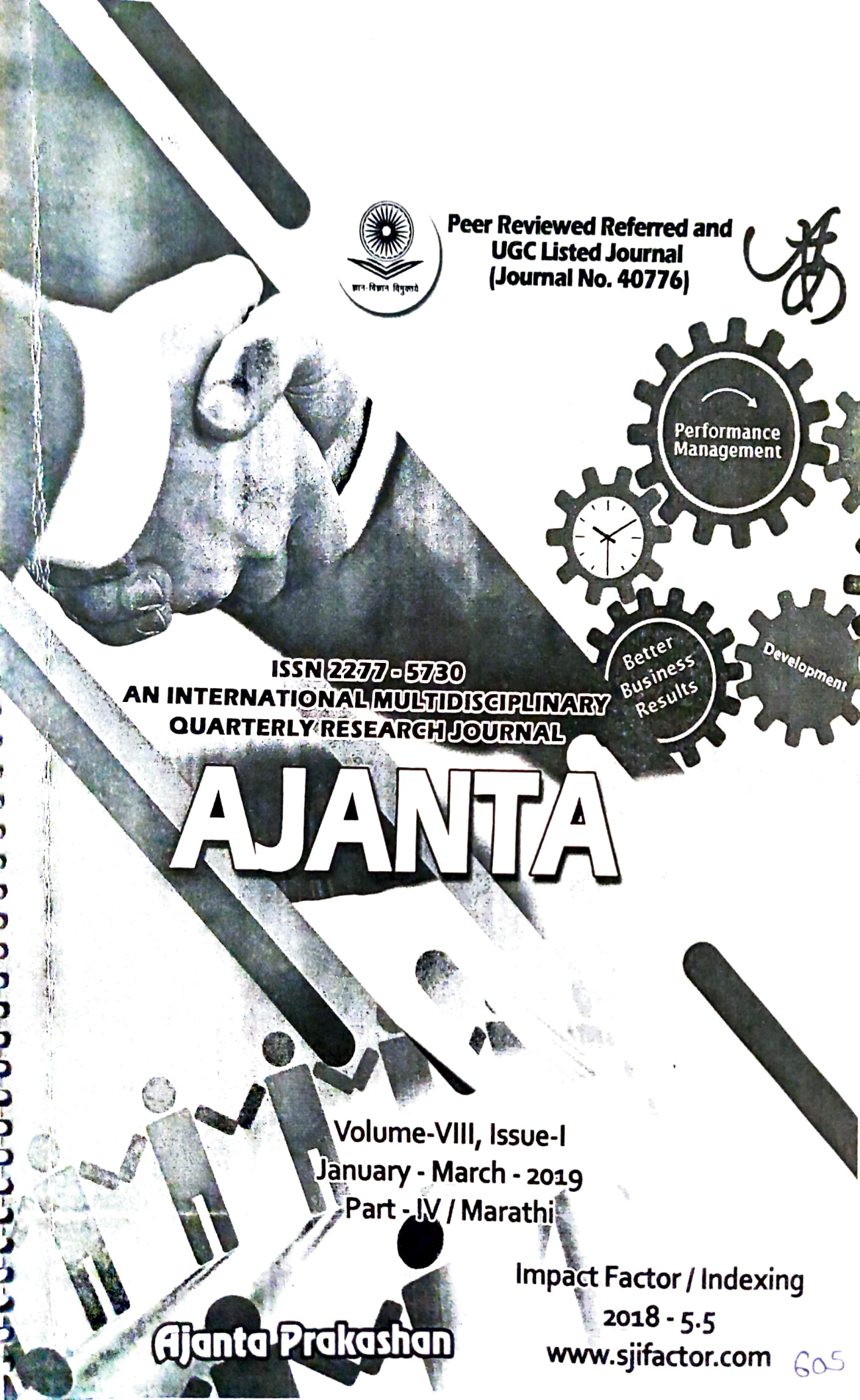

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14. Need and Care of Mentally Disabled in Human Right Perspective-Critical Study

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Introduction

Sound mind in a sound body is recognised as a social ideal. Indian seers and sages had paid great attention to have both sound mind and body. They stressed the importance of mind and its development in the attenuating mantra of "GAYATRI"[1] is good reflection. By mastering mind, one could attain a highest level of mental equilibrium. Bhagavad-Gita and Veda had considered the mind as the sixth sensory organ. Mind is a faculty by which one is aware of surroundings and by which he or she is able to remember, reasons and makes decisions.[2] Mind is not a gross thing, visible and tangible. Its existence is nowhere seen which is opposite to body. When the mind leaves the body, it would bring about a condition of insanity say Vedic thinkers.

