

## **THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITY, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995**

- The person with Disabilities Act, was passed in the winter session of the parliament in 1995 and has come into enforcement on 7th February 1996. The Act gives fundamental rights to all disabled people in the country for the equal opportunity. The Act provides for both preventive and promotive aspect of rehabilitation like education, employment and vocational training, research, manpower development, creation of barrier free environment, reservation, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes etc.
- The Act contains 14 chapters and 74 clauses. In Chapter 1, Blindness, low vision, leprosy, hearing impairment locomotor disability, mental retardation and mental illness are defined. Disabled person is one who is suffering from not less than 40% of any of the disability as certified by a medical authority
- There is a provision in the Act to create a central level and state level coordination committees and the Executive Committee. The main functions of these committees are to review and coordinate the activities of government and NGOs to develop policies and monitor and evaluate the programmes and policies for person with disabilities. The Act provides direction to the government and local bodies for following activities:
- 1. Prevention and early detection of disabilities

All children shall be screened once a year for identifying "at risk" case

Staff of primary health centres shall be trained to assist in this work

## **Measures shall be taken for pre-natal, perinatal, and postnatal care of mother and child Awareness campaigns. MENTAL HEALTH ACT, 1987**

### **(For care and rehabilitation of mentally ill person)**

- The Mental Health Act 1987 repeals Indian Lunacy Act 1912 and Lunacy Act, 1977 (Jammu & Kashmir) and extends to whole of India. Under this Act 1987, a "Mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation (Sub. sec. (1) of Sec. 2).
- Psychiatric hospitals and nursing homes can be established or run only on obtaining a license from state or central authority for mental health services, and would be regulated for proper functioning and care of the mentally ill. Psychiatric services provided from a general hospital or nursing home would not be covered by the licensing and regulating rules (Sec. 3-10).

- Patients admitted on voluntary basis, if they request for discharge, are obliged to be discharged by the medical officer in charge within 24 hours of receiving the request, provided the medical officer is convinced that the discharge will not harm the interest of the voluntary patient. In such case, the medical officer would constitute a Board of two medical officers and seek their opinion. If the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home, the medical officer shall not discharge the voluntary patient but continue his treatment for a period not exceeding 90 days at a time (Sub. sec. 3 of Sec. 18).
  - Admission to psychiatric hospital under special circumstances can also be made on request of a relative or friend of the patient if the patient is not in a position to express willingness for admission as voluntary patient, provided the medical officer in charge is satisfied that it is in the interest of the patient to do so. This application should be accompanied by two medical certificates (one from a medical officer who is working in governmental service) stating that the person has such mental illness and it requires inpatient observation and treatment (Sub. sec. 1 & 2 Sec. 19).
  - No person admitted on the request of another person can be kept in the mental hospital for more than 90 days unless admitted under a Reception Order (S.S.2/Sec. 19). Apart from voluntary admission, a mentally ill person can be admitted through Reception Order. An application for reception order may be made by the Medical Officer in charge of a mental hospital, by the spouse or by any other relative of the mentally ill patient for admission to the Magistrate. The application should be accompanied by two medical certificates from two independent medical practitioners certifying the need for admission for treatment, and that is in the interest, for personal safety of the patient, or that of others. The medical practitioners should have seen the patient within the last ten days prior to the application. The magistrate can pass the Reception Order or Rejection to the application, after personally reviewing the documents and personally examined the alleged mentally ill (unless for reasons which he considers expedient not to personally examine). The consideration of the application should be made in the presence of the applicant, the allegedly mentally ill person, and the person appointed by the allegedly mentally ill to represent him (Sec. 22). A Reception order is valid up to 30 days only or till discharged (Sec. 31).
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- A mentally ill patient admitted by relative or friend can also apply to the magistrate for discharge (Sub. sec. 3 of Sec. 19).
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- Detailed procedures are laid down for being taken into custody by the police, confinement and security of mentally ill persons or prisoners in a mental hospital (Sec. 23, 35).

