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Human Rights and Mental Health: Analytical Study

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ABSTRACT

Mental health issues till today continues to be highly neglected, despite being the common issue in society. People with mental illness experience grave violation of their civil, cultural, economic, political and social rights the world all over. India is not an exception with respect to human rights violations of patients with psychiatric disorders, despite having numerous legal measures such as the Mental Health Act 1987, Persons with Disabilities Act 1995 etc., to prevent the issues.

India has signed a signatory to the Alma Ata Declaration in 1978 that states that health, i.e. a state of complete physical, mental, and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right. In 2007, India was among the many countries that ratified the UN Convention on the Rights of Persons with Disabilities, which includes People with Mental Impairment. Although India has various legal measures to protect the human rights of the mentally ill, the proper implementation of these acts came into question after the Erwadi fire accident in 2001 which caused the death of 25 mentally ill patients who were chained in a faith based 'mental asylum' at Erwadi Village in South India. A recent article reported a young man with mental illness chained to a tree with ant bites and open wounds on his legs this appears to be painfully obvious is that these violations and inhumane treatment continue to occur in India, more often in the rural areas of the country.

Though there are a number of reports of human rights violations of the mentally ill in psychiatric institutional settings, such incidents happening in their own homes are often overlooked and are under-reported.

Keywords: Human rights; Mental illness; Government.

I. INTRODUCTION

Human Rights are the basic rights which form the essential part of his/her development as human being. Constitution acts as a protector of those basic rights as Fundamental Rights and DPSPs. More emphasis has been given to the fundamental rights and they are directly enforceable in the court of law. From a deep study of the Part III and Part IV of the Indian

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Constitution, it is easily evident that almost all of the rights provided in Universal Declaration on Human Rights (UDHR) are covered in these two parts.

II. HISTORICAL DEVELOPMENT OF HUMAN RIGHTS IN INDIA

The Human Rights in India originated long time ago. It can easily be recognized from the principles of Buddhism, Jainism. Hindu religious books and religious texts like Gita, Vedas, Arthasatra and Dharmashstra also contained provisions of human rights. Muslim rulers like Akbar and Jahangir were also very much appreciated for his regard for rights and justice. During the early British era, the people suffered a great violation of several rights and this led to the birth of modern Human Rights jurisprudence in India.

On January 24, 1947, Constituent Assembly voted to form an advisory committee on Fundamental Rights with Sardar Patel as the Chairman. Drafted list of rights were prepared by Dr. B. R. Ambedkar, B. N. Rau, K. T. Shah, Harman Singh, K. M. Musnshi and the Congress expert committee. Although there were few amendments proposed, there was almost no disagreement on the principles incorporated. The rights in the Universal Declaration of Human Rights were almost completely covered in the Indian Constitution either in Fundamental Rights or Directive Principles of State Policy. Nineteen fundamental rights were covered in Motilal Nehru Committee Report, 1928 out of which ten appear in the Fundamental Rights whereas three of them appear as Fundamental Duties.

India had signed the Universal Declaration on Human Rights January 01, 1942. Part III of the Constitution India 'also referred as magna carta' contains the Fundamental rights. These are the rights which are directly enforceable against the state in case of any violation. Article 13(2) prohibits state from making any law in violation of the Fundamental Rights. It always provides that if a part of law made is against the Fundamental Rights, that part would be declared as void. If the void part cannot be separated from the main act, the whole act may be declared as void.

In the case of *Keshvanand Bharti v. State of Kerela*, the apex court observed: "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted."²

III. WHY IS MENTAL HEALTH A HUMAN RIGHT?

People living with mental health conditions are Human beings. They have people they love, dreams and aspirations for their lives. As people, they deserve to be treated with dignity and

² *Keshvanand Bharti v. State of Kerela*

empathy. Under the law they have rights and protections.

But the treatment of those with mental health issues is still a dark stain in our history as a nation.

Mental Health legislation in India has seen a stark improvement over the years since the British Era. Various provision and guidelines have been put into place to safeguard the rights and liberties of the victims of mental health issues.³

However, the real reason for the stagnation of such legislations can be traced back to the age-old stigma that still exists in the mind of a considerable portion of the population. Mental Health issues have always been associated with indifference and antipathy from the people leading to inhuman treatment of the person.

