

have not been applied in our assessment of OPV versus IPV (4,5). Suffice to say that adverse reactions due to OPV were not monitored in spite of specific recommendations by the WHO for countries using OPV (11) and no compensation was offered to those who suffered serious health problems due to such immunisation.

While we cannot retrace our steps, we must learn from the past and consider the value of applying ethics to vaccine choice. Traditionally, epidemiology and economics have guided vaccine choice, but we recommend that ethics should also be a critical element. As actions under a national policy may be non-justiciable, in order to ensure ethics and preservation of human rights India's policy leaders must conduct an ethics assessment/review of every national health programme.

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Medical Council of India's new guidelines on admission of persons with specified disabilities: Unfair, discriminatory and unlawful

SATENDRA SINGH

Abstract

The Medical Council of India (MCI)'s recent guidelines on admission of persons with specified disabilities into the medical course under the disability quota has escalated into

a huge controversy. Multiple litigations have been initiated against MCI by successful National Eligibility cum Entrance Test candidates with disabilities across the country. In light of our new Rights of Persons with Disabilities Act, 2016, and the United Nations Convention on the Rights of Persons with Disabilities, I argue in this essay that these guidelines are unfair, discriminatory and unlawful. I quote Supreme Court judgments on reasonable accommodation, equality and discrimination and highlight the exclusion of doctors with disabilities in policy making.

Introduction

India ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007, which made

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it mandatory to harmonise all its existing legislations in line with its provisions (1). The result was the Rights of Persons with Disabilities (RPwD) Act, passed by Parliament in 2016 and implemented in 2017 (2). The legislation moves from a charity approach to a rights-based approach and safeguards the human rights of people with disabilities. The number of disabilities listed was increased from seven to 21. The provisions of the said Act require that any person with benchmark disability (who has a minimum of 40% of a specified disability) is entitled, as a matter of right, to avail all the benefits and accommodations enshrined in the Act including 5% reservation in higher education (2). Accordingly, the Medical Council of India (MCI) informed candidates for post graduate courses belonging to the disability category that persons with any of the 21 disabilities incorporated in the RPwD Act are considered as eligible in 2018 (3, 4).

Armed with a progressive legislation and amendments in the MCI Regulations, candidates with disabilities appeared for the National Eligibility cum Entrance Test (NEET-UG) to seek admission to the medical course under the disability quota. Out of the 110 students selected under the disability quota this year, the Directorate of Medical Education, Mumbai declared eight students ineligible, all of whom have learning disabilities (5). Similar incidents of candidates with dyslexia, hearing impairment, low vision, dwarfism, upper limb disability, haemophilia being denied admission were reported across the country (6). These decisions were based on the recent "Guidelines for admission of person with specified disabilities" prepared by an Expanded Committee on Disability constituted under the (MCI) (4). Candidates with low vision and dyslexia have already challenged it in the Supreme Court.

What are the new MCI guidelines?

Last year, a candidate with thalassemia knocked at the door of the Supreme Court and successfully got admission into the medical course under the disability quota (3). The MCI, earlier this year, communicated to all counselling authorities that all candidates with these 21 benchmark disabilities are eligible for the benefit of the disability quota in the medical course (3,4). Later, in pursuance of the communication from the Ministry of Health and Family Welfare (MoHFW), MCI submitted its new guidelines on June 5, 2018(4) which are yet to be ratified.

As per the guidelines, despite having benchmark disabilities, candidates with Specific Learning Disabilities (SpLD), visual impairment, hearing impairment, and autism are considered ineligible for the disability quota in the medical course. There is an upper cap of 60% for non-dominant upper limb disability and spine involvement; and 80% for disabilities arising from haematological and chronic neurological disorders; and lower limb disabilities (Table 1).

