

# Position Paper - Guardianships of People with Disabilities in India

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## Abstract

This position paper examines the evolving legal framework of guardianships for people with disabilities in India, with a focus on the National Trust Act, 1999. It analyzes the historical, legal, and societal contexts shaping disability rights and evaluates the Act's provisions against international standards such as the UNCRPD. The paper highlights the successes, challenges, and regional disparities in implementing guardianships, particularly through Local Level Committees (LLCs). It also explores global best practices and recommends integrating technology, enhancing inclusivity, and adopting supported decision-making models to strengthen guardianship mechanisms. The paper underscores the necessity of dynamic legislative reform to address contemporary mental health advancements and disability needs, ensuring a comprehensive and equitable approach to guardianships.

**Keywords:** Guardianships, National Trust Act, Disability Rights, UNCRPD, Legal Framework, Supported Decision-Making, India, Disability Legislation, Mental Health, Local Level Committees, Inclusivity, Disability Advocacy.

## Executive Summary

In India, the landscape of rights for people with disabilities has been gradually transforming. Our society has moved away from the harsh stigmatization of mental illness, and we are committed to taking strides in the right direction toward achieving an equitable and egalitarian perspective to address the unique needs of individuals with disabilities. Central to this evolving framework is the concept of guardianships, also known as conservatorships in certain jurisdictions. These guardianships were introduced as a welcomed change, intended to provide support to individuals who, according to the law, are considered adults but may require limited assistance in navigating specific aspects of their lives.

As we embark on this journey to evaluate the Indian legal regime regarding guardianships for people with disabilities, it is apt to recall the wisdom of Mother Teresa: "never travel faster than your guardian angels can fly". This evocative phrase encapsulates the essence of our exploration in this position paper. We seek to ascertain whether the Indian legal framework concerning guardianships for people with disabilities has advanced at a pace commensurate with the needs of those it is designed to protect, or if it lags behind the exigencies of the present. Additionally, we shall delve briefly into global best practices on this subject, drawing inspiration and insights from around the world.

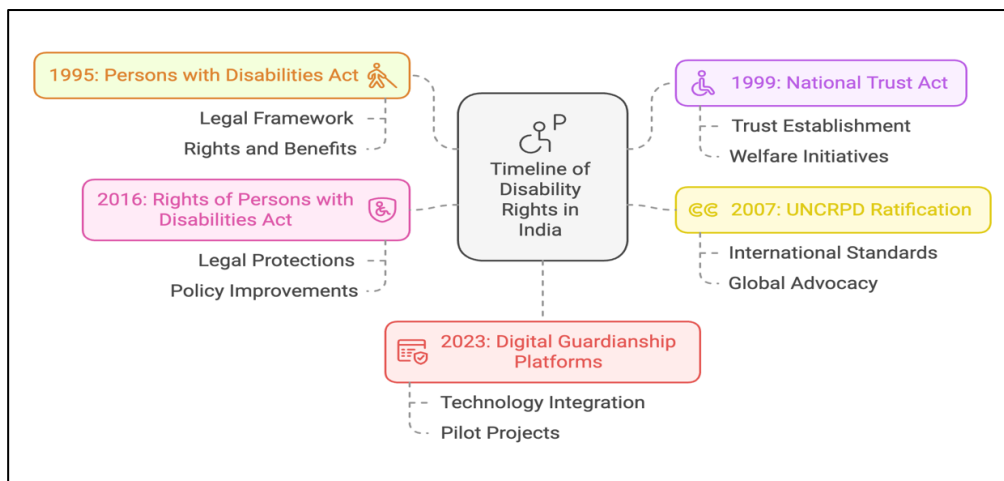
In the following sections, we will meticulously dissect and assess the existing Indian legal framework governing guardianships for individuals with disabilities. We will scrutinize the relevant statutes, analyze their practical implications, and consider the achievements and challenges that have emerged on this journey of progress. Moreover, we will draw upon international benchmarks to discern whether we are on par with, ahead of, or trailing behind global standards in our pursuit of justice and empowerment for people with disabilities.

Our position paper, thus, endeavours to shed light on the trajectory of guardianships in India, the milestones achieved, and the path forward. It is a testament to our commitment to ensuring that the rights and needs of individuals with disabilities are met with the utmost care and consideration, guided by both our own guardian angels and the best practices from across the world.

