UNIT 3 OTHER LAWS RELATED TO MENTALLY ILLNESS

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3.0 INTRODUCTION

In the previous unit we discussed about the Mental Health Act, 1987 and Mental Health Care Bill, 2011. In the present unit we will focus on Persons with Disabilities Act, Narcotic Drugs and Psychotropic Substances Act 1985, National Trust Act, legal responsibility of the mentally ill, Indian Succession Act, Hindu Marriage Act, Domestic Violence Act.

As discussed in the previous unit laws and legislations are significant in order to provide suitable care to the persons with mental illness. This is relevant mainly because persons with mental illnesses are vulnerable and can be subjected to discrimination and marginalization in society. There is also a stigma and negative attitude towards mental illness and persons with mental illness. This can also be due to lack of awareness about mental illness amongst general population. Helping persons with mental illness on one hand requires suitable care, facilities, support and help and on the other hand it requires proper and stringent laws and regulations in order to uphold the rights of the persons with mental illnesses and to facilitate their recovery and rehabilitation. We will now look at the objectives of this unit and then proceed with the Persons With Disabilities Act, 1995

3.1 OBJECTIVES

After reading this unit, you will be able to:

- explain the Persons with Disabilities Act, 1995;
- discuss Narcotic Drugs and Psychotropic Substances Act;
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- describe the National Trust Act;
- explain the legal responsibility of the mentally ill; and
- discuss the Domestic Violence Act.

3.2 THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 received the assent of the President of India on the 1st January, 1996. The Act gave effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region. A meeting to launch the Asian and Pacific decade of disabled persons (1993-2002) was convened by the Economic and Social Commission for Asia and Pacific and held at Beijing on 1st to 5th December, 1992. The Commission adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. India was a signatory to the said Proclamation.

The Act consists of fourteen chapters and 74 sections:

Chapter I : Preliminary: deals with the title of the Act, its extent and relevant definitions
Chapter II : Central Coordination Committee
Chapter III : The State Coordination Committee
Chapter IV : Prevention and early detection of disabilities
Chapter V : Education
Chapter VI : Employment
Chapter VII : Affirmative action
Chapter VIII : Non-discrimination
Chapter IX : Research and manpower development
Chapter X : Recognition of institutions for persons with disabilities
Chapter XI : Institution for persons with severe disabilities
Chapter XII : The chief commissioner and commissioners for persons with disabilities
Chapter XIII : Social security
Chapter XIV : Miscellaneous

Aims and Objectives

1) To spell out the responsibility of the state towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
2) To create a barrier free environment;

3) To counteract any situation of abuse and exploitation of persons; and

4) To make special provision of the integration of persons with disabilities into the social mainstream.

**Obligations on Government:**

1) Undertake surveys, investigations and research concerning the cause of occurrence of disabilities;

2) Promote various methods of preventing disabilities;

3) Screen all the children at least once in a year for the purpose of identifying “at risk” cases;

4) Provide facilities for training to the staff at the primary health centres;

5) Sponsor awareness campaigns and disseminate information on general hygiene, health and sanitation;

6) Take measures for pre-natal and post-natal care of mother and child;

7) Educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;

8) Create awareness amongst the masses through television, radio and other mass media on the causes.

**Activities to be taken in education sector:**

1) Ensuring that every child with disabilities has access to free education in an appropriate environment till 18 years of age;

2) Promoting the integration of students with disabilities in normal schools;

3) Promoting setting up of special schools in government and private sector in such a manner that children with disabilities living in any part of the country have access to such schools and equip these schools with vocational training facilities;

4) Conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole-time basis;

5) Conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above;

6) Imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;

7) Imparting education through open schools or open universities;

8) Conducting class and discussions through interactive electronic or other media;

9) Providing every child with disability free of cost special books and equipments needed for his education.
The Government is to prepare comprehensive schemes for:

1) Transport facilities to the children with disabilities or as an alternative provide financial incentives to parents or guardians to enable their children with disabilities to attend schools;

2) Removal of architectural barriers from schools, colleges or other institution, imparting vocational and professional training;

3) Supply of books, uniforms and other materials to children with disabilities attending school;

4) Grant of scholarship to students with disabilities.

