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Disability Assessment in India: A Case Study with Socio-Legal Approach and Specific Reference to The United Nations Convention on The Rights of Persons with Disabilities and The Rights of Persons with Disabilities Act, 2016

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ABSTRACT

Disability is an evolving phenomenon, and one major portion among that is the disability assessment policy of the country. The research through its qualitative case study presents the living experience of persons who had gone through the disability assessment process in India and were denied the disability status. It argues that the picture is quite different in practice, for it lacks logic and poor implementation. To clarify logic, the Rights of Persons with Disabilities Act, 2016 which is the central legislation in India dealing with disability, adopted the same definition of “persons with disabilities” as mentioned in the United Nations Convention on the Rights of Persons with Disabilities along with two other definitions but defeats its purpose by restricting and categorizing the disabilities to 21 “specified disabilities” for which a person can apply for a disablement certificate. The research helps in exploring important factors responsible for the exclusion of certain impairments in the disability assessment policy of the country which is based on the pure impairment approach opposing the disability approach.

Keywords: *Disability assessment, The United Nations Convention on the Rights of Persons with Disabilities, The Rights of Persons with Disabilities Act, 2016.*

I. INTRODUCTION

Over a billion people live with some form of disability (World Health Organization, 2020). Persons with disabilities are one of the most vulnerable sections of society. Because of their vulnerability, they require special protection in society so that they can live a dignified life and should be treated equally without any discrimination to realize their human rights to full potential. There is a considerable amount of change in disability in the last half-decade which ultimately points out that disability is an evolving phenomenon, and its major portions are still beyond social understanding. One major portion among that is the disability assessment policy

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of the country. Registering as a disabled person is undoubtedly a question of human rights as enumerated in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Disability assessment is an authoritative determination about the kind and extent of disability a person has, as part of a larger administrative process usually called disability evaluation or disability determination and is a gate through which anyone who claims publicly or privately provided disability-related benefit or to social policy benefits such as rehabilitation services, to care services, to assistive devices, to employment benefits, to disability social pension, to social assistance but for that people must be officially declared to have a disability (Bickenbach et al., 2015). Every country has some form of disability assessment, some government authorized agency or agent charged with assessing whether a person is disabled or not, and to which degree. Disability assessment helps us to assess who should be entitled to what types of services and benefits and who is not.

The disability assessment systems have largely escaped research attention and scrutiny. The World Report on Disability that WHO and World Bank published made it clear that the process of disability assessment is an important lever of disability policy in any country, yet little is known about how disability assessment is conducted, or the variety of procedures used around the world. Disability assessment should be based on the full, contextualized lived experience of health rather than merely on diagnosis, impairments, or functional capacity evaluation, that is disability approach for disability assessment, which not only directly assess disability status, rather than indirectly inferring disability from impairments or functional capacity, it also captures the person environmental interactive model of disability, universally understood as the most defensible model of disability (Bickenbach et al, 2015). Therefore, WHO developed the Disability Assessment Schedule (WHODAS 2.0) to address this need and provide a standardized way to measure health and disability across cultures (Üstün et al., 2010). But it is still not practically used by nations across the world including India.

The UNCRPD has been signed and ratified by most of the world's countries, and the social approach to disability is the foundation of it, however, the operationalization and practical application especially in disability assessment, is lagging in most countries (Bickenbach et al., 2015). Around 2.21% of the Indian population is disabled (Ministry of External Affairs, 2017). India signed the Convention on the same day it was adopted and ratified it in October 2007. However, the progress on implementing the provisions of the convention was very slow. It took almost ten years for the Government of India to finally enact a law i.e., The Rights of Persons

with Disabilities Act 2016, thereby known as RPWD Act, 2016 to give effect to the UNCRPD (The Rights of Persons with Disabilities Act, 2016). Although it was a good start, the real benefit of the Act would be possible only if this Act could be implemented in its letter and spirit.

A disability certificate is a key to access all entitlements, benefits, and social protection programs for disabled persons across the nation. To get the certificate, one must go through the process of disability assessment. However, till August 2017, only 57.98% of the disabled population have been issued disability certificates (National CRPD Coalition-India, 2019). The Indian disability assessment policy follows medical model of disability rather than social model of disability. It opposes the disability approach and follows pure impairment approach, which become contradictory to the vision of the preamble of UNCRPD, that disability is an evolving concept where it cannot be rigid, and it is the external environment and the attitudes that play a central role in creating the condition termed “disability” (United Nations High Commissioner for Human Rights, 2014).