Sigmund Freud, Father of modern psychology, considered mind has three parts viz. consciousness, pre-consciousness, and unconsciousness i.e. Id, Ego. And Super Ego.Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[3] In recent year this definition was modified by adding the term spiritually, educationally and economically productive life.

Definition: - Disability is interference with activities of the whole person in relation to the immediate environment

The Disability Discrimination Act, 1999 defines a disabled person as someone with physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities.

Mental Illness and Disability

Psychiatry deals with the study, diagnosis and treatment of mental illness.

Forensic psychiatry deals with application of psychiatry in the administration of justice.

Insanity or unsoundness of mind can be defined as a disease of the mind or the personality, in which there is derangement of the mental or emotional process.

The law has not defined insanity. The term is used for those persons who are unable to adopt themselves to the ordinary social requirements, due to mental disease. The law is most frequently concerned with "mental impairment" and not "mental illness" Different kinds and degree of mental impairment are required for different legal issues. Mental illness has often been regarded as an 'illness' rather than as a disability in particular because it has been seen as a state that can be remedied and is of limited duration. However, there is now increased recognition that mental illness is a continuing condition, although often characterized by a fluctuating pattern which limits activity on an intermittent basis, in response to crises, rather than an ongoing basis. Thus, mental illness is now generally accepted as disability and is increasingly labelled 'psychiatric disability.

Mental and physical health are generic terms, the mental illness and physical illness are of specific nature. Mental illness is fundamentally different from the physical illness. A mentally ill person though is capable of doing many physical activities, yet cannot take a decision involving an element of mental participation, which ultimately will have an impact on physical activity.Law is tool and a means to achieve the end of having balanced social order or the justice. Life in society is not static. It changes depending upon several political, social and economic factors.

The causes for mental illness may be due to bioorganic, organic, genetic or hereditary, environmental, socio-pathological factors. Hereditary may be an important factor in creating mental illness in some cases. The role that heredity plays in causation of mental illness is still under through research and no concrete solution has yet been arrived. Bioorganic causes to bring mental illness may have its origin due to the chemical reaction within the cerebral level. The endocrine glands secrete hormones directly to the blood stream. This may have an effect on the functioning of the body and mind. There may be other factors too responsible that are Environment, Traumatic factor, Natural calamities and disasters like tsunami, Alcoholism and Drug addiction. The causes for mental illness may be due to bioorganic, organic, genetic or hereditary, environmental, socio-pathological factors.

The following are some important terms in connection with insanity.

1) DELIRIUM: It is a disturbance of consciousness in which orientation is impaired, the critical faculty is blunted or lost and thought content is irrelevant or inconsistent. In the early stage the patient is restless, uneasy and sleepless. He then completely loses self-

control, become excited and talks furiously. Delusion and hallucination are present. It usually occurs in physical disease in which there is continuous high temperature, and sometimes due to overwork, mental stress or drug intoxication. The condition last from few hours to weeks and ends with full or partial recovery. A person may become impulsive and violent and may commit suicide. Such person is not responsible for his or her criminal acts.

2) DELUSION: Is a false belief in something which is not a fact, and which persist even after its falsity has been clearly demonstrated. A normal person can have a delusion, but is capable of correcting it by his reasoning power, by his past experience and by being convinced by others. A secondary delusion arises from some morbid experience. Delusion in insane person is a symptom of brain disease. It is under the control of emotional but not rational forces. They are found in affective and schizophrenic psychoses. Delusions are not seen and in anxiety neurosis and Other neurotic illnesses.

