

## IS THERE A NEED FOR LAW REFORM?

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The persons with disability in India have a large number of laws that govern their lives. Many of these laws are archaic and have not kept up with changes in society. Whereas India today is zooming ahead as a world leader in Information Technology, our laws that govern the disabled are a patchwork of old, not so old and new laws that make understanding and application of the law complex and unwieldy.

Till recently the Indian Lunacy Act, 1912, governed the fate of the mentally handicapped with disastrous outcomes. Fortunately, wisdom prevailed and the Act has been scrapped. The Mental Health Act of 1987 deals only with the mentally ill leaving the mentally retarded in a legal limbo, causing problems in caring for persons with mental retardation. The Indian Contract Act, 1872 provides the basis of persons entering into business or contracts, managing his/her own estates, property, bank accounts etc. The basic problem with this law is that it looks upon persons with mental disability as being persons of 'unsound mind' and therefore incapable. Disabled is a term of wide spectrum of capacity of persons with mental disability and that many of them can very easily operate their own accounts and business. Also, technology in India and abroad has advanced considerably making it possible for persons with disability to be more capable in handling their financial affairs.

However, it is the law that needs to take a fresh look at the limits of capacity of the mentally disabled and amend itself to meet today's needs. The deficiencies of the Indian Trusts Act, 1882 and the Guardianship and Wards Act of 1890 will hopefully be covered by the National Trusts Act of 1999 because this Act has opened a window on the issue of capacity when it says in Chapter VI that the local level committees shall consider:

- (a) Whether the person with disability needs a guardian;
- (b) The purpose for which guardianship is required for persons with disability.

These sentences have major imports and breaks ground on the issue of capacity and limited guardianship, i.e., firstly, it accepts that not all persons with mental disability are necessarily in need of a guardian and secondly guardianship if needed could also be "Limited Guardianship", catering only for specific needs. This implies that the law recognises the

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capacity of persons with disability. This is an important step in the understanding of the capabilities of the disabled and thereby in their empowerment.

The National Trusts Act, 1999 was necessary because the needs of the persons with mental disability were not met by the Persons with Disabilities Act, 1995. If we look at all these Acts put together, do we feel that the issue of criminal responsibility, marriage and institutionalization have been met ?

For the past two centuries laws in India for the disabled have been hiccapping from one issue to another. The RCI Act of 1992, as we all know, has generated its own controversies. Is it not time that we have an umbrella law that covers all aspects of legislation for the disabled including accountability and penalties for non-observance of the law ? It is also felt that detailed rules and regulations need to be issued for implementation of the Disability Act, 1995 and the National Trust Act, 1999 specifying in detail what needs to be done and how and when and where.

The options are :

- (a) A new all encompassing Act that covers all aspects of disability complete with detailed rules and regulations as to it's implementation and penalties for failure to observe the law.

Or

- (b) A new Act to cover the areas left out by the Persons with Disability Act, 1995 and the National Trusts Act, 1999 with separate rules and regulations in great detail that spells out how these Acts will be implemented

Or

- (c) Detailed sets of rules and regulations that facilitate the implementation and administration of the Persons with Disabilities Act, 1995 and the National Trust Act, 1999 and lays down penalties for failure in their observance.

This issue needs serious discussion and consideration so that the future does not find us wanting in ensuring the rights of the disabled, their rightful place in society in today's and tomorrow's world.

Recent legislation of 1995 and 1999 for the disabled in India has kindled a lot of hope and hype. These laws spell out in some details the rights of persons with disability.

To some of us, the causes for the slow pace of implementation of the law are as follows :

- (a) Archaic laws that have been enacted spasmodically to meet perceived needs. A holistic analysis of the needs of persons with disability and how they can be met has yet to be taken.
- (b) Lack of knowledge of upholders of the law, i.e., the police, magistrates, deputy commissioners, etc. about the rights of the disabled and the legislation that governs them.
- (c) Failure of the State to accept that the laws for the disabled also imposes an obligation on the State to ensure that these laws are implemented and on the citizens to understand the needs and rights of persons with disability, and the need of their friendship and support.

In the ultimate analysis, it is the outcome that determines the efficacy of a system. Legislation for the disabled in India, like everything else, needs to keep abreast with changes in the modern world if it aims to be truly effective. If we fail to plan effectively, we will only be planning to fail.