The Disabilities Act, 1995 has been replaced by the Disabilities Act, 2016. The new law ensures equality of opportunity and adequate accessibility. It prohibits discrimination of persons with disabilities, unless it can be shown that the act of discrimination was a proportionate means of achieving a legitimate aim. All establishments are required to frame and publish an Equal Opportunity Policy. Prior to enactment of the Disabilities Act, 2016, the law governing rights of the disabled were scattered across the Constitution of India, the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995, the Mental Health Act, 1987, the Rehabilitation Council Act of India and the National Trust (for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999. Although these legislations aimed at safeguarding the rights of persons with disabilities, these legislations did not specifically provide for facilities, benefits and accessible environment for the disabled.

The Rights of Persons with Disabilities Act, 2016 (the “Disabilities Act, 2016”) along with the Rights of Persons with Disabilities Rules, 2017 (together, the “Disability Law”) has been enacted by the Indian government.

The new Disability Law gives effect to the principles of the United Nations Convention on the Rights of Persons with Disabilities. The Disability Law seeks to protect disabled persons from various forms of discrimination, increases measures for effective participation and inclusion in the society, and ensures equality of opportunity and adequate accessibility.

Prior to enactment of the Disabilities Act, 2016, the law governing rights of the disabled were scattered across the Constitution of India, the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (“Disabilities Act, 1995”), the Mental Health Act, 1987, the Rehabilitation Council Act of India and the National Trust (for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999. Although these legislations aimed at safeguarding the rights of persons with disabilities, these legislations did not specifically provide for equality of opportunity especially in matters relating to employment.

The Disabilities Act, 2016 has repealed the Disabilities Act, 1995.

KEY FEATURES OF THE DISABILITY LAW

Some of the key features of the Disability Law include:

a. ‘Disabled persons’ have been categorized as: (i) persons with disability; (ii) persons with benchmark disability; and (iii) persons with disability having high support needs.

b. The definition of ‘person with disability’ under the Disabilities Act, 2016 is an inclusive definition as opposed to the exhaustive definition provided under the Disabilities Act, 1995 and includes 21 types of disabilities as ‘specified disabilities’. The Disabilities Act, 1995 covered only 7 types of disabilities.

c. While majority of the obligations under the Disability Law are cast upon the appropriate government and/or local authorities; certain obligations/duties are also cast upon establishments (including in the private sector).

d. All establishments (including in the private sector) are required to frame and publish an Equal Opportunity Policy.

e. It prohibits discrimination of persons with disabilities, unless it can be shown that the act of discrimination was a proportionate means of achieving a legitimate aim.

f. Onus has been placed on the government to facilitate the rights of disabled persons. The government is required to inter alia, ensure/protect a disabled person’s right to equality, dignity and respect for his/her integrity equally with others; right to personal liberty, right not to be discriminated against; right to live in a community; right to equal protection and safety in situations of risk, armed conflicts, humanitarian emergencies, natural disasters etc.;
accessibility to polling stations and material relating to electoral processes; right to access any
court, tribunal, authority, commission or body having judicial or quasi-judicial or investigative
powers without discrimination; right to own or inherit property (movable or immovable); right to
manage one’s own financial affairs and access to bank loans, mortgages and other forms of
financial credit; right to barrier-free access to healthcare institutions and centres; right to have
cultural life and to participate in recreational activities and sporting activities etc.
g. Additional benefits such as right to free education (between the age group of 6 and 18 years),
reservation in education, government jobs, allocation of land, poverty alleviation schemes etc.
have been provided for persons with benchmark disabilities.
h. Reservation in vacancies in government establishments has increased from 3% to 4%
for certain persons or classes of persons having benchmark disability.
i. For ensuring speedy trial, special courts are to be constituted in each district to handle cases
concerning violation of rights of persons with disabilities.
j. Enhanced penalties with a monetary penalty extending up to Rs. 500,000 (~USD 7750) and
imprisonment extending up to 5 years.

NEW SET OF COMPLIANCES FOR PRIVATE EMPLOYERS

With the enactment of the Disability Law, private employers shall be required to:

a. **Frame an Equal Opportunity Policy:** Every establishment shall notify an Equal Opportunity
Policy. Such policy shall be displayed on the employer’s website, failing which, the same shall
be displayed at conspicuous places of the establishment premises. A copy of the said policy
shall also be registered with the Chief Commissioner or the State Commissioner, as
applicable. The Equal Opportunity Policy shall contain details of the facilities and amenities
that the employer will be providing to the disabled employees in order to enable them to
effectively discharge their duties in the establishment.
b. **Appoint a Liaison Officer:** Private establishments having more than 20 employees are
required to appoint a liaison officer who shall oversee the recruitment of disabled persons and
make the necessary provisions and facilities for such employees in the establishment.
c. **Identify Posts/Vacancies for Disabled Persons:** Although the Disability Law does not
mandate reservation of the disabled in the private sector, private employers are required to
identify posts/vacancies in the establishment that would be suitable for disabled persons and
include details of the same in the Equal Opportunity Policy of the establishment. Further,
private establishments receiving incentives from the appropriate government may need to
ensure that at least 5% of their workforce is comprised of persons having benchmark
disabilities.
d. **Prohibit Discrimination:** The head of the establishment shall ensure that no disabled person
is discriminated against because of his/her disability, except in cases where such act/omission is
a proportionate means of achieving a legitimate aim.
e. **Provide Additional Facilities/Benefits:** Private establishments shall take efforts to provide
additional facilities to the disabled such as training facilities, assistive devices, barrier-free
accessibility and formulate additional benefits for the disabled such as preference in transfer,
special leave etc.
f. **Revamp Existing Hiring Practices and Policies:** Given the above requirements, employers
will now need to revamp their existing hiring practices and modify their HR policies.
g. **Conform with Accessibility Norms:** All establishments will need to ensure that the building
plan/building structure of the establishment and the physical environment, transport and
information and communication technology adheres to the accessibility norms formulated by
the government. No establishment shall be issued a certificate of completion or allowed to
take occupation of a building unless it has adhered to the accessibility norms formulated by
the Central Government.
h. **Maintenance of Records:** Every private establishment having 20 or more employees shall
maintain records containing details of the disabled persons who are employed at the
establishment.

THE HITS

1. With the increase of industries in India, the role of the corporate sector in generating job
opportunities has increased tremendously. For many years now, there has been a pressing
need to create awareness amidst the corporate sector to take active responsibility in
recognizing the abilities of disabled persons and give them equal opportunities in the job
market. By enacting the Disability Law, the Indian Government has succeeded in promoting
equal employment opportunity for the disabled in the private sector as well, by casting
mandatory obligations on private employers.
Among them, 40 to 80 million live in India. Prejudice, coupled with lack of facilities and
opportunities, has often curbed them from leading a normal life. Given the mandatory
requirement to build equal opportunities for the disabled, the above statistics are likely to reduce in the years to come.

3. The Disability Law aims at addressing the problems faced by the disabled from all dimensions. It includes not just the economic and social rights of the disabled, but also includes justiciable rights of the disabled.

4. Social attitudes and stigma have been a major reason for limiting the opportunities of the disabled whether it be in their social and economic life or even within their own families. Despite the magnitude of the issue, awareness on disability issues have been lacking. To that extent, the government's initiative to conduct, encourage, support and promote awareness campaigns and sensitisation programmes is a remarkable step.

5. The Disability Law is a sign that the government is making a move towards a more inclusive and progressive society, where persons would not be limited by their disabilities. This would ensure that employment standards in India are brought in line with international standards.

AND THE MISSES

1. While the initiative taken by the government in recognizing the needs of the disabled is commendable, there is inadequate clarity on various aspects under the Disability Law, which the government may need to clarify in due course. For instance, the Disability Law requires employers (including in the private sector) to include in their Equal Opportunity Policy, details such as special leaves, accommodation facility etc. that shall be provided to the disabled persons working at the establishment. However, Disability Law does not clarify (a) the quantum of special leaves that need to be provided nor does it mention the purpose(s) for which such leaves may be availed; (b) the standards for accommodation facility etc.

2. The Disability Law does not provide a transition framework or a timeline for ensuring compliance under the Disabilities Act, 2016.

3. The obligations cast upon private establishments under the Disability Law such as providing training to the disabled, assistive devices, ensuring accessibility norms etc. would entail additional costs for employers. While government establishments should be able to accommodate these additional costs, the Disability Law does not provide for any incentives to private establishments to enabling them to set-off the costs incurred.

4. Although there is no reservation quota in the private sector, the Disability Law states that 'The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employers in the private sector to ensure that at least five per cent of their work force is composed of persons with benchmark disability'. The way the law has been crafted, it is unclear whether it would be mandatory for private sector employers receiving incentives from the government to ensure that 5% of their workforce is comprised of persons having benchmark disabilities.

5. Although the Disability Law prohibits employers from discriminating against the disabled, the law does not provide for an effective and robust grievance redressal mechanism.

6. The Disability Law places majority of the onus on the Government to either formulate rules or schemes for the disabled to ensure protection of the disabled. Therefore, in effect, the success of the statute will largely depend on the proactive measures taken by the Government.

– Nishanth Ravindran, Preeha S & Vikram Shroff
You can direct your queries or comments to the authors


2 Ratified by India in October 2007

3 Enforceable only against the State/ Centre.

4 RPWD Act, section 2(e) "person with disability" means a person with long term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

5 RPWD Act, section 2(r) (r) "person with benchmark disability" means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

6 RPWD Act, section 2(l) (l) "person with disability having high support needs" means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support.

7 The RPWD Act, (k) "Government establishment" means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes a Department of the Government;
Section 2 (c) of the RPWD Act defines “barrier” as any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hamper the full and effective participation of persons with disabilities in the society.