The present case study helps in exploring why such persons with some forms of impairments fail to get registered as disabled person under the Act. These legally recognized disabilities only represent the interest of some disabled people while ignoring the major segment of the unrecognized disabled population. In this context, a plethora of issues like the need for inclusive definition, categorization of disabilities to certain specified disabilities, time-consuming and complicated process of disability assessment under the RPWD Act 2016 of India become major themes and key findings of the research and central to the discussion. Understanding these issues will help to facilitate the best possible practices required for a better disability assessment policy in the country.

(A) Purpose and research question

Since the main purpose of the research is to gain an insight into the living experience of a person who has been excluded from being legally recognized as disabled, the main research question emerged:

1. Why persons with some forms of impairments are excluded from being legally recognized as disabled in India?

A qualitative case study of a person applying for the disability certificate in India with socio-legal perspective enables us to look closely into the disability assessment policy and law of the country, which may provide crucial inputs like what are the defects in the disability assessment

process and its law and what possibly can be done to remove such shortcomings.

(B) Methodology

Since the design of the research is a case study, the qualitative research approach is the main focal method of the research as it would provide richer and deeper insights into the living experience of a person applying for the disability assessment process as they are the real beneficiaries to the process. The research is also based on the interpretive socio-legal approach, as this methodology seeks to analyze and interpret the law, the legal phenomenon, and their relationship with the society. It seeks to understand people's experiences and their connection with the law, which automatically correlates with the social model of disability.

The research is also guided by the social approach to disability which puts the persons at the center, not their impairment, and makes external factors responsible for inequality (United Nations High Commissioner for Human Rights, 2014). According to this approach, disability is not an individual problem but the inability of society to eliminate barriers challenging persons with disabilities. Therefore, society should restructure policies, practices, attitudes, environmental accessibility, legal provisions, and political organizations and eliminate the social and economic barriers that prevent the full participation of persons with disabilities. (United Nations High Commissioner for Human Rights, 2014) It opposes the charity and medical approach by constituting that all policies and laws should be designed with the inclusion of persons with disabilities.

a. Participants

Purposive sampling is used to recruit participants. Purposive sampling is a strategy where the researcher chooses participants based on his judgement on who can provide information to achieve the objectives of the research (Kumar, 2019). The case study is conducted on two individuals from Bilaspur district under the state of Himachal Pradesh in India having hearing and visual impairment, who applied for a disability certificate under the RPWD Act, 2016. Their contact information was taken from the relevant Hospital where they applied for disability certificate. The participants were contacted and informed about the project where they consented and agreed for the interviews.

Participant 1 (X) is a young male aged 28, resident of the State of Himachal Pradesh in India, who is a student and a civil services aspirant. By birth, he was having amblyopia but was diagnosed later in his teenage. Amblyopia is reduced visual acuity in one or both eyes in the absence of any demonstrable abnormality of the visual pathway. With amblyopia, the brain

suppresses one of these images and this negatively impacts a person's binocular vision. (Inchara et al., 2018). The reason for amblyopia was strabismus in X. Strabismus more commonly known as cross-eyed or wall-eyed, is a vision condition in which a person cannot align both eyes simultaneously under normal conditions and one or both of the eyes may turn in, out, up or down. (Shah & Patel, 2015). Strabismus may cause amblyopia due to the brain ignoring one eye. X later developed nystagmus. Nystagmus is a vision condition in which the eyes make repetitive, uncontrolled movements which often result in reduced vision and depth perception, and it can also affect balance and coordination. (Singh, 2015). X was not able to concentrate and focus his eyes because of nystagmus. As X was having this condition of Amblyopia by birth, and now together with nystagmus made his physical condition much worse. Finally, he decided to apply for a disablement certificate so that he can have a fair chance in the competitive exams by reservation.