Types

a) Grandeur or exaltation: - A man imagines himself to be very rich while in reality he is a pauper.

b) Persecution: -The person imagines that attempts are being made to poison him by his nearest relatives like wife, sons or parents. Delusions of grandeur and persecution are often present together in the same person.

c) Reference: - The person believes that people, things, events, etc; refer to him in a special way. He believes that even strangers in the street are looking at him and are talking about him, or items in the radio or newspapers are referring to him.

d) Influence: - They occur in schizophrenia. The person complains that his thoughts feelings and actions are being influenced and controlled by some outside agency, like radio, hypnotism, telepathy, etc.

e) Infidelity: - A man imagines his wife to be unfaithful while in fact she is chaste.

f) Self-reproach: - The person scolds himself for the past failures and misdeeds which are often of no importance.

g) Nihilistic: - The person declares that he does not exist or that there is no worlds etc.

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h) Hypochondriacal: - The person believes that there is something wrong with his body, though he is healthy.

i) Other types: - are of jealousy, religion, etc

Medic-legal importance: - Delusion is never an isolated disorder, but is merely an indication of deep-seated, widespread disorder. For this reason, such person cannot be regarded as fully responsible for his antisocial acts. A person suffering from delusions of persecution may attempt to kill those who according to his belief are planning to kill him. Hypochondrial person may commits suicide to get rid of the imaginary disease. Suicide is a major risk. There may be combination of murder and suicide.

3) EMPATHY: - The degree to which the observe is able to enter into the thoughts and feelings of the patient and establish good contact.

4) FUGUE: - A state of alter awareness during which an individual firgests part or whole of his life, leaves home and wanders. It may occur in hysteria, depressive illness, schizophrenia and epilepsy.

5) HALLUCINATION: - Is a false sense perception without any external object any external object or stimulus to produce it. They are purely imaginary, and may affect any or all the special sense.

TYPES

a) Visual: - A person imagines of being attacked by a lion when no lion exist. E.g. Dog as Lion or Rope as Snake

b) Auditory: - A person hears voices and imagines that a some one is speaking to him when no one is present.

c) Olfactory: - A person smells pleasant or unpleasant odour when none is present.

d) Gustatory: -A person feels sweet, Sour, bitter, good or bad taste in the mouth, though no food is actually present.

e) Tactile: - A man imagines rats and mice crawling into bed, when there are none.

f) Psychomotor: -A man will have feeling of movement of some part of the body in the absence of such movement.

Visual hallucination is the commonest in organic mental disorders, while the auditory hallucinations are the commonest in functional disorders. Hallucination occurs in fevers, intoxications, and insanity. Visual and auditory hallucinations are the most common. They may

be pleasant, but more often they are unpleasant. A person suffering from unpleasant hallucinations may be incited to commit suicide or homicide.

6) ILLUSION: - Is a false interpretation by the senses of an external object or stimulus which has a real existence, e.g. when a person sees a dog and mistakes it for lion, or hears the notes of birds and imagines them to be human voices, or imagines a string hanging in his room to be snake, or may mistake the stem of a tree for a ghost in the dark. A sent person may experience illusion, but is capable of correcting the false impressions. An insane person continues to believe in the illusions, even though the real facts are clearly pointed out. Illusions are a feature of psychoses, particularly of the organic type.

7) IMPULSE: -This is a sudden and irresistible force compelling a person to the conscious performance of some action without motive or fore-thought. A sane person is capable of controlling an impulse. An insane person having no judgement and no reasoning power, and no capacity to understand the facts, may do things on impulse. These are usually seen in imbecility, dementia, acute mania, and epilepsy.

TYPES

a) Kleptomania: - An irresistible desire to steal articles of little value from a store or from the house of someone and pocket it quietly.

b) Pyromania: - An irresistible desire to mutilate animals

c) Mutilomania:- An irresistible desire to mutilate animals

d) Dipsomania: - An irresistible desire for alcohol drinks at periodic intervals.

e) Sexual impulses: - including sexual perversions.

f) Suicidal and Homicidal impulses.