- Detailed procedures are laid down for ensuring proper care and custody to a mentally ill person by his legal relatives, through the police station (Sec. 25).
- The Act provides for regular, through supervision of mental hospital and nursing homes by monthly joint inspection of three visitors designated by the Central or State authority for health services (Sec. 37).
- Any person (other than a prisoner) admitted to a psychiatric hospital who feels he has recovered from his mental illness can apply for discharge to the magistrate, supported by a medical certificate from the medical officer in charge of the hospital (Sec. 43): he can be allowed to take leave from the hospital on request of his relatives or friends for a specified period (Sec. 45).
- Detailed procedure of safety in hospital, or during leave or absence or transfer to the another hospital has been laid down in Secs. 45, 46, 47. Similarly safe custody and protection of property of the patients has been defined in Sec. 50-77. Physical or mental cruelty of mentally ill patients is forbidden. Similarly conduct of research on a mental patient is forbidden, unless voluntarily consent is obtained. The human rights of a mentally ill person are protected under Sec. 81. Penalties and fines for contravening the provisions of the act have been discussed. (Secs. 82-87).

## Comments

1. The Mental Health Act is one of the good legislations. It came into force in 1993 however it is enacted in 1987 which shows that the Act was given low priority.

2. Mental Health Authorities are formed as watchdog bodies to assure the quality of services. Govt. and private psychiatric hospitals need to get license from these authorities. Practicing psychiatrists have raised objection for this because other branch of medicine do not have similar regulatory bodies to assess the quality of care. At the same time psychiatric hospital may be one which is providing "total care" or general hospital may be providing specialised psychiatric care.

3. Role of judiciary in admission and discharge of psychiatric patients give an impression of criminal flavour (Dutta 1995).

4. There is a need of big investment in development of infrastructure and provision of basic facilities in mental hospital which is still largely ignored.

5. The Act excluded mental retardation, dementia etc. which can not be treated. But very fact is that these conditions need gentle mental care and excluding may be against human rights of these patients.

6. Power and duties of police officers in respect to certain mentally ill persons have been laid down in Chapter 4 part B (Sect 23), of the Act. But we can see many mentally ill patients wandering in public places in conditions of total neglect and squalor. This indeed is testimony to the fact that the way section 23 is presently put to use has failed to achieve the objectives of the Act.

7. "Voluntary admission" not always real voluntary rather misused. This need to be more specific and must have experts opinion on the subject.

## References

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- 2. Education

Every child with disability shall have the right to free education till the age of 18 years with free books, uniforms and scholarships/appropriate transportation and barrier-free environment.

Teacher's training institutions shall be established to develop requisite manpower

Non-formal education

- 3. Employment

3% vacancies in Government shall be reserved for blindness/low vision, hearing impairment, locomotor disability and cerebral palsy.

Government educational institutions including those receiving grant from the government shall reserve at least 3 % of seats.

No employee can be sacked/demoted if they become disabled during service.

- 4. Non-discrimination

All the places of public utilities public buildings, rail compartments, buses, ship and aircraft shall be made barrier-free to give easy access.

- 5. Research and development

Age relaxation and health and safety measures in workplace environment

Poverty alleviation schemes

Reservation at 3%

- 6. Affirmative Action

Aids and appliances shall be made available

Allotment of land shall be made at concessional rates for housing, business, special schools, etc.

- 7. Social Security

Financial assistance to NGOs,

Insurance coverage to employees with disability

- 8. Grievances Redressal

Any violation of rights people with disability may move to the Chief Commissioner for Person with Disability in Centre and Commissioner in State.

- 9. Mass Awareness through TV/radio and other media

Encourage people on general health, hygiene and sanitation

For pre-natal, perinatal and post natal care

Causes and methods of prevention of disabilities

## Comments

1. American Disability Act protects People Living with HIV/AIDS (PLWA) from discrimination in various sectors including employment and health care. However, the Indian Act addresses the needs of very few categories of disability.

2. It protects persons with disabilities against discrimination only in the public sector. Large private sector may not follow the provisions under this Act.

3. Facilities accorded to disabled under this Act, in term of education and employment are ruefully low.

4. Punishment of person who practice discrimination with disabled is not addressed.

5. Diseases caused by Heart diseases, cancer epilepsy, muscular dystrophy, communicable diseases like tuberculosis, hepatitis, HIV infection and AIDS, disabilities like autism, dyslexia, and hemophilia should be included in the list of disability benefit list.

6. Despite the fact that the physical or mental impairment of people living with HIV/AIDS is not apparent, they are not regarded as able bodied individuals. The stigma associated with their condition is so immense that, they are most often denied access to treatment and discriminated in the workplace, at time resulting in termination of employment and prevent from participating in mainstream society.

#### References

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