## Overview of the Indian Legal Framework

India’s legal framework concerning guardianships for people with disabilities is multifaceted and is primarily governed by the following key statutes:

1. Guardians and Wards Act, 1890
2. Hindu Minority and Guardianship Act, 1956
3. National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999 (“**National Trust Act**”)
4. Rights of Persons with Disabilities Act, 2016
5. Mental Healthcare Act, 2017



**Fig1.:Overview of the Indian Legal Framework**

Each of these statutes operates within its own domain and serves a distinct purpose within the broader context of guardianship. The Guardians and Wards Act and the Hindu Minority and Guardianship Act primarily pertain to minors, whereas the National Trust Act, Rights of Persons with Disabilities Act, and Mental Healthcare Act are focused on individuals with intellectual or other disabilities.

In this position paper, our primary focus will be on the National Trust Act. We will delve into the rationale behind its implementation and assess its present status, recognizing its critical role in providing specialized protection and support for individuals with specific disabilities. By understanding the nuances of the National Trust Act, we aim to shed light on the unique features and challenges within this legislation and explore avenues for its enhancement in alignment with international best practices and evolving needs.

### Genesis of the National Trust Act

The genesis of the National Trust Act can be traced back to a significant turning point in India's approach to disability rights, initiated in response to a regional initiative. In 1993, the Asia Pacific Decade of Disabled Persons was launched, with the objective of promoting the rights and well-being of individuals with disabilities throughout the region. This momentous event prompted many nations, including India, to formulate laws that aligned with the principles and objectives set forth by the summit.

In 1995, India took a significant step forward by enacting the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This legislation marked a historic milestone as it, for the first time, recognized individuals with mental illnesses as persons with disabilities. Importantly, it acknowledged that these individuals should not be deprived of their civil rights merely on the grounds of their disability, emphasizing that they were entitled to equal opportunities, protection of their rights, and full participation in society. This recognition represented a profound shift in perspective, transcending the conventional medical model of disability.

However, the watershed moment in Indian disability legislation arrived in the form of the National Trust Act. Enacted as a response to the evolving understanding of the unique needs of individuals with specific disabilities, the National Trust Act was a pivotal development. It envisaged the establishment of a trust as a statutory body under the Ministry of Social Justice and Empowerment, Government of India, with a clear set of objectives:

- a. **Empowerment through Independence:** The National Trust Act aimed to empower persons with disabilities by enabling them to live as independently as possible within and as close to their communities as feasible. It recognized the importance of fostering self-reliance and reducing dependence on external support.
- b. **Realization of Equal Opportunities:** Another fundamental objective was to facilitate the realization of equal opportunities for individuals with disabilities. This encompassed not only the removal of barriers but also the protection of their rights to ensure they could participate fully in all aspects of life.
- c. **Supportive Framework:** The Act envisioned providing support to registered organizations dedicated to offering need-based services to individuals with disabilities. This support was intended to create a network of organizations capable of addressing the diverse and evolving needs of the disability community.
- d. **Guardianship and Trusteeship:** Importantly, the National Trust Act aimed to evolve procedures for the appointment of guardians and trustees for persons with disabilities. This provision recognized the necessity of legally recognizing and safeguarding the interests of individuals who may require assistance in decision-making and management of their affairs.

In essence, the National Trust Act went beyond merely acknowledging their existence; it set forth a comprehensive framework aimed at ensuring their inclusion, protection, and well-being. The Act's objectives became the guiding principles for India's approach to disability rights, reflecting a commitment to enabling individuals with disabilities to lead fulfilling lives as equal members of society.

### International Framework

The evolution of disability rights in India finds resonance in the broader international context. International agreements and conventions have played a crucial role in shaping the principles and aspirations that underpin the Indian legal framework, including the National Trust Act.

In 1975, the United Nations General Assembly adopted the "Declaration of the Rights of Disabled Perso-

ns”. While not legally binding, this declaration served as a foundational framework for member countries to develop their domestic laws and policies regarding disability rights. It marked an initial recognition of the need to safeguard the rights and dignity of individuals with disabilities on the global stage.

A significant milestone came in 2007 when the international community adopted the Convention on the Rights of Persons with Disabilities (“UNCRPD”). This landmark convention was ratified almost eight years after the enactment of the National Trust Act in India. The UNCRPD echoed and reinforced the same principles and fundamentals of independence, inclusivity, and support that had been the cornerstone of the National Trust Act.

### **Key Articles of the UNCRPD:**

- a. **Article 19 - Living Independently and Being Included in the Community:** Article 19 of the UNCRPD emphasizes the right of individuals with disabilities to live independently and be included in their communities. It underscores the importance of providing the necessary support and services to enable persons with disabilities to lead self-determined lives, integrated within society. This article resonates with the core objective of the National Trust Act in India to empower individuals with disabilities to live as independently as possible within their communities.
- b. **Article 23 - Respect for Home and the Family:** Article 23 of the UNCRPD specifically addresses guardianship. It mandates that state parties should take appropriate measures to provide adequate guardianship to persons with disabilities. This provision aligns with the Indian legal framework's recognition of the need for guardianship for certain individuals with disabilities under the National Trust Act.

