



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

RIGHTS OF AUTISTIC PERSONS: A COMPARATIVE STUDY OF INDIAN & AMERICAN LEGAL FRAMEWORK.

AUTHORED BY - SHREEJA UTKALIKA JENA¹ & LYNETTE THABOR

Abstract:

When people pursue their interests, especially those that are on the autism spectrum, they have a better chance at succeeding in life. This research is based on rights of persons with 'autism spectrum disorder' which implies a lack or defect in some people with regards to mental or sensory but they have a right to life, liberty, equality, security, & dignity by virtue of being human but with mental illness especially Autism, cerebral palsy, down syndrome is frequently ostracized & discriminated against due to social indifference & psychological barriers. As a result, the rights & laws related to mentally disabled people must be comprehended & analyzed from different perspectives, including human rights & multiple other laws especially disability laws between India and US to fill the gaps between able-bodied persons & differently abled persons in their accomplishments of identity & integrity in the real sense of terms. When it is seen through a legal lens about the rights of Autistic one can see the major loopholes which have managed to hide from public eye. With the help of this research, it will be ascertained that up to what extent the numerous legal provisions & regulations are available in our country as compared to other country & a comparative study into how these laws have contributed to the evolution of the legal status of Autistic persons in India & US, lacunas, and recommendations.

Keywords: *Autism spectrum disorder, Autistic persons, Disability laws, Differently-abled persons.*

¹ LL.M. Candidate, CHRIST University, Delhi NCR.

1.INTRODUCTION:

According to a report by ET Health, over 18 million individuals in India are affected by Autism. In India, the Constitution grants individuals with disabilities the full range of civil, political, economic, cultural, and social rights. However, the necessary infrastructure to implement these constitutional provisions has been lacking until recently. Unfortunately, essential human rights are often denied, particularly when it comes to mental or psychological disabilities. Autism spectrum disorder (ASD) is a neurological and developmental disorder that impacts a person's ability to interact with others, communicate, learn, and behave. While autism can be diagnosed at any age, it is considered a developmental disorder because symptoms typically appear within the first two years of life. ASD can affect individuals of all genders, races, ethnicities, and economic backgrounds. Although it is a lifelong condition, treatments and services can help improve symptoms and daily functioning. The American Academy of Paediatrics recommends that all children undergo screening for autism, and caregivers should discuss ASD screening or evaluation with their child's healthcare provider. The Americans with Disabilities Act (ADA) is a crucial law that protects the civil rights of individuals with various disabilities, including autism. The ADA ensures that people with autism have the same rights and opportunities as individuals based on race, colour, sex, national origin, age, and religion. It guarantees equal access to public accommodations, employment, transportation, government services, and telecommunications. Unlike the Indian Constitution, the ADA does not provide a comprehensive list of medical conditions that qualify as disabilities. Instead, it is intentionally broad to accommodate changing circumstances and offers flexibility under the law. The Supreme Court ruling in the case of Indra Sawney and Ors vs. Union of India established that while 15(1) of the Constitution covers individuals with disabilities, 15(2), 15(3), and 8(4) do not apply. This creates an unrestricted approach to the application of 15(1). However, there still remains an issue regarding the right to vote for individuals with psychiatric conditions. The Mental Health Care Act, 2017 defines "mental illness" as a significant disorder affecting thinking, mood, perception, orientation, or memory, which severely impairs judgment, behaviour, ability to recognize reality, or meet the demands of daily life. It also includes mental conditions resulting from substance abuse but excludes mental retardation. This research will focus on both international and domestic laws concerning gaps or loopholes in relation to Autism, as well as recommendations and suggested measures. Additionally, the paper will explore the rights of individuals with Autism provided by existing laws in comparison to those in the United States.

1.1. THE LEGAL FRAMEWORK FOR MENTAL DISABILITY

IN INDIA

In India, the Rights of Persons with Disabilities Act, 2016, serves as the primary legal framework for mental disability. This act replaced the earlier Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995. The 2016 Act recognizes various forms of disabilities, including mental disabilities, with the aim of promoting and safeguarding the rights of individuals with disabilities.

