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Assessing the Rights of Persons with Disabilities Act, 2016: Adequacy in  
Addressing the Needs of Individuals with Mental Illness and Their  
Families

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Abstract

This comprehensive analysis evaluates the Rights of Persons with Disabilities Act, 2016, focusing on its adequacy in addressing the unique needs of individuals with mental illness and their families. Originating from India's commitment to the UNCRPD, the Act, enacted in 2016, introduces transformative principles emphasizing dignity, autonomy, and inclusion for persons with disabilities (PWD). The legislation expands the recognized conditions from 7 to 21, ushering in a new era of inclusivity. However, a critical gap emerges concerning mental illness, with the Act falling short in tailoring provisions to the distinctive challenges faced by individuals with mental illness and their families. The role of the Mental Healthcare Bill, 2016, the involvement of psychiatric professionals, and the need for targeted social welfare measures are discussed. The Abstract highlights the necessity of aligning the Rights of Persons with Disabilities Act with psychiatric practice for ethical and inclusive mental health care.

Keywords: Rights of Persons with Disabilities Act, 2016, Mental illness, UNCRPD, Inclusivity, Psychiatric practice.

Introduction

After India signed and ratified the UNCRPD in 2007, a significant legislative overhaul commenced in 2010, aiming to replace the outdated Persons with Disabilities Act, 1995 (PWD Act, 1995) to align with the UNCRPD. Following extensive consultation meetings and a meticulous drafting process, the Rights of Persons with Disabilities Act, 2016 (RPWD Act, 2016) successfully passed both houses of Parliament. This crucial legislation came into effect on December 28, 2016, following the receipt of presidential assent.

Emphasizing the empowerment of persons with disabilities (PWD), the RPWD Act, 2016 enshrines fundamental principles. These include the recognition of inherent dignity, individual autonomy, and the freedom for individuals to make their own choices. The legislation underscores the importance of independence, non-discrimination, and the full and effective participation and inclusion

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of PWD in society. Moreover, it advocates for respect for differences, acknowledging disabilities as integral to human diversity and humanity.

Furthermore, the RPWD Act, 2016 lays out principles such as equality of opportunity, accessibility, and gender equality, emphasizing the rights of children with disabilities. It signifies a paradigm shift in the perception of disability, transforming it from a social welfare concern into a human rights issue.

The implementation of these principles reflects a progressive approach, marking a positive shift towards fostering inclusivity and equality for persons with disabilities in India.

#### Objectives:

- **Evaluate Legislative Evolution:** Examine the evolution of disability legislation in India, particularly the transition from the Persons with Disabilities Act, 1995, to the Rights of Persons with Disabilities Act, 2016, to understand the motivations and objectives behind the legislative overhaul.
- **Assess UNCRPD Alignment:** Evaluate the extent to which the Rights of Persons with Disabilities Act, 2016 aligns with the principles and guidelines set forth by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), considering India's commitment post-ratification in 2007.
- **Analyze Fundamental Principles:** Analyze the fundamental principles embedded in the RPWD Act, 2016, emphasizing inherent dignity, individual autonomy, and the shift from a social welfare approach to a human rights perspective concerning persons with disabilities.
- **Examine Specific Provisions:** Examine specific provisions within the RPWD Act, 2016, that address the unique challenges faced by persons with mental illness (PMI), including changes in terminology, recognition of diverse needs, and the inclusion of mental health disabilities.
- **Evaluate Implementation Mechanisms:** Evaluate the mechanisms outlined in the Act for the implementation of rights and provisions, assessing the role of government bodies, advisory boards, and funds at both national and state levels.
- **Highlight Gaps and Challenges:** Identify gaps and challenges in the RPWD Act, 2016, concerning the specific needs of individuals with mental illness and their families, emphasizing areas where the legislation may fall short or require further refinement.
- **Examine Professional Involvement:** Investigate the level of involvement and representation of psychiatric professionals, specifically the Indian Psychiatric Society, during the drafting process of the RPWD Act, 2016, and assess the implications of their inclusion or exclusion.
- **Propose Recommendations:** Based on the evaluation of gaps and challenges, propose recommendations or amendments to enhance the RPWD Act, 2016, ensuring a more inclusive and effective framework for addressing the needs of individuals with mental illness and their families.
- **Promote Ethical Psychiatric Practice:** Explore the integration of psychiatric practice within the framework of the RPWD Act, emphasizing the ethical considerations and freedom of expression for psychiatrists while ensuring the rights and well-being of persons with disabilities.
- **Contribute to Policy Discourse:** Contribute valuable insights to the ongoing policy discourse surrounding disability rights in India, fostering discussions that lead to the continuous improvement of legislation and practices concerning persons with disabilities, particularly those with mental illness.

