

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

W. P. No. 38923/2018

BETWEEN:

N. Sanjay and Anr.

...Petitioners

AND

Union of India and Ors.

...Respondents

ADDITIONAL SUBMISSIONS ON BEHALF OF THE PETITIONERS

The Petitioners herein humbly submit as follows:

1. The present petition has been filed in public interest seeking implementation of the provisions of the Mental Healthcare Act, 2017 and the Rights of Persons with Disabilities Act, 2016. The Petitioners seek liberty of this Hon'ble Court to place on record submissions and documents in support of their petition, in as much as the same will bring out a clearer picture of the current status of implementation of the aforementioned Acts, on the basis of publicly available information.
2. The Petitioner No. 1 has, during the pendency of the present petition sought information from various public authorities within the State regarding the steps they have taken in pursuance of the objectives of the Mental Healthcare Act, 2017 and the Rights of Persons With Disabilities Act, 2016. Provided below is a table of replies received by the Petitioner in respect of various applications filed under the Right to Information Act, 2005:

Sr. No.	Authority/Agency	Information Sought	Reply
1.	Oriental Insurance Company Ltd.	Details of medical insurance plans that cover mental health problems. (See Section ____	No reply received.
2.	Kendriya Vidyalaya Sanghathan	Details of KVS' disability policy and orders/circulars if any.	No reply received.
3.	Karnataka State Police	Details of steps taken by Karnataka Police to create awareness among staff about provisions of the MH Act, 2017 and the RPD Act, 2016.	No information provided, appeal pending. (ANNEXURE-E)
5.	Karnataka State Prisons Department	Details of prisoners with mental illness as defined under Section 2(1)(w) of the MH Act, 2017.	No response received, appeal pending.
6.	Govt. of Karnataka, Ministry of Health and Family Welfare	Details of: 1. Funds allocated and spent on Mental Health programmes in the year 2017-18; 2. Photocopies of Budgetary allocation for mental health.	Reply received indicating figures and enclosing required documents. (ANNEXURE-G)
7.	United India Insurance Co. Ltd.	Details of Policies that cover mental health problems.	All individual health policies issued on or after 25.03.2019 cover mental illnesses. (ANNEXURE-H)
8.	New India Insurance Co. Ltd.	Details of Policies that cover mental health	New India Premier Mediclaim Policy covers psychiatric and

		problems.	psychosomatic disorders. (ANNEXURE-J)
9.	NIMHANS	Details of patients under treatment for the following ailments in 2018: 1. Schizophrenia 2. OCD 3. Bipolar Disorder 4. Addiction	Reply received indicating following figures: 1. Schizophrenia-1515 2. OCD- 889 3. Bipolar Disorder-1421 4. Addition- 3303 (ANNEXURE-K)
10.	Insurance Regulatory Authority of India	Details of implementation of Section 21(4) of the MH Act, 2017, which requires insurers to cover mental illnesses as they would physical illnesses.	Reply received indicating that IRDA has issued a circular dt.16.08.2018 directing all insurers to comply with provisions of the MH Act, 2017, enclosing copy of circular. (ANNEXURE-L)
11.	Office of the Chief Commissioner for Disabilities, GOI	Total number of cases registered under Section 92 of the RPD Act, 2016 across all States and UTs.	Information not available with the concerned office. (ANNEXURE-M)

3. It is submitted that the aforementioned information received by the Petitioner No. 1 is indicative of the length to which State authorities have gone in meaningfully implementing provisions of the Mental Healthcare Act, 2017 (hereinafter “the MH Act”) and the Rights of Persons with Disabilities Act, 2016 (hereinafter “the RPD Act”). However, it is submitted that the aforementioned information is far from comprehensive, and a complete picture of the status of implementation of the provisions of the laws in question will only

emerge once the Respondents herein provide detailed replies/status reports as directed by this Hon'ble Court.

4. It is humbly submitted that one method to assess the status of implementation of the MH Act and the RPD Act is to chart out the functions and duties that are required to be performed by the State Government under each legislation. The Petitioner herein has taken the liberty to broadly compile a list of such functions/duties under each of the Acts in question and the provisions that mandate the same. Information on the status of implementation of each provisions is unavailable with the Petitioner, however, what little is present in the public domain has been indicated.

