a) As per the legal requirement, employers need not have to take undue hardship or invest a huge amount to provide accommodations for the disabled. (b) For a disabled individual if a building or a certain plant site requires a modification it would stay there for a long time. At the very first place, why such infrastructure was not created was based on a faulty assumption that everyone is having the same level of ability. Thus, making modifications, which are often a major requirement for disability related accommodation, is supposed to be borne by employer. (c) The argument that accommodation reduces legitimate right to profiteering is also based on capitalist rationality argument where employees are treated as mere net marginal product. Accommodation requirement compels employers to take employees in capitalist irrational fashion.

Third, the objective of affirmative action is that as a policy it is supposed to eliminate biases meted out to groups of people who were excluded from the mainstream society. Many a times this social inequality leads to material inequality as well. Studies have reported that majority of the times disabled individuals are also monetarily not well-off (Rao, 2009). Generally disabled individuals are also excluded from various functions and other civic activities due to prejudice or stigma associated with them or simply due to lack of infrastructural support (IANS, 2017). The problem is that as a

group if these situations persist then many disabled individuals may not take up improving their skills and a vicious cycle of exclusion may continue, where employers may even discriminate against them more and they in turn would not develop themselves. Oliver (2005) has extensively argued that how economic, political and other forces create a dependency relation in disabled people. Thus, in order to break the vicious cycle of exclusion and dependency organizations should join hands in affirmative action programs.

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Fourth, every time an employer refuses to take a disabled employee based on the assumption that s/he is less worthy is committing a discrimination. Rational discrimination, for good reason, is called for to not commit this intentional discrimination. Here, another interesting debate comes up. If an employer discriminates against an employee who is an able-bodied individual, based on personal prejudice, then the employer is not going to be penalized, however, such is not going to be the case if a qualified disabled individual is denied the job. Counter-argument to this issue could be that the Act is not focused on individual prejudice correction, rather it is involved in systematic discrimination meted out by disabled individuals and this systematic discrimination is worse than one or two arbitrary problem(s). Another argument against affirmative action is that it en-

courages gross stereotyping of an employee based on a particular characteristic of disability. But that also equally holds when we take certain MBA from a particular college on the basis of his/her single characteristic of educational qualification. Disabled individuals are often on the wrong side of the stereotypical judgment. Thus, in order to check these biases affirmative action programs are necessary.

Finally, when employers individually and collectively resist to take actions which can make discrimination perpetual, in an aggregated manner a system of disability-accommodating environment can be created which is less discriminatory. Contributing to a system of injustice is itself immoral.

Thus, in many countries, including in India, in order to maintain legal compliance, organizations have to create a disability-friendly workplace. RPWD has clearly specified that contravention of the provision of the Act by companies and individuals would attract penalties. Apart from legal compliance reasons there are several other business reasons for nurturing a disability-friendly workplace. First, customers are appreciative about organizational support for disabled individuals (Goyal, 2017). By accommodating disability, organizations can even tap on untapped disability-based market segments. Second, employee morale becomes high when organizations support disabled employees. Third, disabled employees are less prone toward attrition. Given high recruitment and initial training costs, organizations can save substan-

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tially due to this. Fourth, through embracing disability-friendly workplace organizations ensure flexibility, which can become an important employee value proposition. Finally, an inclusive workplace where all forms of differences are rightly nurtured is significant for community and society at large. Thus, accommodating disability can be thought of as a part of corporate social responsibility of any organization. In the next section we focus on how organizations can build up a disability-inclusive workplace.

### Setting Up a Policy

Organizations need to develop beforehand a written policy or guideline for handling disability related issues in the workplace (Meyer, 2016) so that it is not left to individual manager's interpretation or discretion. For this, organizations need to work in collaboration with disabled individuals, medical professionals, academia, disability experts, legal professionals and other organizations to better understand different forms of disabilities and different ways of accommodation. Given worldwide emphasis by disabled individuals that '*Nothing about us without us*' (Scotch, 2009) it is important to include disabled employees while formulating such a guideline for disability management. As an important step toward effective handling of disability, Confederation of Indian Industry (CII) has for-

mulated and circulated among its members, CII Corporate Code on Disability, where member organizations are encouraged to take a pledge that 1% of their workforce would consist of disabled members.