5) Setting up of appropriate forums for the redressal of grievances of parents regarding the placement of disabled children;

6) Suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;

7) Restructuring of curriculum for the benefit of children with disabilities.

All government educational institutions and other educational institutions receiving aid from the government are to reserve not less than 3 per cent of its seats for disabled persons.

[Source: The Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995]

Self Assessment Questions 1


2) What are aims and objectives of The Persons with Disabilities Act, 1995?
3.3 NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (NDPS) ACT, 1985

Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and the NDPS (Amendment) Act, 1988 provide legislative measures for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, and to implement the provisions of the International Convention in the matter.

The Act is comprehensive and supersedes all previous Acts (Opium Act, 1857) Opium Act, 1878, Dangerous Drugs Act, 1930) in this regard.

It consists of eight chapters and 122 sections.

The Act includes narcotic drugs (cannabis, cocaine, coca leaf, opium, poppy straw and all manufactured drugs) and psychotropic substances. (76 drugs and their derivatives are listed in the Schedule eg: diazepam pentazocine, phenobarbitone etc.)

If any person produces, possesses, transports, imports, exports, sells, purchases or uses any narcotic drugs or psychotropic substance he shall be punishable with Rigorous Imprisonment (RI) for not less than 10 years (which may extend to 20 years), and a fine of not less than 1 lakh rupees (which may extend to 2 lakh rupees).

Punishment for a repeat offence is a RI for not less than 15 years and a fine of not less than 1.5 lakh rupees.

Punishment for Ganja handling is RI for 5 years and/or a fine of 0.5 lakh rupees. For a repeat offence, the imprisonment may extend to 10 years and the fine of one lakh rupees. There is also a provision for detoxification through a court order.

A later amendment, the prevention of illicit traffic in NDPS Act has also been passed (Act 46 of 1988). There is now a provision for preventive detention and seizure of property. The maximum punishment is death penalty, if a person is found to be trafficking more than or equal to one kilogram of pure heroin.

This act is relevant for mental health professionals because, if the addict who is found guilty by the court, on the basis of his mental condition (besides age, character antecedents physical condition), he may not be sentenced at once to any imprisonment, but with his consent will be released for medical treatment for detoxification or deaddiction from hospital/institution that is maintained by government (NDPS Act, 1985)

Self Assessment Questions 2
1) What is Narcotic Drugs and Psychotropic Substances (NDPS) Act?
### 3.4 NATIONAL TRUST FOR THE WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, (popularly known as **National Trust Act**) provides for the constitution of a body at the national level for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities and for matters connected therewith or incidental thereto.

It has 9 chapters and 36 sections.

The objectives of the National Trust Act are listed as:

a) To enable and empower persons with disability and independent living as far as possible within and as close to the community

b) To provide support and facilities to enable the disabled person to live with their own family.

c) Support registered organizations to provide needs based crisis services to the families of the disabled.

d) Address problems of the disabled without family support.

e) Care and protection of the disabled in the event of death of parents or guardian.

f) Evolve procedures for appointment of guardians and trustees for people requiring a supported lifestyle.

g) To facilitate equal opportunities, rights protection and full participation for disabled persons.

The Act lists the following programmes to be undertaken:

- Promotion of independent living by creating a conducive environment, counseling and training family members, setting up adult training units and individual and group homes.
- Promoting respite care, foster family care or day care service for persons with disability
- Setting up of residential hostels and homes for persons with disability
- Development of self help groups for persons with disability to pursue the realization of their sights
- Setting up of local committees to grant approval for guardianship

The Act mandates preference of funding to women and senior citizens with disability and persons with severe disability.

The National Trust can be superseded by the Central Government if, on the complaint of a registered organization, it has reason to believe that the Board is unable to perform or has persistently defaulted in performing its duties. The Central Government can supersede the Board by issuing a show cause notice,
3.5 LEGAL RESPONSIBILITY OF THE MENTALLY ILL

Legal responsibility of the persons with mental illness can be discussed under criminal responsibility and civil responsibility.

Criminal Responsibility

Criminal responsibility means whether a person with a mental illness can be exempted from being responsible for a criminal act, he/she has committed, on grounds of the mental illness. Mentally ill offenders usually stand trial in the same way as any other offender, but when sentence is passed, consideration is given to their mental state and to the possibility of psychiatric treatment. In determining whether or not a person is guilty, it is necessary to consider his mental state at the time of the act.

