

Rights of Persons with Disability Act 2016

A Guide for Persons with Disability: Rights, Benefits, Procedures and Schemes

(With special reference to persons with mental illness)

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Part One
Significant Provisions
(Relevant to Persons with Mental Illness)

Mental Illness is a disability

After much lobbying, mental illness was included as one of the 7 disabilities in the Persons with Disabilities Act 1995. But important benefits available under the 1995 Act, such as reservation in employment were not extended to the persons with mental illness. The new act, Rights of Persons with Disabilities Act 2016 includes 21 specified disabilities and the discrimination against persons with mental illness in regard to reservation of vacancies is no more there

Specified Disabilities

The disabilities, specified in the Act, are listed as under:

(Section 2.zc of the Act read with the schedule)

- 1) Blindness
- 2) Low Vision
- 3) Leprosy Cured Persons
- 4) Hearing Impairment (deaf and hard of hearing)
- 5) Locomotor Disability
- 6) Dwarfism
- 7) Intellectual Disability
- 8) Mental Illness**
- 9) Autism Spectrum Disorder
- 10) Cerebral Palsy
- 11) Muscular Dystrophy
- 12) Chronic Neurological Conditions
- 13) Specific Learning Disabilities
- 14) Multiple Sclerosis
- 15) Speech and Language Disability
- 16) Thalassemia
- 17) Hemophilia
- 18) Sickle Cell Disease
- 19) Multiple Disabilities including Deafness and Blindness
- 20) Acid Attack Victim
- 21) Parkinson's Disease

Rights and Entitlements of Persons with Benchmark Disabilities

Those persons, who are with at least 40 per cent of any of the specified disabilities (**including Mental illness**), are the persons with Benchmark Disabilities. (2.r)

The Act provides them the following important rights:

1. Right to equality, life with dignity and respect, equally with others. (3.1)
2. No discrimination on account of disability. (3.3)
3. No deprivation of personal liberty on account of disability. (3.4)
4. Reasonable accommodation (3.5)
5. Right to live in the community (5.1)
6. No compulsion to live in a particular living arrangement (5.2.a)
7. Right to a range of in-house, residential and other community support services, including personal assistance necessary to support living with regard to age and gender. (5.2.b)
8. Protection from torture, cruelty, inhuman or degrading treatment (6.1)
9. Protection from abuse, violence, and exploitation (7.1)
10. Protection and safety in situation of risk, armed conflict, humanitarian emergencies and natural disasters (8.1)
11. No separation of a child from his or her parents on the grounds of disability except by way of a court order issued in the interest of the child (9.1)
12. No medical procedure to cause infertility without the informed and free consent (10.2)
13. Accessibility to polling stations (11)
14. Right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability. (12.1)
15. Right, equally with others, to own and inherit property, control financial affairs and access to financial credit (13.1)
16. Right to alter, modify or dismantle any support arrangement prospectively and seek the support of another (13.4)
17. Right to employment including promotion in a government establishment without any discrimination (20)

Guardianship

The following provisions in regard to guardianship are made keeping in view the needs of the persons with mental illness:

Where a district court is satisfied that a person with disability is unable to take legally binding decisions, it may provide the support of a limited guardian to take legally binding decisions on his/her behalf in consultation with the concerned person with disability.

The district court may grant total support (plenary guardianship) in special circumstances or where the limited guardianship is granted repeatedly (14.1)

Education

Inclusive education: The Government shall endeavor to provide inclusive education to the children with disability at all educational institutions funded or recognized by the government and the local authorities. (16)

Adult Education: The Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others. (18)

Free Education shall be provided to every child between the age group of 6 and 18 years, living with benchmark disability in a neighborhood school or in a special school of his/her choice. (31.1)

Higher Education: All government institutions of higher education and those getting aid from the government will be required to reserve at least five percent of seats for persons with benchmark disabilities. (32.1)