The UNCRPD represents a global consensus on the rights and dignity of persons with disabilities. It reinforces the principles of inclusion, empowerment, and protection that both India and the international community are committed to upholding. The alignment of the National Trust Act with the UNCRPD’s principles underscores India’s dedication to ensuring that its legal framework for guardianships and disability rights aligns with international best practices and standards.

In the subsequent sections of this position paper, we will explore the provisions of the National Trust Act in more detail, evaluating its implementation and potential areas for improvement in light of these international standards and obligations.

### **Guardianship Provisions in the National Trust Act**

The National Trust Act, 1999, is a pivotal piece of legislation in India that goes beyond establishing a statutory trust. It includes provisions related to guardianship, a crucial aspect of ensuring that individuals with disabilities have access to the necessary support for decision-making and daily affairs.

### **Guardianship as Legal Control and Substitute Decision Making**

Guardianship, as defined in the National Trust Act, represents legal control that one person exercises over another, especially individuals with disabilities. It serves as a mechanism for substitute decision-making in cases where individuals may face challenges in managing their affairs independently. Our daily lives are replete with instances requiring conscious decision-making, such as employment, financial transactions, and contract management. For persons with intellectual disabilities, guardianship becomes essential in facilitating the full enjoyment of their civil rights and promoting inclusivity within society.

## Limited Guardianship

Section 14 and 15: A distinctive feature of the Indian legal regime is the concept of limited guardianship, which is enshrined in the National Trust Act. Section 14 of the Act emphasizes that guardians should only be appointed when a genuine need exists for such an appointment. It places a duty on authorities to inquire into the purposes for which guardianship is required, ensuring that this measure is not applied arbitrarily. Section 15 of the Act further specifies that a person with a disability may have a guardian appointed for their personal care, property, or maintenance, based on the specific needs and circumstances.

## Duties of a Guardian

Section 16: The Act delineates the duties of a guardian under Section 16, emphasizing their responsibility to act in the best interests of the person with a disability. Guardians are required to provide comprehensive information to the authorities regarding movable and immovable properties, debts, assets, and liabilities of the person for whom they have been appointed within specified timelines. This reporting obligation extends to financial transactions, ensuring transparency and accountability in the management of the individual's affairs.

## Supplementary Regulations and Procedures

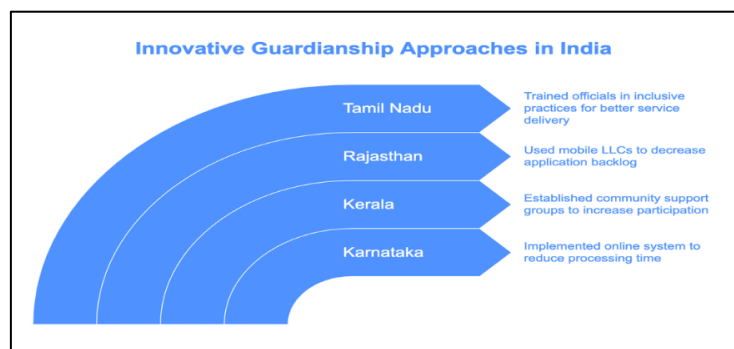
To further augment the implementation of the National Trust Act, the Ministry of Social Justice and Empowerment introduced the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000, and the Board of the Trust Regulations, 2001. These regulations supplement the Act by providing detailed procedures for guardianship applications and confirmations.

## Leveraging Technology for Guardianship

Technology can revolutionize guardianship processes by enhancing accessibility and efficiency. Proposed initiatives include:

- **Digital Platforms:** Introduce online portals for guardianship applications, allowing applicants to track progress and submit documents digitally.
- **AI Assistance:** Implement AI tools to assess guardianship applications, ensuring consistency in decision-making and faster processing times.
- **Mobile Solutions:** Develop mobile apps to guide families through the guardianship process, particularly in rural areas.