Before anyone can be convicted of a crime, the prosecution must prove:

- That he carried out an unlawful act, *actus reus* (act)
- That he had a certain guilty state of mind at the time, namely *mens rea* (Guilty mind).

When a person is charged with an offence, defence can be made that he is not capable because he did not have a sufficient degree of mensrea. This defence can be raised in several ways.

- Not guilty by reason of insanity (under the McNaughton rules).
- Diminished responsibility (not guilty of murder; but guilty of manslaughter, which requires a lesser degree of criminal intent).
- Incapacity to form intent because of an automation.

According to Section 84 of the Indian Penal Code of 1860 “Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong of contrary to law”. This is based the famous McNaughton rules: “The defense of insanity is generally brought forward during the trial state. The
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accused is found not guilty, if insanity is established. There is a related concept, partial insanity or diminished responsibility, which has also been a focus of attention. In partial insanity, dysfunction is primarily in form of delusions, while understanding and memory are intact. For example, an accused kills another person under a delusion that he was attempting to take his life. The action is in self-defense, since the person does not know what he was doing was wrong or contrary to law. The insanity defense is usually used in charges of murder to escape capital punishment. When successful, the accused is considered ‘not guilty’. However, the person is sent to a mental hospital for treatment. For a defense on ground of the mental illness, the unsoundness of mind should have existed at the time of committing the offence. Subsequent unsoundness is not a defense, but may affect the trial.”

According to the Indian law, idiots, imbeciles and persons who are deprived of all understanding and memory, and children below 7 or those between 7 and 12, of immature understanding, are clearly not criminally responsible.

Civil Responsibility

Before a court of Law, all persons are considered to be same; otherwise it is to be proved. A person has no responsibility in the following conditions, if he is proved to be a lunatic.

**Testamentary capacity (Testament, Will):** As per Section 59 of the Indian Succession Act, 1925, “Every person of sound mind, not being a minor, may dispose of his property by will”.

A will can be declared invalid if it is proved that at the time of making the will, the testator:

- Was of unsound mind.
- Did not have the mental capacity to understand the consequences of the act.

It is essential that the testator should have sufficient capacity to understand the conditions of his property, his relations with the persons who were or should or might have been object of his bequest and the scope or the bearing of the provisions of his will. To be valid, the will needs to be signed by the testator in the presence of at least two witnesses.

According to Section 59 of the Indian Succession Act 1925, “Any person of sound mind can make a will. A person who has reached the age of majority can make a will. A person suffering from mental disorder can make a will provided he is capable of the required competency for making a will. Persons who are deaf or dumb or blind are not incapable in making a will, if they are of sound mind. Persons, who are ordinarily insane, may make a will during an interval while they are of sound mind. No person can make a will while he is in such a state of mind, whether arising from intoxication or from an illness or from any other cause, since in these circumstances, the person does not know what he is doing.”

**Marriage and Divorce:** According to the Hindu Marriage Act (Act 25 of 1955), Section 5(ii) introduced by Act 68 of 1976, if at the time of marriage any party is incapable of giving a valid consent due to unsoundness of mind; or though capable of giving consent, has been suffering from mental disorder of such a kind or to
such an extent as to be unfit for marriage and the procreation of children; or has been subject to recurrent attacks of insanity or epilepsy, the marriage shall be voidable and can be annulled by a decree of nullity under Section 12 of the Act.

Insanity or unsoundness of mind is also grounds for divorce under the Muslim Marriage Act, 1939 and Parsi Marriage and Divorce Act, 1936. Divorce can be granted under Section 13 of the Hindu Marriage Act on a petition filed by either spouse on the ground that the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such kind and to such extent that the petitioner cannot be reasonably expected to live with the respondent. The term mental disorder here means mental illness, arrested or incomplete development of mind, psychopathic disorder or disability of mind and includes schizophrenia. Psychopathic disorder here means persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct and whether or not requires or is susceptible to treatment.

Witness: Under the Indian Evidence Act, 1872 (Section 118), a lunatic is incompetent to give evidence in a court of law if he is unable to understand the questions asked or to give rational answers to them by virtue of lunacy.

Contract: Under the Indian Contract Act, 1872 (Section 11) every person to be competent to contract, must be a major and of sound mind, i.e. he is capable of understanding the contract and of forming a rational judgment as to its effect upon his interests.