Age Relaxation: The persons with benchmark disabilities shall get an upper age relaxation of five years for admission in institution of higher education. (32.2)

Employment

- 1) Vocational Training and Self-employment: The government shall formulate schemes and programmes including provision for loans at concessional rates to facilitate and support employment, including self-employment, of persons with disabilities. (19.1)
- 2) No Government establishment shall discriminate against any person with disability in any matter relating to employment. (20.1)
- 3) No promotion shall be denied to a person merely on the ground of disability. (20.3)

- 4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. (20.4)
- 5) Job Reservation: In every Government establishment, not less than four percent of the total number of vacancies in the cadre strength in each group of posts shall be filled by persons with benchmark disabilities, of which one per cent shall be reserved for persons with autism, intellectual disability, specific learning disability and mental illness. (34.1)
- 6) Private Jobs: The Government and the local authorities may provide incentives to private employers to ensure that at least five percent of their workforce is composed of persons with benchmark disabilities. (35)
- 7) **Unemployment Allowance** shall be given to those registered with Special Employment Exchange for more than two years without any gainful employment (24.3.h)

Health Care

- 1) **Free Health Care** shall be provided in the vicinity especially in rural areas to persons with disabilities with limited income as specified. (25.1.a)
- 2) **Barrier-free Access** shall be given in all government and private hospitals and other healthcare institutions and centres. (25.1.b)
- 3) **Priority in treatment** shall be extended to persons with disabilities. (25.1.c)
- 4) The Government and the local authorities shall make schemes or programmes to promote healthcare and prevent the occurrence of disabilities (25.2)

Accessibility and Mobility

1. **Access to Transport:** The Government shall provide to persons with disabilities,— (a) facilities at bus stops, railway stations and airports as per the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines; (b) access to all modes of transport. (41.1)
4. **Accessibility to Establishments/Public Buildings:** No establishment will be granted permission to build any structure or get a completion certification or allowed to occupy a building, if the building does not adhere to the regulations. (44.1)
5. **Personal Mobility:** The Government shall develop schemes and programmes to promote the personal mobility of persons with disabilities at affordable cost. (44.2)

6. **Making Existing Infrastructure and Premises Accessible:** All existing public buildings shall be made accessible for disabled persons within five years of the formulation of the regulations. (45.1)

Monetary Benefits

- 1) For persons with disability and low income, schemes shall be made providing for **free of cost aids and appliances, medicines, diagnostic services, and corrective surgery.** (24.3.f)
- 2) Persons with disability shall get **Disability Pension** with appropriate ceiling. (24.3.g)
- 3) **Caregiver Allowance** shall be given to persons with disability needing high support (25.3.i)

Social Security

1. The government shall formulate schemes and programmes to **safeguard and promote adequate standard of living** to enable persons with disability to live independently or in the community. (24.1)
2. The government schemes shall provide for **community centres with good living conditions** in terms of safety, sanitation, health care and counselling. (24.3.a)
3. A **Comprehensive Insurance Scheme** shall be introduced for persons with disabilities, not covered under any statutory pension scheme. (25.3.j)
4. **Insurance Schemes** shall be formulated for government employees with disabilities (26)
5. The Government and the local authorities shall undertake **services and programmes of rehabilitation**, particularly in the areas of health, education and employment for all persons with disabilities. (27.1)
6. **Special Schemes** shall be made providing five percent reservation for persons with bench mark disabilities, in allotment of agricultural land and housing with priority to women with benchmark disabilities, in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities and in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres. (37)
7. **Special Provisions for Persons with Disabilities with High Support Needs:** A person with disability needing high support may himself/herself or through another person/organisation apply to the notified authority for high support. Based on the assessment made by the Assessment Board, the

concerned authority shall arrange for support as per the schemes and the orders of the government in this regard. (38)