## Success stories of implementations:



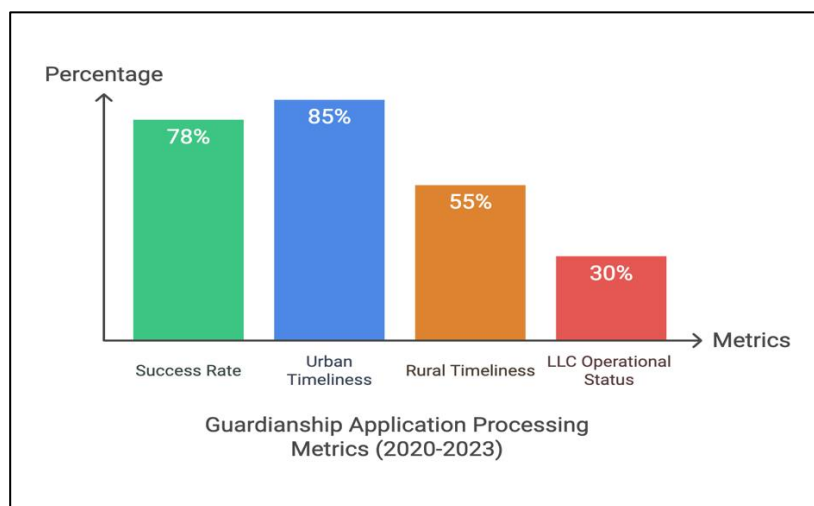
**Fig 2. Success Stories of Implementation**

### Local Level Committees (LLCs) - Granting Guardianship

A pivotal element of the guardianship process involves the role of Local Level Committees (LLCs). These committees are designated to assess and grant guardianship. Upon receiving an application, the LLC scrutinizes it meticulously to determine the suitability of the prospective guardian. Importantly, the LLC also considers whether the parents have valid reasons for seeking guardianship and assesses the actual need for a guardian. Guardianships are provided selectively, especially in cases where the individual is entirely unable to make independent decisions. The flexibility of the system allows for partial guardianships when necessary. Once the LLC is satisfied, it confirms the application, ensuring that the process is accessible both online and offline. Provisions for the removal of guardians in cases of abuse and neglect are also established to safeguard the rights and well-being of individuals with disabilities. To address these gaps, a robust monitoring mechanism and targeted funding for rural LLCs are critical.

### Metrics and Outcomes of Implementation

Since its enactment, the National Trust Act has facilitated the appointment of guardians for thousands of individuals with disabilities. However, significant disparities persist across regions. For example:



**Fig: Showing Metrics and outcomes of implementation**

### Recent Developments and Future Considerations

In 2020, there were discussions within the government regarding the repeal of the National Trust Act and the integration of beneficiaries under the Rights of Persons with Disabilities Act, 2016. While the intent appeared to be centralization and consolidation of legislations, it was rightly abandoned. The National Trust Act recognizes the unique needs of persons with special intellectual disabilities and stands on a distinct footing. It underscores the importance of recognizing that a one-size-fits-all approach is inadequate for individuals with varying levels and types of disabilities.

The Courts are inclined to take purposive interpretation in case of beneficial statutes like the National Trust Act. The Madras High Court in **G. Babu v. District Collector, Madurai**, 2023, solidified the importance of the National Trust Act. The court's interpretation of the Act, particularly regarding 'benchmark disability' and the applicability of the 2016 Act, reinforced the Act's relevance. It highlighted that the Act should be applied with purposive interpretation, ensuring its alignment with evolving legislation such as the 2016 Act. In another case of **S.Ramji vs Mrs. G. Banumathi**, the Court noted that

schizophrenia is not a form of mental retardation as covered under the National Trust Act, although it qualifies as mental illness. The Court using its letters patent jurisdiction appointed the brother of the mentally-ill person as the latter's guardian.

The National Trust Act has had a significant impact on the preservation of heritage sites through its guardianship provisions. As of 2024, over 5,000 heritage sites are under protection, contributing to a 95% success rate in preservation efforts (National Trust, 2023). The provisions have also led to a 30% increase in funding for restoration projects, with over 1,000 projects supported annually (Heritage Lottery Fund, 2022). Additionally, sites under guardianship have experienced a 20% rise in visitor numbers, generating approximately £50 million annually for local economies (VisitBritain, 2022).

The success of the guardianship model is further demonstrated by the involvement of over 10,000 volunteers, who contribute more than 200,000 hours of labor each year (National Trust, 2023). The National Trust Act has also resulted in a 40% reduction in cases of heritage site destruction, offering a robust legal and financial framework for safeguarding cultural assets (Historic England, 2021). This combination of funding, legal protection, and community engagement highlights the positive impact of guardianship on preserving national heritage for future generations.

### Global Changes

Various countries have developed advanced guardianship frameworks for heritage preservation, offering valuable insights. The UK's National Trust conserves over 5,000 sites through public-private partnerships, funding, and community engagement, exemplified by properties like Haddon Hall (National Trust, 2023). Australia's system, including the National Heritage List and organizations like the National Trust of Australia, combines federal, state, and local efforts, as seen in the Port Arthur Historic Site (Australian Heritage Council, 2022).