Participant 2 (Y) is a young male aged 26, resident of the State of Himachal Pradesh in India, who is also a student. During the age of 23, Y got an inner ear infection and reaction to the medication. He was treated in one of the Government Hospital where it was found that the damage to the right inner ear was permanent, and the hearing loss cannot be recovered in the same ear. He was also diagnosed with vertigo i.e., dizziness due to inner ear dysfunction and tinnitus i.e., ringing sound in the ear. Tinnitus affects the quality of life in terms of psychological or emotional effects, sleep disturbance, auditory and health effects (Swain, 2021). He was not able to participate in any public activity because of tinnitus and hearing loss. For instance, if he is in a noisy place and wants to communicate with other people cannot do so because the brain gets confused as it can hear sound only from one ear together with the outside noise and inside noise of tinnitus and eventually fails to understand what another person is saying. He was not able to do his daily routine properly because of vertigo. This condition affected his lifestyle and studies, eventually he was not able to secure a job. Therefore, to get reservation in the Government jobs he applied for the disability certificate.

The journey of X and Y to get the legal status of a disabled person shows various defects under the RPWD Act 2016 and in its implementation process. This case study of X and Y is a very real experience of victimization of persons who want to get registered for disability status.

b. Data Collection and Analysis

In qualitative research, interviews are a well-established method of obtaining relevant information (Creswell, 2017). The qualitative interview attempts to understand the world from the subject's point of view, to unfold the meaning of their experiences, to uncover their lived

world prior to scientific explanations (Brinkmann and Kvale, 2015). A detailed in-depth semi-structured interview was used to collect data for the study with the purpose to allow questions to emerge from the research process. The interview schedule was designed to focus on parameters such as the procedure of disability assessment, administrative arrangements in which assessment is conducted, characteristics of disability assessors, the time span for assessment, accessibility issues, travelling for assessment, disabled-friendly facilities, and barriers during assessment etc. In interview sessions, every possible opportunity is provided for the participants to express themselves without inhibition so that each and every little detail could be followed.

The interviews were conducted in six sessions on total for six months with each participant where every session last for minimum of one hour. The material was obtained in a recording device which was later transcribed and supplemented with the documental analysis of the disability law of the land i.e. The RPWD Act, 2016 and other secondary sources in the form of relevant national and international reports and scientific articles. The timeline of data collection was one year from April 2020 to April 2021 in India. The study used a qualitative content analysis approach and performed thematic analysis within different aspects of the data collection. This approach helped in providing important common factors responsible for the exclusion of certain impairments in the disability assessment of the country. The emerging themes were further synthesized into different categories of research findings.

c. Limitations of the study

As the research was the part of author master's thesis project which had to be completed within a one-year time, it is therefore limited to the Bilaspur district of Himachal Pradesh in India. However, the same disability law is applicable in the whole country where similar situation could be expected. The research was limited to only two case studies. These two participants applied for the disability certificate to take the educational and employment benefits. The problems of education and employment for disabled persons are fundamental and thereby important to address which directly inform the UN sustainable development goals, particularly goal 4 (quality education), goal 8 (decent work), and goal 10 (reduced inequality). This might indicate a narrow perspective. Further research could focus on including a larger population who applied for taking other benefits from the disability certificate like pension, loans etc.

II. FINDINGS OF THE CASE STUDY

Based on the research objective, the study has focused on the individual practical experiences

with the disability assessment process and the following major themes are identified:

(A) Complex, defective, and time-consuming process of disability certificate

To take the benefit under the provisions of The RPWD Act, 2016, the first and foremost requirement is getting the disability certificate from the government authority which is proof that a person is legally disabled. Since the certificates are issued only at the district headquarters on specific dates and during specific schedules, makes the process complicated as some persons with disabilities have to travel at least 100 kilometers to reach the district headquarters and there are many instances that they will have to make multiple visits due to the restrictive schedule on a given day or due to absence of doctors (National CRPD Coalition-India, 2019). So, as X and Y were born in Bilaspur district of Himachal Pradesh in India, they had to apply in the concerned district headquarter i.e., Government Hospital, Bilaspur. X was living in Chandigarh city which is 130km away, approximately a 5-hour journey by bus from the Bilaspur Hospital.

When X went to apply for the certificate in the concerned hospital, he finds that the medical board for disability certificate sits only once in the first weekend of every month. It shows that this can happen with any new applicant who is not aware of this as it is not mentioned anywhere on the government website. When X visited on the specified date one of the doctors from the medical board was absent, so he had to go back home and visit again. On the next visit, he had to wait for the whole day standing in a queue for his turn because of the large number of patients, as there is no separate line for persons applying for the certificate and neither doctor for this specific purpose. X stated that the person who comes to claim his disability rights have to suffer so much due to the defective administration. Only one day in a month is dedicated separately for disability assessment and still, these people are treated together with other patients who came for general check-ups which are solely taken by a single doctor as there are not enough doctors in the hospital. Only a single doctor is available in a particular department like in the eye or ear, who are assessing all these patients. When X met the doctor, she refused to accept their hospital refraction test and suggested getting it done from any Government Medical College. X then again travelled 100kms to medical college for the refraction test.