### Affirmative Action Program

Affirmative Action Program is an important first step for organizations to accommodate disabled individuals, who otherwise may find it difficult to enter into the workforce. According to RPWD, for government organizations reservation of at least 4% posts (which earlier in PWD was 3%) for disabled individuals is a mandatory requirement. The manner in which this 4% reservation needs to be distributed amongst different disability groups in public sector organizations has also been specified in the Act:

- (a) Blindness and low vision -1% reservation
- (b) Deaf and hard of hearing – 1% reservation
- (c) Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy – 1% reservation
- (d) Autism, intellectual disability, specific learning disability and mental illness
- (e) multiple disabilities - 1% for both categories (d) & (e)

In such cases where any vacancy cannot be filled up due to non-availability of suitable persons with benchmark disability, then the vacancy may be filled

up by interchange among other categories, and in case still no person with benchmark disability is available then only a such post can be filled up by a non-disabled candidate after a considerable period.

Emphasizing on affirmative action programs the Act has tried to create a level-playing field for persons with disabilities. However, there are likely to be three critical challenges here. First challenge pertains to the privacy issue of disabled individuals. Currently, a medical certificate (at least 40% benchmark disability) is essential for availing of benefits under the Act. Thus it may pose a challenge for protection of privacy of a disabled individual (Mishra, Parker, Nimgaonkar & Deshpande, 2012). This may particularly become issues of concern where disability is invisible in nature (for example depression). In such cases, where individual requires reasonable accommodation from the employer they will have to disclose their disability status to employers. As per Americans with Disabilities Act (ADA) employers in such cases are required to keep all information pertaining to medical conditions of employees as confidential. Taking note of ADA, Indian organizations should also ensure that only medical officers and staff members dealing with disability information are the only ones who would know the pertinent medical details of an individual. Whether the disabled individuals will reveal their medical status to their colleagues, is best left on the individual judgment of the disabled. Given the nature of prevailing stereotype, it becomes difficult for the person suffering from

disability to reveal his/her medical status to colleagues.

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Second challenge is related to getting a talent-pool of qualified disabled individuals. In order to handle this, organizations can collaborate with special employment exchanges, NGOs, disability based associations for getting the right kind of talent pool. There are many ways through which organizations can address the skill enhancement of disabled. First, sponsoring candidates at the school/college level. Second, offering internships to disabled individuals, and hiring some of them from this pool also can be initiated. For example, United Parcel Service (UPS) has created Transitional Learning Center, where people with disabilities participate in two-week pre-employment training workshops (US Chamber of Commerce, 2017). In these workshops through classroom training, and hands-on simulation participants get acquainted with job responsibilities, safety related issues and soft skills which would be required after joining the organization. After successful completion of such programs trainees get hired by UPS.

Third challenge is connected to training the recruiter on how to deal with disabled candidates. Training the recruiter or interviewer to properly interact with the prospective disabled candidates is an

area where organizations need to work on.

Generally, in public sector organizations, before hiring disabled candidates, different posts are identified and disabled candidates are accommodated only in these pre-specified posts. In some of the cases only low-level, low-skilled jobs were being identified as suitable for disabled candidates, and that again reinforces the stereotypical notion that disabled are only suitable for low end jobs (Kothari, 2012). Disability Discrimination Act (DDA) in the context of UK has stopped identifying jobs for disabled candidates. Reasonable accommodation can make the process of identification of posts for disabled a redundant process.

#### **Reasonable Accommodation**

Reasonable accommodation will vary case by case basis and without making the organization to undertake undue burden/hardship. In the case of *Ranjit Kumar Rajak v. State Bank of India (SBI)* (2009) the petitioner Ranjit Kumar Rajak had a renal transplant in 2004 and later on applied for the post of probationary officer at SBI. Initially the bank rejected him on the ground that he was found medically unfit for the post. The petitioner approached Bombay High Court, where the bank argued that the petitioner would be supposed to undergo medical check-ups frequently and that would be costly for the bank. Quoting Convention on the Rights of Persons with Disabilities (CRPD) Bombay High Court discussed the definition of reasonable accommodation, where it was emphasized that with-

out imposing undue hardship, appropriate modification and adjustment should be done to ensure that persons of disability can enjoy and exercise their human rights on an equal basis. The court directed that the petitioner should be offered the appointment and allowed to join the post in the bank. In RPWD there's no provision for extra leave for disabled individuals. Reasonable accommodation of disabled individuals will require organizations to modify employee's workload, make adjustments in ergonomics and changing organizational attitude toward disability.

#### **Disability Benefits**

Earlier in public sector organizations many differently abled individuals used to get stagnated at the lower levels of Group C & D positions due to their physical disability. As per norm, Central Government did not permit reservation of jobs in higher positions of Groups A & B. Recently in *Rajiv Kumar Gupta Vs. Union of India* (2016), Supreme Court repealed Central Government's order and ruled that there should be reservation for all the government posts. Upper age limit for recruitment for people with benchmark disabilities in government jobs have also been relaxed as per the Act. For private sector organizations though the rule is not stringently laid down, it has been mentioned that private sector organizations would be encouraged to ensure that 5% of their workforce consists of people with benchmark disabilities.