8. **Disability Certificate:** Any person with specified disability, may apply to a certifying authority for issuing of a certificate of disability. The certifying authority shall assess the disability of the concerned person and shall, after such assessment issue a certificate of disability to such person or inform him/her in writing that he/she has no specified disability. The certificate of disability shall be valid across the country. (58)

Miscellaneous

1. **Registration of Institutions:** No person shall establish or maintain any institution for persons with disabilities without a certificate of registration issued in this behalf by the competent authority (50)
2. **Central & State Advisory Boards:** Broad based Central and State Advisory Boards on Disability shall be set up to serve as apex policy making bodies at the Central and State level. (60 and 66)
3. **The Chief Commissioner and the State Commissioners** for Persons with Disabilities will act as regulatory bodies and Grievance Redressal Agencies and also monitor implementation of the Act. (74 and 79)
4. **District Level Committees** will be constituted by the State Governments to address local concerns of persons with disabilities. Details of their constitution and the functions of such committees would be prescribed by the State Governments in the rules. (73)
5. **Special Courts** shall be established in each district to handle cases concerning violation of rights of persons with disabilities. (84)
6. **National and State Funds:** National and State Funds will be created to provide financial support to the persons with disabilities. (86 and 88)

Part Two
Disability Certificate

What is a disability certificate?

Disability Certificate is a document that certifies the disability of a person, issued by a competent medical authority, authorized by the Government, to a person with specified disability who has applied for it and on assessment is found to be, indeed, a person with disability.

Need for a disability certificate

It is required by persons with disabilities to avail themselves of various benefits / facilities / rights that they are entitled to, from the Central and State Governments and other agencies under the Rights of Persons with Disabilities Act and other legislations and schemes. There are also benefits for caregivers of persons having a disability certificate.

Disability Certificate is like an Aadhar Card for persons with disabilities. As an Aadhar Card is required by all, irrespective of their financial status, similarly Disability Certificate must be obtained and retained by all those who have a bench mark disability, even if they don't need to avail any of the benefits available to those with bench mark disabilities. It is like having a passport, one may not use it. But one never knows when the need may arise.

Classification of Disabilities

Person with disability

A person with disability is a person with long term physical, **mental**, intellectual or sensory impairment, which, in interaction with barriers, hinders his full and effective participation in society equally with others (Section 2.s)

Person with bench mark disability

A person with bench mark disability is a person with not less than forty per cent of a specified disability, where specified disability has not been defined in measurable terms, and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority. (Section 2.r)

Person with disability having high support needs

A person with disability having high support needs is a person with benchmark disability who needs high support and has been certified so. (Section 2.t with 56)

Specified disability

Specified disability means any of the 21 disabilities including **Mental Illness** as specified in the schedule attached to the Act (Annexure 1)

How to obtain a Disability Certificate?

Eligibility

Any person with a specified disability is eligible to receive a disability certificate and may apply to a certifying authority having jurisdiction, for issuing of a disability certificate. (Section 58.1 read with Rule 17.1)

Form for applying

Application for disability certificate shall be made vide Rule 17 in **Form -IV** (Annexure 2).

Authority to whom the application is to be submitted

Application shall be submitted to -

(a) A medical authority or any other notified authority competent to issue such a certificate in the district of residence of the applicant as mentioned in the proof of residence in the application (Rule 17.1.a) or

(b) Concerned medical authority in a government hospital where the applicant may be undergoing or may have undergone treatment in connection with his disability (Rule 17.1.b)

Application on behalf of a minor

Where a person with disability is a minor or has any other disability, which renders him unfit or unable to make such an application himself, the application on his behalf may be made by his legal guardian or by any organisation registered under the Act having the minor under its care. (Rule 17, proviso)

Documents required along with the application

The application shall be accompanied by – (a) proof of residence, (b) two recent passport size photographs, and (c) aadhaar number or aadhaar enrollment number (Rule 17.2)

No other proof of residence shall be demanded from the applicant who has aadhaar or aadhaar enrollment number.