Why the MCI Guidelines are unfair

Six experts were chosen by MCI to frame pan-India guidelines for 21 disabilities. All experts were from Delhi and five of them

Table 1: Criteria for eligibility and ineligibility as per new MCI guidelines*

S.No	Specified disabilities	Benchmark disabilities (40% and above)	Not eligible for medical course in disability quota
1.	Locomotor disabilities	Polio, Cerebral palsy, leprosy cured, dwarfism, muscular dystrophy, acid attack victims	More than 80% of lower limb More than 60% for non-dominant upper limb More than 60% for spine
2.	Specific learning disabilities	Dyslexia, dyscalculia	Currently not recommended
3.	Blood disorders	Hemophilia, thalassemia, sickle cell disease	More than 80%
4.	Chronic neurological	Multiple sclerosis, Parkinsonism	More than 80%
5.	Visual impairment	Low vision and blindness	Equal to or more than 40% disability
6.	Hearing impairment	Deaf and hard of hearing	Equal to or more than 40% disability
7.	Speech/language		Equal to or more than 40% disability
8.	Autism	ASD	Currently not recommended
9.	Mental illness		Equal to or more than 40% disability

* Adapted from the MCI guidelines document. Complete table can be seen at reference [4]

from a single institute (4; pp 7-8). Maharashtra, which was the first state to start providing accommodation to children with dyslexia, and many other states (Karnataka, Tamil Nadu, Kerala, Goa and Gujarat) who recognise and have experience with accommodating learning disabilities, were not represented.

The lone member of the MCI committee responsible for setting guidelines for people with SpLD was a psychiatrist who did not recommend medical admission for applicants with dyslexia stating "lack of objective method/quantification of disability to establish presence and extent of mental illness" (4; pp 17-18). The expert further raised the concern that there will be foul play by parents to get fake disability certificates for their wards and stated that "demand for SLD and ASD certificate has grown out of proportion"; however, he cited no reference in support of this claim (4; p 18).

SpLD refers to a group of conditions, which encompass dyslexia, dyspraxia, dyscalculia, dysgraphia, and Attention Deficit Hyperactivity Disorder (ADHD) (7). The Consensus statement of the Indian Academy of Paediatrics on SpLD in its definition part does not consider it as an intellectual disability (8). The commonest one, dyslexia, may be defined as a "learning difficulty that specifically impairs a person's ability to read ... despite having normal intelligence" (9). Dyslexia interferes with processing – but it does not diminish intelligence (10) so it is unfair to compare it with mental illness. Yet, the MCI committee member who looked into this issue was a psychiatrist. There was no paediatrician or

psychologist in this committee (4; pp 7-8). The Department of Paediatrics, AIIMS, New Delhi, which worked extensively with the National Trust of the Government of India and organised training programs for doctors on the new Autism scale last year was not involved (6). Neither there was any involvement of paediatricians from Mumbai. Thus, the MCI did not adopt an inter-disciplinary approach by involving those specialities that are usually entrusted with the diagnosis and care of individuals with SpLD.

The claim by the MCI expert that dyslexia is over diagnosed (4: p 18) has no merit as only a few state governments (Maharashtra, Karnataka, Tamil Nadu, Kerala, Goa and Gujarat) have even formally granted accommodations to people with SpLD. Last year, in class XII (CBSE board) only 840/10,19,360 students across the country were diagnosed as having dyslexia. This year the number was 901/11,06,771 (11). A minuscule 0.08 %, in two successive years, cannot justify using the term "overdiagnosis"; nor should it be the basis of the suggestion that this figure represents a "rise in fake disability certificates". Considering quantification is not standardised currently for SpLD, so benchmark disability present or absent should be used as the criteria to tackle the problem of quantification till we develop better tools. The upper limit of 80% in case of locomotor disability (4; pp 9-11) does not assess individual functional capability. The guidelines should have provision for ability assessment. Arunima Sinha from India is the first woman amputee in the world to climb Mount Everest on a prosthetic limb and Major DP Singh, another amputee, is India's first blade runner who runs marathons. Ted Rummel, an orthopaedic surgeon in Missouri, acquired disability when a blood-filled cyst burst in his spine. Undeterred, he now operates from his modified wheelchair in the Operation Theatre. Mary Verghese set up the first rehabilitation department in India at CMC Vellore while in a wheelchair.

YG Parameshwara is considered the second blind doctor in the world after Dr. David Hartman of the USA. He went on to do his MD in Pharmacology and was appointed as faculty at the Bangalore Medical College (12). Both he and Dr Suresh Advani, a haematologist and wheelchair user (80% disability), were awarded by the President of India. Similarly, there are multiple instances of doctors with disabilities with more than 80% locomotor disability working as faculty and residents in government institutions in the country. Also, the notification from the Ministry of Social Justice and Empowerment on 'Identification of Posts suitable for persons with disabilities' states that if a post is already held by a person with disability, it shall be deemed to have been identified. There are doctors with hearing impairment currently doing specialisation in clinical branches, yet candidates with visual and hearing impairment were obliged to file cases in the court this year.