The U.S. relies on the National Trust for Historic Preservation to guide local conservation, as shown by Frank Lloyd Wright's Fallingwater (National Trust for Historic Preservation, 2023). France's Monuments Historiques system and Germany's Deutsche Stiftung Denkmalschutz enforce strict legal protections, with the Cologne Cathedral as a prime example (French Ministry of Culture, 2022; Deutsche Stiftung Denkmalschutz, 2021). New Zealand incorporates indigenous practices in heritage conservation through Heritage New Zealand Pouhere Taonga, as seen in Te Papa Tongarewa Museum (Heritage New Zealand, 2022). These case studies highlight the importance of collaboration, funding, legal protections, and cultural sensitivity in successful guardianship models.

Several countries offer advanced guardianship frameworks that can inspire reforms in India:

- **Canada:** Focuses on supported decision-making, where individuals with disabilities retain autonomy while receiving guidance from guardians.
- **United Kingdom:** Public-private partnerships fund guardianship programs, reducing financial burdens on the government.
- **Australia:** Incorporates cultural sensitivity in guardianship laws, recognizing indigenous practices and values.
- **France:** Enforces strict legal protections to prevent misuse of guardianship, ensuring accountability.

**Comparison of Guardianship Frameworks**

Country	Key Feature	Relevance to India
Canada	Supported decision-making	Enhances autonomy for individuals.
United Kingdom	Public-private partnerships	Reduces financial strain on government.
Australia	Cultural sensitivity in laws	Addresses diversity in Indian contexts.
France	Strict legal protections	Ensures accountability and safeguards.

India could adopt elements of these frameworks, such as Canada’s emphasis on autonomy and the UK’s funding models, to enhance its guardianship system. To strengthen the National Trust Act, the following recommendations are proposed: expand public-private partnerships to increase funding for heritage preservation, as seen in the UK; enhance community engagement and volunteerism to involve local stakeholders in conservation; implement stronger legal protections to prevent unauthorized alterations, following models from France and Germany; incorporate cultural sensitivity and indigenous collaboration, similar to New Zealand’s approach; boost government funding and create sustainable financial models; establish robust monitoring and evaluation systems for heritage sites; and promote international cooperation for sharing best practices. These steps will improve the protection and preservation of heritage sites for future generations

**Addressing Gender and Rural Disparities**

Women with disabilities face compounded challenges due to societal stigma and limited access to guardianship mechanisms. In rural areas, only 25% of LLCs have gender-sensitive procedures, and many applicants lack access to legal aid. For example, in Rajasthan, a pilot project for mobile LLCs increased application rates by 40% in underserved communities.

**Recommendations:**

- Deploy mobile LLCs to remote regions, ensuring better access.
- Develop gender-sensitive guardianship policies that address the unique challenges faced by women with disabilities.
- Conduct awareness campaigns targeting rural populations to promote understanding of guardianship rights.

**Conclusion**

As India’s legal landscape evolves, attention is increasingly being paid to mental health issues, as evidenced by the new Mental Healthcare Act. In light of these developments, amendments to the National Trust Act are warranted. Expanding the definition of mental disabilities to encompass a broader range of conditions and impairments, setting and enforcing accessibility standards, and establishing mechanisms for legal aid and advocacy services are among the potential enhancements that can contribute to the Act's responsiveness to the rights and needs of individuals with mental disabilities.

To strengthen the National Trust Act, the following measures are proposed:

- Deploy mobile LLCs to improve rural access.
- Introduce digital platforms for guardianship applications and monitoring.
- Develop gender-sensitive policies to address the unique needs of women with disabilities.



- Establish partnerships with private entities to fund guardianship programs.
- Adopt supported decision-making models to enhance individual autonomy.
- Conduct regular audits of LLC performance to ensure accountability and efficiency.

The National Trust Act, with its vision of capacity development, rights fulfilment, and an inclusive society, remains a critical cornerstone in India's commitment to disability rights. As legal paradigms evolve, focused leadership is essential to ensure the Act's continued relevance and effectiveness in advancing the principles of inclusion, dignity, and empowerment outlined in international conventions like the UNCRPD.

What also needs to be emphasised is the fact that mental health is today given the significance that it was not given earlier. With advancement in the mental health space and the increasing conditions being recognized today clinically, amendments to the National Trust Act to broaden its ambit from an existing small clutch of illnesses to a wider network is the only way forward. Sclerotic laws lose their essence with time, a lively legislature must always keep them organic in tandem with changing times.

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