Disabled government employees are expected to be covered under special in-

insurance schemes to be framed by the appropriate government. Posting / transfer of disabled employees (as far as possible) is expected to be near their native places. Family pension is expected to be given to the disabled son/daughter of a government employee. Disabled government employees are provided special travelling allowances. There is also a special provision for allotting residential accommodation to disabled employees under certain quota. Disabled employees are allowed to claim Leave Travel Concessions (LTC) for an escort who travels along with him/her. Government has constituted special awards for best disabled employees to recognize their contributions.

### **Sensitization Programs**

Physically disabled individuals are stereotyped in innumerable ways, which may range from stereotyping disabled individuals as quiet, honest, gentle, benevolent, helpless, hypersensitive, depressed, shy, unsociable, and submissive, saint like, courageous (Stone & Colella, 1996). Sometimes, due to ignorance, there is a possibility that employees may mishandle disabled colleagues. In order to address this, TD Bank in USA had issued Disability Etiquette Guide for all to help everyone understand different forms of disabilities and how to effectively deal with each of the disabilities. Special mentorship programs can be launched to help disabled individuals integrate effectively. Apart from sensitization training for non-disabled employees, when qualified disabled individuals take important positions in organizations or success sto-

ries of disabled candidates are shared organization wide, then the existing stereotypes can get checked to an extent (Stone & Colella, 1996). In an experimental design based study it was also found out that contact and personal interactions with disabled individuals are more effective in changing stereotypical bias of non-disabled individuals than the usual lecture and video-based training programs (Daruwalla & Darcy, 2005).

### **Grievance Redressal**

One of the fundamental philosophies of Disability Act is ensuring non-discrimination and equality not only between disabled and non-disabled, but also amongst different types of disabled individuals. For example, it cannot be assumed that the kind of challenges met by a person suffering from hearing impairment is less severe than that of a blind person. In the case of Deaf Employees' Welfare Association vs Union of India & Others (2013) it was upheld that deaf persons are to be given the same transportation benefit as has been provided to blind and orthopedically handicapped persons in government organizations. As per RPWD every government organization is supposed to appoint a Grievance Redressal Officer whose task would be to inquire disability related complaints within two weeks of its registration.

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### **Retaining the Disabled**

RPWD like the previous PWD Act clearly mentions that no government establishment will be able to dispense with or reduce the rank of a disabled employee in case an employee acquires disability during his or her service tenure. In case the employee becomes unsuitable for the position s/he was holding, then organization needs to put him/her under the same pay scale in another post. In case such post is not available at that time, then organization needs to keep him/her in a supernumerary post until a suitable post becomes available or the person attains superannuation, whichever happens earlier.

### **Employee Resource Groups**

People with disabilities in general face difficulties for building up social network, due to their physical and psychological barriers (Langford, Lengnick-Hall & Kulkarni, 2013). However, if they are able to freely mix with each other and interact they can substantially provide each other the much needed social support. Many organizations actively encourage and support disability based groups. In India employees on their own have also formed disability based associations in the organizations they serve to ensure exchange of workplace experiences and sometimes to raise voices against management. For example, Northern Railway Physically Handicapped Employees Welfare Association and Visually Impaired Bank Employees Welfare Association were formed by disabled employees of railways and banks

respectively to provide support to disabled employees.

### **Promotion of Overall Health**

Organizations can play an important role in promoting a healthy work culture, by supporting employees to take time off, providing flexibility in the work schedule, encouraging employees to take short breaks/ vacations. Going beyond legislations, organizations can promote healthy life-style in employees, try to curb employees' work related stress, and encourage employees in changing certain unhealthy behavior. Along with physical check-ups many organizations provide psychological counseling facility accessible to employees. Providing gym facility, quiet rooms where employees can reflect go a long way in nurturing a healthy life style in the workforce.

### **Universal Design**

The basic principle of universal design is that it should accommodate needs of disabled and non-disabled individuals both in physical and virtual platforms. It is based on seven principles: (a) the design is useful to all with diverse abilities, (b) there is flexibility in use, (c) the design is simple and intuitive, (d) the design communicates necessary information of usage, (e) the design is safe, (f) the design requires less physical effort, (g) design provides appropriate size and space for approach, and use. A recent study by Shpigelman (2018) found that people with intellectual disabilities can benefit substantially by making friends on the virtual platform, however they also

face substantial stress and frustrations due to accessibility issues. Assistive devices, such as alt text, close captioning, screen magnifier and other technical supports can be provided on the virtual platform in order to make it accessible by all. IBM has done noteworthy work in accessibility field by introducing braille printer, talking typewriter, screen reader, automated captioning and editing solution, mobile accessibility checker which have made virtual world considerably accessible. In the physical environment, in case of public buildings a time line of 5 years from the notification of Central Government rule has been set out in RPWD for making existing infrastructure and premises accessible.