The right to vote and the right to stand for election: No person of unsound mind can contest an election or exercise the franchise of voting.


### Self Assessment Questions 4

1) What is Criminal Responsibility?

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### 3.6 DOMESTIC VIOLENCE ACT

The Protection of Women from Domestic Violence Act 2005 was brought into force by the Indian Government from October 26, 2006. The Act was passed by the Parliament in August 2005 and assented to by the President on 13 September 2005.
The Protection of Women from Domestic Violence Act 2005 differs from the earlier law, Section 498A of the Indian Penal Code, in that it explicitly defines domestic violence in addition to dowry-related cruelty. Domestic violence here is defined as follows:

For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he—

a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or

b) forces the aggrieved person to lead an immoral life; or

c) otherwise injures or harms the aggrieved person.

Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another’s property.

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

- The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to get legal protection under the proposed Act.

- “Domestic violence” includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

- One of the most important features of the Act is the woman’s right to secure housing. The Act provides for the woman’s right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.

- The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence.
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to the abused, her relatives and others who provide her assistance from the domestic violence.

- The draft Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman like medical examination, legal aid, safe shelter, etc.

- The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.


Self Assessment Questions 5

1) How is Domestic violence defined in Protection of Women from Domestic Violence Act 2005?


3.7 LET US SUM UP

Thus in the present unit we discussed about various laws related to mental illness like Persons with Disabilities Act, Narcotic Drugs and Psychotropic Substances Act 1985, National Trust Act, legal responsibility of the mentally ill, Indian Succession Act, Hindu Marriage Act, Domestic Violence Act. As professional we need to understand these laws in order to be able to provide adequate services and care to persons with mental illness and their families. Further, we also need to promote awareness about these laws amongst persons with mental illnesses so that they are aware about their rights and facilities available to them. Awareness needs to be created among the care givers and family members of the persons with mental illness as well as amongst the general public.

3.8 ANSWERS TO SELF ASSESSMENT QUESTIONS

Self Assessment Questions 1

1) The Act consists of fourteen chapters and 74 sections, they are as follows:

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<th>Chapter I</th>
<th>Chapter II</th>
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<tr>
<td>: Preliminary: deals with the title of the Act, its extent and relevant definitions</td>
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<td>: Central Coordination Committee</td>
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The aims and objectives of Persons with Disability Act, 1995 are:

5) To spell out the responsibility of the state towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

6) To create a barrier free environment;

7) To counteract any situation of abuse and exploitation of persons; and

8) To make special provision of the integration of persons with disabilities into the social mainstream.

Self Assessment Questions 2

1) The Narcotic Drugs and Psychotropic Substances (NDPS) Act provides legislative measures for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, and to implement the provisions of the International Convention in the matter.

Self Assessment Questions 3

The objectives of the National Trust Act are as follows:

a) To enable and empower persons with disability and independent living as far as possible within and as close to the community

b) To provide support and facilities to enable the disabled person to live with their own family.

c) Support registered organizations to provide needs based crisis services to the families of the disabled.

d) Address problems of the disabled without family support.

e) Care and protection of the disabled in the event of death of parents or guardian.
f) Evolve procedures for appointment of guardians and trustees for people requiring a supported lifestyle.

g) To facilitate equal opportunities, rights protection and full participation for disabled persons.

**Self Assessment Questions 4**

1) Criminal responsibility means whether a person with a mental illness can be exempted from being responsible for a criminal act, he/she has committed, on grounds of the mental illness.

**Self Assessment Questions 5**

1) Domestic violence is defined in the Protection of Women from Domestic Violence Act 2005 as follows:

For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he, (a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or(b) forces the aggrieved person to lead an immoral life; or(c) otherwise injures or harms the aggrieved person.

**3.9 UNIT END QUESTIONS**

1) What are the different types of laws related to the mental illness?

2) What are the different provisions for safeguarding the human rights of the mentally ill in Indian legislation?

3) What are the various clauses in the Narcotics and Psychotropic Substances Act?

4) Write a short note on the Mental Health Act.

5) Discuss Domestic Violence Act.

6) Write a short note on testamentary capacity.

**3.10 REFERENCES**

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### 3.11 SUGGESTED READING


