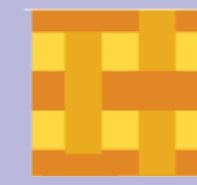
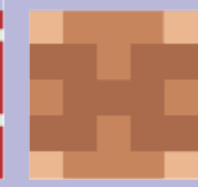
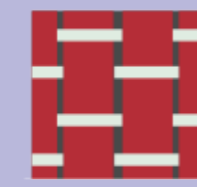




Hanns
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JUSTICE
adda

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, (2016)

CONTEXT

The rights of persons with disabilities – which include non-discrimination, right to employment, inclusiveness in the society, etc – are aimed at empowering the disabled and ensuring that they are given a chance to lead a full, equal and inclusive lives with dignity and respect for his / her integrity.

Prior to this Act, the rights of persons with disabilities were governed by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which provided for only seven types of disabilities, namely, blindness, low vision, leprosy-cured, hearing impairment, loco motor disabilities, mental retardation and mental illness.

Against this background, the Government notified the Rights of Persons with Disabilities Act, 2016 (which came into force on 19 April 2017), which has replaced the 1995 Act and made substantial improvements in enforcing the rights of persons with disabilities.

Subsequently, rules under the Act have also been notified on 15 June 2017 and amended on 21 July 2017, 8 March 2019 and 17 March 2020.

The Act and the Rules would be applicable to all government establishments.

KEY PROVISIONS

DISABILITIES COVERED

The Act has expanded the range of disabilities which are covered within its affirmative umbrella to cover 21 disabilities, including physical disabilities, mental disabilities, mental illness, disability caused due to chronic neurological conditions and blood disorders of the specified kinds. The list provided in the Act is not exhaustive and there is provision for the Government to add other disabilities. The Government has also notified guidelines for the purpose of assessing the extent of specified disability in a person as included under the Act.

R I G H T S P R O V I D E D

The Act seeks to provide several rights to persons with disabilities to ensure that such persons are able to live fulfilling and dignified lives. These rights include the right to live with dignity and integrity; the right to not be discriminated against or deprived of one's life and liberty on the ground of disability; the right to have an appropriate environment.

Under the Act, some form of discrimination is permitted, if the aim is legitimate and the means are proportionate.

Each establishment has been given the freedom to decide what constitutes a “proportionate means” and a “legitimate aim”, as neither the Act or its Rules define these terms.



RIGHTS OF WOMEN AND CHILDREN WITH DISABILITIES

The Act provides certain specific rights to women and children with disabilities. These rights include: the right of children with disabilities to express their views freely on all matters affecting them; and social security schemes and measures which would support women and children.

The right of children with disabilities to receive inclusive education has also been recognized under the Act.

To this end, educational institutions recognized or funded by the Government and local authorities are required to admit such children without discrimination, and ensure that the individual requirements and needs of the children with disabilities are being met with.

PERSONS WITH HIGH SUPPORT NEED

Persons with disabilities with high support need can apply to the authority notified by the appropriate Government requesting for high support, which shall be assessed by an Assessment Board. “High support” means an intensive support, physical, psychological and otherwise, which may be required by a

person with benchmark disability for daily activities, 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. The Central Government has notified rules in this regard.

G O V E R N M E N T ' S R O L E

The Act places certain obligation on the government and local authorities to ensure that persons with disabilities are not deprived of the rights guaranteed to them under the Act. For instance, Government and local authorities are mandated to take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

E M P L O Y M E N T

The Government is also required to formulate schemes and programs to facilitate vocational training and inclusion of persons with disabilities in

vocational and skill training, including provision of loans at concessional rates for support in employment.

Government establishments cannot discriminate against persons with disabilities in matters relating to employment, although the Government may exempt certain establishments from this requirement having regard to the type of the work involved.

While Government establishment cannot dispense with or reduce in rank an employee who acquires a disability during service, such person may be shifted to another post with the same pay scale and service benefits in the

event he/she becomes unsuitable for the post after acquiring the disability.

The government establishment is also required to appoint a Grievance Redressal Officer who will investigate any non-compliance with the Act in relation to employment.

PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

- (i) children between 6-18 years have the right to free education in a neighbourhood or special school**
- (ii) not less than 5% reservation in government institutions and govt-aided higher education institutions**

- (iii) upper age relaxation of 5 years for admissions in institutions of higher education**
 - (iv) reservations in govt. establishments as per prescribed rules**
 - (v) incentives for private sector employers to ensure at least 5% of their workforce has persons with benchmark disabilities**
- The percentage and manner of filling of such reserved posts, and modalities thereof are stipulated in the Act and notifications issued thereunder.

While the Act does not make any impositions on private sector employers, the government and local authorities will provide incentives to employers in the private sector to ensure that at least 5% of their workforce is comprised of persons with benchmark disability.

REDRESSAL

The Chief Commissioner and State Commissioners (to be appointed by the Government) will carry out the provisions of the Act, including inquiring into the deprivation of rights of persons with disabilities and safeguards available to them, as well as inquiring into complaints of non-compliance with the Act. The Executive Magistrate (who is an officer of the State government) looks into complaints regarding abuse, violence or exploitation of a person with disability. The State Government is to set up Special Courts to try any offences under the Act.

For instance, the Delhi government has notified the court of Additional Sessions Judge-02 in each district in Delhi as the special court to try offences under the Act. The State Government may also appoint a Public Prosecutor (i.e. a designated lawyer) who would conduct cases before the Special Court.

P E N A L T I E S

The Act prescribes different penalties depending on the nature of contravention or offence. For instance, contravention of any provisions under the Act (such as non-discrimination, etc.) will be punishable with a fine ranging from INR 10,000 to INR 5,00,000. On the other hand, if anyone fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, he / she may face imprisonment for up to two years and / or with fine up to INR 1,00,000. Further, commission of atrocities against persons with disabilities, which include (a) insulting or intimidating with the intent to humiliate; (b) assaulting or use

person with disability or outrage the modesty of a woman with disability; (c) denying food or fluids to a person with disability, while being in actual charge or control of such person; (d) sexual exploitation of a person with disability while being in a position to dominate the will of such child or woman; (e) injuring any limb of a person with disability or supporting device of such person; and (f) performing any medical procedure likely to lead to termination of pregnancy without express consent – will be punishable with imprisonment of six months to five years and fine.

ACTION POINTS

APPLICATION FOR A CERTIFICATE OF DISABILITY

If you have a specified disability, you may apply for a certificate of disability to the certifying authority. The certifying authorities include (a) a medical authority (or any other notified competent authority) in the district of the applicant's residence; or (b) the medical authority in a government hospital where the applicant may be undergoing or may have undergone treatment in connection with the disability. This application should be accompanied by proof of residence, two recent passport size photographs,

and aadhaar number or aadhaar enrollment number, if any.

The application is to be assessed by the certifying authority within a month. If the application is rejected and an applicant is found ineligible for issue of certificate of disability, the medical authority shall convey reasons for such rejection within one month from the date of receipt of the application. The decision of the certifying authority is also appealable before the appellate authority.

COMPLAINTS FOR NON-COMPLIANCE WITH THE ACT

Depending on the nature of grievance,

you may approach either the Grievance Redressal Officer of your organisation or the Executive Magistrate or the Chief Commissioner or the State Commissioner or the Special Court.



QUESTIONS TO CONSIDER

While the Act is a step in the right direction, its effectiveness is suspect. Non-applicability to the private sector raises questions as to the effectiveness of the Act. Inclusiveness in society cannot be only at the Government level and to have a comprehensive impact, such steps would also need to be incorporated at the private level. The Act stipulates that discrimination is permitted against a disabled person if it is a proportionate means of achieving a legitimate aim, which leaves scope for ambiguity.

On 4 January 2018, the Central Government has notified guidelines for the purpose of assessing the extent of specified disability in a person as included under the Act which can be accessed at <http://www.egazette.nic.in/WriteReadData/2018/181788.pdf>

The Central Government has notified rules in relation to high support need persons with disabilities on 8 March 2019 which can be accessed at <http://egazette.nic.in/WriteReadData/2019/199606.pdf>.

Further information in relation to the Act and its implementation can be found either on the website of the Ministry of Social Justice and Empowerment, or your concerned State Government / Commissioner, depending on where you are residing.