



An overview of Rights of Persons with Disabilities Act, 2016

The Rights of Persons with Disabilities Act, 2016 (“RPD Act”)¹ was enacted with due cognizance of the obligations under the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory.

The RPD Act explicitly recognizes all persons with disabilities as any other person before the Law and enjoins it upon the appropriate Government to ensure that they are able to enjoy their legal capacity equally with others. Further, the RPD Act expands the categorization of persons with disabilities so as to cover 21² conditions as against 7 mentioned in PWD Act, strengthens the regulatory, monitoring and grievance redressal mechanism in terms of their functions and composition.

Impact of RPD Act on establishments

- The Act mandates every establishment³ to formulate an equal opportunity policy⁴ in the manner prescribed and register such policy with the Chief Commissioner or State Commissioner, as applicable;
- If a complaint is received from an aggrieved person regarding discrimination on the ground of disability, the head of such establishment is required to: (a) initiate action in accordance with the provisions of the RPD Act; or (b) inform the aggrieved person in writing as to how the impugned act or omission is a proportionate means of achieving a legitimate aim;
- Maintenance of records of persons with disabilities in relation to the matters of employment, facilities provided and other associated information as prescribed;
- The appropriate Government and local authorities shall provide incentives that are within the limits of their economic capacity, to establishments to ensure that at least 5% of the work force comprises of persons with benchmark disability⁵; and

¹ The RPD Act had received Presidential assent on December 27, 2016 and the Ministry of Social Justice and Empowerment notified and fixed April 19, 2017 as the date of enforcement. The RPD Act has replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act).

² The 21 disabilities are (a) blindness (b) Low-vision (c) Leprosy cured person (d) hearing impairment (e) Locomotor disability (f) Dwarfism (g) Intellectual Disability (h) Mental Illness (i) Autism Spectrum Disorder (j) Cerebral Palsy (k) Muscular Dystrophy (l) specific learning disabilities (m) multiple sclerosis (n) Thalassemia (o) Hemophilia (p) Sickle cell disease (q) Multiple Disabilities (r) Acid attack victims (s) Parkinson’s disease (t) speech and Learning disability (u) Chronic Neurological conditions (Specified Disability).

³ Section 2 (i) ‘establishment’ includes a Government establishment and private establishment.

⁴ The RPD Rules have specified that: (a) every establishment shall publish such policy for persons with disabilities, preferably on their website or at a conspicuous places in their premises; (b) such policy in an establishment (private or government) where 20 (twenty) or more persons are employed shall contain facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment, list of posts identified suitable for persons with disabilities, the manner of selection of persons with disabilities for various posts etc.

⁵ Section 2R ‘benchmark disability’ means a person with not less than 40% of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability has been defined in measurable terms, as certified by certifying authority.

- Existing public buildings⁶ are required to comply with the specifications on accessibility (in relation to standards relating to physical environment, transport, information and communication technology) prescribed under the RPD Rules to make the existing infrastructure accessible to persons with disabilities. The time limit specified in this regard is 5 years from the date of notification of the RPD Rules which is June 15, 2022. Further, no establishment will be granted permission to build any structure, issued a certificate of completion or be permitted to take occupation, if the establishment does not comply with the specifications prescribed in the RPD Rules.

Special provisions

Education⁷: Every Child with benchmark disability between the age group of 6 to 18 years is entitled for Right to free education.

Reservation of not less than 5% seats for students with disabilities in Government higher education institutions and any other institution receiving aid from Government.

Employment⁸: Reservation of not less than 4 % in Government establishment against total number of vacancies in the cadre strength in each group of posts.

Allotment of land⁹: 5% of reservation in allotment of agricultural land and housing in all relevant schemes and development programmes.

Penalties for offences

Any person who violates provisions of the RPD Act, or any rule or regulation, shall be punishable with imprisonment up to 6 months and/or a fine of Rs. 10,000 or both. Any subsequent violation, imprisonment of up to 2 years and/or a fine of Rs. 50,000 to Rs. 5,00,000.

Whoever intentionally insults or intimidates a person disability or sexually exploits a woman or child with disability, shall be punishable with imprisonment between 6 months to 5 years and fine.

Special Courts will be designated in each district to handle cases concerning violation of rights.

Conclusion

This new legislation adopts a social and human rights based approach to disability and recognizes that persons with disabilities are capable of human rights and fundamental freedoms on an equal basis with others.

⁶ Section 2(w) 'public building' means Government or private building used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial for as, railway stations or platforms, roadways, bus stands or terminus, airports or waterways.

⁷ Section 31 and 32 of RPD Act

⁸ Section 34 of RPD Act

⁹ Section 37 of RPD Act