

**Disability Rights
(Rights of Persons with Disabilities
Act & National Trust Act) and Mental
Healthcare Act**



(RESEARCH DIVISION)

NATIONAL HUMAN RIGHTS COMMISSION, INDIA

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Disability Rights (Rights of Persons with Disabilities Act & National Trust Act) and Mental Healthcare Act

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RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The Rights of Persons with Disabilities (RPwD) Act was enacted in the year 2016 and came into force from 19th April, 2017. It replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The objective of the RPwD



Act is to ensure that all persons with disabilities can lead their lives with dignity, without discrimination and with equal opportunities. The Act lays down specific provisions to uphold such rights. It incorporates the rights of persons with disabilities covered under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory.

SOME RIGHTS GUARANTEED UNDER THE RPwD ACT

Persons with disabilities have the right to equality, dignity and respect for integrity:

Section 3(1) of the RPwD Act requires the appropriate government to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

The Act ensures the rights of women and children with disabilities:

Section 4 states that the appropriate government and local authorities shall take measures to ensure that women and children with disabilities enjoy their rights equally with others. The section further states that all children with disabilities have the right to freely express their views on all matters affecting them and that, for this, support will be provided to keep in view their age and disability.

Persons with disabilities have the right to live in the community.

Section 5(2) of the Act states that appropriate government shall endeavour that persons with disabilities are not forced to live in any particular living arrangement and are given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

The Act provides protection to persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment:

Section 6 of the Act requires the government to take measures to prevent torture, cruel, inhuman or degrading treatment and ensure that no person with disability shall be a subject of any research without his or her free and informed consent. This is to be obtained through accessible modes, means and formats of communication and prior permission of a Committee for Research on Disability.

The Act ensures protection of persons with disabilities from abuse, violence and exploitation:

Section 7 of the Act states that victims of violence, abuse or exploitation shall be rescued, protected and rehabilitated. The government is also obligated to create awareness about the provisions and make it available to the public.

Any person or registered organization who or which has reason to believe that an act of abuse, violence or exploitation has been, is being, or is likely to be committed may inform the Executive Magistrate of the incident who thereafter is obligated to rescue, protect, rehabilitate and provide maintenance to the victim.

The police on receipt of complaint or knowing about such incidents are obligated to inform the victim of their rights to apply for protection, free legal aid, right to file a complaint and the particulars of the Executive Magistrate and the nearest organization/institution working for the rehabilitation of persons with disabilities.

Persons with disabilities are entitled to equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters:

Section 8 of the Act requires the National and State Disaster Management Authorities to ensure the inclusion of persons with disabilities in its disaster management activities for their safety and protection.

Children with disabilities not to be separated from their parents:

Section 9 states that no child with disability shall be separated from his or her parents on the grounds of disability except on an order of a competent court, if required, in the best interest of the child.

The Act recognizes the reproductive rights of persons with disabilities:

Section 10 states that the appropriate government shall ensure that persons with disabilities have access to appropriate information regarding the reproduction and family planning and that no person with any disability is subjected to any medical procedure which leads to infertility without his or her free and informed consent.

The Election Commissions to ensure that persons with disabilities can cast their vote:

Section 11 states that the Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

The Act addresses challenges faced by persons with disabilities in accessing the justice system:

Section 12 states that persons with disabilities have the right to access any court or anybody with judicial or quasi-judicial or investigative powers without discrimination and steps will be taken to provide suitable measures to support persons with disabilities, especially those living without a family and those requiring high support for exercising legal rights.

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Further, the Section states that the National and State Legal Services Authority shall make provisions, including reasonable accommodation, to ensure access to any scheme, programme, facility or service offered by them. It is to make all public documents available in accessible formats and for this, all filing departments, registry, etc, will be supplied with necessary equipment. All necessary facilities and equipment to facilitate the recording of testimonies, arguments or opinions given by persons with disabilities in their preferred language and means of communication will be made available.

Legal rights of person with disabilities:

Section 13 states that the appropriate government shall ensure that persons with disabilities enjoy equal legal rights on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

Appointment of Limited Guardian:

Section 14 states that if any designated authority finds that a person with disability, who had been provided adequate and appropriate support, is unable to take legally binding decisions, then he may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the state government. The notified court or authority may grant total support to the person with disability and in case of limited guardianship is granted repeatedly, the decision regarding the support to be provided shall be reviewed by the court or the designated authority to determine the nature and manner of support to be provided.

Persons with disabilities require high support:

Section 15 of the Act states that the appropriate government shall designate one or more authorities to mobilize the community and create social awareness to support persons with disabilities in the exercise of their legal capacity. The authorities so designated shall take measures for setting up suitable support arrangements to enable persons with disabilities living in institutions and those with high support needs to exercise their legal capacity.

EDUCATIONAL RIGHTS OF PERSONS WITH DISABILITIES

The RPwD Act, in **Section 16**, requires the appropriate government and the local authorities to ensure that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities.