### **Friendly Market Initiatives**

While evaluating organization on disability- friendliness US Chamber of Commerce in their workforce inclusion assessment tool, evaluates whether images of people with disabilities appear in advertisements, and other external communication materials of organizations (US Chamber of Commerce, 2017). As compared to gender and race, disabled individuals are quite rarely used in advertisement campaigns (Furness, 2002). Few organizations like Coca-Cola, BBC have come up with interesting ads, which included disability related themes. Interestingly, due to the fact that disability based advertisements are almost invisible, whenever organizations have come up with disability based themes they are taken as innovative advertisements and are well accepted or widely discussed. Recently, creative advertisements made

by Channel 4, “We’re the Superhumans”, and Maltesers’ disability campaigns (Vizard, 2017) generated such interesting discussions. Through these advertisements, apart from generating interest in the advertised product/service, organizations can send an important message that disabled individuals are an integral part of the society.

Organizations looking to build a disability-friendly workplace also need to provide reasonable accommodation to its customers as well. In a case of Javed Abidi vs Union of India & Others (1998) the petitioner Mr. Abidi argued that ambulift, and wheel chair facilities should be provided by the aircraft. Initially Indian Airline defended that it will be costly for them to provide such facilities, but later on they agreed to arrange for the same. Also, in this case, the petitioner raised why there would be differences in air-ticket concessions being provided to blind persons versus those suffering from locomotor disability. The court upheld that depending on the degree of disability both blind and those suffering from locomotor disability should be provided the same ticket concession. In a study done on disabled customer’s experience of a retail outlet it was found that 70% of customer’s experience of being welcomed or not depends on the nature of interaction (or the lack thereof) between the service personnel and the disabled customer (Baker, Holland, Kaufman-Scarborough, 2007). This also reiterates the importance of employee sensitization on disability related issues so that they can comfortably address disabled customers’ needs.

### **Supplier Diversity Program**

In US and UK, under Supplier Diversity Program a certain percentage of supplies are purchased from different minority-run organizations, including disabled-run business organizations. A study done by Ball, Monaco, Schmeling, Schartz and Blanck (2005) on fortune 100 companies show that companies like IBM, Verizon, Wal-Mart, Home Depot, Dow Chemical, Bank of America and others procure a certain percentage of their supplies from disabled-run businesses. This definitely helps the disabled individuals to get a protected market for their products. But, it has also been seen that minority-run organizations can provide cost effective quality supplies to big firms. Many of these disabled-run businesses are small size organizations. Thus, they may require initially some seed funding, mentoring by big organizations procuring their products. Taking note of this initiative, Indian organizations may also earmark a certain percentage of their supplies to be procured from disabled-run businesses.

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### **Raising Public Awareness**

In order to make society aware about disability related issues organizations can create awareness campaigns. For example, Ernst & Young (EY) sponsored American Disabilities Rights Museum on

Wheels, where the moving museum focuses on sharing stories of disability activists, advocates, legislators, disability movement, and successful integration (US Chamber of Commerce, 2017). In India, National Centre for Promotion of Employment for Disabled (NCPEDP) along with Accenture organized a national event for brightest disabled students in the country which aims at creating next generation leaders from disability sector. The recent Paralympics was sponsored by many Indian organizations, like Housing and Urban Development Corporation, Indian Oil, Piramal Group, Canara, HSBC, OBC, Life Insurance, NBCC (India) Ltd., and Cairn India. This may go a long way in creating public awareness and removing stereotypical biases against disability.

### **Social Audit**

Social audit of different initiatives, though essentially is supposed to be carried out by government, both public and private sector organizations can also initiate auditing their disability-initiatives to improve upon their existing disability-programs. For government organizations maintenance of records on employment of disabled candidates, facilities provided and other pertinent information are legal requirement.

### **Conclusion**

Disability is an ever changing concept and a way of life. Roles of both private and public sector organizations are critical in mainstreaming disability related issues. Going beyond legal compliance, In-

dian organizations can strive to create a work environment where all human abilities are treated with equal dignity. There are many areas where organizations need to simultaneously work on in order to make the organization accommodative of all forms of abilities. Successfully creating a disability-friendly work environment is difficult, but we must continue to build our understanding on it so that we can reduce the barriers which disabled individuals face in their everyday life.

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