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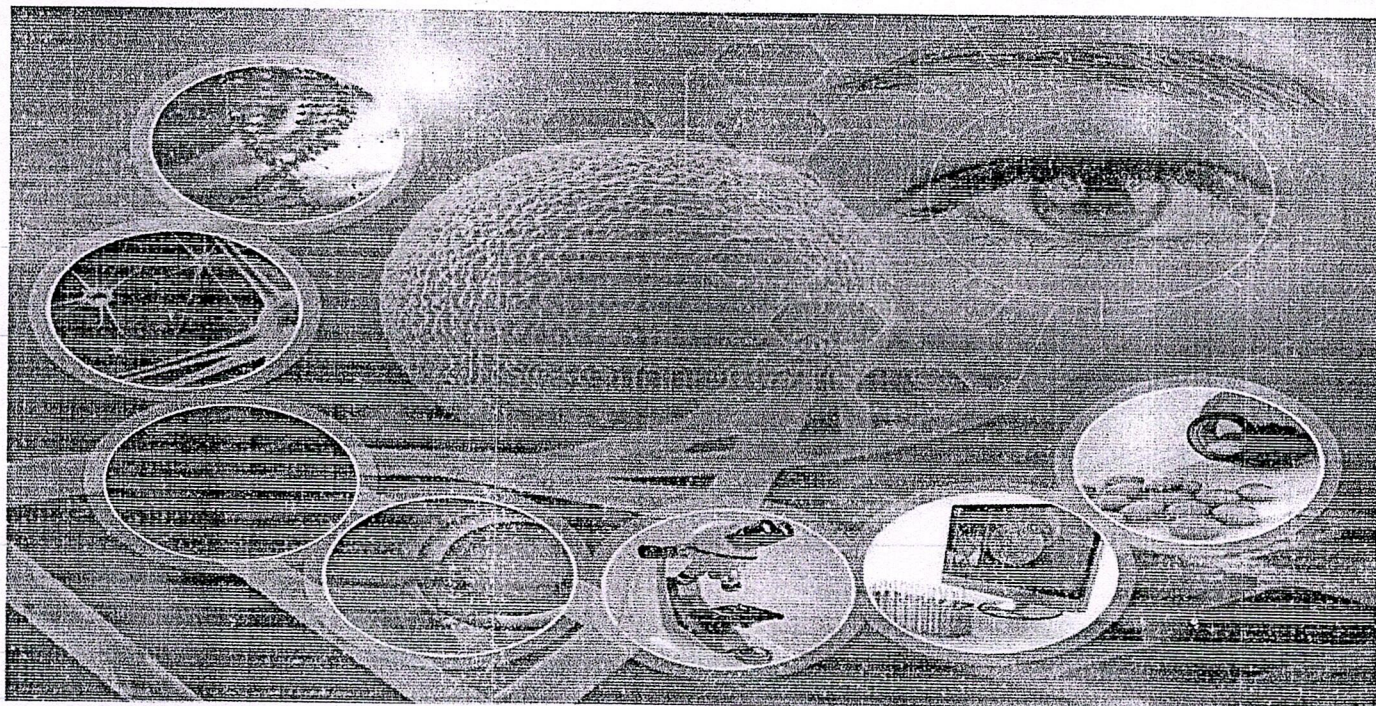
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## **Legal Provisions for Disabled Persons**

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**Introduction:** Although there existed several legislative or policy measures that included certain provisions /benefits for physically handicapped or other disabled people. But before 1980, there was hardly any legislative or policy measures that deals with the persons with disabilities or their rights. In the year 1980, for the first time the policy makers thought about disabled in India in terms of equality. As a result, a number of disability specific legislations have come out.

**Objective of the Study:** To study various acts and policies legally related to disabled people.

**Analysis of the Study:**At present there are many legal provisions for persons with disabilities. Some important legal provisions are included following:

### **The Mental Health Act, 1987**

The colonial legislation of The Indian Lunacy Act, 1912 dealt with certain aspects of mental health. This was a law relating to treatment and care of mentally retarded and mentally ill persons. Thus, the Indian Lunacy Act, 1912 (ILA) was repealed and replaced with the enactment of the Mental Health Act, 1987 (MHA).

The Mental Health Act comes under the Ministry of Health and Family Welfare (MOHFW). It makes provisions to protect the rights of mentally ill persons and safeguard the interests of persons with mental illness such as safeguarding their property through guardians and appointment of managers. It does not talk about rehabilitation aspect for such people.

The Ministry of Health (MHA) has initiated a proposal to amend the MHA, in the background of the United Nation Convention Rights of Persons with Disabilities (UNCRPD). A paper on draft amendments has been prepared by the Center for Mental Health Law and Policy, Indian Law Society, Pune on behalf of Ministry, on 28<sup>th</sup> February, 2010.

The main objective of the act is:

1. To regulate admission to psychiatric hospital or psychiatric nursing homes to mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary basis and to protect the rights of such persons while being detained;
2. To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;
3. To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;
4. To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;
5. To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;
6. To provide for the establishment of Central Authority and State Authorities for Mental Health Services;
7. To regulate the powers of the government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;
8. To provide for legal aid to mentally ill persons at state expenses in certain cases.

### **The Rehabilitation Council of India Act, 1992**

The act is applicable throughout India. It was brought into force on 31<sup>st</sup> July, 1993. The act was passed to regulate the manpower development programmes in the field of education of persons with special needs. The main objectives are to regulate the training policies and programmes in the field of rehabilitation of people with disabilities, to standardize training courses for rehabilitation professionals, to recognize universities/institutions running degree/diploma/certificate courses in the field of rehabilitation of the disabled and recognize and equalize foreign degree/diploma/certificate courses. A committee of experts recommended certain changes in the act which have been approved by the Parliament through the amendment act in 2000. Some changes in definitions of the term "handicapped" and "mental retardation" was incorporated as a part of this amendment. These definitions have already been covered under section "Legal definitions of disability" above. This amendment also entrusted the Rehabilitation Council of India with the additional responsibilities of monitoring the training of professionals and personnel, and



promoting research in rehabilitation and special education.

