

# Protection and Promotion of Rights of Persons with Disabilities

**ATI**

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# **RIGHTS OF DIFFERENTLY ABLED PERSONS**

# What is Disability?

## Two kinds of Disability

### 1. Mental Disability

1. Mental Retardation,
2. Mental Illness

### 2. Physical Disability:

1. Blindness
2. Low Vision
3. Hearing Disability
4. Speech Disability
5. Locomotor Disability

# Disability Status

## Disability Status: (Global Position)

1. USA	20%
2. Japan	5%
3. Australia	15%
4. Sri Lanka	5%
5. B'desh	10%
6. Nepal	5%
7. India	2.13%

# Disability Status

- According to the Census 2001: 2.19 crore people with disabilities in India ( 2.13 per cent)
- This includes persons with *visual, hearing, speech, locomotor and mental disabilities*.
- 75% of persons with disabilities live in rural areas,
- 49 per cent are literate.
- Only 34 per cent are employed.
- The earlier emphasis on **medical rehabilitation** has now been replaced by an emphasis on **social rehabilitation**.

# Disability Status

## Disability data as per Census India 2001

1. Movement	28%
2. Seeing	49%
3. Hearing	6%
4. Speech	7%
5. Mental	10%

## Disability data as per National Sample Survey Organisation (NSSO) 2002

1. Movement	51%
2. Seeing	14%
3. Hearing	15%
4. Speech	10%
5. Mental	10%

# Law Relating to Disability

## International Conventions

1. Convention on the Rights of Persons with Disabilities ( 50 Articles)
2. Optional Protocol to the Convention on the Rights of Persons with Disabilities (18 Articles)

## Disability Legislation in India

1. The Persons with Disabilities (Equal Opportunities, Protection of Right and full Participation) Act 1995
2. National Trust Act 1999
3. Mental Health Act 1987
4. Rehabilitation Council of India Act 1986

# Persons with Disabilities Act, 1995

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995)

## The aims and objectives of the Act are:

1. To spell out the responsibility of the state towards the - **prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation** of persons with disabilities;
2. To create a barrier free environment;
3. To counteract any situation of abuse and exploitation of persons; and
4. To make special provision of the integration of persons with disabilities into the social mainstream.

# Persons with Disabilities Act, 1995

## Obligations on governments:

1. Undertake surveys, investigations and research concerning the cause of occurrence of disabilities
2. Promote various methods of preventing disabilities
3. Screen all the children at least once in a year for the purpose of identifying “at risk” cases
4. Provide facilities for training to the staff at the primary health centres
5. Sponsor awareness campaigns and disseminate information on general hygiene, health and sanitation,
6. Take measures for pre-natal and post-natal care of mother and child;
7. Educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;
8. Create awareness amongst the masses through television, radio and other mass media on the causes

# Persons with Disabilities Act, 1995

## Education:

1. Ensuring that every child with disabilities have access to free education in an appropriate environment till 18 years of age.
2. Promoting the integration of students with disabilities in normal schools.
3. Promoting setting up of special schools in government and private sector in such a manner that children with disabilities living in any part of the country have access to such schools and equip these schools with vocational training facilities.
4. Conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole-time basis;
5. Conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above;
6. Imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;
7. Imparting education through open schools or open universities;
8. Conducting class and discussions through interactive electronic or other media;
9. Providing every child with disability free of cost special books and equipments needed for his education. (Section 27)

# Persons with Disabilities Act, 1995

## **Comprehensive schemes are to be prepared by the government for:**

1. Transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools.
2. The removal of architectural barriers from schools, Colleges or other institution, imparting vocational and professional training;
3. The supply of books, uniforms and other materials to children with disabilities attending school.
4. The grant of scholarship to students with disabilities.
5. Setting up of appropriate forums for the redressal of grievances of parent, regarding the placement of disabled children;
6. Suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
7. Restructuring of curriculum for the benefit of children with disabilities.

All government educational institutions and other educational institutions receiving aid from the government are to reserve not less than 3 per cent of its seats for disabled persons. (Section 39) (see: State of Kerala v. Mary Joseph, (2001) 3 Kerala Law Times 26)

# Persons with Disabilities Act, 1995

## Employment

1. The appropriate governments to identify posts in government establishments, which can be reserved for disabled persons and review the list of posts at periodic intervals (not exceeding three years) (Section 32)
2. At least 3 percent of vacancies in every government establishment are to be reserved for persons with disabilities. Out of which 1 per cent each shall be reserved for persons suffering from blindness or low vision and the other 2 percent for persons with hearing impairment and loco motor disability or cerebral palsy. But the central government may exempt any establishment from the above requirements if the nature of work in such establishments is such that disabled persons are unable to work in such establishments.(Section 33)