Key points regarding mental disability laws in India under the Rights of Persons with Disabilities Act, 2016 include:

- **Definition:** The Act identifies various conditions as mental illnesses, encompassing disorders such as bipolar disorder, intellectual disabilities, autism spectrum disorders, and other mental health conditions.
- **Rights and Entitlements:** The Act guarantees equal rights, opportunities, and protection for individuals with mental disabilities. It prohibits discrimination and mandates the government to facilitate their full participation and integration into society.
- **Capacity and Guardianship:** The Act recognizes the decision-making capacity of individuals with mental illnesses. It upholds the principle that individuals with disabilities, including those with mental disabilities, should have the autonomy to make their own choices and decisions. The Act also outlines provisions for supported decision-making.
- **Education:** The Act underscores the right to education for individuals with mental disabilities and requires educational institutions to offer inclusive education. It advocates for reasonable accommodations and necessary support for students with disabilities.
- **Employment:** The Act advocates for equal employment opportunities for individuals with mental disabilities. It stipulates that both the government and private sector must implement measures to ensure that individuals with disabilities have access to employment without facing discrimination.
- **Reservation:** The Act includes provisions for reservation in education, employment, and government schemes for individuals with disabilities.

1.2 INDIAN JURISPRUDENCE ON MENTAL HEALTH AS COMPARED TO THAT OF USA

Both India and the United States have legal frameworks addressing mental health, but there are differences in their approaches. Here is a brief comparison:

In India:

Rights of Persons with Disabilities Act, 2016:

1. The Act acknowledges mental disabilities as a distinct category, encompassing conditions such as bipolar disorder, intellectual disabilities, autism spectrum disorders, and other mental health conditions. Rights and Inclusion focus on ensuring equal rights, opportunities, and protection from discrimination. The Act strives to guarantee full participation and inclusion in society for individuals with mental disabilities. Capacity and Guardianship recognize the decision-making capacity of individuals with mental illnesses. The Act promotes supported decision-making over substituted decision-making. Education and Employment uphold the right to education and employment for individuals with mental disabilities. The Act mandates inclusive education and equal employment opportunities. Legal Capacity acknowledges legal capacity for individuals with disabilities, including those with mental disabilities. The Act advocates for supported decision-making when necessary. Various laws and regulations in India protect the rights of autistic individuals and efforts have been made to promote their inclusion and well-being. Key rights and provisions relevant to autistic individuals in India include:
2. Right to Education: Autistic individuals in India are entitled to inclusive education under the Right to Education Act, 2009, ensuring access to mainstream schools and reasonable accommodations for learning.
3. Protection from Discrimination: The Rights of Persons with Disabilities Act, 2016, prohibits discrimination based on disability, including autism, aiming to promote and safeguard the rights of individuals with disabilities for their full and equal participation in society.
4. Healthcare Access: Autistic individuals have the right to healthcare services, encompassing assessment, diagnosis, therapy, and medical care. The government is responsible for ensuring accessible and affordable healthcare services for all.

These rights are often protected by national laws and international agreements, such as

the CRPD². The specific implementation of these rights may vary from one country to another, and advocacy groups and organizations often work to promote and protect the rights of autistic individuals in their respective regions. It is crucial to raise awareness and promote policies and practices that respect and uphold the rights of autistic individuals and ensure their full inclusion in society. It is important to note that while these laws and regulations exist, their implementation may vary from state to state in India. Additionally, societal attitudes and awareness about autism can vary, and there is still much work to be done to ensure the full inclusion and protection of the rights of autistic individuals in the country. Organizations and advocacy groups often play a significant role in advancing the rights and well-being of autistic individuals in India.

In United States:

Americans with Disabilities Act (ADA), 1990, and the Americans with Disabilities Amendments Act (ADAAA), 2008:

Definition of Disability: ADA and ADAAA define disabilities broadly and include mental health conditions. They protect individuals with mental health disorders from discrimination in various areas, including employment. Rights and Accommodations focuses on ensuring equal opportunities and reasonable accommodations for individuals with disabilities. This includes provisions for workplace accommodations and accessibility.

Mental Health Parity Act (MHPA), 1996, and Mental Health Parity and Addiction Equity Act (MHPAEA), 2008:

- **MHPA:** Mandates that annual or lifetime dollar limits on mental health benefits be no lower than those for medical/surgical benefits.
- **MHPAEA:** Requires health insurers to provide mental health and substance use disorder benefits at parity with medical/surgical benefits.

Individuals with Disabilities Education Act (IDEA), 1975:

- Ensures the provision of special education services to children with disabilities, including those with emotional or behavioural disorders. Legal Capacity under U.S. law generally

² United Nations Convention on the Rights of Persons with Disabilities

assumes legal capacity for individuals unless proven otherwise. Guardianship is determined through state laws, and the process may vary.