Mental Healthcare Act, 2017:

5. The Mental Healthcare Act, 2017 has been enacted on the basis of the recognition of persons with mental illness as vulnerable members of society that were subject to discrimination, and with the intent that they ought to be treated like any other persons with physical health problems. The environment around them should be conducive to recovery, rehabilitation and full participation in society.
6. The MH Act, 2017 seeks to provide healthcare to persons with mental illness while recognizing their rights, ensuring their dignity, with an intent to promote their assimilation and participation in society. An

added objective is to ensure maximum accessibility to mental healthcare services.

Section	Particulars	Status
7.	Mental Health Review Board (constituted u/s. 80) to maintain online register of advance directives.	No information available.
18.	<p>State Government is required to provide access to mental healthcare services at affordable cost, of good quality, accessible geographically, without discrimination.</p> <p><u>Range of services include:</u></p> <p>(a) acute mental healthcare services;</p> <p>(b) half-way homes, sheltered/ support accommodation;</p> <p>(c) services for home-based rehabilitation;</p> <p>(d) hospital and community-based rehabilitation services;</p> <p>(e) child and old age mental health services;</p> <p>Further, the appropriate government is required to integrate mental healthcare services into general healthcare services and:</p> <p>(a) ensure that, as a minimum, mental health services run/funded by the State Government are available in each district;</p> <p>(b) till such time that the above are provided, the State Government is to make rules regarding reimbursement of costs of such</p>	<p>No specific information available.</p> <p>However, the Annual Report of the Dept. of Health and Family Welfare (2017-18) has set out a strategy for management and treatment of mental illnesses in consonance with Section 18.</p> <p>This report states that 6.43 lac patients have been treated across the State, but the treatment gap is about 80% at present.</p>

	<p>treatment at a mental health establishment;</p> <p>(c) full range of services to be made available at all government run/funded hospitals, and minimum services to be made available in community health centres;</p> <p>(d) PWM living below the poverty line to be provided treatment and services free of charge at all mental health establishments run/funded by the government;</p> <p>(e) Essential drugs list to be compiled, and such drugs to be provided free of cost at all establishments run/funded by the government.</p> <p>State Government to ensure necessary budgetary allocation is set in place for implementation of the above.</p>	
29.	State Government to plan, design, and implement programs for promotion of mental health and prevention of mental illness, especially for suicide prevention and reduction.	Information not available on the current status of the Mental Health Programme as specified in the Karnataka Integrated Health Policy, 2017.
30.	State Government to take all measures to ensure that provisions of the Act are given wide publicity, carry out programs to reduce stigma associated with mental health, provide periodic awareness and sensitization training to appropriate government officials.	No information available, apart from presence of "Manochintana" radio program which is broadcast once a week on FM Vividabharati in Bangalore.
31.	State Government to make measures	No information available.

	to address human resource requirements of the mental health services so that human resources for such services may increase. At the minimum, the government is required to train all medical officers in public healthcare establishments, prisons or jails to provide emergency mental healthcare.	
32.	State Government to ensure effective cooperation between services provided by all concerned ministries and departments.	No information available.
45.	State Government to establish the State Mental Health Authority within 9 months from the date of the Act receiving Presidential assent.	<p>Karnataka State Mental Health Authority has been established. However, how far the Authority has gone in carrying out the functions/duties assigned to it under the MH Act, 2017 (specifically under Sections 55, 62, and 73) is not known.</p> <p>It is not known whether Mental Health Review Boards have been set up as mandated under the Act by the State Authority.</p>
121.	Power of State Government to make Rules for implementation of the Act.	Rules not framed

Rights of Persons with Disabilities Act, 2016:

7. In so far as the RPD Act, 2016 is concerned, it is submitted that the National Centre for Promotion of Employment for Disabled People (NCPEDP) and the National Committee on the Rights of Persons with Disabilities (NCRPD) has carried out a detailed study on the status of

implementation of the RPD Act, 2016, and published the same on 03.12.2018. The study has been compiled on the basis of information sought from each State and Union Territory on the progress achieved in respect of settling-up of the administrative machinery that is instrumental in implementing provisions of the RPD Act. The administrative machinery consists of State Advisory Board, District Committees, State Commissioners for Persons with Disabilities, and various other authorities envisioned under the RPD Act, 2016.

