

*Chapter-II*  
*Rights and*  
*Entitlements*



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### Rights and Entitlements

*Rajasthan State Policy on Disabilities, 2012 had not been revised even after promulgation of the RPwD Act, 2016. The Rajasthan Rights of Persons with Disabilities Rules, 2018 were implemented with delay of more than one year and eight months. Reservation to SAPs was not adequately provided by the departments and SAP employees were deprived of reservation in promotion for more than four years since the enactment of RPwD Act.*

*State Commissioner office lacked the mechanism for follow up on compliance of its orders and directions. The issues relating to non-constitution of State Advisory Board, State Committee for Research on Disability, State Fund and Assessment Boards in the State, even after lapse of four years of implementation of the Act indicate severe deficiencies in establishing the institutional mechanisms envisioned in the Act.*

RPwD Act, 2016 provides various rights and entitlements which include equality and non-discrimination, community life, protection against cruelty and inhuman treatment, reproductive rights, accessibility in voting, access to justice, legal capacity, etc.

Efforts made by the various departments for effective implementation of the RPwD Act, 2016 and the establishment of institutional mechanisms are discussed in the following paragraphs.

#### 2.1 Formulation of new State Policy

The State Advisory Board was mandated under Section 71 (2) of RPwD Act to develop State policy and advise the State Government on policies, programmes, legislation and projects with respect to disability and review and coordinate the activities of all Departments and other Governmental/Non-Governmental Organizations in the State dealing with matters relating to PwDs, recommend steps to ensure accessibility, non-discrimination for PwDs and monitor and evaluate the impact of laws, policies and programmes designed to achieve full participation of PwDs.

Audit observed that the Rajasthan State Policy on Disabilities, 2012 had not been revised as of October 2022, even after promulgation of the RPwD Act, 2016.

Regarding the lack of revision of the Policy, GoR stated (November 2022) that action would be taken after formulation of new policy by GoI in compliance of the RPwD Act and important aspects of that policy would be included in new State Policy. The reply of the State Government is not acceptable as the Policy is required to be revised so that a contemporary policy in line with the latest national and global impetus on inclusion, including the focus on welfare and empowerment of SAPs, is in place for guiding the actions of the State Government in this regard.

## 2.2 Implementation of Rajasthan Rights of Persons with Disabilities Rules, 2018

As per Section 101 of the RPwD Act 2016, the State Government was required to frame rules for carrying out the provisions of the Act, not later than six months from the date of commencement (April 2017) of this Act. In Rajasthan, the Rajasthan Rights of Persons with Disabilities (RRPwD) Rules, 2018 were implemented in January 2019 after lapse of one year and eight months from the commencement of the Act.

Audit observed that due to delay in implementation of the Rajasthan Rights of Persons with Disabilities Rules, 2018 in the State, some of the important mechanisms, as mandated in the Act highlighted in Paragraph 2.5 were either not established or established with delays due to which the beneficiaries were deprived of their rights and entitlements. GoR accepted the facts (November 2022).

## 2.3 Providing reservation to SAPs

Section 34 of the RPwD Act provided for four *per cent*<sup>5</sup> reservation in government and public sector jobs to SAPs. The one *per cent* increase (as compared to the provision in PwD Act, 1995) in the present Act was for persons with intellectual disabilities<sup>6</sup>, mental illness, multiple disabilities, autism and specific learning disabilities. Further, Sections 34(1) and (3) of the RPwD Act provide for reservation in promotion and relaxation of upper age limit for employment.

Audit observed (July-August 2021) that after the RRPwD Rules, 2018 were notified (January 2019), Department of Personnel took further six months to issue the relevant orders (August 2019) regarding reservation to SAPs.

Information regarding compliance of these orders at State level was sought for from Department of Personnel, GoR (July 2021). The required information has not been made available to audit (December 2022).

Audit observed that the provisions relating to reservation in promotion, relaxation in upper age limit and concession in marks were notified (October 2021) in the State four years after the enactment of the RPwD Act. GoR accepted the facts (November 2022).

***Recommendation 1: The State Government may ensure that reservation in jobs and promotions are made for the SAPs as per the RPwD Act.***

5 Four *per cent*: one *per cent* each for locomotor disability, visual disability and hearing disability and one *per cent* for intellectual disabilities, mental illness, autism, specific learning disabilities and multiple disabilities.

6 Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills including 'specific learning disabilities' and 'autism spectrum disorder'.

## 2.4 Policy for Equal Opportunity

Section 20 of the RPwD Act provided that no Government establishment should discriminate against any PwD in any matter relating to employment and the Government may frame policies for posting and transfer of employees with disabilities. Further, as per Section 21 of the RPwD Act, every establishment was to notify Equal Opportunity Policy detailing measures<sup>7</sup> proposed to be taken by it in pursuance of relevant provisions of Chapter-IV (Skill Development and Employment) of the RPwD Act, 2016 in the manner as may be prescribed by the Central Government and every establishment was to register a copy of the said policy with the State Commissioner.

Audit observed (July-August 2021) that Equal Opportunity Policy had not been implemented in the State as the same is yet to be approved by the GoR.

