



## LEGAL Guardianship of Persons with Disabilities under the National Trust Act, 1999

Samishtha Mamgain<sup>1</sup>, Anurag Massey<sup>2</sup>

<sup>1</sup>Advocate at District Court, Dehradun, Uttarakhand, India

<sup>2</sup>Student, LL.M. (Master of Laws), Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand, India

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### ABSTRACT

The National Trust Act, of 1999, was started to help people with intellectual and developmental disabilities in India. It established a legal guardianship system and was intended, as its authors say, "for the welfare of persons with disabilities." Its provisions are too complicated to summarize fully here, but we will highlight what we see as the Act's overall intent and effect—namely, to set up a parental substitute for persons with disabilities who are unable to care for themselves and who, under the legislation's premise, can be presumed to need care and maintenance in the first place.

Although the guardianship system has its benefits, it faces many serious obstacles. In India, the requisite criteria for being eligible to serve as a guardian are strict and inflexible. These two qualities combine to make potential guardians scarce. Even if one meets the eligibility requirements, there is good reason to doubt whether many would have an adequate understanding of the legal entitlements of the ward. There is far too little awareness, by both potential guardians and potential wards, of the very existence of the system. This study casts a critical eye on the guardianship system to call attention to these and several other weaknesses, which it sees as undermining the system's overall effectiveness, and it concomitantly seeks to propose several ways of addressing these weaknesses.

### Introduction

Guardianship and management of affairs of persons with Intellectual/developmental disabilities under the National Trust Act, India 1999 is for people with disabilities another important provision of the legislation for the protection of people with different disabilities. To protect the rights and interests of persons with autism, cerebral palsy, mental retardation, or multiple disabilities, the National Trust Act creates the National Trust for the Welfare of Persons with Disabilities. This important section of the Act is known as section 14: Legal Guardian; it refers to the responsibility of making provision for the legal guardian of the person in the event of the person's incapacity.<sup>1</sup>

Consequently, this introduction forms an entrance to examine the legal guardianship system created under the National Trust Act of 1999. It forms a basis for comprehending the principal aspects of Section 14 as the criteria for legal guardianship, guardians' appointment procedure, and the given tasks and authorities. The provision is also aimed at supporting and protecting the person with a disability in order avoid threatening to his/her well-being and guarantee that all human rights will be respected.<sup>2</sup>

By adopting this research design, we intend to reflect on the positive impact of legal guardianship on the lives of disabled persons. In this paper, the provision will be discussed based on the relevant theoretical models and empirical research, legal case studies, and analysis of potential positive and negative impacts on creating opportunities for social inclusion, and the avoidance of situations that might lead to abuse and misuse.

Finally, this study also aims to add to the literature on disability rights and welfare in India. Therefore, it is our intention through the following study to bring into light the legal guardianship system under the National Trust Act of 1999 and call for policies that respect the rights of persons with disabilities, uphold their dignity, and recognize the diversity of our society and encourage everyone's active participation.

This research used doctrinal research methods. To compile the information, both primary and secondary methodologies were used in compiling the data.

- Search for journal articles, research papers, guidelines, and government notifications from its enforcement of Section 14 of the National Trust Act, 1999.

<sup>1</sup> Dr. Rumi Ahmed, *Rights of Persons with Disability in India* 14 (Zaccheus Entertainment, New Delhi, 1st edn., 2015).

<sup>2</sup> Legal Guardianship and Custody of Adults with Mental Disabilities in India and Abroad, *available at*: <https://blog.ipleaders.in/legal-guardianship-and-custody-of-adults-with-mental-disabilities-in-india-and-abroad/> (last visited on October 5, 2024).

- Review the articles, literature, guidelines, and government documents and notifications collected particularly for this specific section on this topic.

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## WHAT IS LEGAL GUARDIANSHIP OF PERSONS WITH DISABILITIES

Guardianship for persons with disabilities is a vital legal intervention to promote the well-being and defend disabled persons, who are unable to make specific decisions on their own, because of their disability.

Legal guardianship is a legal process in which a juvenile court assigns a responsible person to take full charge for their actions. Through the guardian, the disabled person is allowed to make decisions on issues concerning health, finance, schooling, properties, and other personal matters. Such arrangements arise when the person with a disability cannot reason and appreciate the impact of his/her actions or to express himself/herself.<sup>3</sup>

That way, they can be shielded from exploitation, abuse, or negligence by their families, yet also receive adequate health care, and financial and educational needs.

Legal guardianship in most cases entails a petition to a court discussing the ability of the disabled person, and the nature and degree of the guardianship with the help of experts. In its turn, once approved an appointed guardian becomes legally authorized to make the decisions on behalf of the person with a disability.