Why the MCI Guidelines are discriminatory

The Ministry of Social Justice and Empowerment (MSJE) framed guidelines for evaluation and the procedure for certification of various specified disabilities - the guidelines

were finalised by the MoHFW and were notified by the Central Government in the Gazette on January 4, 2018 (13). MSJE constituted an expert committee which further created eight sub-committees. It is important to note here that there were separate sub-committees on "developmental disorders" and on "mental illness" in this nodal body. In spite of this, MCI relied on a psychiatrist alone to make sweeping comments on developmental disabilities, suggesting that they discriminate against people with learning disability.

The MSJE committee had experts from different hospitals, from the Indian Council of Medical Research, and it included Directors of National Institutes working for people with disabilities under the Central Government, and the Director General of Health Services (DGHS). The DGHS is the final authority to decide upon cases where any controversy or doubt arises in the interpretation of the definitions or classifications or evaluation procedures regarding the said guidelines. Yet the DGHS was never consulted by the MCI.

The MSJE Assessment Guidelines clearly state that for SpLD, the diagnosis will require a team approach involving a paediatrician and a clinical or rehabilitation psychologist. They identified neuropsychology battery by National Institute of Mental Health and Neurosciences as a diagnostic tool. For disability certification, the guidelines specified that the medical authority should comprise of (13: pp 94-95):

- (a) *The Medical Superintendent/Chief Medical Officer/Civil Surgeon*
- (b) *Pediatrician or Pediatric Neurologist (where available)*
- (c) *Clinical or Rehabilitation Psychologist* (d) *Occupational therapist or Special Educator or Teacher trained for assessment of SpLD.*

Recognising that SpLD is not a mental disorder, the recommended team does not include a psychiatrist. Yet, the MCI included a psychiatrist and excluded experts who are mandated by the Central Government to do this job. The Assessment Guidelines also clearly mention that no reassessment is required after 18 years of age and that this certificate will be valid lifelong. The basis for this decision is that the coping strategy of dyslexics and their learning patterns are usually established by the time they go to higher education, making reassessment at that stage a wasteful exercise. The MCI's insistence on re-evaluation smacks of discrimination.

Why the MCI Guidelines are unlawful

The Delhi High Court on July 31, 2018, granted relief to a hearing-impaired candidate (14) who cleared the NEET examination but was denied admission as the MCI guidelines state that candidates with auditory disability are not eligible for admission into the medical course in the disability quota. The court, however granted her permission upholding the principles of non-discrimination and equal opportunity enshrined in UNCRPD. The court observed that the MCI recommendation has not yet attained finality and is pending

consideration before the MoHFW and the amendment, in this behalf, has so far not been carried out in the relevant regulations (14). The MCI guidelines disempowering persons with specified benchmark disabilities are “abhorrent to the principles enshrined in the Constitution of India and to the provisions of the RPwD Act.”

The court stressed that the RPwD Act came into being to give effect to the UNCRPD provisions, to which India is a signatory. “The Preamble to the said Act does not permit for any deviation from the stated objective”; while directing the petitioner to participate in the counselling under the disability quota and the concerned authority to reserve a seat in MBBS course for the current academic session (14).

This is not the first such decision, as much before the enactment of RPwD Act, the apex court in India mentioned the doctrine of “reasonable accommodation” for the first time in a judgment while pulling up the Jammu and Kashmir High Court (15) which denied a person with cerebral palsy a school teacher’s job as he could not hold a stick of chalk. The ground prepared was that the process of teaching is incomplete without the use of the blackboard. The Apex Court agreed that while a person having cerebral palsy may not be able to write on a blackboard, an electronic external aid could be provided which could eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort. The term “reasonable accommodation” has been officially defined under section 2(y) of the RPwD Act 2016 as (2):

‘necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others’

In National Legal Services Authority vs Union of India and others in Writ Petition (Civil) No.400 of 2012, the Supreme Court said (16:p 93):

“In international human rights law, equality is found upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms.... Discrimination occurs due to arbitrary denial of opportunities for equal participation. Equality not only implies preventing discrimination but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation...”