GoR accepted the facts (November 2022). GoR however, did not furnish reasons for non-approval of the Equal Opportunity Policy.

***Recommendation 2: GoR may take necessary steps for early adoption of Equal Opportunity Policy for the protection of rights of the SAPs.***

## 2.5 Institutional mechanisms for implementation of the Act

### 2.5.1 Constitution of Assessment Board

Section 38 of the RPwD Act provided that any person with benchmark disability, who considered himself to be in need of High Support<sup>8</sup>, or any person or organisation on his or her behalf, may apply to an authority to be notified by the appropriate government, for requesting to provide High Support. An application for need of High Support was to be certified by an Assessment Board at district level.

Audit observed (July 2021-January 2022) that the State Government had issued the order to constitute the Assessment Boards at district level in September 2021, more than four years after the enactment of the RPwD Act, 2016. GoR accepted the facts (November 2022).

### 2.5.2 Constitution of State Committee for Research on Disability

Rule 3 of RRPwD Rules, 2018 provided that the State Committee for Research on Disability at State level should be constituted under the chairmanship of an

7 Regarding accessibility, post identified suitable for SAPs, post recruitment induction and promotion training, transfer and posting policies etc.

8 High support means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities (such as brushing, combing, dressing, toilet hygiene, etc.), to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy.

eminent person having vast experience in the field of Science and Medical Research and other members<sup>9</sup>.

Audit scrutiny (July-August 2021) of records of Directorate, SAP revealed that the Committee for Research on Disability at State level was not constituted in the State (March 2021) even after lapse of four years of the enactment of the RPwD Act, 2016.

GoR accepted the facts and stated (November 2022) that the process regarding constitution of the State Committee for Research on Disability was under consideration at appropriate level.

### 2.5.3 Formation of State Fund

Section 88(1) of the RPwD Act provided that a fund should be constituted by the State Government to be called as the State Fund for PwD. Rule 35 of RRPwD Rules, 2018 prescribed utilization of the State Fund for purposes such as welfare, training, education, rehabilitation, direction, counselling and social upliftment of the PwDs etc. in the State.

Audit observed that even after the lapse of four years of enactment of the Act, the State Fund for the SAPs was not constituted in the State as of September 2022. GoR stated (November 2022) that budget allotted for SAPs was to be treated as State Fund. The reply is not acceptable as creation of a special purpose fund is totally different from budgetary allotment.

### 2.5.4 State Commissioner for SAPs

The office of the State Commissioner, SAPs was setup in the State under Section 60 of the PwD Act, 1995 and was envisaged to play a crucial role in implementing and enforcing the provisions of the PwD Act, 1995 as well as under Section 79 of RPwD Act, 2016.

Section 80 (b) of the RPwD Act provided that the State Commissioner should inquire, *suo motu* or otherwise, in matters relating to deprivation of rights of PwDs and safeguards available to them and take up the matter with appropriate authorities for corrective action. The RPwD Act provided that the State Commissioner shall, for the purpose of discharging the functions under this Act, have the powers of a civil court<sup>10</sup> while trying a suit related to deprivation of rights of SAPs.

During 2016-21, 61 cases<sup>11</sup> (including one case on *suo motu* basis) related to deprivation of rights of SAPs were registered in the Court of State Commissioner, of which 57 cases were decided and orders were issued (during 2016-21) for compliance to the concerned departments.

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9 Director, Department of Medical and Health, Director, SAP and five members from SAPs or registered state level organisation representing each of five groups of specified disabilities.

10 as are vested in a court under the Code of Civil Procedure, 1908.

11 61 cases: 2016-17: 11; 2017-18: 20; 2018-19: 08; 2019-20: 18 and 2020-21: 4.

Audit observed (July-August 2021) that the office of the State Commissioner did not have any mechanism to monitor the action taken on complaints from the aggrieved SAPs.

Deputy Commissioner SAP accepted the facts and stated (August 2021) that if the aggrieved petitioner is not satisfied with the solution on his complaint, he submits a re-appeal and action is taken thereafter and the records of complaints were not prepared due to non-availability of technical staff.

### **2.5.5 Constitution of State Advisory Board**

As per provisions contained in Section 66 of RPwD Act, the State Government was required to constitute a State Advisory Board (SAB) on disability under the chairmanship of Minister in charge of the Department<sup>12</sup>.

Audit observed (July-August 2021) that this important mechanism required for the effective implementation of the Act had not been constituted by the State Government even after lapse of four years of implementation of the Act. GoR accepted the fact (November 2022).

The issues brought out in paragraphs 2.5.1 to 2.5.5 indicate severe deficiencies in setting up the institutional mechanisms envisioned in the Act for an effective implementation of the Act. This has contributed to deficient implementation of the RPwD Act, 2016 in the State which has deprived 2.28 per cent population of the State of their legal rights and benefits.

***Recommendation 3: The State Government may set up the institutional mechanisms envisioned in the Act for effective implementation of the Act for the welfare of the SAPs.***

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12 and also consisting of Secretaries of various Departments, three Members of the State Legislature and 23 Members to be nominated by the State Government.