



MY DISABILITY DOES NOT HINDER  
MY ABILITY TO BE CONSIDERED EQUAL.



# **NATIONAL LEGAL SERVICES AUTHORITY (LEGAL SERVICES FOR DIFFERENTLY ABLED CHILDREN) SCHEME, 2021**



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## **INTRODUCTION**

About 4-8% of the population in India is differently abled. One in every 10 children is born with or with the passage of time acquires a physical, mental or sensory disability. These translate into 40-90 million children across the world, which is a substantial number. Only 35.29% of the persons with disabilities have access to schools during their lifetime.

Despite improvement in the health care system of the country, the situation of differently abled children remains deplorable, particularly in rural areas and among the lower socio-economic population. Differently abled children in India are subjected to multiple deprivations and limited opportunities in several dimensions of their lives. Some of these include, not being enrolled to schools, lower employment rates, limited awareness of entitlements and services available and lack of social welfare support.

The pseudo-stigma attached to the disabilities makes family members hide the fact of having a disabled or challenged member at home, ultimately leading to social isolation and restrictive behaviors. There is a fear that they would be victims of disgrace and indignity and thereby family members would lose the status or acceptance they enjoy in the community. This denial becomes a hurdle for early identification and treatment. Such persons would be hidden somewhere and the family members expect, unrealistically, to overcome the situation without realizing the long term consequences of such self-imposed denial.

As per the Census 2011, in India out of the 121 Crore population, 2.68 Crore persons are 'disabled' which is 2.21% of the total population. Out of the 2.68 crore disable persons, **78.64 lakh** are children below the age of 18 years.

Total disabled children population as per Census 2011	No. of Disabled children (Disability Wise)( approx.)							
	Seeing	Hearing	Speech	Movement	Mental Retardation	Mental illness	Any other	Multiple disability
<b>78,64,636</b>	14,10,554	15,94,983	6,83,771	10,45,708	5,95,231	1,35,791	17,20,86	6,78,512

## **TARGET GROUPS:**

**The target group under the Scheme will be the mentally and physically disabled children including children who are from poor and needy families that**

cannot afford the education of their child. The recipients of legal literacy would, however include teachers, doctors and Officers responsible for the welfare of children and other stake holders.

## **LAWS/LEGISLATIONS**

**Constitutional Rights:** Mentally and physically challenged people can avail all the fundamental rights guaranteed to an ordinary citizen by the Constitution of India. No statute bars them from enjoying these rights. However for mentally challenged the most important constitutional rights are:

***Right against discrimination:*** By Article 15(2) of Constitution of India any citizen, including mentally challenged people, can't be denied access to public goods. Also, they need to be provided equal opportunities to prosper in life.

***Right to Health:*** Article 21 gives the right to life and personal liberty. Right to health flows directly from right to life and the same has been laid down by the Supreme Court in many cases.

- **The Rehabilitation Council of India Act 1992 :**

With a view to address the growing concern about the disadvantages suffered by the handicapped persons in every walk of life including education, the Parliament enacted this Act to provide for the constitution of the Rehabilitation Council of India, for regulating and monitoring the training of rehabilitation professionals and personnel; promoting research in rehabilitation and special education; the maintenance of a Central Rehabilitation Register; and for matters connected therewith or incidental thereto. Special teachers for educating and training the handicapped form part of the definition of "rehabilitation professionals" in Section 2(1)(n). This enactment also governs the special teachers engaged by any school/institution for imparting education and training to CwSN. They must fulfil this requirement over and above the qualifications prescribed under the special law concerning registration and recognition of schools and maintaining minimum standards for imparting quality education<sup>1</sup>.

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<sup>1</sup> Rajneesh Kumar Pandey and Ors. vs. Union of India (UOI) and Ors. (28.10.2021 - SC) : MANU/SC/0997/2021

- ***The Persons with Disabilities (Equal opportunities, protection of rights and full participation) Act 1995:***

This Act recognizes the need to provide equal opportunities and enhance participation of mentally challenged in the society. Few landmark steps taken in this regard were:

- Establishment of special schools for the education of disabled children.
- Disabled children are given the right to free education till the age of 18 under this Act.
- 3% employment reservation for disabled (Including mentally disabled) in government jobs was approved.