Doctors with disabilities do exist

In the landmark Jeeja Ghosh and Anr vs Union of India and Ors on judgment, the apex court stated (17):

“...the very first sentence of the book “NO PITY” authored by Joseph P.Shapiro reads:

“Non disabled Americans do not understand disabled ones.” The only error in the aforesaid sentence is that it is attributed to Americans only whereas the harsh reality is that this statement has universal application. The sentence should have read:

“Non disabled people do not understand disabled ones.”

One of the biggest flaws of both the MCI committee and the MSJE Committee framing Assessment Guidelines is the exclusion of doctors with disabilities on the committees. We, the disabled people, are real-life experts on matters pertaining to disabilities. As I wrote in the *Indian Express*, policymakers and doctors without the lived experience of having a disability must not assume they know of our abilities or doubt our competencies (18). Where are the voices of doctors with disabilities? It was my four-year battle with MoHFW which finally unlocked 1,674 posts for doctors with disabilities in the Central Health Services (19). These were not even reserved posts, nevertheless MSJE officials reported on their affidavit in the Court that “such posts are not suitable to be manned by people with disabilities” (20). If the ceiling broke it was because of my lived experience as a doctor with disability. Unfortunately, history has repeated itself as candidates with disabilities have been denied medical admission this year by MCI.

The rights of people with disabilities are protected globally by legislations – The Americans with Disabilities Act (US), The Equality Act (UK) and The RPwD Act (India). There is literature available to counter the MCI prejudice. The majority of students with disabilities in medical education in the United States have invisible disabilities - ADHD (33.7%), SpLD (21.5%), psychological disability (20%), deafness or being hard of hearing (2.2%), in addition to visual (3%) and mobility (2%) disability (21). Similarly, in the UK, 10% of medical students from a medical school have reported SpLD (22).

Willem Kolff (father of artificial organs & pioneer of haemodialysis) and Helen Taussig (founder of paediatric cardiology) both had dyslexia (18). Eleanor Walker (a dyspraxic medical student) and Sebastian Shaw (a doctor with dyslexia) are keeping the flag flying high by publishing the lived experiences of medical students with dyslexia in peer-reviewed journals (10, 22-23).

Reasonable accommodations for medical students with dyslexia

“There is a need to foster a supportive environment, in which asking for help is not seen as weakness, and admittance of difficulty is not viewed as negativity”

– A doctor with dyslexia (23)

I feel it is unethical to label candidates with disabilities under benchmark disability and offer no support. The majority of medical institutions in the country are not accessible to people with disabilities. Based on my case before the National Human Rights Commission, MCI amended the Standard Assessment

Table 2: Sequence of events highlighting the present MCI Guidelines controversy			
No	Date	Authority	Action
1.	19.04.2017	Ministry of Social Justice and Empowerment	Rights of Persons with Disabilities (RPwD) Act implemented
2.	04.01.2018	Ministry of Social Justice and Empowerment	Notified Guidelines for evaluation and procedure for certification of various specified disabilities
3.	22.01.2018	Medical Council of India	Notified the MCI Regulations on Graduate Medical Education (Amendment), 2017 incorporating provisions of RPwD Act
4.	08.02.2018	Central Board of Secondary Education	Issues Information Bulletin for National Eligibility Cum Entrance Test (UG) 2018 for Admission to MBBS/ BDS Courses confirming reservation of 5% seats for disabled candidates, along with schedule on specified disability as per RPwD Act
5.	20.03.2018	Medical Council of India	Informs candidates for post graduate courses belonging to disability category that all 21 disabilities incorporated in "The Rights of Persons with Disabilities Act- 2016" are considered as eligibility criteria, if they go beyond 40 percent disability.
6.	31.05.2018	Medical Counselling Committee	The admissions for Post Graduate Courses were concluded under the reservation policy for disability category in terms of the existing criteria under the RPwD Act.
7.	04.06.2018	Central Board of Secondary Education	Result for CBSE - National Eligibility Cum Entrance Test (UG) 2018 declared.
8.	05.06.2018	Medical Council of India	MCI Expert Committee on Disability submitted its report to Ministry of Health & Family Welfare regarding guidelines for admission of persons with specified disabilities (yet to be approved by Central Govt)
9.	10.08.2018	Supreme Court of India	Observed that the Government has to consider the report of the MCI as expeditiously as possible and to decide whether the Central Government is inclined to go by the schedule that has been incorporated in the RPwD Act; and whether it intends to accept the report of the MCI Committee or not.
10	16.08.2018	Doctors with Disabilities	75 Doctors with Disabilities writes to the Union health ministry to "reject the discriminatory MCI guidelines" in light of RPwD Act and global practices.