General Observations:

- **Legal Capacity** - While both countries recognize the importance of legal capacity for individuals with mental disabilities, the approach to guardianship may differ. India emphasizes supported decision-making, while the U.S. determines guardianship through state-specific laws.
- **Anti-Discrimination** - Both India's Rights of Persons with Disabilities Act and the U.S. ADA focus on anti-discrimination measures, promoting equal opportunities, and protecting the rights of individuals with mental disabilities.

It's essential to note that legal frameworks can evolve, and amendments may occur. For the latest information, it's advisable to consult the most recent statutes and regulations in both jurisdictions. Apart from these legislations, there is *The Autism CARES Act* is a piece of legislation in the United States that provides funding and support for research, education, and services related to autism spectrum disorders. CARES stands for "Collaboration, Accountability, Research, Education, and Support." The act was originally known as the Combating Autism Act when it was first passed in 2006 and has been reauthorized and renamed several times since then. The Autism CARES³ Act aims to address various aspects of autism, including research, early detection, diagnosis, intervention, and the transition to adulthood. Some of the key provisions and objectives of the act includes funding for research into the causes, prevention, and treatment of autism, as well as the development of best practices for early intervention and treatment. It requires the collection of data on the prevalence of autism and the effectiveness of various interventions and treatments. This data helps policymakers make informed decisions. The act supports educational programs and outreach activities aimed at increasing awareness and understanding of autism among healthcare professionals, educators, and the public. It promotes training and professional development for healthcare providers, educators, and other professionals who work with autistic individuals. The act addresses the unique challenges faced by autistic individuals as they transition into adulthood and aims to provide support and services to facilitate a successful transition. It encourages collaboration between various federal agencies to ensure a coordinated and comprehensive approach to addressing autism-related issues.

³ Collaboration, Accountability, Research, Education and Support Act

The act establishes the IACC⁴ to monitor and coordinate federal activities related to autism research and services. The Autism CARES Act has been reauthorized multiple times, most recently in 2019, ensuring continued funding and support for autism-related programs and research in the United States. This legislation plays a crucial role in advancing our understanding of autism and improving the quality of life for individuals on the autism spectrum and their families.

1.3 STATEMENT OF PROBLEM:

The problem came into existence with due to lack of implementation, structural defaults in definition, technical difficulties, ambiguity and most importantly lack of awareness about the topic as for centuries the conventional people who limp or who used a wheelchair, basically the ones whose illness was physically visible, were known as disabled. The preamble of the disability laws clearly states that it aims to uphold the dignity of every Person with a Disability (PWD) in society and prevent any form of discrimination. But it is crystal clear that these laws cannot carry through its aim, as the number of incidents reported every day of discrimination faced by disabled people is only increasing. The ground reality remains that disabled children continue to be neglected and marginalized. Education policy in India has gradually increased the focus on children with disability and inclusive education in regular schools has become a primary policy objective. However, despite its importance, educational outcomes for children with disabilities are still not satisfactory, particularly in rural and remote areas. Access to healthcare - Indian population is consist of 1.3 billion people, and we know that our health care system is already very stretched. Poor people or people who do not have access to proper healthcare and the people with disabilities are worsened.

1.4 CONCERNS & DIFFICULTIES

The implications of mental health laws can give rise to various concerns and difficulties. While these laws aim to protect the rights of individuals with mental health conditions, their implementation and impact may pose challenges. Here are some common concerns associated with the implications of mental health laws:

⁴ Interagency Autism Coordinating Committee.

- **Stigma and Discrimination-** Despite legal protections, there may still be societal stigma and discrimination against individuals with mental health conditions. Changing deep-seated societal attitudes and educating the public to reduce stigma remains a challenge.
- **Access to Quality Mental Health Care-** Limited access to quality mental health services and professionals. Addressing shortages in mental health infrastructure, ensuring affordability, and improving the distribution of mental health resources.
- **Capacity and Decision-Making-** Balancing the autonomy of individuals with mental health conditions and the need for protection in decision-making. Determining the appropriate level of intervention or support while respecting the individual's autonomy and rights.
- **Involuntary Treatment and Civil Liberties-** Balancing the need for involuntary treatment in certain situations with protecting an individual's civil liberties. Striking the right balance between ensuring public safety and respecting individual freedoms and rights.
- **Legal Capacity and Guardianship-** Determining the legal capacity of individuals with mental disabilities and establishing guardianship when necessary. Developing procedures that safeguard the rights of individuals while providing support and protection when needed.
- **Resource Allocation-** Limited financial and human resources for mental health services and legal implementation. Allocating sufficient resources to mental health services, including staff training and support systems.
- **Intersectionality and Vulnerable Populations-** Unique challenges faced by marginalized and vulnerable populations with mental health conditions. Addressing the intersectionality of mental health issues with factors such as race, gender, socioeconomic status, and ensuring equitable access to mental health care.
- **Community Integration and Inclusion-** Challenges in integrating individuals with mental health conditions into the community. Promoting community-based rehabilitation and inclusion, overcoming societal barriers, and fostering a supportive environment.