- **The Rights of Persons with Disabilities Act, 2016:**

It repealed and replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. It has been enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for connected matters. More rights have been conferred on the disabled persons and more categories have been added. Access to justice, free education, role of local authorities, National fund, and the State fund for persons with disabilities have been created. 2016 Act is noticeably a sea change in the perception and requires a march forward look regarding the persons with disabilities and the role of the States, local authorities, educational institutions, and the companies<sup>2</sup>. Individual dignity signifies identifying the individual's worth as an equivalent member of society, respect for dignity of others and fostering conditions in which everyone can evolve according to their capacities. Principle of reasonable accommodation concedes that if disability as a social construct must be remedied, conditions must affirmatively be created for facilitating development of disabled i.e. it is founded in norm of inclusion. Exclusion negates individual dignity and worth. Accommodation implies positive obligation to create conditions conducive to growth and fulfilment of disabled in every aspect of their existence. Accommodation which law mandates is "reasonable" since it must meet requirement of each condition of disability. Expectations of disabled person are unique to nature of his disability and character of impediments encountered as its consequence. Reasonable accommodation

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<sup>2</sup> Justice Sunanda Bhandare Foundation v. Union of India, (2017) 14 SCC 1

determinations must be based on case-to-case basis in consultation with disabled person concerned<sup>3</sup>.

- **The Mental HealthCare Act 2017**

Under this Act, a mentally disabled person has the right to treatment and care in a psychiatric hospital. Provision for separate accommodation for mentally challenged people under the age of 18 is provided in the Act. The cost of the treatment in Mental Health Establishment needs to be undertaken by respective state governments unless the relatives of the patient bear it. The Act also provides certain legal safeguards to the mentally challenged. A mentally challenged person has the right to avail legal aid as per section 12 of the Legal Services Authorities Act,1987.

## **JUDICIAL APPROACH**

The Indian judiciary has adopted a sympathetic approach towards mentally disabled people. Time and again the judiciary has taken cognizance of infringement of rights of these people and provided them relief.

***Chandan Kumar Vs. State of West Bengal, Writ Petition (Crl.) No. 365 of 1988 decided on 25.04.1990*** :- In the mental hospital of Mankaundi in Hoogly District West Bengal, the patients were kept chained with iron ropes and were physically tortured and denied food and water. This was all done in the name of treatment. The Supreme Court ordered the cessation of this inhuman practice, held the State liable and recommended reforms in mental health hospitals across the country. Now no patient in these hospitals can be held chained.

***Legal Aid Committee Vs. State of MP, 1994 SCC (5)27 on 10.05.1994***:- The Supreme Court highlighted the need to have stricter enforcement of laws made for the betterment of mentally ill.

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<sup>3</sup> Vikash Kumar v. UPSC, (2021) 5 SCC 370

## **PROBLEMS, GAPS AND CONSTRAINTS**

- ***Lack of Mental Health Establishment***

India, though a signatory to various conventions and treaties, still falls short of adequate number of mental health establishments. Ideally, there should be at least one mental health establishment in every district.

- ***Poor infrastructure***

Most of the mental health establishments require upgradation. Lack of facilities in addition to staff and doctors exacerbates the situation of mentally challenged.

- ***Lack of awareness***

The majority of the country is today unaware of the rights of mentally challenged.

- ***Current laws***

The current set up in the country induces incompetence and seclusion in the mentally challenged children rather than seeking to uplift them and assimilate them in the society.

## **WHY THIS SCHEME IS NEEDED**

To ensure effective access to justice to persons with disabilities on an equal basis with others, NALSA has launched the NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015. However, the said NALSA Scheme talks only about the mentally ill and mentally disabled persons which is apparently silent on the rights and benefits of a person who is physically disabled or handicapped. Children with physical disability equally require an extra-care and attention as of mentally ill persons. They need different and special kind of education, skill training, health-care and other basic facilities for their welfare and rehabilitation. Community support is equally important for their re-integration in society.

## **TYPES OF DISABILITIES**

### **1. Physical Disability**

- Locomotor Disability
  - Leprosy Cured Person
  - Cerebral Palsy
  - Dwarfism

- Muscular Dystrophy
- Acid Attack Victims
- Visual Impairment
  - Blindness
  - Low Vision
- Hearing Impairment
  - Deaf
  - Hard of Hearing
- Speech and Language Disability

## **2. Intellectual Disability**

- Specific Learning Disabilities
- Autism Spectrum Disorder

## **3. Mental Behaviour (Mental Illness)**

## **4. Disability caused due to-**

- Chronic Neurological Conditions such as
  - Multiple Sclerosis
  - Parkinson's Disease
- Blood Disorder
  - Haemophilia
  - Thalassemia
  - Sickle Cell Disease

## **5. Multiple Disabilities**

## **6. Other disabilities described in the Legislations**

Children with disabilities in India face many challenges. They need special education and resources for their survival e.g. blind children need to be given training in Braille language and a deaf & dumb children needs to learn sign language to communicate with others. Improving vocational training for children with disabilities is a critical element for enhancing the quality of life for such children and their families.