8) OBSESSION: - In this a single idea, thought, or emotion is constantly entertained by a person which he recognises as irrational, but persists in spite of all efforts to drive it from his mind. It is a disorder of content of thought. This idea is usually associated with some sort of dread or fear. Example: - A person may go to bed at night after securing bolting the door of his room, but he soon gets up to see he has done so, A sane the whole night in frequently seeing whether the door is bolted. person may repeat once or twice, but an insane person does not sleep, and spends the whole night in frequently seeing whether the door is bolted.

9) PHOBIA: - It is an excessive or irrational fear of a particular object or situation.

Lucid interval: - This is a period occurring in insanity, during which all the symptoms of insanity disappears completely. The individual is able to judge his acts soundly, and he becomes legally liable for his acts. The period of lucid interval varies from person to person and from time to time in the same person and as such one cannot be certain about the time when person passes again in the state of insanity. Therefore, if he commits an offence, he cannot be completely held responsible, because it is very difficult to know, whether he was suffering from some mental abnormality at the tome of committing the offence. In mania and melancholia lucid intervals are common.

10) PSYCHOPATH: - Is person who is neither insane nor mentally defective, but fails to conform to normal standards of behaviour. Psychopath have abnormal personality, these are two types i) psychopathic Disorder ii) Psychopathic Personality.

11) PAYCHOSES: - They are characterised by a withdrawal from reality; a living in a world of fantasy. They lost contact with reality. These are two types i) The psychotic killer and ii) Psychopathic killer.

12) SCHIZOPHERNIA: -It is a psychosis. "Schizophrenia" literally means disintegration of mind or split personality, in which the patient loses his contact with environment. It is primarily a disorder of thinking (cognition)

13) NEUROSES: - The patient suffers from emotional or intellectual disorders, but he lost mostly in the form of anxiety, depression, or Hysteria.

14) DEMENTIA: - Is define as the global deterioration of the individual's intellectual, emotional and cognitive faculties in a state of impaired consciousness. Dementia is the loss of abilities and occurs most commonly at late stage in life.

15) AMENTIA: - Insufficient mental development or functioning. It includes idiocy, imbecility, feeble mindedness. Often it is characterised as an incomplete maturation of attention, perception, cognition and social adaptability due to arrested mental development.

16) Melancholia: - Is a mood disorder of non-specific depression, characterized by low levels of enthusiasm and low levels of eagerness for activity.

These are certain classification of psychiatrics to be study in human rights perspective. Human Rights means: -- Human rights are rights inherent to all human beings, whatever our

nationality, place, residence, sex, national or ethnic origin, race, religion, language or other status.

Human beings are rational beings. They by virtue of their being human possess certain and inalienable rights which are commonly known as human rights, since these rights belong to them because of their very existence, they become operative with their birth. Human Rights, being withbirth, are therefore inherent in all the individuals' irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they create an environment in which people can develop their needs and provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings: human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

According to section(i)(d) of the protection of Human Rights Act 1993, human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

According to Universal Declaration of Human Rights, the expression 'human rights' denotes all those rights which are inherent in our nature and without which we cannot live as human beings. Mentally Disabled people have been one of the numerous oppressed, supressed and unheard sections of the society. They are unaware about human rights.

Rights of Mentally Disabled

Human rights of mentally disabled have hitherto neither specifically documented in any code nor been prescribed or elaborated by judiciary of India. According to Richard Wasserstrom human rights of mentally disabled means one ought to be able to claims as entitlement those minimal things without which it is impossible to develop one's capabilities and to live as human beings. It refers not only their privileges but remedial rights of protection against infringement of their human and other statutory rights. These rights include

1) Right to health; 2) Right against discrimination; 3) Right to treatment; 4) Right to all freedoms; 5) Right to dignity; 6) Right to property; 7) Right to privacy; 8) Right to human living conditions; 9) Right to release after treatment; 10) Right to qualified guardian etc.