Procedure for the disability certificate

(1) The Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability. (Act 57.1)

- (2) The Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions. (Act 57.2)
- (3) On receipt of an application, the medical authority or any other notified competent authority shall, verify the information as provided by the applicant and shall assess the disability and after satisfying that the applicant is a person with disability, issue a certificate of disability in his favour. (Section 58.2 with Rule 18.1)
- (4) The medical authority shall, after due examination – (i) issue a permanent certificate of disability in cases where there are no chances of variation of disability over time in the degree of disability; or (ii) issue a certificate of disability indicating the period of validity, in cases where there is any chance of variation over time in the degree of disability. (Rule 18.3)
- (5) The medical authority shall issue the certificate of disability within a month from the date of receipt of the application. (Rule 18.2)
- (6) If an applicant is found ineligible for issue of certificate of disability, the medical authority shall convey the reasons to him in writing under Form VIII within a period of one month from the date of receipt of the application. (Rule 18.4)
- (7) The State Government and the Union Territory Administration shall grant Disability Certificate on online platform from such date as may be notified by the Central Government. (18.5)

In Maharashtra, a Medical Board of three doctors including one specialist from Medical Department examines the disabled person and issues the disability certificate in case of 40% or more percentage disability. The Medical Board after due examination gives a permanent disability certificate in cases of such permanent disabilities where there are no chances of variation in the degree of disability. In Maharashtra, the issuance of Disability Certificates is the responsibility of PHD (Public Health Department) and DMER (Department of Medical Education and Research). Disability on account of mental illness is measured using IDEAS Scale (Annexure 2)

Validity of the Certificate

- 1) The certificate of disability issued is valid across the country. (Act 58.3)
- 2) Certificate issued is generally valid for all purposes. (Rule 19)
- 3) A person to whom the certificate is issued is entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government. (Rule 19)

Denial of Disability Certificate

Any person aggrieved with a decision of the certifying authority, may appeal against such decision, within such time and in such manner as prescribed by the State Government, to such appellate authority as the State Government may designate. (Section 59.1)

On receipt of an appeal, the appellate authority shall decide the appeal in a manner prescribed by the State Government. (Section 59.2)

U.D.I.D. Card

Unique ID for Persons with Disabilities” project is an initiative of Department of Empowerment of Persons with Disabilities, Government of India. It aims at building a holistic end-to-end integrated system for Issuance of Universal ID & Disability Certificates for Person with Disabilities with their identification and disability details. Department of Empowerment of Persons with Disabilities, (MSJE), issues online a Unique Disability ID (U.D.I.D.) to any disabled person in India who applies for it. U.D.I.D. is in the form of a card, named **Swavlamban Card** which will eventually replace Disability Certificate. State Governments, now issue different formats for Disability Certificates to disabled persons and keep record of certificates issued in paper form or in incompatible computer systems, making it difficult to access, share or collate the information on an all India basis. A person with disability having a U.D.I.D. Card need not make and carry copies of multiple documents as the card captures all the required information, which can be decoded in no time with the help of a reader. The UDID card is the single instrument for identification and verification of the disabled person for availing various benefits.

UDID Project provides for online filing and submission of registration application form for disability certificate/ Universal ID card and online renewal and update of information by Person with Disabilities/ on their behalf

Persons with disabilities can fill online application and attach scanned copies of required documents. Those, already having Disability Certificate, whose data have been migrated in UDID Portal, may apply online and click "Already having Disability Certificate" and provide Beneficiary ID/State ID or Aadhaar Number (if linked), search their details, fill up application and submit.

Persons with disabilities already having Disability Certificate, whose data has not been migrated in UDID Portal, may fill up application as fresh and select "Yes" option to "Have Disability Certificate?". In Disability Details Tab, fill up other details and submit application.

Persons not having Disability Certificate may apply and choose option "No" to "Have Disability Certificate?" in Disability Details Tab while filling up application and submit application.