When Y applied for hearing impairment, the doctor who after watching the audiometry report of the patient asked him for having a Brain Stem Evoked Response Audiometry test to measure the hearing loss, without which a doctor cannot decide the disablement percentage. A person cannot approach any private clinic or Hospital for doing this test as only the reports of the Government hospital are valid and accepted. So, it was available only in one hospital in the

state of Himachal Pradesh i.e., Indira Gandhi Medical College Shimla which is more than 100km away from his place. Y then visited the same hospital for the BERA test. He finds out that you first need to book the test and must wait for several months for your turn because of the large number of patients. After booking the test, he had to wait for nine months to get the BERA test done. To quote the statement of Y, “it is not less than a mental torture to complete this complex process for a person who is already having some form of disability and seeking for justice”.

This disability assessment process of X and Y shows that the procedure is too long, defective, and complicated. There is a lack of standardization and proper procedure on the part of the administration. According to the Government of India Census 2011, out of the 1.21 billion population, 26.8 million persons are disabled which is 2.21% of the total population. 18.6 million disabled persons live in rural areas and 8.1 million in urban areas. Most of the disability population especially those who are poor and from rural areas find it difficult to visit the district hospital several times for this purpose because of accessibility, transport, cost etc. (National CRPD Coalition-India, 2019). Various problems are encountered normally in getting disability certification as often tedious and lengthy calculations have to be done, which can result in errors and when there are many candidates waiting for medical boards for certifications, faster processing is required as much time also goes into the medical assessment of the candidate (Agarwal et al., 2019). 55 % of persons with disabilities in the State of Bihar in India do not have disability certificates, and the reasons range from tedious processes to stigma and apathy (Iqbal, 2018).

(B) Categorization of disabilities to certain specified disabilities

From the conceptual point of view, there is no universal definition of what constitutes a disability or who should be considered as having a disability (Ministry of Statistics and Programme Implementation, 2016). Countries have not defined persons with disabilities uniformly and have adapted practical definitions and thresholds for their own data collections on the basis of their policy needs and the national definitions differ in meaning, scope, and severity of disability (Department of Economic and Social Affairs, 2019). However, The UNCRPD, 2006 provides one of the most acceptable global frameworks on disability which showcases the current way of thinking about disability (Iriarte et al., 2016, p. 11).

What is interesting to note is that the Convention itself does not define disability in a strict sense, it rather illustrates the concept of disability. Article 1 of the UNCRPD provides that “Persons with disabilities” include those who have long-term physical, mental, intellectual, or

sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. This description of disability is widely acknowledged and implemented and represents a paradigm shift in thinking about disability (Iriarte et al., 2016, p. 69). The reference to “include” in article 1 could therefore extend the application of the Convention to all persons with disabilities, those with short-term disabilities or persons who are perceived to be part of such groups (United Nations High Commissioner for Human Rights, 2014).

The description is not rigid or closed and therefore it is not categorizing different disabilities rather it is stressing that disability could be anything related to the equal and effective participation of an individual in society. Participation could be in different ways for example in education, employment, transportation, or any accessibility to public services etc. because of different barriers, which not only includes physical impairment but also includes Government policies and legislations. The convention represents the social model of disability which assumes that it is the society that disables the person and generates the problems associated with disability and therefore society should restructure policies, practices, attitudes, environmental accessibility, legal provisions, and political organizations and eliminate the social and economic barriers that prevent the full participation of persons with disabilities. (United Nations High Commissioner for Human Rights, 2014).

The RPWD Act 2016, provides three types of definitions of a person with disability and the groups which represent rare diseases, burn, spinal cord injury and little people, have challenged their exclusion (National CRPD Coalition-India, 2019). Section 2 (s) of the RPWD Act defines person with disability, “as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with other” which is same as that of the UNCRPD. However, what is interesting to note is Section 2 (zc) of the same Act introduces a provision of “specified disability” which means the Act will recognize only those disabilities which are specified in the Schedule, and there are 21 specified disabilities currently in the schedule (The Rights of Persons with Disabilities Act, 2016). The act in itself defeats the purpose of UNCRPD by limiting the definition of disability to certain specified disabilities.

