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GUARDIANSHIP VERSUS CITIZENSHIP: A JURISPRUDENTIAL ANALYSIS OF LEGAL CAPACITY AND THE DISENFRANCHISEMENT OF PERSONS WITH INTELLECTUAL DISABILITIES IN THE INDIAN ELECTORAL FRAMEWORK

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ABSTRACT -

The legal framework governing the rights of persons with disabilities in India, in the present scenario, is characterised by a profound normative schism. One side stands progressive, aligning the Rights of Persons with Disabilities Act, 2016 (RPWD Act) and the Mental Healthcare Act, 2017 (MHCA) with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), recognising legal capacity as universal and inherent. On the other hand, remains archaic, based on the framework of the Representation of the People Act, 1950 (RPA) and the National Trust Act, 1999, which continues to operationalise disqualifications based on “unsoundness of mind” and “guardianship”.

This article shall provide an exhaustive legal analysis of the conflict, examining how the intersection of electoral laws and guardianship laws results in a systematic disenfranchisement of citizens with intellectual and psychosocial disabilities. Arguing that the retention of the Representation of the People Act, 1950 creates a boundary of civil death where guardianship becomes the justification for disenfranchisement. Through statutory incoherence, domestic jurisprudence, this article establishes the current electoral framework, violating the constitutional mandate of equality obligation to replace substituted decision-making with supportive decision-making.

INTRODUCTION: THE PARADOX OF UNIVERSAL ADULT SUFFRAGE –

Adoption of the Constitution of India in 1950 was a revolutionary moment for democracy, primarily through the introduction of Universal Adult Suffrage, wherein the right to vote from colonial markers of status ostensibly creates a polity of equals¹. However, this universality was not absolute; the Constitution explicitly allows for the disqualification of voters on grounds of “non-residence, unsoundness of mind, crime or corrupt or illegal practices”.

The exception was operationalised through Section 16 of the Representation of the People Act, 1950, which mandates a person to be disqualified for registration in an electoral roll if they are of unsound mind and are so declared by a competent court, fossilising exclusion for millions of citizens with intellectual and psychological disabilities².

Indian disability law has been governed by a welfare or a medical model for decades. The Persons with Disabilities Act, 1995, has viewed the disabled subject not as bearers of rights but as recipients of charity and protection. In this prototype, denial of political agency was seen as a logical corollary.

The ratification of the UNCRPD³ by India necessitated a paradigm shift to a human rights model, positing that disability does not arise from impairment itself but from the interaction between an individual’s impairment and the societal barriers⁴. Importantly, Article 12 of the UNCRPD⁵ states that persons with disabilities enjoy the legal capacity on an equal basis. Such obligatory international rule culminated in the enactment of the RPWD Act⁶, 2016, explicitly recognising the right to political participation and legal capacity.

RPA⁷ 1950 remains unamended despite the enactment of the RPWD Act⁸, creating a paradox in which an individual can be recognised as a person with true legal capacity under

¹ INDIA CONST. art. 326.

² See *Vikash Kumar v. Union Pub. Serv. Comm'n*, (2021) 5 S.C.C. 370 (India); *see also* Convention on the Rights of Persons with Disabilities art. 29, Dec. 13, 2006, 2515 U.N.T.S. 3.

³ United Nations Convention on the Rights of Persons with Disabilities

⁴ Convention on the Rights of Persons with Disabilities pmb. para. (e), Dec. 13, 2006, 2515 U.N.T.S. 3.

⁵ United Nations Convention on the Rights of Persons with Disabilities

⁶ Rights of Persons with Disabilities Act, 2016

⁷ The Representation of the People Act, 1950

⁸ Rights of Persons with Disabilities Act, 2016

disability law while being disqualified as “unsound” under election law. Furthermore, the appointment of a guardian for persons with autism, cerebral palsy, intellectual disability and multiple disabilities continues to be a model of substituted decision making. The appointment of a guardian under the National Trust Act, 1999, is erroneously interpreted by election officials as proof of “unsoundness of mind,” leading to de facto disenfranchisement⁹.

