

Guest Editorial

THE RIGHTS OF PERSONS WITH DISABILITIES (RPwD) ACT 2016 AND PSYCHIATRIC CARE

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Submitted on: 19/1/2020

Published Online: 13/2/2020

“Mr A is suffering from chronic mental illness with remissions and relapses. During relapse most of the time, he is unmanageable at home and needs hospitalisation. Two years back, he lost his parents. During a relapse in 2019, he needed hospitalisation, and nobody is there to pay hospital bills even though there is sufficient money in the bank. When relatives approached the honourable Court through an advocate to appoint a guardian, the request was denied saying that Mental Health Act 1987 is repealed and under Mental Healthcare Act 2017 (MHCA 2017) court has no provision to interfere in such matter as it has to be done by local boards constituted under MHCA. Unfortunately, in Kerala, no board is constituted under MHCA at the time of this incident. Under the provisions of the Rights of Persons with Disabilities (RPwD) Act, Section 14, the index patient was provided with a guardian to solve the financial issue under the provision of limited guardianship by District Court as Mental Illness is also a specified disability. (DOP 25/19, District Court Ernakulam)”

INTRODUCTION

Generally, Psychiatrists and other mental health professionals think that the Disability Act is only to provide disability certificate for availing disability pensions and similar social benefits for persons with mental illness. But treatment related issues, including guardianship and rehabilitation of Persons with Mental Illness, can be settled under the Rights of Persons with Disabilities Act 2016 (RPwD Act 2016). The help of District Court or any Designated Authority by State Government can be sought for guardianship under this Act. Social Justice Department is the Nodal Department, and District Administration is the designated authority for the implementation of RPwD Act 2016.

Whenever the rules and guidelines are not formed by State Government under the RPwD Act 2016, aggrieved Persons with Disabilities (PwDs) or their representatives can approach the District Court for a solution.

PSYCHIATRIC PRACTICE AND RELEVANT SECTIONS UNDER RPwD ACT 2016

Certain sections under RPwD Act 2016 are helpful for the medical practitioners for the smooth and dignified care of their patients with mental illness. Sections 14, 96 and 97 are such sections which provide adequate protection and appointment of a guardian for the patients with mental illness.

Please cite this article as: John T. The rights of persons with disabilities (RPwD) act 2016 and psychiatric care (Guest Editorial). Kerala Journal of Psychiatry 2020;33(1):1-4. doi: 10.30834/KJP.33.1.2020.183

Section 14 of RPwD Act 2016

Section-14 deals with the provision of guardianship. Limited guardianship means the appointment of a guardian for a definite purpose and for a limited period and if the patient needs guardianship repeatedly it can be converted into total guardianship

“Section 14. (1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

Explanation.—For the purposes of this subsection, “limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall

operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.”

Section 96 and 97 of RPwD Act 2016

Section 96 of this Act protects the application of other laws along with Act. Whenever and wherever necessary MHC laws, IPC section 89 and similar laws can be applied for the care of the patient.

Section 96. “The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force”, means the application of other laws not barred.

{IPC Sec-89, Act done in good faith for the benefit of a child or insane is not an offence by reason of any harm which it may cause}

Section 97 provides protection of any action taken in good faith for the care of a person with disabilities.

Section 97. “No suit, prosecution or other legal proceedings shall lie against the appropriate Government or any officer of the appropriate Government or any officer or employee of the Chief Commissioner or the State Commissioner for anything which is in

good faith done or intended to be done under this Act or the rules made thereunder.”

Role and Responsibilities of Stakeholder Departments

Social Justice Department in every state is the Nodal Department for implementing The Rights of Persons with Disabilities Act 2016 in the concerned state while other Departments are stakeholders. Medical Officers are mainly concerned with certification, registration of institution, social security, health, rehabilitation, recreation, family and reproduction right of PwDs. District Administration can coordinate the programs and schemes for PwDs with other departments. Local level committees have been constituted in many districts chaired by District Collector for ensuring legal rights of PwDs especially for mentally challenged. The guardianship certificate issued earlier for disabilities included under the National Trust Act by District Collector is now extended to Persons with Mental Illness under this Act.