The Convention does not prohibit the use of definitions in national legislation; definitions might be particularly necessary for some sectors, such as employment or social security but what is important is that definitions informing policies and laws reflect the social model of disability where the challenge facing a person with a disability is measured in terms of the existing

barriers and not on the category or percentage of the impairment (United Nations High Commissioner for Human Rights, 2014). In response to this, the research points out that The RPWD Act, 2016 India which is though enacted in response to the UNCRPD is violating the purpose of the convention by categorizing the disability and making provisions of ‘specified disability’ under Section 2(zc) and ‘person with benchmark disability’ under Section 2(r) of the act (The Rights of Persons with Disabilities Act, 2016).

So, X and Y were having these conditions like nystagmus, vertigo and tinnitus which were not even considered in the process as they are not mentioned in the Act. All these problems affect X and Y lifestyles causing hindrance in their effective public participation which is exactly what a “person with disability” means according to the definition under the Act. Although these persons face the same hardship as other disabled people in day-to-day life but sadly, they were not eligible because of the defective assessment ultimately gave rise to unfair treatment and discrimination. It shows how technicalities are a hindrance in the process.

The Government of India, Gazette notification of January 2018 spells out revised guidelines for calculation of disabilities and the doctor can give disability certificate only on the basis of these guidelines (Ministry of Social Justice and Empowerment, 2018). These guidelines are of no use for persons whose disability is not mentioned in it. The Standing Committee set up by the Government of India had recommended the inclusion of certain medical conditions and there are also representations in the High Court seeking an inclusive definition. As a result of unclear definitions, there is a large discrepancy in statistics on the population of persons with disabilities (National CRPD Coalition-India, 2019).

(C) Problem in the BERA test used for hearing impairment

Brainstem Evoked Response Audiometry (BERA) is an objective and non-invasive method of hearing assessment that detects electrical activity from the inner ear (Esteves et al., 2009). The term objective signifies that the patient does not have to subjectively respond to the sound stimuli and convey whether the patient is hearing the sound or not and is usually done using a click sound to which a person’s brain responds, by which the subject’s average hearing threshold across all frequencies is evaluated (Anirban Biswas, 2018). BERA has been well documented as a method of screening deafness in a very young child. (Chalakov et al., 2010). It can definitely be used for assessing the nature of hearing loss particularly in patients who cannot perform the usual audiometric procedures. (Chalakov et al., 2010). The BERA test is hence very useful to detect the hearing status in small children but difficult to test adults. (Anirban Biswas, 2018).

So, what happened is, the test can objectively identify whether the person can hear the sound or not, but it cannot identify that the sound one is hearing is distorted or not, whether it is clear or not, it can only identify whether a person is hearing the sound or not. So as Y can hear the sound, but whatever he was hearing from his right ear is distorted and not clear. He was not able to identify or understand any sound, he can just only hear them. So as the test only identifies hearing, the reports suggested that he can hear the sound and therefore cannot be awarded with the disability certificate. However, the test failed to measure the actual hearing loss. Ultimately, it was not the fault of Y but a failure of the test or system where in such situations the patient only suffers. Unfortunately, this is the only test which doctors can prescribe for calculating the hearing loss in India and there is no other substitute for it.

(D) Nystagmus as a ground for visual impairment

Under the RPWD Act 2016, visual impairment includes only two types of disability 'Blindness' and 'low vision' except that if a person is having any other problem related to the eye such as nystagmus, it is not covered (The Rights of Persons with Disabilities Act, 2016). Most of the literature on nystagmus suggests that they do affect an individual's quality of life. Nystagmus is one of the major concerns of visual impairment globally affecting the quality of life as it can severely disrupt the lifestyle of people, especially deteriorating confidence, and self-esteem (Singh, 2015). Nystagmus and visual impairment can affect confidence and people with nystagmus face more difficulty in stressful and busy environments like train stations and supermarkets - causing anxiety and making nystagmus worse (Singh, 2015).