### **The National Trust for Welfare for Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999**

The National Trust Act provides for the establishment of an institution for the welfare of people with autism, cerebral palsy, mental retardation and multiple disabilities. The act gives direction for the care and protection of persons with these disabilities in the event of death of their parents, procedures of appointment of guardians and trustees for persons in need of such protection and to provide need based services in times of crisis to the families of the disabled. The National Trust Act mandates the creation of a Local Level Committee (LLC) comprising district magistrate along with one representative from a registered organization and one person with a disability. The Local Level Committee is vested with the authority to decide upon applications for legal guardianship. It also provides procedures for appointment of legal guardianship. It also lays down the duties of the legal guardianship who has to furnish the periodic returns to the local level committee about the assets of the ward and their disposal in their hands. Similarly, the committee too is required to maintain inventory and annual accounts of the property/assets, claims and liabilities submitted by legal guardians to it.

The National Trust Board is established for overall supervision of the National Trust Act. The government has made an initial contribution of Rupees one billion to the trust fund. The interest earned is used in supporting mandated activities.

### **Rights of Persons With Disabilities, 2016**

The act replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Parliament passed the "Rights of Persons with Disabilities (RPWD) Bill, 2016 on 16<sup>th</sup> December, 2016. In the bill, the disability has been based on an evolving and dynamic concept. It fulfills the obligations to the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory. At present, the types of disabilities have been increased from existing 7 to 21 and the central government will have the power to add more types of disabilities. The 21 disabilities are given below:

1. Blindness
2. Low-vision
3. Leprosy Cured Persons
4. Hearing Impairment (Deaf and hard of hearing)
5. Locomotors Disability
6. Dwarfism
7. Intellectual Disability
8. Mental Illness
9. Autism Spectrum Disorder
10. Cerebral Palsy
11. Muscular Dystrophy
12. Chronic Neurological Conditions
13. Specific Learning
14. Multiple Sclerosis
15. Speech and Language Disability
16. Thalassemia
17. Hemophilia
18. Sickle Cell Disease
19. Multiple Disabilities including deaf and blindness
20. Acid Attack Victim
21. Parkinson's Disease
- 22.

### **The other features of bill are as follows-**

1. The bill provides penalties/offences committed against persons with disabilities and also for violation of the new law provisions. Special courts will be designated in each district to handle cases concerning violation of rights of persons with disabilities.
2. Reservation in vacancies in government establishments has been increased from 3% to 4% for certain persons or class of persons with benchmark disability.
3. Every child with benchmark disability between the age group of six and eighteen years shall have the right to free education.



4. The act provides for grant of guardianship by district court under which there will be a joint decision-making between the guardian and the persons with disabilities.
5. Responsibilities have been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.
6. Additional benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation scheme etc have been provided for persons with benchmark disabilities and those with high support needs.
7. Broad based central and state advisory boards on disability are to be set up to serve as apex policy making bodies at the central and state level.
8. The office of chief commissioner and state commissioner for persons with disabilities has been strengthened by an advisory committee constituted under the act.
9. The creation of national and state fund to provide financial support to the persons with disabilities. The existing national fund and the trust fund for empowerment of persons with disabilities will be subsumed with the national fund.

### **Indian Constitution**

1. The constitution of India under chapter III guarantees fundamental human right to all persons. The constitution of India does not specifically prescribe discrimination on the ground of "disability" but it does not contain non-discriminatory provisions that guarantee equality and equal opportunities for all citizens under Articles 14, 15 and 16.
2. Article 14 (Right to Equality)
3. The right of equality is enshrined in Article 14 of the constitution and recognizes that all persons are equal before law. Persons with disabilities are entitled to this guarantee not to be discriminated against in any manner and to be treated equally which includes the requirement for special treatment where required.
4. Article 15 (1) & (2) [Rights Against Discrimination]
5. Article 15 (1) enjoins on the government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
6. Article 15(2) states that, no citizen (including the disabled) shall be subject to any disability, liability, restriction or condition on any of the above grounds in the matters of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public.
7. Article 16
8. Article 16 provides the guarantees to reservation and equal opportunity in public employment are made under the persons with disabilities act. The right to equality has been upheld for persons with disabilities not to be discriminated and to provide equal opportunities in recruitment to the civil services (NFB vs. UPSC) (1993) and Amita vs. Union of India (2005).
9. Article 21
10. Article 21 of the constitution guarantees the right to life to all persons (including disabled persons) which has been interpreted by the Supreme Court include the right to live with dignity, the right to livelihood and the right to education. Article 21A guarantees the right to free and compulsory education for all children between the ages of 6-14 years.
11. Directive Principles of State Policy (DPSP)
12. Chapter III of the constitution contains the directive principles of state policy. It aims for the state to comply with the principles under certain articles.
13. The directive principles of state policies provide in Article 38 that the state policy has to be directed to minimize inequalities, secure right to an adequate means of livelihood and also secure that the operation of legal system promotes justice.
14. Under Article 39A of the constitution provides that the state shall secure the operation of the legal system promotes justice, on the basis of equal opportunity and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
15. The Constitution of India under the directive principles of the state policy directs the state to make effective provision for security the right to work, the education and public assistance in case of unemployment, old age sickness, disablement and other cases of undeserved want. The laws relating to disabled come in the Seventh Schedule under the concurrent list. Article 41 also provides adequate justification by the government to enact a comprehensive law for the disabled in India.