### **schemes to be formulated by the appropriate government for:**

1. The training and welfare of persons with disabilities;
2. The relaxation of upper age limit;
3. Regulating the employment;
4. Health and safety measures and creation of a non-handicapping environment in places where Persons with disabilities are employed;
5. The manner in which and the person by whom the cost of operating the schemes is to be defrayed; and
6. Constituting the authority responsible for the administration of the scheme. (Section 38)

# Persons with Disabilities Act, 1995

## Non-discrimination

1. Adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;
2. Adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently. (Section 44)
3. Install auditory signals at red lights in the public roads for the benefit of persons with visually handicap;
4. Make curb cuts and slopes in pavements for the easy access of wheel chair users;
5. Engrave the surface of the zebra crossing for the blind or for persons with low vision;
6. Engrave the edges of railway platforms for the blind or for persons with low vision;
7. Devise appropriate symbols of disability;
8. Provide warning signals at appropriate places.(Section 45)
9. Provide ramps in public buildings;
10. Provide Braille symbols and auditory signals in elevators or lifts;
11. Provide ramps in hospitals, primary health centers and other medical care and rehabilitation institutions.

# Persons with Disabilities Act, 1995

## Affirmative Action

1. (Section 42) Special schemes are to be notified for the preferential allotment of land at concessional rates for:
  2. Housing
  3. Setting up business
  4. Setting up special recreational centres
  5. Establishment of special schools
  6. Establishment of research centres
  7. Establishment of factories by entrepreneurs with disabilities (Section 43)

# National Trust Act 1999

## Introduction

1. India has enacted **3 legislations in the 1990s**. The first, in **1992**, was the **Rehabilitation Council of India Act**, which relates to standardization of training courses for rehabilitation professionals, to accreditation of training institutions and of individuals desirous of becoming rehabilitation professionals.
2. To date, Rehabilitation Council of India has recognized **161** training centers offering 200 courses and registered 20,000 professionals.
3. Under PWD Act over 6300 grievances have been redressed. However, the more newly recognized disabilities like autism and multiple disabilities were not included in **the 1995 Act**, nor were there any specific provisions for persons with Cerebral Palsy and Mental Retardation.
4. **In December 1999, therefore, after a decade of lobbying by parents and professionals, the Parliament of India enacted the Act entitled “National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities”.**
5. It is a **statutory autonomous body** under the aegis of the **Ministry of Social Justice & Empowerment, Government of India**.

# National Trust Act 1999

## Definitions

- (a) "**autism**" means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour;
- (b) "**Board**" means Board of trustees constituted under section 3;
- (c) "**cerebral palsy**" means a group of non-progressive conditions of a person characterised by abnormal motor control and posture resulting from brain insult or injuries occurring in the pre- natal, peri-natal or infant period of development;
- (g) "**Mental Retardation**" means a condition of arrested or incomplete development of mind of person which is specially characterised by sub normality of intelligence;
- (h) "**Multiple Disabilities**" means a combination of two or more disabilities as defined in clause (i) of section 2 of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

# National Trust Act 1999

**(m) "registered organisation"** means an association of persons with disability or an association of parents of persons with disability or a voluntary organisation, as the case may be, registered under section 12;

**(o) "severe disability"** means disability with eighty percent or more of one or more multiple disabilities;

**(p) "Trust"** means the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability constituted under sub-section (1) of section 3.

**3. Constitution of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability, etc. – (22 persons including the Chairperson and CEO)**

# National Trust Act 1999

## **The objects of the Trust shall be –**

- (a) to enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong;
- (b) to strengthen facilities to provide support to persons with disability to live within their own families;
- (c) to extend support to registered organisations to provide need based services during period of crisis in the family of persons with disability;
- (d) to deal with problems of persons with disability who do not have family support;
- (e) to promote measures for the care and protection of persons with disability in the event of death of their parents or guardians;
- (f) to evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection;
- (g) to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability; and
- (h) to do any other act which is incidental to the aforesaid objects.

# National Trust Act 1999

## POWERS AND DUTIES OF THE BOARD

11. (1) The Board shall -

- (a) receive from the Central Government a one-time contribution of rupees one hundred crores for a corpus, the income whereof shall be utilised to provide for adequate standard of living for persons with disability;
- (b) receive bequests of movable property.
- (c) receive from the Central Government such sums as may be considered necessary in each financial year for providing financial assistance to registered organisations for carrying out any approved programme.

(2) For the purposes of sub-section (1), the expression "approved programme" means-

- (a) any programme which promotes independent living in the community for persons with disability by-
  - (i) Creating a conducive environment in the community;
  - (ii) Counseling and training of family members of persons with disability; (iii) Setting up of adult training units, individual and group homes;
- (b) any programme which promotes respite care, foster family care or day care service for persons with disability;

# National Trust Act 1999

- (c) setting up of residential hostels and residential homes for persons with disability;
  - (d) development of self-help groups of persons with disability to pursue the realisation of their rights;
  - (e) setting up Local Level Committee to grant approval for guardianship; and
  - (f) such other programmes which promote the objectives of the Trust.
- (3) While earmarking funds for the purposes of clause (c) of sub-section (2), preference shall be given to women with disability or to persons with severe disability and to senior citizens with disability.