Responsibilities of mainstream schools to ensure inclusive education:

- Admit children with disabilities without discrimination;
- Provide education and opportunities for sports and recreation activities equally with others;
- Make buildings, campuses and various facilities accessible;
- Provide reasonable accommodation according to the individual's requirements;
- Provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;
- Ensure that education to persons who are blind or deaf or both is imparted in the most appropriate language, mode or means of communication;
- Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- Monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- Provide transportation facilities to children with disabilities and also the attendant of the children with disabilities having high support needs.

Measures will be undertaken by the government to make inclusive education a reality:

Section 17 of the RPwD Act requires the Government and local authorities to:

- Conduct a survey of school-going children in every five years to identify children with disabilities, ascertaining their special needs and the extent to which these are being met: Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;
- Establish adequate number of teacher training institutions;
- Train and employ teachers, including teachers with disability who are qualified in sign language and Braille, and also teachers trained in teaching children with intellectual disability;
- Train professionals and staff to support inclusive education at all levels of school education;
- Establish adequate number of resource centres to support educational institutions at all levels of school education;
- Promote the use of appropriate augmentative and alternative modes, including means and formats of communication, Braille and sign language to supplement the use of one's speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enable them to participate and contribute to their community and society;
- Provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of 18 years;
- Provide scholarships in appropriate cases to students with benchmark disability;
- Make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;
- Promote research to improve learning.

PROVISIONS FOR SKILL DEVELOPMENT AND EMPLOYMENT



Government is required to frame schemes for skill development and employment of persons with disabilities:

Section 19 of the RPwD Act requires the appropriate government to formulate schemes and programmes, including provision of loans at concessional rates, to facilitate and support the employment of persons with disabilities, especially for their vocational training and self-employment. The scheme and programmes are to provide for the following:

- Inclusion of persons with disabilities in all mainstream formal and non-formal vocational and skills training schemes and programmes with adequate provisions of support and facilities;
- Exclusive skill training programmes will be devised for those with developmental, intellectual, multiple disabilities and autism with active links with the market;
- Maintenance of disaggregated data on the progress made in the skill training and self-employment;
- Loans at concessional rates, including that of microcredit;
- Marketing of products made by persons with disabilities.

Persons with disabilities to have protection against discrimination in employment:

Section 20 states that no government establishment shall discriminate against any person with disability in any matter relating to employment, provided that the appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

Persons with disabilities cannot be denied promotions on the grounds of disability:

Section 20 states that no promotion shall be denied to a person merely on the ground of disability.

RIGHTS OF PERSONS WITH BENCHMARK DISABILITIES

“Person with benchmark disability” means a person with not less than forty per cent 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. The Schedule of Specified Disabilities enumerates the following disabilities:

1. PHYSICAL DISABILITY

- A. Locomotor disability:
 - Leprosy cured person
 - Cerebral palsy
 - Dwarfism
 - Muscular dystrophy
 - Acid attack victim
- B. Visual impairment:
 - Blindness
 - Low vision
- C. Hearing impairment:
 - Deaf
 - Hard of hearing

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D. Speech and language disability

2. INTELLECTUAL DISABILITY

A. Specific Learning Disabilities

B. Autism Spectrum Disorder

3. MENTAL BEHAVIOUR

A. Mental Illness

4. DISABILITY CAUSED DUE TO

A. Chronic neurological conditions:

- Multiple Sclerosis
- Parkinson's Disease

B. Blood disorder:

- Haemophilia
- Thalassemia
- Sickle Cell Disease

5. MULTIPLE DISABILITIES

Note: The Central Government may notify any other category as per need.

Institutions of higher education to reserve seats and provide age relaxation:

Section 31 of the Act states that notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the ages of 6 to 18 years shall have the right to free education in a neighbourhood school, or a special school, of his choice. Further, **Section 32** requires all government institutions of higher education and other higher education institutions receiving aid from the government to reserve not less than 5% seats for persons with benchmark disabilities and to give an upper-age relaxation of five years for admission.

Government to identify suitable jobs for persons with benchmark disabilities:

Section 33 requires the appropriate government to:

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- i. Identify posts in establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved as per the provisions of Section 34;
- ii. Constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and
- iii. Undertake periodic review of the identified posts at an interval not exceeding three years.

Percentage of reservation provided to persons with benchmark disabilities in government employment and how it is to be distributed:

Section 34 requires every appropriate government to appoint in every government establishment not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and 1% for persons with benchmark disabilities under clauses (d) and (e), namely

- (a) Blindness and low vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability, including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) Autism, intellectual disability, specific learning disability and mental illness;
- (e) Multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disability

Provision for age relaxation provided:

Section 34 states that the appropriate government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

Legal provision of employment in a private sector for persons with benchmark disability:

Section 35 requires the appropriate government and the local authorities

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to, within the limit of their economic capacity and development, provide incentives to the employer in the private sector to ensure that at least 5% of their workforce is composed of persons with the benchmark disability.