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**The persons with disabilities act, 1995: fostering inclusion and social welfare:**

Enacted as the PWD (Equal Opportunities, Protection of Rights, and Full Participations) Act, 1995, this legislation aimed to actualize the "Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region." Originating from a meeting of the Economic and Social Commission for Asia and the Pacific Region in December 1992 at Beijing, this Proclamation launched the "Asian and Pacific Decade of Disabled Persons 1993–2002."

The Act initially identified seven conditions of disabilities, including blindness, low vision, leprosy cured, hearing impairment, loco motor disability, mental retardation, and mental illness. Mental retardation was defined as "a condition of arrested or incomplete development of the mind of a person, specially characterized by sub normality of intelligence," while mental illness was simply described as "any mental disorder other than mental retardation."

Rooted in a social welfare approach towards Persons with Disabilities (PWD), the Act primarily focused on the prevention and early detection of disabilities, as well as the education and employment of PWD. Notably, the legislation mandated a 3% reservation in government jobs and educational institutions to promote inclusivity. Emphasizing the creation of barrier-free environments, the Act sought to serve as a measure of nondiscrimination.

**Advancing rights and inclusion: highlights of the rights of persons with disabilities act, 2016:**

The Rights of Persons with Disabilities Act, 2016, marks a transformative shift by expanding the list of recognized conditions from 7 to 21. This inclusive approach now encompasses conditions like cerebral palsy, dwarfism, muscular dystrophy, and addresses specific challenges faced by acid attack victims, individuals who are hard of hearing, and those with speech and language disabilities, among others.

Noteworthy changes include the replacement of the term "mental retardation" with "intellectual disability," defined as a significant limitation in both intellectual functioning and adaptive behavior. The Act places importance on equality, dignity, and the integrity of persons with disabilities (PWD). Recognition of diverse needs is evident, with provisions for high support needs and a benchmark disability threshold of at least 40%.

Crucially, the Act mandates that PWD have the right to equality, life with dignity, and respect for their integrity on par with others. The government is tasked with creating environments that harness the capacities of PWD, emphasizing non-discrimination and personal liberty.

In a bid to protect against abuse and exploitation, the Act empowers individuals and organizations to report instances of violence to local Executive Magistrates. Ensuring equal rights for women and children with disabilities, measures against cruelty, and providing legal aid are integral components.

The legislation emphasizes accessibility in various aspects, including voting, access to justice, and public documents available in accessible formats. Legal capacity, property rights, and the right to control financial affairs are ensured on an equal basis with others.

The Act reinforces the commitment to inclusive education, vocational training, and self-employment, requiring accessible infrastructure. Government initiatives extend to healthcare, insurance, rehabilitation, cultural activities, and sports. Reservations in education and employment, incentives for private sector employers, and specialized employment exchanges aim to enhance opportunities.

Setting a 5% reservation in higher education institutions and government establishments, the Act underlines the importance of creating an inclusive society. Enforcement mechanisms, advisory boards, and funds at national and state levels emphasize the commitment to realizing the objectives of the

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legislation. Penalties for contraventions and provisions against atrocities demonstrate the legislative resolve to safeguard the rights and dignity of Persons with Disabilities.

### **Bridging gaps: the rights of persons with disabilities act, 2016 and mental illness concerns:**

Examining the Rights of Persons with Disabilities Act, 2016 reveals a critical gap in addressing the specific needs of individuals with mental illness (PMI) and their families. Despite mental illness being recognized as a condition of disability, the Act falls short in tailoring provisions to the distinctive challenges faced by PMI.

