

**MENTAL ILLNESS VIS-À-VIS THE PERSONS WITH DISABILITIES ACT IN THE
KERALA CONTEXT**

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The Indian Parliament enacted this historic piece of legislation known as “The persons with Disabilities (Equal opportunities, Protection of Rights and full participation) Act, 1995” as the Central Act No: 1 of 1996; as the Nation is a signatory to the proclamation on the full participation and Equality of People with Disabilities in the Asia and Pacific Region, adopted at the meeting to launch the Asian and Pacific decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992 and thus had to enact a suitable legislation amongst others for:

- i) to remove any Discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis, non-disabled persons;
- ii) to counteract any situation of the abuse and the exploitation of persons with disabilities.
- iii) to make special provision for the integration of persons with disabilities into the social mainstream.

For the effective implementation of the provisions and to safeguard the rights of the persons with disabilities came up in due course the Offices of the Chief Commissioner for Persons with Disabilities at the Central-level and the commissioner for persons with Disabilities at the State-level.

In the Parent Act as per Section 2 (i) the term “disability” means amongst others as (vi) “Mental retardation” in difference to (vii) “mental illness”. Section 13 mentions the organizational set up of the State co-ordination committee. Section 32 deals with identification of posts which can be reserved for persons with disabilities. Section 33 speaks of reservation of posts and in Sub-section (iii) specifies locomot or disability or cerebral palsy in the posts identified for each disability. Sections 44 to 47 outlines Non-discrimination. Section 60 envisages the Appointment of Commissioner for persons with Disabilities at the state-level and at present a State Commissionerate functions under a Commissioner who is in the level of a Secretary to State Government and is assisted by a full-time Deputy Secretary as Administration Officer who is also assisted by a full-time Under Secretary and Subordinate Staff. Their office functions in the State Government Secretariate annexe at Thiruvananthapuram.

Section 62 enshrines in detail that the State Commissioner has to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities and U/s. 63, the Commissioner has been vested with certain powers of civil court alike the provisions under the Code of Civil Procedure, 1908.

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Sub-Sections (1) and (2) of Section 73 envisages the Power of appropriate Government to make Rules. Thus the Central Rules w.e.f. 31-12-96 was gazetted under Notification No. S.O. 908 (E), dt. 31-12-96 in the Gazette of India Extra-ordinary Part II Section 3 (ii) and the State Rules for Kerala w.e.f. 30-6-2000 was gazetted as SRO No: 603/2000 in the Kerala Gazette Extra ordinary No. 1271 dt. 30-6-2000. Rule 3 of the Kerala State Rules prescribes the guidelines for Evaluation of various disabilities mentioned in Section 2 (q) of the Parent Act regarding mental illness being the guidelines for evaluation of various disabilities as published in Gazette of India, Part I Section 1 No: 4-2/83-HW-III dt. 06th August, 1986 Government of India, Ministry of Welfare, as may be amended from time to time. It is pertinent to note that this Notification was published almost a decade prior to the Central Act No: 1 of 1996 and with the passage of time the Government of India has on 27th February, 2002 gazetted as Extra ordinary No. 49 in Part I Section 1, the Guidelines for evaluation of mental illness and procedure for certification under the Central Act No: 1 of 1996, which went unrecognized by the State Commissioner appointed for Kerala as well as the Social Welfare Department of the Government of Kerala and the Notification has no value in the State even on its entering the fifth year of being gazetted. To add insult to injury, as per the recommendation of the State Commissioner, the Government of Kerala has vide G.O. (P) No. 119/05/SWD dt. 06.8.05 ordered 3% reservation in twenty identified class I and class II posts in the State Government and State PSUs only for the physically challenged and moreover the Annexure-V to the State Rules under the head "Mental Disorders" does not in any way mention about "Mental Illness" in contrast to "Mental retardation", a publication about the later by the W.H.O. being misinterpreted so as to include all "Mental Disorders" which is grossly against the very provision in the Parent Act-Section 2 (q).

As a result of all this, there exists no special provision for Equal opportunity, protection of Rights and full participation in the State of Kerala for those "mentally ill" (who are on maintenance-medication and can work efficiently) vis-à-vis, non-disabled persons; which needless to emphasise, is an abuse and exploitation of such person with disabilities and no means of integration of those unfortunate fellow citizens into the social mainstream. This inaction on the part of the State of Kerala also violates various judicial pronouncements made by the Hon'ble Supreme Court of India and various Hon'ble High Courts with regard to this Enactment. The judgments rendered by this very Hon'ble High Court in W.A. No. 1589 of 2003 decided on 20-10-2003 (Shaji Kumar V. Bharat Petroleum Corporation) – 2004 (1) KLT 961 and by the Hon'ble Supreme Court (In Re Death of 25 chained inmates in Asylum Fire in Tamil Nadu V. Union of India) – (2002) 3 SCC 31 & (R.D. Upadhyaya V. State of A.P & others) – (2001) 1 SCC 437 are some of the landmarks in the disability jurisprudence in India relating to the Central Act No: 1 of 1996, which will make further inroads in the days to come. Isn't it time yet for Kerala not to discriminate amongst the "Disabled", having the dubious record of the highest percentage of suicides in India almost every successive year and to think along the objects and reasons of this epoch-making legislation and amend the state rules and its Annexure-V at the earliest and imbibe the Central Notification of 27th February, 2002?

Let Justice be done even if the heavens may fall!

Jai Hind.