Provision of reservation provided in poverty alleviation and development of schemes and programmes:

- a. 5% reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;
- b. 5% reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;
- c. 5% reservation in allotment of land on concessional rate, where such land is to be used to promote housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

OTHER PROVISIONS UNDER THE ACT FOR PERSONS WITH DISABILITIES

Special provisions for persons with disabilities with High Support Needs:

Section 38 states that any person with benchmark disability, who considers himself in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

Government is required to ensure an adequate standard of living in the community for persons with disabilities:

Section 24 requires that within the limit of its economic capacity and development, the government shall formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community. The quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least 25% higher than the similar schemes applicable to others.

Healthcare facilities for persons with disabilities

Section 25 states that facilities provided will include barrier-free access in all parts of government and private hospitals and other healthcare institutions and centres, priority in attendance and treatment and subject to income criteria free healthcare in the vicinity especially in rural areas.

Measures to be undertaken to prevent the occurrence of disabilities:

Section 25 also states that the appropriate government and local authorities shall take measures and make schemes or programmes to promote healthcare and prevent the occurrence of disabilities. To achieve this, they will:

- (a) undertake surveys, investigations and research concerning the cause of occurrence of disabilities;
- (b) promote various methods for preventing disabilities;
- (c) screen all the children at least once a year to identify “at-risk” cases;
- (d) provide facilities for training to the staff at the primary health centres;
- (e) sponsor awareness campaigns and disseminate information for general hygiene, health and sanitation;
- (f) take measures for pre-natal, perinatal and post-natal care of mother and child;
- (g) educate the public through the pre-schools, schools, primary health centres, village level workers and Anganwadi workers;
- (h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;
- (i) healthcare during the time of natural disasters and other situations of risk;
- (j) essential medical facilities for life saving emergency treatment and procedures; and

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- (k) sexual and reproductive healthcare especially for women with disability

The Act also mandates social audits of schemes and programmes for persons with disabilities:

Section 48 requires the appropriate government to undertake a social audit of all general schemes and programmes involving persons with disabilities to ensure that they do not have an adverse impact and meet the requirements and concerns of persons with disabilities.

Insurance schemes to be devised for employees with disabilities in government service:

Section 26 requires the appropriate government to notify and make insurance schemes for their employees with disabilities.

Steps to be undertaken for rehabilitation in the areas of health, education and employment:

Section 27 states that within the economic capacity and development of the government and local authorities, services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities shall be undertaken. Rehabilitation policies shall be drawn up in consultation with NGOs and financial assistance shall be provided to NGOs for implementing services and programmes.

Measures to be taken to ensure persons with disabilities have a cultural life and participate in recreational activity:

Section 29 requires the appropriate government and local authorities to provide sponsorships to artists and writers with disability, establish a disability history museum, which chronicles and interprets their historical experiences, make art accessible, promote recreation centres and other associated activities, redesign courses in cultural and arts subjects to enable participation and facilitate participation in scouting, dancing, art classes, outdoor camps and adventure activities.

Section 29 also requires the development of technology, assistive devices and equipment to facilitate access and inclusion for persons

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with disabilities in recreational activities and also ensuring that persons with hearing impairment can access television programmes with sign language interpretation or sub-titles.

Measures to be introduced to ensure accessibility in infrastructure, transport and other public spaces:



Persons with disability independently accessing an ATM

Sections 40, 41, 44-46 lay down specific provisions for development and improvement of facilities in the public spaces to ensure accessibility for persons with disabilities. This includes ensuring that newly constructed buildings adhere to strict rules of construction which include facilities for persons with disability and older buildings are renovated to include above mentioned facilities.



All public spaces must have special provisions for persons with disability

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Transport must also be made more accessible so that persons with disability can enjoy the use of public spaces and facilities with dignity and freedom. Further, the appropriate government and the local authorities are required to formulate and publish an action plan for providing accessibility in all their buildings and spaces that offer essential services - such as all primary health centres (PHCs), civil hospitals, schools, railway stations and bus stops.

SCHEMES FOR THE WELFARE OF PERSONS WITH DISABILITY

Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/ Appliances Scheme (ADIP Scheme)

ADIP scheme is a scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances. Its main objective is to assist the needy persons with disabilities in procuring durable, sophisticated and scientifically manufactured, modern, standard aids and appliances that can promote their physical, social and psychological rehabilitation, by reducing the effects of disabilities and enhance their economic potential. The aids and appliances that are supplied under the scheme must have due certification. A person with disabilities fulfilling the following conditions would be eligible for assistance under ADIP scheme.

- An Indian citizen of any age.
- Holds a 40% Disability Certificate.
- Has a monthly income from all sources not exceeding Rs 20,000/- per month.
- In case of dependents, income of parents/guardians should not exceed Rs 20,000/- per month.
- Who have not received assistance during the last 3 years for the same purpose from any source. However, for children below 12 years of age, this limit would be 1 year.