Form, thereby fixing the accountability of barrier-free campus on to the institution by putting this in the Dean's Declaration form (24). Diversity and inclusion are unfortunately still not on the agenda of medical educators in India. One very important role of curriculum designers is to generate products to fulfil the needs of students with a varying range of abilities, learning styles, and preferences. In this sense, the use of media in medical education should help teachers proactively plan for students with diverse characteristics, and institutions should include strategies for creating an inclusive curriculum and instructional methods. This can only be achieved through using universal design for learning.

Universally-designed presentations and handouts (replacing white backgrounds with pastel colours, using Sans-Serif fonts, avoiding underlining titles, using flowcharts & concept maps) are recommended by doctors with dyslexia as inclusive practices (8). This will help colour blind students too. Three UK studies have analysed the impact of dyslexia on performance in different exam formats (22) and they found that 25% extra time allows students with dyslexia to perform as well as other students. It is important to note that no accommodations were provided to candidates with SpLD in the NEET-UG, yet many cracked this tough entrance examination. Section 21(2) of the RPwD Act mandates every establishment to frame an Equal Opportunity Policy and this is where such accommodations must be mentioned and fulfilled in letter and in spirit. Section 21 of the RPwD Act 2016 and Section 10 of the RPwD Rules 2017 mandates appointment of a Grievance Redressal Officer in every establishment to circumvent deviations.

MCI may please note that denial of reasonable accommodation has been defined as "discrimination" under section 2(h) of the RPwD Act 2016 and therefore any person

or establishment contravening the provisions of this Act can be subject to punishment under section 89 and 92. A group of 75 doctors with disabilities have now written to the Health Minister to reject the "discriminatory" MCI guidelines and embrace diversity in medical education by adopting best global practices (25). The General Medical Council of the UK come up with Gateways to the Profession (2008, updated 2013) which is being revised currently into *Welcomed and Valued* (2018) which advises medical educators on how students and doctors with disabilities can be provided with an enabling environment (26). Earlier in June, the Association of American Medical Colleges released a report on the lived experiences of learners and physicians with disabilities and how they enrich diversity (27). MCI, as per the needs of the RPwD Act and in consultation with doctors with disabilities, may start diversity and inclusion units in all medical institutions to provide reasonable accommodations.

One notable gap in the literature is the lack of studies on the emotional impact of studying medicine with disability. In granting learners with disabilities accommodations are we inadvertently doing harm by singling them out and leaving them vulnerable to discrimination? More work is needed in this area especially from medical students and doctors with disabilities, provided that they are not stopped from pursuing medicine.

Students with diverse learning needs must not be barred from entering the medical profession. They add diversity to our profession and we must be inclusive to their needs. The RPwD Act is a welfare legislation based on UNCRPD - the first human rights treaty in the 21st century with a record number of signatories. It is the duty of everyone to see that the principles of UNCRPD are respected and that the provisions of the RPwD

Act are carried out.

Declaration of interest: *The author of this paper is a doctor with disability who led a representation of 75 doctors with disabilities, under the banner "Doctors with Disabilities: Agents of Change", to the Central Government requesting that the new MCI guidelines be quashed. The author then filed a writ petition in Hon'ble Supreme Court of India for the same. This article is a follow up of a small editorial published in the Indian Express (quoted in reference).*

Post script: *The author-led representation, under the banner "Doctors with Disabilities: Agents of Change", was taken on record by the Health Ministry. It has been learnt that the Health Ministry has amended certain controversial parts in the MCI guidelines acknowledging said representation in their response to the apex court.*

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