However, it should be emphasized that legal guardianship can also differ by jurisdiction and in terms of legal parameters. Moreover, there is also increasing acknowledgment of the need to discover less restrictive options than guardianship for the protection of disabled people, who are unable to make decisions independently, for their welfare, there is a method called supported decision making which tries to include disabled persons in the decision-making process.<sup>4</sup>

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## LEGAL GUARDIANSHIP FOR PERSONS WITH DISABILITIES UNDER THE NATIONAL TRUST ACT, 1999, AND RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016:

In India, legal guardianship for persons with disabilities is governed by the laws outlined in The National Trust Act, 1999, and Rights of Persons with Disabilities Act, 2016:<sup>5</sup>

### **The National Trust Act, 1999**

Section 14 of this Act concerning persons with disabilities focuses on guardianship for which it sets out the process for appointment.

#### ***Voluntary Guardians***

Section 14 of the above-mentioned Act mentions that a parent, relative, or organization may apply for guardianship with the local committee which is formed under the said Act voluntarily.

#### ***Involuntary Guardians***

As per the provision of section 13 of the said Act, is satisfied, if the district collector thinks that the person having mental disorders is unable to manage himself then the legal guardian can be appointed by him. A guardian appointed under this section may be given plenary (limited) guardianship i.e., full control of such a person, or may be given limited guardianship of a person both the guardian as well as the mentally ill person would make all decisions collectively.

### **Legislation for Disability**

The Rights of Persons with Disabilities Act, 2016 – Section 14 of the aforesaid Act provides provisions for the legal wards of persons with disabilities. According to it, if the district court or any other authority as may be notified by the state government is satisfied that a person having disability to whom adequate and appropriate facilities were extended and who cannot take legal proceedings, may be given further support of a limited guardian to take legally enforceable decisions on his behalf in consultation with such person in such manner as may be prescribed by the state government.

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<sup>3</sup> D. K. Menon, M. T. Kishore, T. Sivakumar, P. K. Maulik, D. Kumar, R. Lakhan, & R. Banerjee, "The National Trust: A viable model of care for adults with intellectual disabilities in India", 21 *Journal of Intellectual Disabilities* 259 (2017).

<sup>4</sup> M. L. Perlin, "Striking for the Guardians and Protectors of the Mind: The Convention on the Rights of Persons with Mental Disabilities and the Future of Guardianship Law" 117 *Penn St. L. Rev.* 1159 (2012-2013).

<sup>5</sup> Jagan Mudgade, "A study on National Trust Act among parents having children with autism, cerebral palsy, mental retardation and multiple disabilities at Latur (Maharashtra)" 7(6-I) *IAHRW Int'l J. of Soc. Sci. Rev.* 1947 (2019).

### Reasons for Considering Legal Guardianship

In many cases, parents who have fully assumed responsibility for their child may require legal assistance to avoid all those barriers that might come in the way of their child's property management, education, etc. Employment of legal guardianship has been highly relevant when it comes to the determination as it is a legal arrangement that allows one person to manage the affairs of another person due to his or her disability.<sup>6</sup>

The many situations where parents might need to legally represent their child are as follows:

#### Safeguard the Individual from Potential Harm

Such persons may lack the ability to reason or to respond appropriately to threats that cause them to be abused, exploited, or neglected. In such cases, a legal guardian can act as a protection mechanism or shield.

Employment of labor at the workplace or even wife beating is known to continue the society with those who may not reason.

Based on the reports of the HINDU dated the 22nd of January, 2021, the organization the disability rights has written to the Union Home Minister Amit Shah where they have demanded the NCRB to record the violent crimes against disabled persons.<sup>7</sup>

In their letter to Mr. Shah, the activists wrote that they were 'disturbed that there is no primary statistic available on the violence against disabled women and girls from the NCRB as this vital sphere of violence does not have their specific identity as a separate class in the NCRB records.'<sup>8</sup>

#### Financial Management

It can monitor financial matters to ensure that bills are paid benefits cashed and resources are used wisely to fulfill things whereby they are not aware of.

Guardianship would be desirable concerning the possibility of receiving loans and concessions on behalf of the disabled individual. The government has put the schemes in different programs The National Handicapped Finance Development Cooperation has an income generation scheme for people with mental disability like Cerebral Palsy, Mental Retardation, Autism, and Multiple Disabilities.

#### When Natural Parents Can no Longer Provide Care

In general, parents are responsible for the basic needs of their children such as education, medical facilities, clothing, shelter, etc, but if they assume this role ineptly, legal guardianship for the children can be undertaken.

This can also be a solution to permanency care if the parent does not want the child or simply does not wish to take care of the child. Close members of the child can also approach the court and seek an order to be granted as a legal guardian of the child so that the child does not have to be placed within the care of strangers.<sup>9</sup>

#### Medical Decision Making

In capabilities where a client may not grasp medical knowledge or complexities of medical help, then a legal guardian can help make correct medical decisions for the client. Special persons need a reliable person to assist them on such matters.