Aids/appliances which do not cost more than Rs. 10,000/ - are covered under the Scheme for a single disability. However, in the case of Students with Disabilities (SwDs), students beyond IX class, the limit would be raised to Rs.12,000/. In the case of multiple disabilities, the limit will apply to individual items separately in case more than one aid/appliance is required.

Scholarships for Students with Disability

There are scholarships provided for SwDs under the Scheme of *National Scholarships for Persons with Disabilities*. Every year, 500 new scholarships are awarded for pursuing post-matric professional and technical courses of duration more than one year. However, for students with cerebral palsy, mental retardation, multiple disabilities and profound or severe hearing impairment, scholarship is awarded for pursuing studies from Class IX. Students with 40% or more disability, whose monthly family income does not exceed Rs. 15,000, are eligible for scholarship. A scholarship of Rs. 700/- per month to day-scholars and Rs. 1,000/- per month to hostellers is provided to the students pursuing Graduate and Post Graduate level technical or professional courses. A scholarship of Rs. 400/- per month to day-scholars and Rs. 700/- per month to hostellers is provided for pursuing diploma and certificate level professional courses. In addition to the scholarship, the students are reimbursed the course fee of upto Rs. 10,000/- per year.

Facilities for voters with disabilities

Voters having one among the 21 disabilities as mentioned by the Rights of Persons with Disabilities Act 2016 are termed as voters with disabilities. In addition, if a person who has reduced mobility and/or motor function and/or physical coordination due to age, temporary ailment, pregnancy and other disease, and needs to be facilitated to get registered and to vote are termed as electors/ voters with reduced mobility and physical functions.

An eligible person with disability or reduced mobility/ physical functions can get enrolled in electoral roll by filling Form 6 inclusive of information about one's disability online at www.nvsp.in and uploading the necessary documents. One can also enrol at voter enrolment centres or the offices of Electoral Registration Officers/ Assistant Electoral Registration Officers, which will be accessible for persons with disabilities and reduced mobility/ physical functions, by filling Form 6 in two copies which are available free of cost at such centres/ offices and annexing copies of the relevant documents. In case of any assistance/ facilitation of communication required in filling the form, the same would be provided at both offices. The forms can also be sent by post to Electoral Registration Officer/ Assistant Electoral Registration Officer.

GRIEVANCE REDRESSAL AND SPECIAL COURTS

CHIEF COMMISSIONER OF PERSONS WITH DISABILITIES- NODAL GRIEVANCE REDRESSAL AUTHORITY

The Chief Commissioner for Persons with Disabilities is the nodal authority to address the grievances and issues of persons with disabilities. **Section 74** of the RPwD Act requires the appointment of a Chief Commissioner for Persons with Disabilities and two Commissioners to assist the Chief Commissioner, of which one Commissioner shall be a person with disability. Further, the Chief Commissioner shall be assisted by an advisory committee comprising of not more than 11 members drawn from the experts from different disabilities

Functions and Duties of the Chief Commissioner:

Section 75 requires the Chief Commissioner to:

- a) identify *Suo motu* or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with the RPD Act and recommend necessary corrective steps;
- b) inquire, *Suo motu* or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate government and take up the matter with the appropriate authorities for corrective action;
- c) review the safeguards provided by or under the Act or any other law for the time being in force for the protection of the rights of persons with disabilities and recommend measures for their effective implementation;
- d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;
- e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

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- f) undertake and promote research in the field of the rights of persons with disabilities;
- g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;
- h) monitor implementation of the provisions of the Act and schemes, programmes meant for persons with disabilities;
- i) monitor the utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities;
- j) perform such other functions as the Central Government may assign.

Powers of the Chief Commissioner:

Section 77 states that the Chief Commissioner shall, to discharge his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for the examination of witnesses or documents.

Every state government required to appoint a State Commissioner for Persons with Disabilities:

Section 79 requires the State Governments to appoint a State Commissioner for Persons with Disabilities who shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the State Government.

Section 80 requires the State Commissioner to:

- a) identify, *Suo motu* or otherwise, provision of any law or policy,

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- programme and procedures, which are inconsistent with this Act, and recommend necessary corrective steps;
- b) inquire, *Suo motu* or otherwise, into a deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate government and take up the matter with appropriate authorities for corrective action;
 - c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of the rights of persons with disabilities and recommend measures for their effective implementation;
 - d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;
 - e) undertake and promote research in the field of the rights of persons with disabilities;
 - f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;
 - g) monitor implementation of the provisions of this Act and schemes and programmes meant for persons with disabilities;
 - h) monitor utilisation of funds disbursed by the state government for the benefit of persons with disabilities; and
 - i) perform such other functions as the State Government may assign.

SPECIAL COURTS

Section 84 requires that for providing speedy trial, the state government shall notify for each district a Court of Session to be a Special Court to try the offences under this Act. This has to be done with the concurrence of the Chief Justice of the High Court of the state.

