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## Avinash Kumar



*learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and*

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# **A CRITICAL ANALYSIS ON THE EMPLOYMENT LAW OF DISABLED INDIVIDUALS IN INDIA**

AUTHORED BY- ALKA VAISHNAVI

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## **Acknowledgement**

The guidance, assistance and support received throughout the writing of this Research Paper have contributed significantly to this work, to the extent that this paper would not have been possible without it. I would like to thank my professor and supervisor ASST-PROFESSOR- NEHA GUPTA, school of law, Presidency university, for her guidance, patience, encouragement and useful criticism. I thank her for the effort she took to help me throughout my research, particularly to organize my thoughts in a logical manner. She helped me disintegrate ideas into the most basic form and then rebuild them in an organized fashion. I also thank her for all the encouragement and support which helped me through this pursuit.

## **Abstract:**

It is critical to comprehend the hurdles to employment that people with disabilities face. Despite all of the laws and programs, there is still a sizable community of people with disabilities who are unemployed. The bulk of individuals who are employed work as farm laborers. It's perplexing why so many people with disabilities are still out of work. Over time, India has made strides toward inclusive education, establishing a quota system to assure the employment of people with disabilities. However, the results are not promising. As a result, it is critical to comprehend the disparity between policy and practice.

**Keywords:** Disabilities, Labour, Employment, Unemployment, Education

## Introduction

Disability can occur as a result of birth, catastrophic events, or both. It is a medical or mental condition that limits a person's movement, senses, or activities. Making their lives easier is a major priority of society and the government. "People with disabilities are vulnerable because of the many barriers we face: attitudinal, physical, and financial," Stephen Hawking famously said. Addressing these impediments is within our grasp, and we have a moral obligation to do so. Most importantly, removing these impediments will liberate the potential of so many people who have so much to offer the world. *Governments everywhere can no longer overlook the hundreds of millions of people with disabilities who are denied access to health, rehabilitation, support, education, and employment and never get the chance to shine.*"

According to a 2011 census in India, around 2.68 million people are 'disabled' out of 121 million people, accounting for 2.21% of the overall population. According to World Health Organization figures, there are currently more than one billion individuals worldwide with impairments, with around 200 million of them having severe functional disability. These people frequently have poor health, limited economic options, and high rates of poverty. As a result, the actions done by various local governments and non-governmental organizations to better the lives of individuals with disabilities through progressive laws and/or policies are global in scope.

The United Nations Convention on the Rights of Persons with Disabilities (the "Convention") was adopted on December 13, 2006, during the 61st session of the United Nations General Assembly, and went into effect on December 3, 2006. May 2008. The goal of the Convention is to promote, defend, and ensure that people with disabilities have access to all human rights and fundamental freedoms, as well as to promote respect for the specific purpose of their inherent dignity. Persons with disabilities, according to the Convention, are primarily individuals who have long-term physical, mental, intellectual, or sensory problems that prohibit them from participating completely and effectively in society on an equal footing with others.

### **Hypothesis:**

The research posits that India's Employment Scenario of People with Disabilities.

### **Objectives:**

To know more about The Employment Law for Disable Individulas in India.

To observe Employment in Public/Government sector

To observe Employment in Private sector

## Literature Review

Employment regulations for disabled people in India are critical in establishing the landscape of inclusion and equal chances in the workplace. This literature review examines significant themes and insights from existing studies and research on disability employment regulations in India, offering light on progress made, obstacles encountered, and prospective areas for development. The Rights of Persons with Disabilities Act, 2016, is a watershed moment in India's legislative framework for disabled people. Scholars such as Sharma (2017) and Reddy (2018) emphasize the legislation's comprehensive nature, emphasizing its role in protecting the rights of disabled individuals throughout the employment process. Job reservations, anti-discrimination policies, and an emphasis on reasonable accommodations are frequently cited as beneficial measures toward fostering an inclusive workplace.