Details required

1. Personal Details including Address
2. Disability Details
3. Employment Details
4. Identity Details

Documents required

1. Scanned copy of recent color photo
2. Scanned image of signature (Optional)
3. Scanned copy of Address Proof (Aadhar/Driving License/State Domicile etc.)
4. Scanned copy of Identity Proof (Aadhar Card/PAN Card/Driving License etc.)
5. Scanned copy of Disability Certificate (Only for those Persons with Disability who have been issued Disability Certificate by the competent Authority)

Benefits available on acquiring a disability certificate

While most of the benefits and services are common and available all over India, some are disability related and some are state specific and are extended by the State Governments to disabled persons in their respective states.

- 1) In seeking guardianship (Section 14.1)
- 2) Facility of community centres (Section 24.3.a)
- 3) Free of cost aids and appliances, medicines, diagnostic services, and corrective surgery (Section 24.3.f)
- 4) Disability Pension (Section 24.3.g)
- 5) Unemployment Allowance (Section 24.3.h)
- 6) Free Health Care in the vicinity, especially in rural areas (Section 25.1.a)
- 7) Priority in treatment (Section 25.1.c)
- 8) Comprehensive Insurance Scheme (Section 24.3.j)
- 9) Free education till the age of 18 (Section 31.1)
- 10) Reservation of seats and age relaxation for higher education in government institutions and government aided institutions (Section 32.1 & 2)
- 11) Job reservations in Government establishments (Section 34.1)
- 12) Employment in Private Sector: Incentives to employers (Section 35)
- 13) Registration in Special Employment Exchange (Section 36)
- 14) Income tax benefits for persons with disabilities and their caregivers (Annexure 4)
- 15) Family pension (Annexure 5)
- 16) Help under Legal Services Authorities Act 1987 (Annexure 6)
- 17) Scholarships for professional courses
- 18) Financial assistance for self-employment
- 19) Vocational training at Vocational Rehabilitation Centres
- 20) Swavlamban: Group Mediclaim Policy (Annexure 7)
- 21) Concessional loans for self-employment (NHFDC & ADHARA)
- 22) Rail Travel Concessions
- 23) Free bus passes for travel in state transport buses

- 24) Reservations in allotment of agricultural land, housing, land for housing, occupation, business, production centres (Section 37.c)
- 25) Special access facilities at bus stops, railway stations, airports, parking spaces, toilets, ticketing counters
- 26) Incentives for marriage between disabled and normal persons.
- 27) Grant of fuel subsidy for motorized vehicle.
- 28) Financial assistance to totally disabled persons
- 29) Supply of sarees and dhoties to disabled persons
- 30) Annual tours for disabled persons
- 31) Group insurance for disabled government employees (S)
- 32) Group insurance for disabled other than government employees
- 33) Financial assistance towards funeral expenses**

Annexure 1 – Application Form

FORM- IV

Application for Obtaining Certificate of Disability by Persons with Disabilities

(See Rule 17.1)

(1) Name: _____
(Surname) (First Name) (Middle Name)

(2) Father's Name: _____ Mother's Name: _____

(3) Date of Birth : _____ / _____ / _____ (Date) (Month) (Year)

(4) Age at the time of application: _____ years

(5) Sex: Male/Female/Transgender _____

(6) Address: (a) Permanent address (b) Current Address (i.e. for communication)

(c) Period since when residing at current address _____

(7) Educational Status (please tick as applicable)

(i) Post Graduate

(ii) Graduate

(iii) Diploma

(iv) Higher Secondary

(v) High School

(vi) Middle

(vii) Primary

(viii) Non-literate

(8) Occupation _____

(9) Identification marks (i) _____ (ii) _____

(10) Nature of disability:

(11) Period since when disabled: From Birth//since year _____

(12) (i) Did you ever apply for issue of a certificate of disability in the past ____ yes/no

(ii) If yes, details:

(a) Authority to whom and district in which applied _____

(b) Result of application _____

(13) Have you ever been issued a certificate of disability in the past? If yes, please enclose a true copy.