Public prosecutors shall be appointed in these courts:

Section 85 requires the state government to notify and specify a Public Prosecutor or appoint an advocate with experience of not less than 7 years as a Special Public Prosecutor for the purpose of conducting cases in the Special Court.

Forum under this Act for persons with disabilities to approach if they face discrimination in employment:

Section 23 requires the appointment of a Grievance Redressal Officer (GRO) by every government establishment for grievance redressal relating to the matters of employment. The appointment of a GRO has to be notified to the Chief Commissioner or State Commissioner Disabilities as the case may be.

Any person aggrieved with the non-compliance of the provisions relating to employment may file a complaint with the GRO who shall investigate it and shall take up the matter with the establishment for corrective action.

The GRO shall maintain a register of complaints in the manner as may be prescribed by the Central government and every complaint shall be inquired within two weeks of its registration.

If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

OFFENCES AND PENALTIES



PENALTIES PRESCRIBED FOR OFFENCES COMMITTED UNDER THE ACT

- For the first contravention of provisions or rules under the Act, a fine up to Rs 10,000, and for subsequent contravention, a fine of Rs 50,000 up to Rs 5 lakh.
- If a company commits an offence and is proved that the offence has been committed with the consent, connivance or neglect by any director or other officer, such officer of the company shall be deemed to be guilty and liable to be proceeded against and punished accordingly.
- For fraudulently availing benefits meant for persons with benchmark disabilities, imprisonment up to two years or with fine up to Rs 1 lakh or with both.
- For insulting, intimidating, humiliating a person with disability within public view; assaulting or using force with intent to dishonour or outrage the modesty of a woman with disability;

denying food or fluids; sexually exploiting; injuring, damaging or interfering with the use of any limb or sense or any supporting device; performing, conducting or directing any medical procedures which leads to termination of pregnancy without her express consent, or that of a guardian and without the opinion of a registered medical practitioner; imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

- For will fully failing to produce any book, account or other documents or failing to furnish any statement, information or particulars, punishment with fine up to Rs. 25,000 for each offence, and in case of continued failure or refusal, with further fine up to Rs. 1,000 for each day after the date of the original order imposing the punishment of fine.

WHAT CAN A PERSON WITH DISABILITY DO IF PROVISIONS OF THIS LAW ARE NOT IMPLEMENTED?

- Make representations to the concerned government and/ or the concerned establishment, if there is deprivation or violation of any right provided under the Disabilities Act.
- If there is no response or if the response is negative/ inadequate, approach the concerned Commissioner of Disabilities.
- Alternatively, file a Writ Petition under Article 226 of the Constitution of India, in the concerned High Court.
- If there is any violation of a Constitutional right also, of national importance, file Writ Petition under Article 32 of the Constitution before the Supreme Court.

NATIONAL TRUST ACT, 1999

The “National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities” Act, 1999 provides for setting up a statutory body named National Trust to enable persons with disability to live independently by: (i) promoting measures for their protection in case of death of their parents, (ii) evolving procedures for appointment of their guardians and trustees, and (iii) facilitating equal opportunities in society.

The objectives of the National Trust in particular are:

- to enable and empower persons with disability to live as independently as possible within and as close to their community as possible;
- to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability;
- to extend support to its registered organisations to provide need-based services; and
- to evolve procedures for appointments of guardians and trustees for persons with disabilities.

Disabilities under National Trust Act:

The National Trust works for the welfare of persons with any of the following four disabilities

- Autism Spectrum Disorder (ASD)
- Cerebral Palsy
- Mental Retardation (now termed as Intellectual Disability)
- Multiple Disabilities

What is Guardianship?

A guardian is a person who is appointed to look after another person or his property. He or she assumes the care and protection of the person for whom he/she is appointed the guardian. The guardian takes all legal decisions on behalf of the person and the property of the ward. The occasion for taking care of another person may be his minority

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that is, a person who has not completed 18 years of age. It can also refer to guardianship of a person who because of physical and mental deficiencies is unable to take care of himself or his property. From early times, the condition of minority has been the ground for the appointment of guardians in all societies. This is because a minor person is considered unfit to make informed decisions for himself, which can be binding on him as regards others. Therefore, a minor person is treated in law as incompetent to enter into a contract with a person who is an adult. In all matters, therefore, a minor has also been considered unfit to represent himself except through his guardian. A guardian decides on behalf of the minor for protecting the interests of the minor and his property under the **Guardianship and Wards Act, 1890, Indian Contract Act, 1872 and Mental Health Act, 1987**

Constitution of Local Level Committee (LLC):

As per **Section 13 (1)** of the National Trust Act 1999, the Board shall constitute a Local Level Committee (LLC) for such area as may be specified from time to time.