THE LEGISLATIVE ARCHITECTURE: A TRIAD OF CONFLICT -

The Representation of the People Act 1950 acts as the primary statutory vehicle for disenfranchisement, mandating that any person declared “unsound” by a competent court is disqualified as a registered voter. Section 16(1)(b) entrenches a medical model of disability, conflating diagnosis with incapacity, without a competent court and stripping individuals of their constitutional right to vote as per archaic legal standards¹⁰.

The contrast between the RPWD¹¹ and the MHCA¹² asserts a presumption of universal legal capacity. Section 13 of the RPWD Act guarantees a person with disabilities to enjoy legal capacity in all aspects of life, whereas, Section 3(5) of the MHCA clarifies explicitly that mental illness alone does not imply unsoundness of mind. Newer laws theoretically override the exclusionary clauses of the RPA¹³, still without a formal repeal of Section 16, a legislative standoff persists, leaving the status of disabled voters in limbo¹⁴.

The National Trust Act, 1999, complicates such a landscape by empowering Local Level Committees to appoint guardians for a person with disabilities. Although it intends to provide care and support, these guardianship certificates are misinterpreted as proof of unsoundness of mind by electoral authorities¹⁵. This creates a guardianship trap where the state’s protection mechanism becomes the very instrument of disenfranchisement, forcing families to choose between legal guardianship for financial security and the political right

⁹ See Amita Dhanda, *Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?*, 34 SYRACUSE J. INT'L L. & COM. 429 (2007).

¹⁰ See *Vikash Kumar v. Union Pub. Serv. Comm'n*, (2021) 5 S.C.C. 370 (India).

¹¹ Rights of Persons with Disabilities Act, 2016

¹² Mental Healthcare Act, 2017

¹³ The Representation of the People Act, 1950

¹⁴ Compare Rights of Persons with Disabilities Act, 2016, § 13, No. 49, Acts of Parliament, 2016 (India), with Representation of the People Act, 1950, § 16(1)(b), No. 43, Acts of Parliament, 1950 (India).

¹⁵ See Amita Dhanda, *Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?*, 34 SYRACUSE J. INT'L L. & COM. 429 (2007).

to vote.

THE CONSTRUCT OF "UNSOUND MIND": A LEGAL FICTION -

Under the Indian Law, there is no unified definition of “unsound mind”. A legacy term derived from the Victorian-era English law, which categorised individuals as lunatics, who have acquired mental illness or as idiots, people with congenital intellectual disability¹⁶.

The Supreme Court of India observed that there is no definition of unsoundness of mind. The courts have treated this expression as equivalent to insanity. Whereas, insanity itself has no explicit definition, but is used to describe degrees of mental disorder¹⁷.

This dangerously equates a legal status with a medical condition, that is, unsoundness of mind and mental disorder, respectively. This conflation ignores the fact that a person may have a mental disorder yet retain full cognitive capacity to understand the political processes and can also cast a vote. Equating legal capacity with mental incapacity, the judiciary has validated the exclusion of the mentally ill from citizenship.

The courts often look into Section 12 of the Indian Contract Act, 1872, for guidance. A person is of unsound mind to make a contract if he is capable of understanding it and of forming a rational judgement as to its effects upon his interests. Applying this rational judgement to voting is discriminatory; non-disabled voters are not subjected to a competency test, they are free to vote based on superstition, bias or coercion. Only a person with disability is required to prove their rationality to exercise a fundamental right.

The label of “unsound mind” acts as a guillotine for citizenship rights. While the MHCA¹⁸ 2017 attempts to link illness and civil death severely, the electoral disqualification remains a potent weapon. Families often trigger this “civil death” by applying the guardianship certificates, unaware that this may strip their family member of the right to vote.

A critical procedural safeguard in Section 16(1)(b) RPA¹⁹ the fact that the person must "stand so declared by a competent court" raises a pivotal question: Which court is competent?

¹⁶ *Id.*

¹⁷ *Hari Singh Gond v. State of M.P.*, (2008) 16 S.C.C. 109 (India).

