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## Remedies-Rights To Disabled Person

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### ABSTRACT

Mentally ill persons are born with same set of rights, as we have their physical or mental illness do not take away their valuable rights, rather, they are in need of more Civic rights and privileges so that they can stand together with normal ones. Disability is the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to physical and social barriers. It includes physically handicapped as well as mentally retarded person sub-normal mental capacity, whether arising from innate mental defect or deficiency or from mental disorder or illness, has long presented legal problems of care and custody, of responsibility of such persons rights of their capacity for legal act, of responsibility for wrongs and crimes and liability to punishment. In India, awareness about mental health issues remained dangerously low, sensitiveness in human being is decreasing day by day.

**INTRODUCTION:-** Key words (1) mentally ill person (2) Disability (3) Mental Health Act (4) The Rights of person with Disabilities Act 2016

It is heartening to see that we are very much concern with issues of disabled persons. First let us understand the concept of disability. The Concept can be best understood with reference to the meaning clarified by WHO, Disability is the loss or limitation of opportunities to take part in the normal life of community on an equal level with others due to physical and social demarcation. It includes physically handicapped as well as mentally retarded person.

In India, awareness about mental health problems remained dangerously low, Sensitiveness in human being as decreasing day by day. Disrupted or incomplete development of any organ of the body or brain is defines or known under disability. Disability arising from the loss of any part of the body due to an accident also comes under the category of disability. In this way, two forms of disability physical disability and mental disability have been prescribed by medical science. In the general sense, disability is such a physical and mental ability that a person is unable to perform any task like normal people. In India a person who is not a victim of disability of less than 40% certified by a medical Board is considered as a disabled person. In the 1981, Census in India, three categories of persons with disability. In 2001 were 5 types and 7 types of disabilities in 2011 as the basis of disability. The persons with disabilities Act 2016 has now increased the categories of persons with disabilities to 21. (1)

Kinds or Identification of disabled person under Disabilities Act 2016.

1. Mental Retardation. 2 Autism Spectrum Disorder. 3 Cerebral Palsy. 4. Mental illness. 5. Hearing impairment. Speech Impairment 7. Blindness 8. Low Vision 9. Locomotor Disability. 10. Leprosy-cured 11. Dwarfism 12. Acid Attack Victim 13. Muscular Dystrophy. 14. Specific learning disabilities. 15. Intellectual disability. 16. Multiple sclerosis. 17. Parkinson Disease 18. Hemophilia 19. Thalassemia 20. Sickle cell disease 21. Multiple Disability

Even Now a days because of lack of Education lack of Medical treatment facility and utter social neglect, the mentally ill mostly remain Condemned to their own fate such persons are facing very painful isolated existence and even extinction.

### **Mental Health and Law Apparent issues.**

Disability is a major social problems in India. The ironic aspect associated with this problem is that in Indian society, the disabled are often seen as despised and hazy. Even disabled are neglected and despised by family members. In such a situation, disabled starts to consider us life as a curse. They start getting frusted and frustrated. The importance of mental health is statutory recognized vide the mental health Act, but the over all mind set in its effective implementation is lagging. These is need to change the mind set of people. It also being realized that regulation in the area of mental health is inecitable. The three organs of the state Viz, the executive, the legislature and the fiduciary, therefore, must adopt a more activist approach in urgently tackling the problems of the mentally vulnerable and take immediate action to ameliorate the pathetic conditions in which they are forced to exit. Our constitutional ethos highlights three basic components of human personality Viz dignity ( Art 21) Creativity (Art 19)(1) and opportunity (Art 16) (1) and 38. (2) Article 19(1) 16(1) and 38(2).

At present, the current status of legislation on this subject confines to certain major Acts, such as (I) Mental Health Act, 1987 (MHA) Provides for treatment and case of the mentally ill persons and making better provision with respect to their property and related matters, (II) The Bombay nursing Home Registration Act 1949 Containing Regulatory Provision for the nursing home (III) The Medical council Act, (IV) The legal services authority Act 1987 entitling under section 12(d) and (g) person with disability including a person in a psychiatric hospital or psychiatric nursing home for free and competent legal services (V) The equal opportunities ( Protection of Rights and full participation) Act 1995 and in 2016 the PWD Act come into force. (3) In this Act special provisions were made for education, employment, barrier free construction of environment and social security etc. for the disabled. Keeping in mind the needs of differently abled person, where the department of Disability empowerment was created by the central government in the year 2012 under the ministry of social justice and empowerment in the year 1999 a separtal national trust was formed for the welfare of people with Autism, cerebral-pulsy, mental retardation and multipele disabilities. maintaining the objektivies of monitoring the expenditure of funds released by the central government for the welfare of persons with disabilities and increasing co-ordination with the state commissioners to address complaints related to the compliance of rules and regulations related to the persons with disabilities commissioners office was established.(4)

The problem of disability in India is not only more, but is also increasing gradually. under 2011 census date shown that the total population of the disabled in India increased from 21.9 million in 2001 to 26.8 million in 2011. Among the total disabled populations of the country, the percentage of disabled person is 55.9 (1.5 crore) and that of women is 44.1 ( 1.1 crore) the percentage of disabled people in India is 2.21 percent (5)

### **The Mental Health Act 1987:-**

The regulation under the mental health(M.H.) Act is Supervisory and not facilitating. The Defination of Mentally "ill" given in section 2 (M) as a person who is in need of treatment by reason of any mental disorder other than mental retardation is quite wide under section 91 of the M.H. Act, there is a provision for legal aid to mentally ill persons. (6) The High court under this provision has the power to make rules with the previons approval of the state Government make detiled provision for a competent and adequate legal aid with all necessary inputs regarding the entire juslice process. unfortunately, no such efforts are made on where except Gujrat. An outstanding and segnificant contribution have been

made by Gujrat High court. In the case of Bhola bhai Hirabhai VS state of Gujrat directions have been given to frame rules for assessing criminal responsibility and providing legal aid to the mentally ill persons. (7)