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The mental problem is an invisible problem and so people cannot feel it or visualize the impact of problem. Neither can they understand the impact which create on the individual who is affected and his family members. The society is apprehending them as a burden and not pitting efforts to utilize their potentialities or putting adequate efforts to change them again in to a productive member of the society. It is really difficult for the family members too to make arrangement for a non-productive family member's food, clothing, shelter and ever-increasing cost of pharmaco-therapy. So, these people, who are suffering through no fault of their own, are sent to homes or governmental hospitals, which are even worse than jail. Little attention is paid to their human rights, their feelings and emotions. Some start believing that they are not members of their world anymore; they are here by mistake or by chance not by choice. For some agony is unbearable and they commit suicide – some dare not as they are too weak physically and mentally to take a bold step like that.

In India, Mentally Disabled people are not aware about their human rights. In this condition their Physical strength deteriorates, mental stability diminishes so socio- economic and medical problems increases. On the other hand, due to comparatively high physical as well as psychological vulnerability their cries for help get locked within four walls. That's why only few cases of violation of human rights of Mentally Disabled people are being reported and they need legal remedies.

The lunacy and mental illness as understood in medical field is quite vast when compared to the one as understood in legal field[4] Legal insanity is not medical insanity andmust not be confused with medical insanity. The court is concerned with only legal aspect and not the general spectrum of the medical field[5] There can be no legal insanity unless cognitive faculties of mind is destroyed as a result of unsoundness of mind to such an extent as to as a result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act or that what he is doing is contrary to law. To have legal insanity the disease which so disturbs the mind that one cannot think calmly and rationally of all the different reason to which society consider the rightness or wrongness of the action, should be there.

Similarly, any disease, which so disturbs the mind that one cannot perform the duty with some moderate degree of calmness and reason may be fairly said to prevent that man from knowing as to what he did was wrong,[6]

Conclusion

The law is instrument to bring harmony to march with social change. Law changes from place to place and time to time. If it does not change to the ever-changing society, then it would be an instrument of oppression or suppression.In the modern-day of welfare State the law starts its application almost from the stage of womb and ends in tomb. Like law, the medicine and psychiatric knowledge are the other tools to restore the disturbed mind to its original status. So, it is duty of every citizen of India to care of Mentally disable person.

References

1) Mental Health and Law by. Dr S.B.N. Prakash Rtd. District Judge Lawyers's Law Book
2) D.D. Basu, "*Human Rights in Constitutional Law,*" (1994) Prentice Hall, Delhi P.5 (ISBN 81-203-0588-4)
3) Agarwal H.O., "*International law & Human rights*," 14th Ed. 2007, Central Law Pub. Allahabad
4) Narendra Kumar, "*Constitutional Law of India,*" 6th Ed. 2007, Allahabad Law Agency, Faridabad
5) Bakshi P.M., "*the Constitution of India,*" 9th Ed 2009, Universal, Delhi.(ISBN 978-81-7534-714-4)
6) Common problems in psychosocial Rehabilitation; www. Psychosocial.com
7) Human rights of mentally ill persons; www.legalserviceindia.com
8) www.un.org/esa/socdev/enable/dispaperdes4.htm
9) Disability: the concept and related Indian legislation; www. Psyplexus.com
10) National Legal Services Authority
11) An overview on right of disabled in India; wwwlawyersclubindia.com
12) Human rights and action for mental illness; www.mentalhealthworildwise.com
13) Disability law and access to rights; www.disabilityindia.org
14) Convention on the Rights of Persons with Disabilities and Optional Protocol
15) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
16) The Mental Health Act, 1987

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FootNote

- Aum tat savitruvarenyambhargodevasataDhi mahi, Dhiyionaprachodyat. Dhi in Sanskrit means Mind
- Dorland's pocket Medical Dictionary Page No. 387.
- W.H.O.1948 in preamble to constitution.
- Onkar Lal Vs State of M.P.1987 Cri L.J. 1289, Basanti Vs State 1989 Cri.Lj 415
- Mental Health and Law by. Dr S.B.N. Prakash Rtd. District Judge Lawyers's Law Book p.g.no.49
- KhaziBhazurRehaman Vs Emperor 30 Cri.lj 494 as refered in Indian Penal code by Rehaman 29 ed.