As per **Section 13(2)**, a local level committee (LLC) shall consist of-

- An Officer of the Civil Service of the Union or of the State, not below the rank of a District Magistrate or a District Commissioner of a district;
- A Representative of a Registered Organization; and
- A Person with disability as defined in Clause (t) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Right & Full Participation) Act, 1995 (1 of 1996). *Section 13(1) and (2) of National Trust Act-1999.*

Local Level Committee (LLCs) have been advised to include following as co-opted members in addition to the statutory members to assist them in their functioning

- District Social Justice Officer/District Welfare Officer/District Rehabilitation Officer
- Civil Surgeon or Chief Medical Officer,
- A Psychiatrist of the District Hospital

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- A Reputed Lawyer in the district

Apart from above, Local Level Committee (LLC) could involve any other Government Officer or Disability Experts for rendering justice to the case and effective functioning, as per *Guidelines issued in October 2007, based on Section 13(5) of National Trust Regulations.*

Schemes under National Trust Act

1. **Disha (Early Intervention and School Readiness Scheme):** This is an early intervention and school readiness scheme for children in the age group of 0-10 years with the four disabilities covered under the National Trust Act and aims at setting up Disha Centres for early intervention for a person with disability through therapies, trainings and providing support to family members.
2. **Vikaas (Day Care):** This is a day care scheme, primarily to expand the range of opportunities available to persons with disabilities for enhancing interpersonal and vocational skills as they are on a transition to higher age groups. The centre will also offer care giving support to the persons with disabilities during the time the person with disability is in the Vikaas centre. In addition, it also helps in supporting family members of the persons with disabilities covered under the National Trust Act to get some time during the day to fulfil other responsibilities.
3. **Samarth (Respite Care):** The objective of Samarth scheme is to provide respite homes for orphans or abandoned, families in crisis and also for persons with disabilities from Below Poverty Line (BPL) & Low Income Group (LIG) families, including destitute with at least one of the four disabilities covered under the National Trust Act.
4. **Gharaunda (Group Home for Adults):** The objective of Gharaunda scheme is to provide an assured home and minimum quality of care services throughout the life of the person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities with adequate and quality care service with acceptable living standards including provision of basic medical care from professional doctors. Gharaunda Centre should provide vocational activities, pre-vocational activities and assistance for further training.

5. **Niramaya (Health Insurance Scheme):** The objective of Niramaya scheme is to provide affordable Health Insurance to persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. All enrolled beneficiaries will get a health insurance cover of up to Rs. 1.0 lakh as defined in the chart OPD treatment including the medicines, pathology, diagnostic tests, etc.
6. **Sahyogi (Caregiver training scheme):** This scheme aims at setting up Caregiver Cells (CGCs) to provide training and create a skilled workforce of caregivers to provide adequate and nurturing care for persons with disabilities and their families who require it. It also seeks to provide parents an opportunity to get trained in care giving if they so desire. This scheme provides a choice of training through two levels of courses of primary and advanced levels.
7. **Gyan Prabha (Educational support):** The Gyan Prabha scheme aims to encourage people with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for pursuing educational/ vocational courses like graduation courses, professional courses and vocational training leading to employment or self-employment. National Trust will provide a specific amount per course to a Person with Disability which will generally cover fees, transportation, books, out of pocket expenses (OPEs) etc.
8. **Prerna (Marketing Assistance):** Prerna is the marketing assistance scheme of National Trust to create viable and widespread channels for sale of products and services produced by Persons with disabilities (PwDs) covered under National Trust Act. The scheme also provides an incentive to the Registered Organisation (RO) based on the sales turnover of the products made by PwDs and fund their participation in sales such as exhibitions, melas, fairs, etc. to sell the products made by persons with disabilities.
9. **Sambhav (Aids and Assisted Devices):** This is a scheme to set up additional resource centres, one each in each city of the country with population greater than 5 million (As per 2011 census), to provide information and easy access to devices, appliances, aids,

software, etc. for betterment and empowerment of PwDs under the National Trust disabilities.

10. Badhte Kadam (Awareness and Community Interaction):

This scheme shall support Registered Organisations (RO) of The National Trust to carry out activities that focus on increasing the awareness of the National Trust disabilities. It aims at community awareness, sensitisation, social integration and mainstreaming of persons with disabilities. The National Trust shall sponsor a maximum of 4 events for each RO per year which is obligated to conduct at least 1 event in a year.

MENTAL HEALTHCARE ACT, 2017

It is the right of every person to have access to healthcare services, including mental healthcare. In order to ensure access to mental health assistance to all, the Mental Healthcare Act, 2017 was passed on 7 April, 2017 and came into force from 29 May, 2018.

What is Mental Illness?

The **Mental Healthcare Act, 2017** defines “**mental illness**” as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by subnormality of intelligence.”



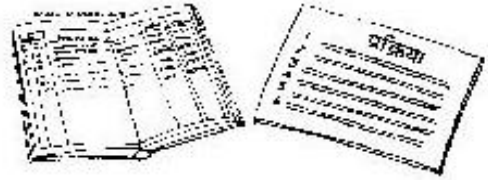
What is Mental Health Care?

