

Letter to the Editor

COMMENTS ON THE EDITORIAL ON THE RIGHTS OF PERSONS WITH DISABILITIES (RPWD) ACT 2016 AND PSYCHIATRIC CARE

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Submitted Online: 29/4/2020 Published online: 11/6/2020

Dear Sir,

In the guest editorial published online on 13th February 2020 in the Kerala Psychiatry Journal titled "The Rights of Persons with Disabilities (RPWD) Act 2016 and Psychiatric Care",¹ a few clarifications would be necessary for more accurate information to the readers. Author of this deserves appreciation for his attempt to describe how a few provisions of the RPWD Act 2016, would be useful for psychiatry practitioners in situations where persons with mental illness would require a legal guardian for decision making. As per the Sections, 75 and section 80 of the RPWD Act 2016, the Chief Commissioner of Disabilities at State and Central level are the authorities, who should monitor the implementation of the provisions and schemes under this Act.^{2,3} A statement that District Administration is the designated authority for the implementation of this Act would need elaboration and clarification as it may convey a different message to the readers. Perhaps District administration is only the nodal authority to implement programs and schemes under this Act.

A statement on page 1 of this editorial "if a person having grievances about the non-formation of rules under this RPWD Act 2016 could approach a district court" may need tweaking. No rule bars any person for approaching a District Court to find a solution for grievances. However, it would be more accurate to state that regarding non-formation of rules under this Act, the aggrieved parties should approach the State commissioner of Disabilities who is the specific implementation authority in this regard, before approaching a District or the High court.

In page 3 of this editorial, under the paragraph titled "roles and responsibilities of the stakeholder departments" following narration "Local-level committees have been constituted in many districts chaired by District Collector for ensuring legal rights of PWDs especially for mentally challenged", requires clarification. In our opinion, these may convey incomplete information to the readers, and we wish to add some additional information and clarification in this regard through this letter. As per the information provided by the National Trust, local level committees (LLC)s

Please cite the article as: Angothu H. Comments on the editorial on the Rights of Persons with Disabilities (RPWD) act 2016 and psychiatric care (Letter to the editor). Kerala Journal of Psychiatry 33(1): 76-79. doi: 10.30834/KJP.33.1.2020.191

are operational in all 688 districts of India excluding the districts under Jammu & Kashmir.⁴ They are constituted for the provision of granting legal guardianship as per Section 11(e) of the National Trust Act (NTA), 1999.⁵ Apart from appointing or revoking the legal guardianship for a PWD as described under the NTA 1999, this committee has no authority to ensure any other legal rights for persons with disabilities. Besides, the phrase "especially mentally challenged" could be replaced with "any PWD as defined under the NTA 1999" for more accurate dissemination of knowledge in this regard. In the same paragraph this statement that "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", could be rephrased further as it could confuse the readers that people with mental illness can apply for guardianship to these LLCs. This editorial may convey to the psychiatrists information that, LLC can grant a limited guardianship certificate for a PWD due to mental illness. To my knowledge, LLCs are not designated by any State Government to grant limited guardianship for disabled persons due to mental illness under the RPWD Act 2016.

Under the paragraph with subtitle "Certification", the author has described that "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." We wish to provide clarification and correction in this regard, as this may convey inaccurate information to the psychiatry residents and practitioners.

Section 2(l) of the RPWD Act 2016, defines the term "High support", as intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy. Further, section 2(s) of the same Act describes that a PWD having high support needs means, "a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 and who needs high support" as per the Section 2(l) of this Act.

We agree with the author that Disability certification may be done at the discretion of the constituted medical board without considering any minimum or maximum duration of mental illness. The following statement made by the author under subheading Certification that, "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.' is confusing. In my opinion, a state of disturbed behaviour in a person with mental illness at a point of time, may not be the factor to determine the eligibility for legal and limited guardianship under the RPWD Act 2016. We wish to clarify further that the Department of Empowerment of Persons with Disabilities, on the 8th March 2019 notified the Rights of Persons with Disabilities (Amendment) Rules) 2019 in which the process of certification on High Support Needs is detailed through a tool to assess high support requirements. According to this, any person with benchmark Disability (BMD) may apply

for the assessment by the High Support Needs Assessment board constituted as per these rules. A cutoff score of 60 against the maximum Score 100 when this tool is administered has been recommended for the declaration that such a PWD needs "High Support".⁶

In my understanding, the construct of High Support needs assessment and or the declaration that a person with BMD requires High Support or even the declaration that a person with BMD does not require high support has nothing to do with the provision of grant of legal guardianship for any PWD. Perhaps the author may clarify this further as the author's statement may convey a meaning that a person with mental illness, disturbed, unable to make appropriate decisions can be included under the category of Person with Benchmark Disability who needs High Support, which in my opinion is inaccurate.

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Reply by the Author of the Guest Editorial, Thomas John

I sincerely thank the readers for appreciating my article, critically evaluating my guest editorial and requesting for a few clarifications, which are necessary for more accurate information to the readers. I also endorse the readers' valuable suggestions.

Purpose of this article is to show that there is a provision in RPWD Act 2016, where the court can directly intervene under section 14 in

certain situations which is lacking in the MHC Act. In this case, the court genuinely wanted to help a patient and their relatives in distress due to red-tapism and helped them interpreting the Section 14 of RPWD Act 2016 which is clearly and fully described in this article. Hence interested parties can approach the court quoting this as a reference for any similar situation. This article is based more on

ground realities than the notifications and publications of authorities.

The readers are right that the District Collector is only the nodal officer at the district level to implement the program for the Disability Commissioner. For more clarification and information of the readers, I just mentioned the name of District administration which many of us do not know and directly approach the Disability Commissioner wasting time¹. The "grievances" I mean, is not the grievance of not having rules. "Local-level committees have been constituted in many districts chaired by District Collector for ensuring legal rights of PWDs especially for mentally challenged"¹ is nothing but an extension of old LLCs under NT Act 99.

National Trust Act came into existence in 1999 for covering four disabilities related to childhood, namely Autism, Cerebral Palsy, MR and Multiple disabilities (a combination of any of the first three). The previous procedure to issue guardianship for conditions under the NT Act by the executive magistrate after evaluation by LLC is now extended for all disabilities by some Proactive Disability Commissioners. Still, for Mental Illness it was possible only through court before this new Act.. Once the new Act (RPWD Act2016) is introduced automatically PWD Act 95 and NT Act all are repealed, and all disabilities come under this new Act. Now a similar committee can deal with similar issues for all cases of PwDs. I mentioned mental illness, as

it is the topic of discussion in this article. There are Disability Commissioners in some states in India who have even made WhatsApp groups and take appropriate and timely actions for patients who need high support needs for all disabilities, including mental illness. The need for a guardian comes under high support need.

There is no chance for any confusion to anybody, including PGs regarding Certification. Nowhere in the Act or related rules and guidelines, as of my understanding, it is mentioned 'a state of disturbed behaviour in a person with mental illness should not be given a certificate. In the evaluation committee to certify 'PWD with high support need,' the representative of the Social Justice Dept is there. Hence it becomes the responsibility of social justice dept as followed in some countries. There a psychiatrist has only to certify the applicant's mental illness and its relation to the disability. The provision of high support need or guardianship is a social problem and let it be viewed in that way. Some medical officers are reluctant to certify certain disabilities as the illness behind disabilities like mental illness may be with possible recovery. There is no reason for such confusion as the certification in this context is the disability due to disease and not the illness parse.

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