

THE PERSONS WITH DISABILITIES ACT, 1995

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Subject :- Medical law

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INFORMATION

- ⦿ Name: The Persons with Disabilities Act, 1995.
- ⦿ Country: India
- ⦿ Subject(s):
An Act to make it unlawful to discriminate against disabled persons in connection with employment, the provision of goods, facilities and services or the disposal or management of premises; to make provision about the employment of disabled persons; and to establish a National Disability Council
- ⦿ Adopted on: 1995

GOALS

- Prevention and early detection of disabilities
- Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities
- Various measures shall be taken to prevent disabilities. Staff at the Primary Health Centre shall be trained to assist in this work
- All the Children shall be screened once in a year for identifying 'at-risk' cases
- Awareness campaigns shall be launched and sponsored to disseminate information
- Measures shall be taken for pre-natal, peri natal, and post-natal care of the mother and child

PRINCIPLES

The core concepts in the DDA 1995 are, instead:

- ◉ less favourable treatment for a reason related to a disabled person's disability; and
- ◉ failure to make a "reasonable adjustment".
- ◉ whether the proposed adjustment would meet the needs of the disabled person;
- ◉ whether the adjustment is affordable;
- ◉ whether the adjustment would have a serious effect on other people.

STRUCTURE AND MAIN ARTICLES

- Preliminary
- The central coordination committee
- The state coordination committee
- Prevention and early detection of disabilities
- Education
- Employment
- Affirmative action
- Non-discrimination

OTHER ARTICLES

- Research and manpower development
- Recognition of institutions for persons with disabilities
- Institution for persons with severe disabilities
- The chief commissioner and commissioners for persons with disabilities
- Social security
- Miscellaneous

PRACTICAL REALIZATION

“The Right of Persons with Disabilities bill- 2016” was passed by both houses Rajya Sabha and Lok Sabha.

The Disability Bill-2016 replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

KEY FEATURES OF THE DISABILITY LAW

- ◉ The RPWD Act 2016 contains 17 chapters with 102 sections. All these chapters are important to Psychiatrists while chapters 1,5,10 and 11 hold special importance as the provisions in these chapters are closely associated with the ethics of physical and mental health professionals. The definitions of specified disabilities given at the end of the Gazette Notification as a ‘Schedule’ are an extension of definitions given in chapter 1, section 2(zc). Mental health disabilities like intellectual disabilities, specific learning disabilities and autism spectrum disorders are clubbed together creating confusion for the certifying doctors and implementing Government departments. By this definition it looks like that these three items are one and the same. It has to be rectified immediately before framing rules for implementation of the Act.

SIGNIFICANCE - THE HITS

- ◉ With the increase of industries in India, the role of the corporate sector in generating job opportunities had increased tremendously. For many years now, there has been a pressing need to create awareness amidst the corporate sector to take active responsibility in recognizing the abilities of disabled persons and give them equal opportunities in the job market. By enacting the Disability Law, the Indian Government has succeeded in promoting equal employment opportunity for the disabled in the private sector as well, by casting mandatory obligations on private employers.

THE HITS

- According to the United Nations, around one billion people live with disabilities globally. Among them, 40 to 80 million live in India²³. Prejudice, coupled with lack of facilities and opportunities, has often curbed them from leading a normal life. Given the mandatory requirement to build equal opportunities for the disabled, the above statistics are likely to reduce in the years to come.

SIGNIFICANCE - THE MISSES

- ◉ While the initiative taken by the government in recognizing the needs of the disabled is commendable, there is inadequate clarity on various aspects under the Disability Law, which the government may need to clarify in due course. For instance, the Disability Law requires employers (including in the private sector) to include in their Equal Opportunity Policy, details such as special leaves, accommodation facility etc. that shall be provided to the disabled persons working at the establishment. However, Disability Law does not clarify (a) the quantum of special leaves that need to be provided nor does it mention the purpose(s) for which such leaves may be availed; (b) the standards for accommodation facility etc.

THE MISSES

- ◉ The Disability Law does not provide a transition framework or a timeline for ensuring compliance under the Disabilities Act, 2016.
- ◉ The obligations cast upon private establishments under the Disability Law such as providing training to the disabled, assistive devices, ensuring accessibility norms etc. would entail additional costs for employers. While government establishments should be able to accommodate these additional costs, the Disability Law does not provide for any incentives to private establishments to enabling them to set- off the costs incurred.