### **OBJECTIVES:**

- To increase educational and future employment accessibility of the children with disabilities by using assistive aids/technologies and comprehensive vocational training.
- To promote primary and higher education of the Visually Impaired, Disabled and Underprivileged children.
- To promote special training on communication and language skills through use of Braille script to the blind children.

- To improve the mobility skills of the children with visual disability and facility in the use of necessary aid and appliances.
- To give special inputs on managing the daily living skills.
- To provide for special orientation education with reference to the physical, psychological and social environment.
- To cope with the normal literacy levels to prepare and provide opportunities for educational integration that would eventually lead to social integration.
- To involve the parents and encourage them in a participative role in the educational process of their child.
- To reduce malnutrition related disability through nutritional supplements.
- To promote and spread art, cultural and recreational avenues for children with disabilities.

### **SPECIAL MEASURES TO BE TAKEN:**

1. State Legal Services Authorities/District Legal Services Authorities shall ensure legal representation to the disabled children.
2. State Legal Services Authorities/District Legal Services Authorities to ensure maximum enrollment of disabled children in inclusive schools and vocational institutions in the respective Districts. School should not deny admission to any specially disabled child.
3. State Legal Services Authorities/District Legal Services Authorities to ensure that requisite boards reflecting the availability of free legal services to the eligible categories including disabled persons are being displayed outside all Private and Government Schools. The possibility for displaying such boards outside hospitals, office of Deputy Commissioners, Panchayat Ghar etc. be also explored.
4. State Legal Services Authorities/ District Legal Services Authorities shall explore each and every possibility to join hands with the other stakeholders including NGOs and public agencies working for the protection, rehabilitation and reformation of disabled children.
5. All educational institutions and training centres to ensure safety and security of female trainees. Appropriate facilities must be available for female trainees with



disabilities to ensure their safety and privacy. SLSAs/DLSAs to take necessary steps accordingly.

6. Governments and non-governmental organizations are developing special programmes for children with disabilities. SLSAs/DLSAs to create awareness about such special programmes and efforts be made to connect disabled children with these schemes/programmes to get benefits under them.
7. Children with disabilities generally have less opportunity to go to school. Training programmes must be developed to use hands-on training techniques to teach new skills to children with disabilities.
8. Children with special needs have different characteristics. Due to such characteristics and constraints, they require a special form of educational service tailored to their abilities and potential. SLSAs/DLSAs to ensure admission of specially targeted children in special or normal schools in accordance with their specificity.
9. There is an urgent need of using media for children with special needs to facilitate learning process and vocational skills of children with special needs. With interactive multimedia, acceptance of the informative material will be more easily captured than the delivery by using books and props.
10. **Ensure Issuance of Disability Certificates in Schools:** State Legal Services Authorities/District Legal Services Authorities in co-ordination with District Education Officers, Chief Medical Officers and other relevant departments shall ensure (through Principals) that disability certificates are issued to all the disabled students. Confirmation regarding the issuance of the same be sent to respective District Legal Services Authorities/ State Legal Services Authorities.
11. **Ensuring accessible toilets and drinking water facilities in Schools for disabled Children:** At times, the Children with disabilities do not attend school for want of an accessible toilet and drinking water facilities. The district education officer shall ensure that such basic facilities are made easily accessible. in their schools. The same shall be ensured by District Legal Services Authorities/ State Legal Services Authorities.
12. **Competitions for Disabled Children in Schools:** To promote a sense of belonging and togetherness among disabled children, competitions and easy

games viz. essay competitions, street play competitions, poster making, debate etc. be organized in schools for disabled children. Separate teams may be formed for such competitions. Ideally, the teams so formed may include normal children and those with disability.

13. **Special awareness camps for issuing disability certificates in villages:** Special awareness camps be organized for issuing disability certificates in villages/rural and urban areas in co-ordination with Chief Medical Officers and other relevant departments.

14. **Disabled children are more prone to be victims of violence:** Children with disabilities are more likely to be victims of violence. Estimates indicate that children with disabilities are at significantly higher risk of experiencing violence than peers without disabilities: 3.7 times more likely for combined measures of violence, 3.6 times for physical violence and 2.9 times for sexual violence. State Legal Services Authorities/District Legal Services Authorities to organize legal awareness camps for the victims of violence particularly with disabilities.

15. **Children with disabilities and their families face particular challenges in emergencies:** Children with disabilities or their representatives should be associated in the planning and implementation of disaster risk reduction and recovery processes. Special awareness campaigns for disabled children in coordination with Disaster Management teams be organized where disabled children are sensitized on rescue measures to be adopted in times of emergencies.

16. Legal Awareness Camps be linked with **NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015.**

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