### **International perspective:-**

In the year 2008, the united nations Treaty on the rights of persons with Disabilities has been given satisfaction by the UNCRPD in 2006 with the emphasis on giving full and effective participation to the disabled along with other persons of the society. A part from this India is also Associated with the Incheon strategy which was implemented during the decade-long period 2013 to 22 for Asia and the pacific region and the whole world to make society free of disabilities and ensure their rights for the disabled to be known is the action plan. if the disabled is given an accessible environments they can't only contribute better in action building but can also overcome the obstacles of life by developing them- selves well. keeping this in mind, an innovative initiative has been taken in the form of the Sugamya Bharat Abhiyan. The strategy paper of this campaign has been prepared keeping in the mind the third goal of incheon strategy in which the emphasis is on providing physical environment public transport knowledge informations and communication facilities to the disabled.

### **The consumer protection Act, 1986:-**

The national human rights commission report call for an effective implementation of legislation to provide full and equal opportunities for the persons, suffering from disabilities under the person with Disabilities Act 1995. In the context of mental sickness those who are afflicted for want of clear Knowledge of the available choice, in respect of house hold goods or transport facilities and even health services and life threatening situations necessitating the parctiace of drugs etc. remain totally dependents Most of time in respect of mental health services usually proxy consent by family of the mentally sick is required A standard M.H. Practice therefore is to by pass patient's capacity to consent and to allow surrogated decision making resultantly the patients does not co-operate usually as no attempt is made to seek his voluntary consent. willing co-operation of the patient can secure better results such issues require critical reappraisal. (8)

### **Search of Justice:-**

The Rights of person with Disabilities bill 2014 is considered to be extremely important for the welfare of persons with disabilities. Its most special thing is that it is proposed to give 5% reservation to disabled in government jobs. It is 4% accepted in the amended bill. According to 2011 census, the disability population in india is 2.68 crore. of these 1.34 crore disabled persons are is the employment age group. Experts say that the countrys GDP be increased by 3 to 7 percent by providing equal opportunities to the disabled. It is clear that disabled is not a burden. It they are linked to the mainstream they can become carriers of economic and social development.

In the background of the legal constitutional mandate under article 21 interpreted to cover a gamat of rights essential for decent and dignified human living and a legal scenario as narrated above one can't resist inquiring why is it that shocking state of affairs prevail in the asylums and hospitals for the mentally sick patients? Why is there so much apathy at the central and state levels in doing enough to ameliorate their miserable existence and devise scientifically designed rehabilitation strategies?

The Pathetic stituation of this vulnerable segment of our community has been high lighted in Ramchandra Tandi VS State . The division bench upholding the rights of the disabled children asked the state not to take the "Untenable stand of financial instability and need for financial austerity".(9)

In Bolabhai Hirabhai VS State of Gujrat.(10) The Division bench of the High Court setting a side the order of conviction of an insane accused invoked the time-tested mac naughten Rule, animating section 84 of the Indian penal code and quashed the sentence passed under sections 302 of IPC. Especially worth recording, however is the concern shown by the court for mentally challenged and its directives to

- (I) Frame rules for assessing criminal responsibility and
- (II) Make Rulles regarding legal aid to mentally ill persons

## **Conclusion :-**

It is absolutely necessary for the development and progress of country to connect the disabled with mainstream. For this the disabled have to be made barrier free. It is not just the government's responsibility. For this all citizens including the employers, teachers, local communities, goods and service providers and the disabled themselves will also have to come forward. Some other initiatives are still needed for welfare to disabled. Interests among the NGO's and lack of transparency in mental health sector also evident. Psychiatric and trained health care, paramedical services are also inadequate due to a very low priority attached to this sector by the state.

Justice V. R. Krishna Iyer said " Law hangs limp if executive action is nil. The Court can not run the administration, but can only give directions. Therefore we want legislation and activist administration if the disabled are enjoying brighter prospects.(11)

The need of the hour is not merely to generate empathy for the mentally challenged but to organize in every state, an expert Research team that may be responsible for continued situation analysis and reliable surveys.

Disabled is not a curse but it is valuable human resource. Keeping this in mind the government has also paid attention to financial inclusion of differently abled. Taking a step forward towards education employment and self-reliance of the disabled, the national handicapped finance and development corporation was formed on 24 January 1997 with a share capital of Rs 400 crore by the central government. It is working for the welfare of the differently abled as a non-profit company. The corporation provides grant for skill training to the differently abled then the facility of self employment loan education loan and microfinance as also provided. A unique job portal for the disabled has been developed by N. H. F. D. C. in consultation with the department of disabled employment which was launched in January 2016. This job Portal provides free job opportunities, self employment loans, education loans and skill training etc. on single platform.

## **Notes and references**

- 1. The rights of persons with disabilities Act, 2016**
- 2. Article 14(1) and 32 (2) of the constitution.**
- 3. National trust 1999 ( Ministry of social justice).**
- 4. Person With disabilities ( Equal opportunities protection Rights and Full Participation Act, 1995.**
- 5. census report 2011.**
- 6. Medical Health Act, 1987 Section 9**
- 7. Bola bhai VS State of Gujrat. law report 2000.**
- 8. Consumer Protection Act, 1986.**
- 9. Ramchandra tandi VS State of Orissa.**
- 10. Bolabhai Hirabhai VS State of Gujrat.**
- 11. Law Justices and Disabled Page 113(1982) by Justices V R Krishna Iyer**