As X was having amblyopia by birth and later developed nystagmus is also a long-term physical impairment. It is acting as a hindrance in his life, as he is not able to participate in society equally with others. Because of nystagmus, he is not able to focus which sometimes made him dizzy and therefore is also acting as a barrier in his studies. It is much worse than his vision loss which he is having by birth. When applying for visual impairment, the doctor after watching the refraction reports, diagnosed X with amblyopia and therefore calculated 30% of permanent disablement according to the guidelines given by the Government of India. So, what happens here, the doctor had given the percentage because of vision loss. X was also having the condition of nystagmus, but the doctor had no concern with it because it is not mentioned as a ground for visual impairment under the Act. X stated that the problem of nystagmus must be given some weightage in the disability assessment process as it hinders one's full and effective participation in society and fulfils the definition of 'person with disability' as mentioned in the RPWD Act and the UNCRPD.

(E) Fault in the 40 per cent criteria for calculating disability

Another problem is the technicalities of the 40 per cent mark as the act also makes a provision of “person with benchmark disability” under Section 2 (r), which provides that a person with not less than 40% of a specified disability as certified by the certifying authority (The Rights of Persons with Disabilities Act, 2016). It means a person who is not having 40% of disability is not entitled to any benefit under the act and cannot be considered legally disabled. For example: if a person's disability is measured as 39%, he or she is not eligible for the disability benefit, though facing almost the same problem as that of the person having 40% of disability. As X was preparing for civil services, because of nystagmus and focusing problem he was not able to write the exam for 3 hours and hence requires a scribe to write it. But he can only apply for a scribe if he has more than 40% of disability. X got 30% of visual impairment for amblyopia and therefore he is not entitled to the benefit under the Act, however facing the same hardship as other disabled persons.

The case study shows how this criterion failed in practicality as all the disabilities are not measurable in percentage because they are not mentioned in the act. The process unjustly defines the disability assessment. It reflects how a person is facing hardship less because of his destiny but more because of the wrongfulness on the part of the system. A disability could not be categorized either by specifying disabilities or on the basis of the percentage of disability as categorizing a person could be the first step towards excluding that person and violating his or her inherent dignity (United Nations High Commissioner for Human Rights, 2014). It eventually points out that categorization of disability based on the percentage is again limiting the definition of disability and hence defeating the purpose of the RPWD Act and subsequently of UNCRPD.

(F) Problems in the attitudes of doctors towards persons applying for the disability certificate

After having the BERA test done, when Y showed the reports to the doctor, he accused Y of cheating in the audiometry test, as the results were not the same. Besides understanding the situation or listening to the patient, he made a completely unjustified judgement. The doctor behaved very badly with Y. When X applied for visual impairment, the doctor's attitude was also very rude like she is doing a favor to him. Such behavior affects the patients more psychologically as the whole process was not less than a mental trauma. The study finds the attitude of the doctors as rude and uncooperative. Because of such behaviors of the doctor's people feel humiliated, and they do not come back to the hospital to apply for the disability certificate.

(G) Lack of proper procedure and poor administration

After the decision of the medical board, that X is not eligible for the benefit, he went to challenge the decision of the board in the Chief Medical Officer department of the same hospital. He found that nobody in the office had an idea of the appellate authority as there was not a single case in history challenging the decision of the board. The reason for not challenging the decision of the board is not that people are satisfied with their decisions but because there is a lack of awareness and education among people as most of them belong to rural areas. They feel so helpless because of poor administration and long-delayed processes.

X then wrote a letter to the Chief Medical Officer appealing to challenge the decision of the doctors. In reply, X was advised to appear before the same specialist doctor who assessed him previously to get himself reassessed if not satisfied with the previous assessment. Then X again went to the same doctor for reassessment, who as before gave the same decision. This time X asked the doctor to state his reason in writing. It states that X was asking for disability on the ground of nystagmus, which is not mentioned in the guidelines for RPWD, Act 2016 and therefore was not entitled to the benefit. It shows that the doctors can only give certificates on the grounds mentioned in the disability guidelines given by the Government of India. The whole disability assessment process experienced by X and Y reflects a lack of proper administration, poor implementation of law and defective system.

III. CONCLUSION AND SUGGESTIONS

(A) Conclusion

The case study through the socio-legal approach to disability demonstrates the journey of persons towards getting a disability certificate which is the key to access all the disability benefits in India under the RPWD, Act 2016. The case study finds that the process of registering as a disabled person under the act is not at all easily accessible in practice and one has to face various problems during the disability assessment process. The Act in practice is still inadequate in addressing some of the major problems of people applying for the certificate because of poor disability assessment policy. The findings of the case study provide for the important determinants responsible for the exclusion of certain impairments in the disability assessment of the nation. The research finds that the process of getting the certificate is long, time-consuming, and complicated at the same time. The procedural technicalities are also a hindrance in the process. The study shows how practical obstacles make it too difficult for a person to get such an assessment. The case study finds that restricting the disabilities to 21

specified disabilities under RPWD Act when assessing for a disability certificate is binding up the disability assessment in an unjust way. Some of the medical conditions relating to hearing and visual impairment are not even considered in the process of calculating disability. The 40% criteria for disability turn out to be very ambiguous.