**Explanation** -For the purposes of this sub-section, the expression,-

- (a) "persons with severe disability" shall have the same meaning as is assigned to it under sub- section (4) of section 56 of the Persons with Disabilities (Equal Opportunities. Protection of Rights and Full Participation) Act, 1995 (1 of 1996);
- (b) "senior citizen" means a person who is above the age of sixty-five years or more.

# National Trust Act 1999

- 12. Procedure For Registration-
- 13. Constitution of Local Level Committees-
- 14. Appointment of Guardianship
- 15. Duties of Guardian

# Rehabilitation Council of India Act, 1992

The Act relates to standardization of training courses for rehabilitation professionals, to accreditation of training institutions and of individuals desirous of becoming rehabilitation professionals.

## Definitions

3. "handicapped" means a person-
  - visually handicapped;
  - hearing handicapped ;
  - suffering from locomotor disability; or
  - suffering from mental retardation;
4. "hearing handicapped" means with hearing impairment of 70 decibels and above, in better ear or total loss of hearing in both ears;
5. "locomotor disability" means a person's inability to execute distinctive activities associated with moving, both himself and objects from place to place and such inability resulting from affliction of either bones joints muscles or nerves;
8. "mental retardation" means a condition of arrested or incomplete development of mind of person which is specially characterized by sub-normality of intelligence;

# Rehabilitation Council of India Act, 1992

## **13. "rehabilitation professional" means-**

- audiologists and speech therapists; clinical psychologists;
- hearing aid and ear mould technicians;
- rehabilitation engineers and technicians;
- special teachers for educating and training the handicapped;
- vocational counselors, employment officers and placement officers dealing with handicapped;
- multi-purpose rehabilitation therapists, technicians; or
- such other category of professionals as the Central Government may, in consultation with the Council, notify from time to time;

# Rehabilitation Council of India Act, 1992

14. "visually handicapped" means a persons who suffers from any of the following conditions namely -

- total absence of sight;
- visual acuity not exceeding 6/60 or 20/200(snellen) in the better eye with the correcting lenses; or
- limitation of the field of vision subtending an angle of degree or worse.

# Rehabilitation Council of India Act, 1992

The Rehabilitation Council of India Constitution and incorporation of Rehabilitation Council of India

- There will be 27 Members.

## **FUNCTIONS OF THE COUNCIL**

- Recognition of qualifications granted by University etc., in India for Rehabilitation Professionals.
- Recognition of qualification by Institutions outside India

# The Role of Judiciary in Protection and Promotion of Human Rights

# The Role of Judiciary in protection and promotion of Human Rights

*“The task of protection and promotion of Human rights is a complex one and requires the co-operation of all sections of the Society”*

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Hon'ble Justice Venkatachaliah

# Human Rights

- Meaning of 'Human Rights'
- Universal Declaration of Human Rights 1948
- Human Rights under Indian legal System.
- Human Rights and Indian Judiciary.

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

1. Equality before Law. (Art.14)
2. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. (Art.15)
3. Equality of opportunity in matters of public employment. (Art.16)
4. Abolition of Untouchability. (Art.17)
5. Abolition of Titles. (Art.18)

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

1. Freedom of Speech. (Art.19)
2. Protection in respect of conviction for offences. (Art.20)
3. Protection of life and personal liberty. (Art.21)
4. Protection against improper arrest and detention. (Art.22)

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

1. Prohibition of traffic in human beings and forced labour.
2. Prohibition of employment of children. (Art.23)
3. Freedom of conscience and free profession, practice and propagation of religion. (Art.24)
4. Freedom to manage religious affairs. (Art.25)
5. Freedom as to payment of taxes for promotion of any particular religion. (Art.26)
6. Freedom as to attendance at religious instruction or religious worship in educational institutions. (Art.27)
7. Protection of interests of minorities. (Art.28)
8. Right of minorities to establish and administer educational institutions. (Art.29)

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

- The constitution reflects provisions of UDHR 1948.
- Most important provision under Constitution is Art. 21 - *“No persons shall be deprived of his life and personal liberty except according to the procedures established by law”*
- The narrow view of the earlier time has been substantially reviewed and it includes
  - Aids and employment
  - Sec.303 of IPC ( Mithu Vs St of Punjab 1983)

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

## Right to life:

- Right to live with dignity( Francis Coralie Vs Delhi 1981.
- Right to healthy environment.( MC Mehta).
- Free education.
- Privacy.
- Shelter.
- Timely medical aid.
- Fair trial.
- Legal aid

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

- Delay in Trial and execution.
- Ecological Balance.
- Fair Trial
- Hand cuffing
- Non revision of pay.
- Prostitution - opportunities for education
- Public hanging.
- Right not to live

# HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

- Smoking in public places.
- Sexual harassment.
- Solitary confinement.
- Traffic control
- Water

**Thank You**