Individuals with severe mental illness often lack awareness due to a lack of insight, making family support crucial. In a country with limited mental health resources, families play a vital role in the management of mental illness. However, Section 7(2) of the Act, while aimed at protecting PWD from abuse, can inadvertently discourage family members and caregivers from providing proactive assistance, fearing legal repercussions.

The scarcity of mental health services, especially in rural areas, compounds the problem. The Act, relying on PWD to seek support, leans heavily on NGOs and overlooks the fundamental role of families. The legislation's silence on building a robust support system for a country with millions suffering from severe mental illness raises concerns, particularly for those in remote villages lacking basic healthcare facilities.

Earlier provisions in the RPWD Bill acknowledged limited and plenary guardianships for "mentally ill persons." However, the final Act replaces this term with "persons with disability," introducing ambiguity. The Act presumes universal legal capacity for all PWD, including those with severe mental illness, but contradicts itself in certain sections presuming a lack of legal capacity for PMI.

Sections disqualifying "a person of unsound mind" from advisory boards and the limited job reservation for PMI suggest an assumption of incapacity. The Act's chapters on education, vocational training, and self-employment lack specific measures for PMI, overlooking the attitudinal and environmental barriers they face.

In addressing these concerns, recognizing the unique challenges faced by PMI and implementing targeted social welfare measures could ensure a more inclusive approach. Acknowledging the impairment of mental state in the treatment process and incorporating exceptions could lead to more comprehensive and beneficial care for PMI, ultimately benefiting society as a whole.

### **Aligning The Rights of Persons with Disabilities Act, 2016 With Psychiatric Practice:**

The Rights of Persons with Disabilities Act, 2016, comprising 17 chapters and 102 sections, holds particular significance for psychiatrists, with chapters 1, 5, 10, and 11 being of special importance due to their close association with the ethical considerations of healthcare professionals. The definitions of specified disabilities in the Gazette Notification's 'Schedule' extend from those outlined in Chapter 1, Section 2(zc). Notably, mental health disabilities such as intellectual disabilities, specific learning disabilities, and autism spectrum disorders are grouped together, causing potential confusion for certifying doctors and implementing government departments. Rectifying this grouping is essential for clarity and effective implementation.

Introducing a new category, 'Chronic Neurological Disorder,' the Act emphasizes long-term impairment with the addition of 'chronic' for certification clarity. Considering the term 'Mental Illness' as a disability, the inclusion of 'chronic/long-standing/prolonged' could enhance precision.

Chapter 5 addresses healthcare, research, and rehabilitation for persons with disabilities, while Chapter 10 outlines the certification procedure. When formulating rules under this Act, it is crucial to safeguard the professional ethics and freedom of expression of psychiatrists. Chapter 11 focuses on the

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constitution of Advisory Boards and the nomination of members, emphasizing the need for adequate representation of psychiatrists at the national, state, and local levels.

Ensuring a seamless integration of psychiatric practice within the framework of the Act is essential for upholding the rights of persons with disabilities and fostering ethical standards in mental health care.

### Conclusion

In conclusion, a more comprehensive approach could have been adopted in the Mental Healthcare Bill, 2016 (MHCB) to specifically address aspects related to the protection of persons living with mental illness, encompassing issues like safeguarding against abuse, violence, and exploitation, as well as the nuances of guardianship. This would have allowed the Rights of Persons with Disabilities Act, 2016 (RPWD Act, 2016) to focus on general provisions. The potential challenges faced by individuals with Intellectual Disability (Mental Retardation), Autism, and Multiple Disabilities, previously well-addressed by the National Trust Act of 1999, may now mirror the situation encountered by those with mental illness under the new Act.

Notably, the lack of involvement of the Indian Psychiatric Society, a significant professional association representing over 90% of qualified psychiatrists in India, during the drafting process of the RPWD Act, 2016 is a noteworthy omission. Given the expertise of psychiatric professionals in the treatment and care of individuals with mental illness, autism, and intellectual disability, their insights should be accorded due significance in the formulation of legislation in this domain. This discussion highlights practical challenges foreseen in the treatment and care of persons with mental illness and underscores the need for careful consideration and necessary measures during the rule-making process for effective implementation by both central and state governments.

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