Certification

The minimum period of illness is not mentioned in the definition of mental illness for the sake of disability certification under the Act. Hence a disturbed patient eligible for guardianship can be considered for certification irrespective of the period of illness if he can be included under the third category of ‘Person with Benchmark Disability who needs High Support.’

Under the Central Guidelines of this Act, Disability Certificate issued by private practitioners are also valid provided it is countersigned by the designated authority. Psychiatric care in India is more in private set up, and such a provision is helpful to settle the

guardianship and similar issues for the sake of persons with mental illness.

Psychosocial Rehabilitation and RPwD Act 2016

After the Ervadi tragic incident in 2001, the honourable Apex Court of India instructed State Governments to strictly implement rules for the care of homeless mentally ill patients in rehabilitation centres. As the existing rules under the MH Act, 1987 were very hard and not practicable, most of the institutions for rehabilitation were on the verge of closure. Such a movement was a social issue as more than eighty per cent of rehabilitation centres for mentally ill persons were run by NGOs. In Kerala Honorable High Court of Kerala intervened to overcome this stalemate and as a result, a new rule was framed in Kerala known as “The Kerala Registration of Psycho-Social Rehabilitation Centres of Mentally Ill Persons – Rules 2012”. as per GO (P) No-45/2012/SWD dated 24/07/2012 Thiruvananthapuram. This rule is based on the previous Disability Act.

CONCLUSION

The general impression of Psychiatrists and other medical officers is that the Disability Act is just for certification for social benefits. But certain sections under RPwD Act 2016 can be conveniently used for the care of patients with mental illness in day to day practice, rehabilitation and to solve legal matters associated with guardianship.

Financial support and sponsorship

Nil.

Conflicts of interest

There are no conflicts of interest.

REFERENCES

1. John T, Subramanyam AA, Sagar R. Strength and weakness of the guidelines of Rights of Persons with Disabilities Act 2016 (dated January 5, 2018): With respect to the persons with neurodevelopmental disorders. *Indian J Psychiatry* 2018; 60:261-4.
2. Narayan CL, John T. The Rights of Persons with Disabilities Act, 2016: Does it address the needs of the persons with mental illness and their families. *Indian J Psychiatry* 2017; 59: 17-20.
3. Radhakrishnan VK, Abraham KR. A Magna Carta in psychosocial rehabilitation: The long road travelled. *Indian J Psychiatry* 2017; 59: 407-10.
4. The Gazette of India, No-49, New Delhi, dated 28th December 2016, The Rights of Persons with Disabilities Act, 2016, Ministry of Law and Justice.
<https://sw.cg.gov.in/sites/default/files/rpwd-act-2016.pdf>
5. The Gazette of India, No-489, New Delhi, dated 15th June 2017, rules for RPWD Act 2016, Ministry of Social Justice and Empowerment, Dept. of Empowerment of Persons with Disabilities.
<https://www.ncpedp.org/sites/all/themes/marinelli/documents/RPWD%20Act%202016%20Rules-copy-En.pdf>
6. The Gazette of India, No-61, New Delhi, dated 5th January 2018, guidelines for RPWD Act 2016, Ministry of Social Justice and Empowerment, Dept. of Empowerment of Persons with Disabilities.
<https://groups.google.com/forum/#!topic/wet-hepwd/XuRiT0VdWsg>
7. The Gazette of India, No-184, New Delhi, dated 11th March 2019, the Rights of Persons with Disabilities (Amendment) Rules, 2019. Ministry of Social Justice and Empowerment, Dept. of Empowerment of Persons with Disabilities.
<https://www.sconline.com/blog/post/2019/03/12/central-government-notifies-rights-of-persons-with-disabilities-amendment-rules-2019/>
8. The Kerala Registration of Psychosocial Rehabilitation Centres of Mentally Ill Persons—Rules 2012
<http://swd.kerala.gov.in/DOCUMENTS/Act&Rules/Rules/11454.pdf>