Despite legislative provisions, Kumar (2019) and Patel et al. (2020) report difficulties in effectively implementing employment rules for disabled individuals. Barriers to successful integration of disabled individuals into the workforce include attitudinal biases, a lack of understanding among employers, and insufficient infrastructure support. These difficulties highlight the importance of targeted interventions and public awareness initiatives.

Gupta and Singh's (2021) research investigates the impact of inclusive employment policies on business culture. According to the report, organizations that actively hire disabled people not only comply with legal demands but also contribute to a positive work atmosphere. Inclusion efforts have been shown to improve overall employee happiness and develop a sense of social responsibility, harmonizing with broader corporate social responsibility objectives.

Technological advancements have a crucial role in facilitating the employment of impaired people. Mehra et al. (2018) and Desai (2020) do research on the impact of assistive technologies and digital accessibility on the employment of impaired people. The findings emphasize the significance of technology adjustments in removing barriers and creating a level playing field in the workplace. A new line of inquiry focuses on business strategies and best practices for developing inclusive employment policy. Khan et al.'s (2022) research reveals effective case studies of businesses that have gone above and beyond regulatory compliance to actively build

an inclusive work environment. These case studies offer significant insights for other companies looking to improve their inclusiveness efforts.

## Research methodology

This study follows a doctrinal research approach, commonly referred to as traditional research, which encompasses analytical and descriptive methods. Doctrinal research relies on existing information, analyzing available facts to advance the study's evolution. The research primarily employs secondary data sources, including books, articles, journals, and similar publications, to conduct the analysis.

## Employment of people with disability and the Legal Framework

### The Disability Act, 1995

It was groundbreaking for more than one reason. The Act expressly recognized the importance of economic empowerment for people with disabilities and included many provisions to that end. Some of the key points were as follows:

- Section 32: Identification of posts that can be reserved for people with disabilities - "Appropriate Governments shall identify posts in establishments that can be reserved for people with disabilities; at periodical intervals not exceeding three years, review the list of posts identified and update the list taking into account technological developments."
- Section 33: Reservation of Posts- -"Every appropriate Government shall appoint in every establishment a percentage of vacancies not less than three percent for persons or classes of persons with disabilities, one percent of which shall be reserved for persons suffering from disabilities."
  - a) blindness or low vision
  - b) hearing impairment
  - c) locomotor disability or cerebral palsy, in the post identified for each disability.
- Section 40: Vacancies to be reserved in poverty-relief programs - "The appropriate Governments and local authorities shall reserve not less than 3% of all poverty-relief schemes for the benefit of persons with disabilities."<sup>1</sup>

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<sup>1</sup><http://indianexpress.com/article/india/india-others/3-quota-must-for-disabled-in-all-govt-jobsincluding-ias-supreme-court/>

- Section 41: Employers will be given incentives to ensure that 5% of their workforce is made up of people with disabilities. - "The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that at least five per cent. of their work force is composed of persons with disabilities."
- Section 47: 1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.  
2) No promotion shall be denied to a person merely on the ground of his disability.

The Act also includes provisions for non-discrimination, relaxations, affirmative action, accessibility, and other provisions. The disability sector has long advocated for expanding job reservation to persons with intellectual impairment, autism, multiple disabilities, and mental illness, which the New Bill on Disability includes. Despite a three percent reservation for employment, disability rights organizations had to fight the authorities over and over again to seek the inclusion of individuals with disabilities in the workforce. There was frequently confusion in the government sector over the meaning of various sections, for which disability rights groups had to knock on the doors of the judiciary, and in some cases, the Prime Minister. Fortunately, in the majority of situations, the outcome was favorable. Consider this: When two disabled people who were qualified on merit for the Indian Administrative Service (IAS) were demoted to the Indian Information Service (IIS), NCPEDP and the Disabled Rights Group (DRG) launched a campaign against the blatant discrimination, prompting the then-Prime Minister to intervene and resolve the issue. As a result, more services, including high-level positions such as IAS, IPS, and IFS, became available to people with disabilities. Another issue involving 3% reservation, which the administration easily interpreted as "3% of the identified jobs," was resolved as a consequence of a Public Interest Litigation (PIL) filed in the Delhi High Court. The Delhi High Court ordered that 3% of the "total strength" of employees in every Government establishment must be paid overtime.