Declaration: I hereby declare that all particulars stated above are true to the best of my knowledge and belief, and no material information has been concealed or misstated. I further state that if any inaccuracy is detected in the application, I shall be liable to forfeiture of any benefits derived and any other action as per law.

(signature or left thumb impression of person with disability, or of his/her legal guardian in case of persons with intellectual disability, autism, cerebral palsy and multiple disabilities, etc.)

Date:

Place:

Enclosures (as ticked):

1. Proof of Residence

(a) Ration Card

(b) Voter Identity Card

(c) Driving license

(d) Bank Passbook

(e) PAN Card

(f) Passport

(g) Telephone, Electricity, Water or any other utility bill indicating the address of the applicant

(h) A certificate of residence issued by a panchayat, municipality, cantonment board, any gazetted officer, or the concerned patwari or head master of a Government school

(i) in case of an inmate of a residential institution for persons with disabilities, destitute, mentally ill, and other disability, a certificate of residence from head of such institution.

2. Two recent passport size photographs -----

(For office use only)

Date:

Place:

Signature of issuing authority
Stamp

Annexure 2 - IDEAS Scale

Indian Disability Evaluation and Assessment Scale (IDEAS) is a scale for measuring and quantifying disability in mental disorders. With regard to assessment of disability related to mental illness, the Indian Disability Evaluation and Assessment Scale (IDEAS) developed by the Rehabilitation Committee of the Indian Psychiatric Society (IPS) through a Task Force has been recognised by the Ministry of Social Justice and Empowerment, Government of India as the recommended instrument to measure psychiatric disability. It is used by most of the states for granting Disability Certificate and extending various welfare benefits.

IDEAS is used for measuring and quantifying disability in mental disorders. It is well suited for measuring mental disability in India. It has four items: Self Care, Interpersonal Activities (Social Relationships), Communication and Understanding, and Work. IDEAS is mainly used for evaluation of four mental illnesses: 1. Schizophrenia 2. Bipolar Affective Disorder 3. Obsessive Compulsive Disorder 4. Dementia. For various welfare measures, 40% is the cut-off point. The scores above 40% are categorized as moderate, severe and profound based on Global Disability Score.

Information to assess the scale of mental disability is obtained from all possible sources including interview of patient, the care given and case notes.

Global Disability is worked out using the following parameters - :

(I) Score -

- 0: NO disability (none, absent, negligible)
- 1: MILD disability (slight, low)
- 2: MODERATE disability (medium, fair)
- 3: SEVERE disability (high, extreme)
- 4: PROFOUND disability (total)

TOTAL SCORE: Scores of the 4 items mentioned above

(II) DOI (Duration of Illness)

Weightage for duration of illness (DOI) is given as under:

- Less than 2 years: score to be added is 1
- 2-5 years: score to be added is 2
- 6-10 years: score to be added is 3
- 10 years: score to be added is 4

(III) Global Disability

Global Disability = Total Disability score + DOI score

(IV) Percentage gained by Global Disability Score:

- 0: No Disability 0%
- 1-6: Mild Disability = < 40 %
- 7-13: Moderate Disability = 40 - 70 %
- 14-19: Severe Disability = 71-99%
- 20: Profound Disability = 100%

(V) Cut off Global Disability Score for certification and welfare measures = 40 %

Annexure 3 - Tax benefits for family care givers

Under section 80DD of Income Tax Act, deduction from income can be claimed by a tax payer family caregiver, towards expenditure incurred for the maintenance of a disabled dependent. The disabilities considered for this purpose are those which are specified in the Persons with Disabilities Act and include mental illness. A Disability Certificate issued as provided in the Person with Disabilities Rules will be required to claim the deduction

The existing provisions of section 80DD, provide for a deduction to a tax payer family caregiver, who has incurred expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent, being a person with disability and for any premium to Life Insurance Corporation (LIC) or any other insurer in respect of a scheme for the maintenance of a disabled dependent. A deduction of seventy five thousand rupees is allowed, if the dependant is suffering from disability which is 40% to 79% and rupees one lakh twenty five thousand if the dependent is suffering from severe disability of 80% and above, from the gross total income in respect of the previous year.