#### Support and Coordination

Integration services in the case of guardianship include assistance with the management of other aspects of a person's life because ensuring that different aspects of a given person's life are properly aligned is an important key to successful and stable care and services.

#### Preserving Dignity

Although in guardianship the decisions are made on behalf of the individual, it is done to exclude the realization of the best interest of the person.

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<sup>6</sup> Guardianship, available at: <https://thenationaltrust.gov.in/content/innerpage/guardianship.php> (last visited on October 5, 2024).

<sup>7</sup> "Crimes Against Persons with Disabilities: Rights Organisations Want NCRB to Maintain Data", available at: <https://www.thehindu.com/news/national/crimes-against-persons-with-disabilities-rights-organisations-want-ncrb-to-maintain-data/article33635243.ece> (last visited on October 5, 2024).

<sup>8</sup> Chetna P. Bhadange, "Socio-Legal Issues of Differently Abled Persons of India" Advocate High Court, available at: [https://www.researchgate.net/profile/Vibhuti-Patel/publication/291827646\\_Equitable\\_society\\_for\\_Equal\\_Opportunity/links/56a6722408ae6c437c1aefed/Equitable-society-for-Equal-Opportunity.pdf#page=105](https://www.researchgate.net/profile/Vibhuti-Patel/publication/291827646_Equitable_society_for_Equal_Opportunity/links/56a6722408ae6c437c1aefed/Equitable-society-for-Equal-Opportunity.pdf#page=105) (last visited on October 5, 2024).

<sup>9</sup> Rajib Bhattacharyya, "Disability Laws in India: A Study" 1(4) *Int'l J. of Res.* 2348-6848 (2014),

### **Mitigating Risks**

Custodianship reduces the risks arising from a person's ability to make wrong decisions in that it protects the individual from making inappropriate decisions. An advocate protects the individual's rights and makes certain that he or she is not left out, or neglected in cases that involve law, health, and other aspects of life.

By being a legal guardian a quicker decision may be made in urgent either for medical services or protection measures for the person under their care.

To obtain legal guardianship it is necessary to evaluate the situation and needs of each person separately because it is a huge responsibility.

### **Problem Analysis on Legal Guardianship of People with Disabilities as per the National Trust Act of India, 1999**

Any decision of people with disabilities under the National Trust Act of India 1999 is an important strategic advancement that will economically secure the rights of the affected consumers in the country. Nevertheless, it may have a beneficial effect if intended, but the real-life application of the system has certain difficulties and vices that further consideration should be given. This specific study highlights the key issues about the legal guardianship system in India although, it can easily ascertain the major difficulties confronted by the lawful guardianship system In India.<sup>10</sup>

#### **Poor knowledge and availability**

Retention of the legal guardianship provisions is another interesting issue, but low knowledge and access to them among the target population appear to be the biggest problem. Some challenged persons, their families, or legal representatives may lack knowledge of their legal entitlements or even the complete process of seeking legal guardianship. The ignorance majority of the time restricts the proper and efficient realization of the Act and may even make the beneficiaries fail to take the benefit.

#### **Rigid Eligibility Criteria**

The other problem is the stringent criteria for legal guardianship, According to the Act, there has to be an investigation to decide whether a person is unable to make decisions on his or her own. However, these assessment procedures may not always leave room for consideration of differences in talents that may be endowed to certain categories of disabled people and may withdraw some of them from the legal right to guardianship where they actually may need it.

#### **Lack of availability of suitable guardians**

One possible disadvantage of legal guardianship is that appropriate candidates capable of fulfilling all attendant responsibilities may not be found. S strengthening the institution of legal guardianship one of the tasks can be the identification and appointment of competent and honest guardians for disabled persons, especially in districts, where people are not familiar with this concept at all.

#### **Striking a Balance between Protection and Autonomy**

However, in quarreling on the Act, an attempt was made to guard the health and welfare of these individuals but at the same time, a crucial focus on the envelopment of their capacities, freedoms, and decision-making powers was missing. Maintaining the aspect of legal guardianship and personal rights and choices of the person, as well as a need for the person, can be quite sensitive.<sup>11</sup>

#### **Monitoring and Safeguards**

Important jurisdiction of monitoring and protecting measures is indispensable to avoid the situation where disabled individuals under custody turn out to be abused or exploited. The Act should lay down strong requirements of periodic scrutiny, oversight, and reporting in the interest of the protected parties.

#### **Inclusive Decision-Making-**

Promoting an active engagement of disabled people, their families, and caregivers in formulating legal decisions based on the intended legal guardianship is very important in ensuring that the intended legal agreements serve the best interest of the intended candidates as well as their laid down dreams and ambitions.