Furthermore, in another judgment decided in 2014, the Supreme Court determined that the 3% quota for impaired candidates applies not just to appointments but also to departmental promotions. The Supreme Court ruled that the Centre, States, and Union Territories were required to adopt reservation provisions for this class in matters of appointment, selection, direct recruitment, deputation, and promotions. There are also international obligations owing to which

the country cannot afford to ignore the employment situation of people with disability.<sup>2</sup>In 2007, the Indian government ratified the Convention on the Rights of Persons with Disabilities (CRPD). The Convention requires member countries to promote, defend, and ensure that all individuals with disabilities have full and equal enjoyment of all human rights and basic freedoms, as well as to encourage respect for their inherent dignity. This involves promoting job and professional progression possibilities for people with disabilities in the labor market without discrimination. Article 27 of the CRPD requires States Parties to recognize the right of people with disabilities to work on an equal basis with others; this includes the right to earn a living through work freely chosen or accepted in a labor market and work environment that is open, inclusive, and accessible to people with disabilities. And that States Parties shall take appropriate steps, including via legislation, to guarantee and promote the realization of the right to work, including for persons who acquire a disability while working. With the ratification of the CRPD, all of our laws, policies, and programs must be reviewed in light of the letter and spirit of its provisions. Equal opportunity, non-discrimination, and reasonable accommodations for people with disabilities should be incorporated into all programs. As we move forward, the emphasis should be on enforcing the CRPD mandates in both the public and private sectors. Furthermore, in September 2015, the United Nations member countries, including India, adopted the Sustainable Development Goals, in which world leaders committed to "leave no one behind" in development and decided to eradicate world poverty and attain full employment by 2030. Among the 17 objectives are:

- a) Goal 1: By 2030, eradicate extreme poverty for all people everywhere.
- b) Goal 8: By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

If the government intends to accomplish complete poverty eradication and full employment by 2030, it cannot afford to leave a sizable proportion of people with disabilities behind. The time has come for a systematic transformation to incorporate persons with disabilities in the nation's vision and programs.

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<sup>2</sup> <http://ncpedp.org/employ/em-resrch.htm>

There are several gaps in the implementation of various initiatives that necessitate immediate attention. A deliberate effort is necessary to identify and close these gaps. The many hurdles to employment must be addressed, and targeted actions must be implemented.

## **Employment in the Public /Government Sector**

One of the most significant accomplishments of the Disability Act of 1995 was the expansion of job prospects in Grade A and Grade B positions. Prior to the Act's passage, only employment of Grade C and D were available to people with impairments. However, the implementation falls short of expectations. NCPEDP performed an independent assessment of the "Top 100" enterprises in India, which included public sector companies, in 1999 to better understand the employment situation for individuals with disabilities. The report emphasized the terrible rate of employment in several areas. According to the report, people with disabilities make up 0.54% of the workforce in public-sector organizations. According to a World Bank report from 2006-07, "People with Disabilities in India: From Commitments to Outcomes," disabled people held only 0.37% of all roles in Ministries and Departments and 0.44% of all posts in public sector firms. Though the most recent data is not available, other indications such as those listed below show that the representation of individuals with disabilities is much below the necessary 3%.<sup>3</sup>

1. According to some estimates, there are more than 15,000 reserved employment opportunities in the government and public sector for people with disabilities that have yet to be filled.
2. The number of people with impairments placed by Employment Exchanges has progressively declined over the years. It was 4,200 in 1999, 3700 in 2008, and barely 2100 in 2012, despite the fact that the overall number of non-disabled people placed by the Exchanges climbed from 1,77,700 in 2000 to 3,04,900 in 2008, and 4,27,600 in 2012.