Mental Healthcare includes analysis and diagnosis of a person’s mental condition and treatment as well as care and rehabilitation for mental illness. The motive of this Act is to provide mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services.

Rights of Persons with Mental Illness as given in the Mental Healthcare Act, 2017:



Mental Health Care



Access to Information and Record



No Discrimination



Right to Legal Aid



No cruelty and inhuman treatment

1. **Right to Access Mental Healthcare:** Every person shall have the right to access mental health services run or funded by the appropriate Government at affordable cost and the mental health services should be available in sufficient quantity without any discrimination on the basis of gender, sex, sexual orientation,

religion, culture, class, caste, political beliefs, disability or any other basis.

2. **Right to Information:** A person with mental illness or his nominated representative shall have the right to know the criteria of admission if the person is being admitted, know and understand the treatment plan and side effects (if any) of the proposed treatment and make application to the concerned Board to review the admission.
3. **Right to Access Medical Health Records:** All persons with mental illness shall have the right to access their basic medical records. However, the mental health professional (in charge of such records) may withhold specific information in the medical records if disclosure would result in serious mental harm to the person with mental illness or likelihood of harm to other persons.
4. **Right to Equality and Non-Discrimination:** Every person with mental illness shall be treated as equal to persons with physical illness which should include access to ambulance services, emergency service and other services without any discrimination
5. **Right to Confidentiality and Restriction on release of information in respect of mental illness:** A person with mental illness shall have the right to confidentiality in respect of his mental health, healthcare and treatment plan. Therefore, all health professionals providing treatment to a person with mental illness should keep the information confidential which has been obtained during the treatment. The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.
6. **Right to Free Legal Aid:** A person with mental illness shall be entitled to receive free legal services to exercise his rights given under the Mental Healthcare Act. It should be the duty of the magistrate, police officer, person in charge of the custodial officer or mental health establishment to inform the person with mental illness that he is entitled to free legal services.

- 7. Right to make Complaints about Deficiencies and Provision of Services:** Any person with mental illness or his nominated representative shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to the medical officer. If not satisfied, the person should send the complaint to the concerned Board or the State Authority if not satisfied by the response of the concerned Board.
- 8. Right to protection from cruel, inhuman and degrading treatment:** Every person with mental illness shall have a right to live with dignity and they must be protected from cruel, inhuman or degrading treatment in any mental health establishment.
- 9. Capacity to make Mental Healthcare and Treatment Decisions:**

 - i. Every person including a person with mental illness shall have the right to make healthcare or treatment decision, if the person is able to understand the information related to the treatment, communicate the decision by speech, expression or gesture and appreciate any reasonable consequence of a decision or a lack of decision on treatment.
 - ii. The information regarding the healthcare treatment shall be given in a language that is understandable to the person with mental illness, i.e. use of simple language, visual aids or sign language.
 - iii. The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.
- 10. Advance Directive:** Every person who is not a minor, shall have a right to make an advance directive in writing, specifying the way a person wishes to be cared and treated for a mental illness, and appoint individual or individuals as his nominated representative for taking decision related to his treatment in conditions when the person is unable to make treatment decisions for himself

Who is a Nominated Representative? A nominated representative is an individual, whom a person with mental illness appoints to represent and support him and to take decisions on his behalf during the process of his treatment in the mental healthcare system. A nominated representative might be a family member, close friend but not a minor, and should be competent to discharge the duties or perform the functions assigned to him.

Rights & Duties of the Nominated Representative: The nominated representative of the person with mental illness is mandated to provide support to him in making treatment decisions and have the right to seek information about diagnosis and treatment and be involved in discharge planning, have access to the family or home based rehabilitation services. The nominated representative shall have the right to withhold consent for letting the state authority obtain the knowledge and do relevant research on the mental health needs of the person with mental illness.

The Mental Healthcare Act specifies the **procedure and conditions of admission, treatment and discharge** of persons with mental illnesses including **minors**. Further, it states that minors so admitted shall be accommodated separately from adults, in an environment. Their age and developmental needs are kept under consideration.

The Act also prohibits the use of the following procedures on persons with mental illness:

- i. Electro-convulsive therapy without the use of muscle relaxants and anaesthesia
- ii. Electro-convulsive therapy for minors
- iii. Sterilisation of men and women, when such sterilization is intended as a treatment for mental illness
- iv. Chaining in any manner

Roles and Responsibilities of the Concerned Authorities:

1. Duties of the Appropriate Government:

- i. The appropriate government shall have a duty plan, design and implement programmes for the promotion of mental

- health and prevention of mental illness in the country.
- ii. The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted suicide, to reduce the risk of reoccurrence of attempt to commit suicide.
 - iii. It shall also address the human resource requirements of mental health services in the country by planning and implementing educational and training programs in collaboration with institutions of higher education and training.
 - iv. The appropriate Government shall train all medical officers in public healthcare establishments and all medical officers in the prison or jails to provide basic and emergency mental healthcare.
 - v. The appropriate government shall make necessary arrangements for a range of services required by a person with mental illness and integrate mental health services into general healthcare services at all levels such as Health establishments in all districts in urban as well as rural areas.
 - vi. Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card , or persons who are destitute or homeless shall be entitled to mental health services free of any charge and at no financial cost, with free of cost medicines at all mental health establishment run or funded by the appropriate Government.
 - vii. The Central Authority shall periodically review the use of advanced directives.