- **Education and Awareness-** Lack of awareness and understanding of mental health laws among the public and even professionals. Implementing effective educational programs to raise awareness and understanding of mental health issues, rights, and legal protections.
- **Legal Loopholes and Ambiguities-** Potential loopholes or ambiguities in mental health laws that may lead to inconsistent application or exploitation. Regularly reviewing and updating legislation to address emerging challenges and ensure clarity and effectiveness.

1.5 SUGGESTIVE MEASURES:

- **Legal Protection:** Enact comprehensive legislation that specifically addresses the rights and needs of individuals with autism. This should include protection against discrimination in education, employment, health and other areas.
- **Accessible Education:** Ensure that people with autism have access to quality education tailored to their needs. This may include providing special training for teachers, integrating inclusive educational practices into schools, and providing support services such as speech therapy and occupational therapy.
- **Employment opportunities:** Promote inclusive employment practices so that people with autism can find meaningful employment. This may include partnering with businesses to create job opportunities, providing vocational training programs and providing work experience and support services.
- **Health services:** Improve access to health services that meet the unique needs of people with autism. This may include training health professionals to better understand autism, providing early intervention services and providing mental health support.
- **Community Support Services:** Create community support services to help people with autism and their families. This can include respite care, support groups, recreational programs and help navigating social services and resources.
- **Support and Awareness:** Raise awareness of autism spectrum disorder (ASD) to combat stigma and promote understanding and acceptance in society. Encourages leadership efforts by people with autism and their allies to strengthen their voices and protect their rights.
- **Legal capacity and decision-making:** Develop policies and practices that respect the legal capacity of people with autism and support them in decision-making. . of his own

life. This may require implementing supported decision-making models and providing adequate safeguards to protect their rights.

- **Accessible communication:** Ensure that information and communication materials are accessible to autistics, including those with communication difficulties. This may include providing alternative formats such as easy-to-read materials or visual aids.
- **Research and data collection:** Invest in autism research and collect disparate data on autism to inform policy and service delivery. This can help identify gaps in services and develop evidence-based interventions.
- **Family Support:** Provide support services to families of people with autism, including counselling, education, and emergency care. Providing families with the resources and support they need can improve the well-being of both the autistic person and their caregivers.

CONCLUSION

Several important conclusions can be drawn from the rights of autistic people: Autistic people, like everyone else, are entitled to all human rights and must be treated with human dignity. This includes the right to life, liberty and security and protection against discrimination, torture or degrading treatment. Autistic people have the right to participate fully in society. This implies ensuring access in education, working life, health and public space and promoting inclusive policies and practices for diverse needs. Autistic people have the right to quality education and work. This includes providing reasonable accommodations in educational institutions and workplaces to facilitate their participation and success. Autistic people should have access to health services tailored to their unique needs. This includes mental health services, therapies and medical care that address the specific challenges of autism. Autistic people have the right to independence and self-determination regardless of the support they need. They should participate in decision-making processes and respect their preferences and choices. Autistic people should be protected from discrimination because of their neurodivergence. Laws and policies should be in place to prevent discrimination in various areas of life, including education, work, and health. Autistic people have the right to communicate in ways that meet their needs, and different communication styles must be understood and respected. In addition, they have the right to protect themselves and participate in decisions that affect their lives. Society should promote awareness and acceptance of autism to reduce stigma and misunderstanding. This includes promoting understanding of the various strengths and challenges associated with autism. In short,

it can be stated that recognizing and protecting the rights of autistic people is essential to building an inclusive and just society. Embracing neurodiversity contributes to a richer, more compassionate community that values the unique contributions of everyone, regardless of their neurological differences.