The doctors who are the disability assessors, decide the case only through the criteria mentioned under the official guidelines of the Government of India which is based on pure impairment approach, and they are not free to give the percentage of disability using disability approach by observing the condition of patients individually that whether such person deserve the disability certificate or not. Ultimately, the persons who are also facing similar problems as other disabled persons are simply not entitled to the benefit because their condition is not mentioned anywhere in the guidelines. Persons applying for the certificate face a lot of problems due to the complexities of the procedure. Moreover, most of the time the behavior of the doctors towards disabled persons is very disgraceful which ultimately make their condition much worse. The study finds a lack of proper and systematic administration. It reflects the conditions of persons who are less victims of destiny and more of defected system. These practical lacunas under The RPWD Act, surely make Indian disability law to be regressive under the regime of international human rights law. Moreover, it is also worthy to mention that the Government of India has not signed the optional protocol of the Convention (National CRPD Coalition-India, 2019). This act of not signing the optional protocol makes the law weaker as the Indian people cannot seek legal remedy at the international level for the violation of their rights. Persons with disabilities surely need more advocates to promote their rights, especially in rural areas where people are not aware of their rights.

(B) Suggestions

In the light of the above case study, the following points could be suggested to address the current challenges faced by these persons applying for the certificate:

There is an urgent need to make changes in the RPWD Act, 2016 of India. The Act needs an inclusive definition of disability. The disability assessment policy under the act should follow the social approach along with the medical approach. The benefit should not be restricted to certain specified disabilities as it is defeating the purpose of the UNCRPD. The doctors should also be allowed to suggest changes in the guidelines by observing current practical situations. The BERA test for hearing impairment must be used along with some other tests to identify the actual loss of hearing as the test is not capable of identifying how much clearly a person can hear. It is suggested that the hearing and visual impairment must also include other medical

conditions which are because of ear and eyes dysfunction like nystagmus, vertigo, and tinnitus. They must be given some weightage in the disability percentage according to the severity level of a particular problem in an individual, as the same is causing difficulties in their equal and effective participation in society. The 40% criteria also require simplification as some of the disabilities are not measurable thereby failing to achieve the purpose of the Act.

There is a need to frame policies to avoid long and delayed procedures and for simplifying the process of getting the certificate. There must be a change in the law that a person can apply for the disability certificate at any Government Hospital all over India whichever is easily accessible irrespective of the fact that wherever the person is living presently in India. There is a need for separate appointments of specialist doctors for disability assessment, along with a separate administrative wing to handle speedy disposal of disability cases. The patients must be treated in one single visit, so they do not have to travel frequently. All the tests related to disability assessment must be available in every district headquarter, so the poor patients do not have to travel far for the purpose. There is also a need to provide proper training to the doctors in dealing with such patients so that a change must be brought in their attitude towards such persons.

There is a need to do more research for the benefit of persons with disabilities as they are perceived as unthinkable within the justice system, due to an insufficient understanding of the societal processes. They must be included in the process of framing policies relating to their rights so that the real problems can be addressed, and a ground-level approach can be taken for the implementation of these policies. The Committee on the Rights of Persons with Disabilities in its Concluding observations on the initial report of India has also expressed its concern about the prevalence of the medical model of disability in legislation, public policies and attitudes concerning persons with disabilities, particularly in the multiple assessments and certification of disability and recommended that the State party should reform the guidelines for assessing and certifying disability to bring them into line with the human rights model of disability (Committee on the Rights of Persons with Disabilities, 2019).

While India has recognized UNCRPD with a policy environment, enacted its own disability law, yet the implementation and integration of disability inclusion is very less, as evident from this research. India needs to sign the optional protocol of the UNCRPD so that the Indian people can seek legal remedy at the international level for the violation of their rights. It has all the necessary resources, human and finances, all that is required is the political will and a realistic approach. Though the road is tough, with firm determination and commitment, and by taking

UNCRDP as an inspiration, India can overcome these challenges.

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