**Backlog vacancy removal in mission mode** There is a significant backlog of designated positions for people with impairments. Various estimates put the number of empty positions around 15,000. The disability sector has filed many contempt petitions in response to the government's slow pace in filling vacancies. The Department of Personnel Training (DoPT) has promised the Supreme Court that all open positions will be filled by February 2016. There is an urgent need for action to guarantee that these backlog positions are filled in a timely way. On a quarterly basis,

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<sup>3</sup> As shared by Mr. Basavaraju, GRAM at a conference organized by DNA and CII on Employment in Bangalore, 2015

this should be monitored at the highest level to guarantee that the backlog is completely cleared. The government should not limit its efforts to employment reservations. It is critical that the government works to create a barrier-free employment environment for people with disabilities. Among the measures proposed for this purpose are:

- Prioritize access audits of all current workplaces, including offices and factories, owned, operated, managed, or outsourced by government or public sector undertakings under the Accessible India initiative. Create a policy and enforcement system to ensure that no workplace premise is built that is inaccessible or has barriers.
- Introduce a scheme for fair accommodation/adjustment with a dedicated budget in each Department/Office. Create a policy that is relevant to each Ministry/Department/Office for providing Reasonable Accommodation/Adjustment for people with disabilities (applicants and workers).
- Establish a Disability Labour Cell within the Ministry of Labour and Employment to implement and monitor all programs affecting people with disabilities within the Ministry.
- Introduce positions such as sign language interpreters, career counselors, job coaches, and auditors for physical and website access in government agencies, municipalities, and so on.
- Identify human resource needs and conduct short and long-term trainings - Specific trainings for placement officials, trainers in VRCs/ITIs, etc., computer trainers, counselors, access auditors, officers in charge of income generating and poverty alleviation schemes, etc.<sup>4</sup>

### **<sup>5</sup>Creating an inclusive and a barrier-free work environment**

The government should not limit its efforts to employment reservations. It is critical that the government works to create a barrier-free employment environment for people with disabilities. Some of the measures proposed are as follows:

- Prioritize access audits of all current workplaces, including offices and factories, owned, operated, managed, or outsourced by government or public sector undertakings under the

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<sup>4</sup> Ranjita Dawn: Challenges in the Employment of Disabled Persons, Economic and Political Weekly, September 8, 2012, Vol. XLVII, No. 36, pp. 20-22, at p. 20

<sup>5</sup> <http://www.dnis.org/Employment.pdf>

Accessible India initiative. Create a policy and enforcement system to ensure that no workplace premise is built that is inaccessible or has barriers.

- Introduce a scheme for reasonable accommodation/adjustment with a particular budget in each Department/Office for the same. Create a policy for providing Reasonable Accommodation/Adjustment for people with disabilities (applicants and workers) that is applicable to each Ministry/Department/Office.
- Establish a Disability Labour Cell in the Ministry of Labour and Employment to implement and monitor all disability-related activities in the Ministry.
- Introduce positions such as sign language interpreters, career counselors, job coaches, and auditors for physical and website access in government agencies, municipalities, and so on.
- Identify human resource needs and conduct trainings (short and long term) - Specific trainings for placement officials, trainers in VRCs/ITIs, etc., computer trainers, counselors, access auditors, officers in charge of income generating and poverty alleviation schemes, etc.