2. **Duties of the State Mental Health Authority:**

- i. **Development of Quality Standards:** The development of quality provision norms and standards for different types of mental health establishments shall be specified by regulations made by the State Authority.

- ii. **Registration of Mental Health Professionals:** The State Authority shall register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals and publish the list of registered mental health professionals in each district.
- iii. **Constitution of Mental Health Review Boards:** The State authority shall constitute a Mental Health Review Board to address issues faced by persons with mental illness such as providing legal aid, provide a caregiver if a nominated representative is not available, etc.
- iv. **Research:** The State Authority must take informed consent from persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medical interventions.

3. Mental Health Review Board:

- i. In conditions where no person such as relative or caregiver is available to be appointed by the person with mental illness, the Mental Health Review Board, constituted by the State Authority shall appoint the Director, Department of Social Welfare, or his designated representative as the nominated representative of the person with mental illness.
- ii. To receive and decide upon applications from persons with mental illness or their nominated representatives against the decisions of mental health professionals or in respect of non-disclosure of information in mental health establishments.
- iii. Where an establishment violates the rights of a person with mental illness, the Board or Authority may conduct an inquiry and take action to protect the rights of such persons.

4. Mental Health Establishments:

- i. Every person or organization that proposes, establishes or runs any mental health establishment shall register the said establishment with the Authority.

- ii. Every mental health establishment should meet the minimum standards of services and facilities and specified number of personnel engaged in the establishment for the purpose of registration and continuation of registration of the mental health establishment.
- iii. Every mental health establishment shall display the certificate of registration in a conspicuous place in the mental health establishment in such a manner that it is visible to all visitors.
- iv. An audit of all registered mental health establishments shall be conducted every three years under the supervision of Review Board.

5. Mental Health Professionals:

- i. No mental health professional or medical practitioner shall discharge any duty or perform any function not authorized by the Act or specify or recommend any medicine or treatment not authorized by the field of profession.
- ii. The mental health professional working in any mental health establishment must possess authentication or registration under the concerned authority.

6. Responsibilities of Other Agencies:

- i. **Duties of police officers in respect of person with mental illness:** Every officer in- charge of a police station shall have a duty to protect any person wandering at large (within the limits of the police station) if the officer has reason to believe that the person has mental illness and is incapable of taking care of himself and take him to the nearest public health establishment. In case of homeless persons wandering in the community, report of missing person shall be lodged at the concerned police station.
- ii **Duties of the Medical Staff:** The medical officer in- charge of the public health establishment shall be responsible for the assessment of the person and the needs of the person with mental illness.

- iii. **Duties of the Magistrate:** When any person with mental illness appears or is brought before the Magistrate, the Magistrate may order in writing that the person is conveyed to a public mental health establishment for assessment and treatment.

7. Offences and Penalties:

- i. **For Unregistered Mental Health Establishments:** Whoever carries on a mental health establishment without registration shall be liable to a penalty which should not be less than five thousand rupees which may be extended up to fifty thousand rupees.
- ii. **For Persons Working in Unregistered Mental Health Establishment :** Whoever knowingly serves as a mental health professional in a mental health establishment not registered under the Act, shall be liable to a penalty up to twenty thousand rupees.
- iii. **Punishment for the contravention of provisions made under the Act:** Any person who contravenes any provisions, rules or regulation of this Act, shall be punishable with imprisonment for a term which may extend to six months, or with a fine extended up to ten thousand rupees or both.
- iv. **Offences by Companies:** Where an offence has been committed by a company, every person who at the time of offence was in- charge for the conduct of the company shall be deemed to be guilty and punished accordingly.

PREVENTION OF MENTAL ILLNESS

There can be multiple causes contributing to mental illness. The following tips may be useful for prevention of the same:

- i. Eat nutritious food and exercise daily.
- ii. Engage yourself in a hobby or constructive activity.
- iii. Do not self-criticize and treat yourself with kindness and respect.
- iv. Learn how to deal with stress.

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- v. Set realistic goals.
- vi. Seek peer group support when feeling sad or depressed.
- vii. Approach teachers if there is any adjustment problem with classmates or peers.
- viii. Talk to parents regarding issues faced with studies, school or any social setting.
- ix. Stay away from cigarettes, alcohol and other drugs.
- x. Get help form a professional when you need it.