(A copy of the Report dated 03.12.2018 is annexed hereto as **ANNEXURE-N)**

8. Additionally, there is no clarity on the measures taken by the Respondent No. 2 State on ensuring that persons with disabilities are provided effective accessibility to justice, healthcare establishments, information and communication technology, transport services as mandated by Section 12, 25(1)(b), 41 and 42 of the RPD Act, 2016.

Section	Obligation of the State	Compliance
101(1)	Rules to be framed within six months of the commencement of the RPD Act	Draft Rules made, but final Rules not notified
8(2) and (3)	The State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities. The District Disaster Management Authority shall maintain record of details of persons with disabilities in the district.	Nil
10 (1)	Appropriate Government to ensure that persons with disabilities have access to	Nil

	appropriate information regarding reproductive and family planning.	
12	State Legal Services Authorities shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to all schemes, programme, facility or service offered by them. To make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.	Nil
15 (1) & (2)	State Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity and to take measures for setting up suitable support arrangements to exercise legal capacity by persons with disabilities living in institutions.	Nil
16	State Government and local authorities to ensure that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities, make building, campus and various facilities accessible; provide reasonable accommodation, provide transportation facilities to the children with disabilities etc.	Nil
17	State Government and the local authorities to: <ol style="list-style-type: none"> a. conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to 	Nil

	<p>which these are being met:</p> <ul style="list-style-type: none">b. first survey shall be conducted within a period of two years from the date of commencement of this Act;c. to establish adequate number of teacher training institutions and train and employ teachers who are qualified in sign language and Braille and in teaching children with intellectual disability;d. to train professionals and staff to support inclusive educatione. to establish adequate number of resource centresf. to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;g. (h) to provide scholarships in appropriate cases to students with benchmark disability;h. to make suitable modifications in the curriculumi. to promote research to improve learning;	
18	To promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.	
19	State Government shall formulate schemes and programmes including provision of loans at	Nil

	concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.	
21 and 22	Government to ensure that every establishment has notified an equal opportunity policy and has registered a copy of the said policy with the State Commissioner. Every employment exchange shall maintain records of persons with disabilities seeking employment.	Nil
23	Every Government establishment shall appoint a Grievance Redressal Officer	Nil
24	State Government shall formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:	
31	(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.	Not fully complied
32	All Government institutions of higher education shall reserve not less than five per cent. seats for persons with benchmark disabilities. Persons with benchmark disabilities shall be given an upper age relaxation of five years	Not fully complied
34	State Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark	Not fully complied

	disabilities	
42	State Government shall take measures to ensure that all contents available in audio, print and electronic media are in accessible format; (ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning; (iii) electronic goods and equipment which are meant for every day use are available in universal design.	Nil

**DIRECTIONS OF THE HON'BLE SUPREME COURT ON
IMPLEMENTATION OF THE RPD ACT:**

9. It is submitted that the Hon'ble Supreme Court, in the case of ***Rajive Raturi v. Union of India, (2018) 2 SCC 413***, had directed governments of all the States to implement provisions of the RPD Act, 2016 in so far as they relate to promoting accessibility persons with disabilities to public buildings, offices, transport etc. The Hon'ble Supreme Court directed, *inter alia*, that:

- (i) As per Sec. 46 of the Act, all government buildings providing any services to the public are to be made fully accessible by June 2019;
- (ii) States directed to identify 10 most important cities and towns and make 50% of all government buildings in them accessible by December, 2019;
- (iii) As per Section 41 of the Act, all States directed to ensure that all government buses are disabled friendly;

- (iv) As per Section 60 and 66 of the Act, all States directed to constitute State Advisory Boards within 3 months from 15.12.2017.

10. Given the above, it is humbly submitted that the Respondent No. 2 State may also be directed to report on the compliance with directions issued by the Hon'ble Supreme Court in ***Rajive Raturi's*** case, in so far as it relates to the present petition.

Place: Bangalore

Date:

Counsel for the Petitioners
(Rohan Kothari)

INDIAN LEGAL NEWS