Furthermore, the provision of legal guardianship under the National Trust Act of India 1999 is here to safeguard the rights and welfare of disabled persons but this meets with several challenges in its realization. Solving these problems depends on the multifaceted actions from the legal authorities, non-profit organizations, NGOs, and activists to increase people's awareness of the subject, provide the possibility of access, and create efficient protections. Through this critical analysis of the problems with the legal guardianship system, the goal is to provide the requisite information and

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<sup>10</sup> Dr. Sonali Kusum, "Contemporary Legislative and Judicial Developments on Rights of Persons with Disabilities - In Context of Pandemic Covid 19" 5(3) *Int'l J.L. Mgmt. & Human.* 1660 (2022).

<sup>11</sup> Aditi Sharma & Vatsal Sing, "Guardianship of Individuals with Special Needs: India's Evolving Legal Regime", *available at*: <https://www.sconline.com/blog/post/2023/04/24/guardianship-of-individuals-with-special-needs-indias-evolving-legal-regime/> (last visited on October 5, 2024).

necessary recommendations that may enhance the legal guardianship for people with disabilities and thereby enable a more compatible, safe, and enabling environment for persons with disability in India.

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## CHALLENGES OF SECTION 14 OF THE NATIONAL TRUST ACT, 1999

Guardianship appointment for persons with disabilities is under Section 14 of the Act. Here are some potential challenges that could arise in the context of appointing guardians under this section:<sup>12</sup>

### Determining Disability

A difficulty could be determining if an individual qualifies as being disabled under the Act. The actual qualification of the degree of disability or the need for a guardian may need some professional assessment.

### Best Interests

Sometimes it's challenging to find the right compromises to protect the best interests of a person with disabilities. Taking a holistic view, discussions must cater to the needs of the person while also respecting his/her rights; at the same time, there has to be a focus on safeguarding the person.

### Choosing the Right Guardian

Selecting a proper guardian capable to give proper care and make decisions in the best interest of the protected person is not always possible. This way the guardian should be in a position to assess and meet the needs of the individual with disabilities.

### Avoiding Abuse or Exploitation

It has a potential for abuse and misuse by coming up with guardianship provided in scenarios that concern finance. Peculiar attention should be paid to the fact that the guardian is an honest and ethical person.

### Monitoring and Reporting

There is a need to constantly check on the actions and decisions of the guardian to ensure that he or she does not exploit his or her authority. Government officials and ordinary people do not seem to know of reporting responsibilities to the authorities – this may be a weakness.

### Legal Procedure

In this study, we were also able to discover one of the main complexities that people experience when they are applying for the position of a legal guardian. Papers that surround the crucial processes involved in the appointment of a guardian are likely to take a lot of time as well as be very involving mainly because of the following tasks;

We also found that another issue is that the meetings of the LLCs are not done at the right time as it becomes inconvenient for the parent/guardian who intends to have guardianship.

### Evolving Needs

Disabilities have a dynamic nature in that the requirements for the disabled and the difficulties faced by the disabled change from time to time, so the National Trust Act is also dynamic in that routines change now and then.

### Reducing Stigma

The most crucial barrier to the effective implementation of equal opportunities for disabled persons is social prejudice and prejudice that is faced with disabled persons.<sup>13</sup>

### Collaboration and Coordination

It is not easy to cooperate and communicate with different stakeholders including government agencies, NGOs, and special advocacy groups to implement and execute the purpose of the National Trust Act.

### Monitoring and Evaluation

This is an area of difficulty, yet it's one of the most critical components if the National Trust has to be accountable for its programs and services and if monitoring and evaluation have to be done properly.

Overcoming the mentioned difficulties demands the cooperation of the government, non-governmental organizations, and international bodies, focused on the rights and the condition of persons with disabilities.

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<sup>12</sup> Triveni Goswami Vernal, "Rights of Persons with Disabilities in India: Provisions, Promises and Reality" Registered Special Educator & Independent Researcher, India, *available at*: <https://orcid.org/0000-0001-9389-395X> (last visited on October 05, 2024).

<sup>13</sup> *Supra* note 11.

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## CONCLUSION

Section 14 of the National Trust Act, 1999, exists to allow for the naming of guardians for those with disabilities who need help and care to make decisions and manage their affairs.

This also seeks to maximize the protection of the rights of vulnerable persons while at the same time guarantee they are protected considering their dignity. Nonetheless, there are always some difficulties with the appointment of legal guardians. Several challenges such as a gap between the implementation of the policy and lack of awareness, and the various procedures that surround its use may weaken it. To improve the observed outcomes, more clarity in the legal action, as well as raising awareness in the legal rights to the guardianship, and monitoring the actual actions of both the individual and the selected guardian are needed. In this way, the addressed concerns will help to improve the work of the system of legal guardianship thus ensuring the necessities of the targeted people, their rights, and needs prevail and are protected properly.