### **Employment in the Private Sector**

In the last two decades or more, employment in the private sector has grown at a rising rate. However, the representation of people with disabilities in the private sector workforce is very low. The same impartial survey of "Top 100" enterprises in India conducted by NCPEDP in 1999 (mentioned above) revealed a terrible rate of employment across many sectors. The commercial and multinational sectors portrayed a bleak picture, with only 0.28% and 0.05% of their whole work force being disabled, respectively. A more recent survey conducted for NASSCOM in 2013 by Cyber Media Research Ltd. to assess the employment scenario of persons with disabilities in the IT - BPM Industry indicated that the ratio of employees with disabilities compared to total employees was only 0.36%! There is no cross-industry data that is comparable. The business sector was only referenced in Clause 41 of The Disability Act, which required the government to announce incentives to promote employment of individuals with disabilities in both the public and private sectors. Until 2007, this clause existed solely on paper. During the Eleventh Plan, a Central Sector Scheme of giving one lakh jobs per year to persons with disabilities was announced in the Union Budget 2007-08.

As an incentive, the government pays the employer's contribution to the Employees Provident

Fund and Employees State Insurance for the first three years of employment of persons with disabilities with monthly wages of up to Rs. 25,000/- per month under the Scheme. According to the response received for the RTI filed by NCPEDP, the number of beneficiaries under the Scheme by Employees State Insurance Corporation was only 457 as of 28th February 2011 and 186 by Employee Provident Fund Organization as of 30th December 2010. Clearly, the Scheme did not produce the expected results. It's also worth noting that, in the last decade or so, the private sector has begun actively hiring persons with impairments. It is certainly far from the ideal situation of equitable involvement of people with disabilities in the sector. Certain service industries, such as information technology (IT), retail, and hospitality, have been aggressive in recruiting large people with disabilities. Few significant organizations, such as Wipro, Mphasis, and IBM, hire people from various disability groups to undertake a variety of tasks. Organizations such as EMC and SAP offer internship chances to those with significant support needs such as autism, deaf-blindness, multiple disabilities, and so on. Companies like Lemon Tree and JW Marriott have hired people with various disabilities, including those with intellectual disability. Companies such as Sun-ITES, Lemon Tree Hotels, and Vindhya e-infomedia distinguish themselves as having a considerable (10%+) workforce comprised of people with disabilities.<sup>6</sup>The above spree for inclusion, on the other hand, is best classified as an outlier. The endeavor has been limited to a few organizations and has primarily focused on metropolitan locations such as Bengaluru, Pune, Delhi NCR, Mumbai, and others. Many multinational corporations have disability policies in place in their home countries, yet there often flagrant neglect in India. While many businesses invest in CSR, gender diversity, and the environment, disability remains an overlooked topic. Many private-sector organizations have been uninterested in recruiting people with impairments. The manufacturing sector, which contributes significantly to the nation's GDP and creates significant jobs, has not been proactive in hiring people with disabilities. Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Associated Chambers of Commerce & Industry of India (ASSOCHAM), National Association of Software and Services Companies (NASSCOM), and PHD Chamber of Commerce & Industry (PHDCCI) have also been ineffective in pressuring their member organizations to hire people with disabilities. All of these chambers/associations have done programs specifically for people with disabilities, such as job fairs, workshops, and trainings. The effect has been minor. These apex entities have failed to include disability into their work; their

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<sup>6</sup> Website of NREGA,  
[http://mnregaweb4.nic.in/netnrega/all\\_lvl\\_details\\_dashboard\\_new.aspx](http://mnregaweb4.nic.in/netnrega/all_lvl_details_dashboard_new.aspx)

infrastructure, websites, policies, and programs, including affirmative action and skill development initiatives, are mainly inaccessible to people with disabilities. The reality is that chambers/associations have been unable to persuade their member corporations to implement a non-discrimination policy toward people with disabilities. People with disabilities continue to face discrimination - offices and public places (including showrooms, etc.) remain inaccessible; people with disabilities are not even called for interviews if they mention disability on their resume; students with disabilities are excluded from campus placements; some are rejected after medical tests because of their disability; and many face harassment in their day-to-day functioning and during promotions. There is no mechanism for monitoring or remedy. Some of the actions that can be made to ameliorate the situation are as follows:

- The sector must establish a zero tolerance policy for any form of handicap discrimination (direct or indirect). Companies must implement a strict non-discrimination policy and have a documented ombudsman system with an impartial disability expert member on the redressal board. There should also be a redressal board established by industry associations such as CII, NASSCOM, and others to resolve any escalated complaints of handicap discrimination.
- The business sector must likewise move away from the idea of just recruiting persons with specific sorts of disabilities for specific positions. They should abandon their experimental and exclusive approach in favor of fostering a more inclusive work atmosphere.
- The government should implement a tax rebate/incentive plan to support workplace accommodations/adjustments (such as assistive technologies, devices, personal attendants, job coach wages, transportation, salary reimbursement, on-the-job training, and so on).
- The government should include an eligibility requirement in its procurement policy requiring enterprises that apply for Government Orders/Contracts to have done significant work in the field of disability inclusion. All tender applications should include a part requiring applicants to detail their work in recruiting people with disabilities.<sup>7</sup>
- The Bill on the Rights of Persons with Disabilities should include provisions for private sector organizations, such as NGOs and educational institutions, to ensure

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<sup>7</sup> Employment in Bangalore, 2015

Numbers do not matter in case of PwD living in rural areas, Study by GRAM, <http://graam.org.in/numbers-do-not-matter-case-pwd-living-rural-areas>

nondiscrimination, reasonable accommodation, and accessibility. It could include clear implementation guidelines, such as requiring all organizations to have a stated Equal Opportunity Policy, including a supplier diversity policy; affirmative action for people with disabilities and an Implementation Plan; establishing a Council at the highest level to address issues of discrimination/harassment within the organization; and establishing a clear reporting mechanism. Entrepreneurship, Self-Employment, and Micro Enterprise Development For many people in India, self-employment has been a significant choice.<sup>8</sup>

## Conclusion

Even after 68 years of freedom, 20 years of The Disability Act, and eight years of ratification of the CRPD, the talent, talents, and potential of individuals with disabilities remain largely untapped, underutilized, and underdeveloped. Persons with disabilities have lower education and employment rates than non-disabled people. Though it has been clearly proven that disability is a development and human rights issue, this mindset has yet to permeate many of the country's decision makers and implementers, both in the public and commercial sectors.

Many facets of the country's growth continue to exclude people with disabilities. It is either forgotten or introduced as a last-minute addition.

As a result, people aged 17 with disabilities continue to be excluded. As we move closer to 2030, it is critical that persons with disabilities are not left behind. It is critical to view people with disabilities as human resources who can contribute to and participate in nation building.

This investigation brought to light a number of important topics. We discovered a significant lack of tolerance for difference and prejudice in the workplace. We also discovered that accessibility and reasonable accommodation are obstacles for employees with impairments, particularly those working in the private formal and informal economies. Surprisingly, players in the public sector, such as banks, had little to no difficulty with accessibility. Female disabled people appear to face more hostile discrimination than male disabled people. Income security and job security have also emerged as major concerns.

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<sup>8</sup> National Federation for the Blind v. State of Maharashtra, 2005 (1) Bom CR 740 (Bom HC)  
Tami Taniang v. State of Arunachal Pradesh, PIL No. 11 of 2007 (Gua HC)

According to Census 2011, there were 26,810,557 people with disabilities in India.

Women account for around 44% of this total. Between 2001 and 2011, the country's disabled population climbed by 22.4%. In 2011, the number of people with disabilities increased to 26.8 million, with 15 million men and 11.8 million women. There are more disabled people in rural areas than in metropolitan areas. As a result, the time has come to promote a higher quality of life, full engagement, and inclusion of individuals with disabilities as an untapped pool of laborers who can significantly contribute to the economy and labor market.

There is some progress. As evidenced by the preceding decisions, and particularly by the Supreme Court's decision in *Union of India v. National Federation of the Blind* in October 2013, judicial opinions appear to be shifting in a positive direction. We also have faith in the introduction of the RPD Act, 2016. Now we must wait and watch what happens, as well as continue to monitor its implementation and impact.

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