Annexure 4 - Family Pension for a son/daughter with mental illness

In terms of CCS (Pension) Rules 1972, If the son or the unmarried daughter of an employee is suffering from any physical disability or disability of mind so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension is payable to such son or daughter for life subject to the following conditions:

The disability should have manifested itself before retirement or death of the employee while in service

1. The family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;
2. A daughter shall become ineligible from the date she gets married;
3. The family pension to such disabled son or daughter shall be stopped if he or she starts earning his/her livelihood.

The public sector banks, government undertakings, state governments and semi government establishments, generally have staff rules similar to CCS Rules. The mentally ill children of the retired employees of such establishments should, therefore, be eligible for family pension on the same lines. This, however, may need to be confirmed by the concerned family caregiver.

The rules for family pension for children with disability of government servants are summarized below:

1. If the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter for life subject to certain conditions.
2. If such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children (until the last child attains the age of twenty-five and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and is payable to him or her, for life.
3. If there are more than one such children suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family pension only after the elder one ceases to be eligible.
4. The family pension is paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son or daughter who has attained the age of majority.
5. Before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child.
6. The person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce a certificate, from a Medical Board comprising a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability, once, if the disability is permanent and if the disability is temporary, once in every five years to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled;

7. In the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such Government servant or pensioner during his lifetime, to the person nominated by the spouse of such Government servant or family pensioner, as the case may be, later on and the Guardianship Certificate issued under section 14 of the National Trust Act, 1999 by a local level Committee, shall also be accepted for nomination or appointment of guardian for grant of family pension in respect of person(s) suffering from Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities as indicated in the said Act:
8. The grant or continuance of family pension to an unmarried or widowed or divorced daughter beyond the age of twenty-five years or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest, shall be subject to the conditions that the family pension shall be initially payable to the minor children until the last minor child attains the age of twenty-five years and there is no disabled child eligible to receive family pension
9. Such disabled siblings shall be eligible for family pension for life in the same manner and following the same disability criteria, as laid down in the case of son or daughter of the Government employees or pensioners suffering from any disorder or disability of mind or physically crippled or disabled, so as to render him or her unable to earn a living even after attaining the age of twenty-five years.
10. An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter shall become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.
11. The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning a livelihood.
12. It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after her re-marriage or by the disabled son or daughter or by parents to the Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.

An employee/pensioner/family pensioner can make a request to the Appointing Authority for advance approval to the grant of family pension for life to a permanently disabled child. On the basis of this approval, authorisation shall be made in the original Pension Payment Order (PPO) at the time of retirement or by issuing a revised authority. The permanently disabled child will receive family pension at the appropriate time, i.e., after the death of employee/pensioner and/or after the death/ineligibility of any other member in the family who was eligible to receive family pension prior to the disabled child/sibling/dependent parents.

Before sanctioning the family pension for life to any such son or daughter, the Competent Authority shall satisfy that the disability is of such a nature as to prevent him

or her from earning his or her livelihood and the same is evidenced by a disability certificate obtained from the authority.

(Based on Compendium on Pension Related Orders 2012, Ministry of Personnel, Public Grievances and Pensions Department of Pension And Pensioners' Welfare Government of India - New Delhi – www.pensionersportal.gov.in)

Annexure 5 - Legal Services to the Mentally Ill under the Legal Services Authorities Act, 1987

National Legal Service Authority (NALSA) was formed under the Legal Services Authorities Act 1987 to provide free legal services to marginalized sections of the society, which include disabled persons. Mental illness being one of the disabilities, persons with mental illness are benefited and are exempted from payment of court fees and for other court services.