¹⁸ Mental Healthcare Act, 2017

¹⁹ The Representation of the People Act, 1950

While the Indian Lunacy Act, 1912, which has been repealed and the Mental Health Act, 1987, empowers the district court to hold inquisitions, to declare an individual as a lunatic or manage their property, the current legal framework abolished this practise. Today, the MHCA, 2017, focuses strictly on capacity for treatment decisions rather than general civil status, and the RPWD Act, 2016, explicitly presumes legal capacity, leaving no statutory mechanism for a general declaration of unsoundness of mind.

Therefore, there is no current statutory procedure in India for a court to declare a person of unsound mind for electoral disqualification. The “competent court” requirement acts as a phantom provision requiring a declaration that no modern time law gives the court any power to make in the specific context of voting²⁰.

GUARDIANSHIP AS DISENFRANCHISEMENT: THE ADMINISTRATIVE REALITY -

The most significant barrier to the voting rights of persons with intellectual disabilities is not any competent court, but the local-level committees, under the National Trust Act.

The Local Level Committee (LLC) is an administrative body and not a judicial one. Headed by a District Magistrate. Despite this, the election officials often treat an LLC’s appointment of a guardian equivalent to a declaration of the competent court as an indication of an unsound mind.

Legal Distortion:

- National Trust Act: Empowers LLCs to appoint guardians for "care of person and property." The LLC is not authorised to declare a person "of unsound mind" or disqualify them from voting.
- RPA²¹ 1950: Requires a "competent court." An LLC is not a court.
- Administrative Practice: Booth Level Officers (BLOs) see a guardianship certificate and assume incapacity.

²⁰ See *Jomon Jacob v. State Election Comm'n*, 2025 SCC OnLine Ker 12458 (India).

²¹ The Representation of the People Act, 1950

In the jurisprudence of the National Trust Act, courts have clarified that LLCs have limited power. Yet the LLC certificate functions as a de facto disenfranchisement order in the electoral domain. This administrative overreach violates the requirement of Section 16 of the RPA²².

This creates a cruel dilemma for families, for instance, a young adult with Down syndrome needs assistance in managing a bank account, and the bank demands a Legal Guardianship Certificate under the National Trust Act. Once the certificate is issued, the individual is legally marked as requiring a guardian, and when cross-referenced with electoral rolls, the individual may be removed from the voters' list as "mentally unfit"²³.

Families are forced to choose between political citizenship and economic protection, and without any middle ground, one retains the capacity to vote while receiving support for finance²⁴.

The root of this conflict is the clash between two decision-making models:

- a) Substituted Decision-Making (Guardianship): The person is incapable, and the guardian decides for them in the "best interest" of the ward. Since voting rights are non-transferable, the person and their guardian cannot vote, resulting in total exclusion.
- b) Supported Decision-Making (Citizenship): Here, the person has the capacity to vote but needs support to exercise it as per the will and preference of the individual. The person votes with potential assistance, and the decision remains the voters'.

The RPWD Act, 2016, Section 14, introduces "limited guardianship" as a supporting mechanism, stating it as a mandate that the limited guardianship acts based on mutual trust and obtain the consent of the person with disability. However, the National Trust Act has not been amended to reflect this shift towards Support Decision Making, leaving the

²² *Id.*

²³ See Reserve Bank of India, Notification No. DBOD.No.Leg.BC.84/09.07.005/2013-14, *Legal Guardianship Certificates Issued under the Mental Health Act, 1987 and National Trust Act, 1999* (Jan. 13, 2014).

²⁴ See National Platform for the Rights of the Disabled, *Alternative Report to the UN Committee on the Rights of Persons with Disabilities* (2019).

plenary guardianship model dominant in practice²⁵.

THE JURISPRUDENTIAL TURN: DISMANTLING THE MEDICAL MODEL THROUGH INDIAN ADJUDICATION AND COMPARATIVE CONSTITUTIONALISM –

The struggle for the enfranchisement of persons with intellectual and psychosocial disabilities is not merely legislative, but rather deeply jurisprudential. We are currently witnessing a seismic shift in how courts perceive disability by moving away from the "medical model" of protectionism toward a "human rights model" of substantive equality. This section analyses this transition by juxtaposing the evolving gaze of the Indian Supreme Court against the established global consensus on universal enfranchisement.

The old guard of such jurisprudence has been exemplified, where the Supreme Court inadvertently validates the exclusion of a person with a mental illness from legal capacity by equating mental disorders with unsoundness of mind. This conflation of a clinical diagnosis with a legal status laid the groundwork for the disenfranchisement, where a medical certificate often serves as a warrant for civil death.

- a) In *Shakti Vahini v. Union of India*, 2018, the Court held that "the ability of an individual to make choices is an inextricable part of dignity." This ratio is transposable to the electoral context, that if the choice of a partner is fundamental to human dignity, the choice of a government, then, the ultimate expression of civic will must be afforded the same sanctity.
- b) The Watershed Moment in *Vikash Kumar v. UPSC*, 2021, the Court ruled that reasonable accommodation is a fundamental right, and the Court explicitly rejected the medical model. The implications for voting are profound; the state cannot disqualify a voter based on what they cannot do; rather, the state has a positive obligation to provide the support that enables them to vote.
- c) In the *Rehab Centre Residents Case*, Kerala High Court, 2025, the Kerala High Court had a groundbreaking recent development. The Kerala High Court applied the *Vikash Kumar* logic to the specific issue of voting and ruled that residency in

²⁵ See Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) on Article 12: Equal Recognition Before the Law*, U.N. Doc. CRPD/C/GC/1 (May 19, 2014).

a psychosocial rehabilitation centre does not equate to "unsoundness of mind." Crucially, it shifted the burden of proof that the State cannot presume incapacity; it must prove it through a specific declaration by a competent court.

INSTITUTIONAL MECHANISMS: THE ELECTION COMMISSION OF INDIA –

The Election Commission of India (ECI) Strategic Plan 2016-2025 identifies the inclusion of PwDs as a core goal. They mapped the PwD voters, introduced the functioning of the Saksham app for requesting assistance, and mandated ramps and Braille signage at polling booths. Assistance in voting is given under the Conduct of Elections Rules as per Rule 49N, which allows a companion to assist a blind or infirm voter. This form of practice is of “supported decision making”.

Despite high-level policy, the reality on the ground is determined by Booth Level Officers (BLOs). They conduct a door-to-door verification, often carrying the prejudices of society, and having discretionary power. If a family reports a member as “mentally retarded” the officer may proactively suggest deletion of non-enrollment. BLOs proactively operate on visual markers of disability.

As per the voter registration form, it explicitly lists that the applicant must sign a declaration that they are not disqualified. A person under guardianship, signing this form, creates a fear of legal perjury, which deters the enrolment.

Civil society organisations, particularly the National Platform for the Rights of the Disabled (NPRD) and Equals Centre for Promotion of Social Justice, have been vocal in their critique. In their shadow reports to the UNCRPD²⁶, groups highlighted that the unsound mind provision violates Article 29.

The limitations of the Saksham App prove to be more concise: while the app allows wheelchair bookings, it does not address the legal barriers encountered during registration for those with intellectual disabilities. Even blind users have reported accessibility issues with the app’s use and limitations.

²⁶ United Nations Convention on the Rights of Persons with Disabilities

CONCLUSION –

The continued existence of Section 16(1)(b) in the Representation of the People Act, 1950 is an anachronism that stains India's democratic credentials. It creates a class of "lesser citizens" whose political voice is silenced by the very laws meant to protect them. The conflict between the National Trust Act which labels them as wards, and the RPWD Act²⁷ which hails them as citizens creates a legal paralysis that results in disenfranchisement.

Transitioning from civil death to full citizenship, it requires a fundamental reimagining of the legal subject, it demands that the state stop viewing persons with disabilities as objects of care to be managed, rather as political agents to be heard. The Constitution applies with "full force and vigour" to the disabled; it is time the ballot box reflects this reality.

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