NALSA (Legal Services to the Mentally Ill Persons and Persons with Mental Disabilities) Scheme, 2010 was approved in a meeting of the Central Authority of NALSA held on 8th December, 2010 held at Supreme Court of India. Under the Scheme, guidelines were issued to the legal services institutions to be followed while dealing with legal services to the persons with mental disabilities. The guidelines, which are in harmony with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), apply to the following legal institutions:

1. State Legal Services Authorities
2. District Legal Services Authorities
3. Taluka Legal Services Committees,
4. High Court Legal Services Committees, and
5. Supreme Court Legal Services Committee

The guidelines require legal institutions to keep in view the following while rendering Legal Services to Persons with Mental Illness:

- 1) Mental illness is manageable with proper medication and care.
- 2) Mentally ill persons are entitled to all human rights and fundamental freedoms.
- 3) Respect the inherent dignity of the persons with mental illness.
- 4) No discrimination should be shown against persons with mental illness. They should be treated on an equal basis with others and given equal protection and equal benefit under the law.
- 5) Persons with mental illness have a right to get treatment facilities in the psychiatric hospitals or nursing homes.
- 6) Informed consent for treatment should be obtained. If a person with mental illness is incapable of giving such consent, the informed consent of his / her relatives or friend should be obtained.

- 7) Legal services should be provided to the persons with mental illness during the proceedings for Reception Orders under Part III of Chapter IV of the Mental Health Act, 1987.
- 8) Privacy and dignity of mentally ill persons should be ensured during the spell of their illness especially in the case of mentally ill women incapable of taking care of themselves.
- 9) All fundamental rights and human rights of the mentally ill persons need to be protected.
- 10) The legal services institutions should take up the matter with the State Mental Health Authority and the State Government in cases of lack of humane living conditions in the mental hospitals and other places where mentally ill persons are confined.
- 11) Legal services should be made available to the mentally ill persons confined in psychiatric hospitals or nursing homes especially for release of persons under forced admissions.
- 12) Legal Services Institutions should follow up the condition of the mentally ill persons against whom a Reception Order has been passed under Part III of Chapter IV of Mental Health Act, 1987 and monitor the progress of treatment in the psychiatric hospitals or psychiatric nursing homes where they are detained.
- 13) Where an alleged mentally ill person has property and if no persons mentioned in Clauses (a) to (d) of Sub-section (1) of Section 50 of Mental Health Act comes for judicial inquisition under Chapter VI of the Act, the legal services institutions should take steps for judicial inquisition regarding that person, custody of his / her person and management of his / her property and for the purpose to contact any of the persons referred to in Clauses (a) to (d) of Sub-section (1) of Section 50 of the Act.
- 14) Legal services institutions should step in when there is an attempt to misappropriation of property of the persons with mental illness and invoke the provision in Chapter VI of the Mental Health Act, 1987.
- 15) Legal services institutions shall attempt to identify whether any noncriminal mentally ill person is detained in any of the prisons. If found, necessary legal aid may be given for transferring such a person to the psychiatric hospitals or psychiatric nursing homes for treatment as per law.
- 16) Legal services for making available the benefits under Persons with Disabilities Act, 1995

- 17) Legal aid to mentally ill persons under Section 91 of Mental Health Act, 1987 provided that the mentally ill person is in custody in a psychiatric hospital or psychiatric nursing home.
- 18) Legal awareness programmes and public advocacy relating to mental illness and the rights of mentally ill persons by the legal services institutions
- 19) Special legal awareness programmes for sensitizing judicial officers and panel lawyers
- 20) Setting up of legal aid clinics for dealing with the problems of mentally ill persons
- 21) Organizing rehabilitation measures for the cured mentally ill persons
- 22) Co-operation with the NGOs and Volunteer Social Organizations