This paper deals with the apparent correlation between the concept of Human Rights and Mental Health. There are numerous instances of gross infringement of the human rights of mentally health issues individuals which spark the debate on whether we as a society or as nation are doing enough to support these vulnerable souls. The Development of technology and people's thought-process has brought about a positive outlook and better care is taken to ensure the human rights of such people is not upheld.

IV. HUMAN RIGHTS VIOLATION IN MENTAL HEALTH

In this difficult time, the issues relating to mental health across world has come to light. In India, even before the outbreak of the COVID-19 pandemic, there was already a mental health epidemic.

As per the World Health Organization (WHO), about 15% of the total disease conditions around the world are related to mental illness. According to WHO; India is one of the largest populations suffering from mental health issues from depression and anxiety, to severe conditions like schizophrenia.

The economic loss due to mental health conditions and issues during 2012-2030 is 1.03 trillion dollars.

The main cause for such an alarming situation is lack of understanding, empathy, awareness, sensitivity, and stigma attached towards people facing mental health issues. There is a serious scarcity of mental healthcare people in India.

As per WHO, mental health workforce in India (per 100,000 population) include psychiatrists

³ <http://www.legalserviceindia.com/>

(0.3), nurses (0.12), psychologists (0.07) and social workers (0.07).⁴

V. CURRENT POLICIES AND LAWS ON MENTAL HEALTH IN INDIA

The Article 21 of the Constitution of India states the right to life which has been expanded to include the right to health. It is essential that mentally health issues persons receive good quality mental healthcare and living conditions in their homes and society without being further tortured.

Leading back in 1982, the Government of India launched the National Mental Health Programme (NMHP). After some 38 years, it is still on paper. NMHP was introduced seeing the heavy burden of mental health illness on the society, and the absolute zero infrastructure of mental health care in the country to deal with it.

The Mental Health Act, enacted in 1987, has been the criticized since its introduction. The National Health Policy, 2002 incorporates provisions on mental health. However, no separate policy on mental health issues exists.

In 1996, the District Mental Health Program (DMHP) was added and strategized in 2003 to include two important schemes of **Modernization of State Mental Hospitals and Up-gradation of Psychiatric Wings of Medical Colleges/General Hospitals.**

India signed the Convention on Rights of Persons with Disabilities and its Optional Protocol in 2007.⁵

It is important to note that the DMHP states provision of mental health care services at the ground level and has the following objectives:

- To provide basic mental health services to the society and to integrate these services with other health services;
- Early detection and treatment of people with mental health issues within the community itself;
- To reduce the attached of mental illness through public awareness; and
- To treat and rehabilitate mental health issues people within the community.

A Mental Health Policy Group (MHPG) was appointed by the Ministry of Health and Family Welfare (MoHFW) in 2012 to prepare a draft of DMHP for Twelfth Five Year Plan (2012–2017).

⁴ WHO

⁵ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

The main objective was to reduce distress, disability and other negative notions related to mental illness and to enhance recovery from mental illness by ensuring the availability of and accessibility to mental health care schemes and infrastructure for all in the plan period, particularly the most vulnerable and underprivileged sections of the population.

Its other objectives was to reduce stigma, promote community participation, increased access of preventive services to at-risk population, ensuring rights to them, Introducing mental health programs with other programs like rural and child health, motivate and empower work place for staff, focusing on improvisation of infrastructure for mental health service delivery, to educate about mental health and establish governance, administrative, and accountability mechanisms.

A central mental health care team has also been formed to supervise and implement the programme with ease. A Mental Health Monitoring System is being developed for supervision. Proper and standard form of training was proposed with the help of training manual.

After the National Mental Health Survey in 2014–2016, the Government of India started making efforts to improve the mental health services by formulating various policies like;

- National Mental Health Policy (NMHP), 2014,
- The Mental Healthcare Act, 2017 came into force on May 29, 2018.⁶

The new Act focused on the rights of a mental health issue person and repealed the Mental Health Act, 1987. Despite having many positive features, the Mental Health Act, 1987 was the target of criticism since its introduction and was not effectively implemented due to the lack of resources.

Unfortunately, the new Act has been introduced without addressing the issues which troubled the Mental Health Act, 1987.⁷ The new Act ignores the presence of a mental health awareness programs in the country. The Act should would have mandated all the states to implement mental health programs, and the state mental authority should have been made responsible for the same. The only way the Act can be correctly implement as the right to mental healthcare is by enabling the implementation of proper National Mental Health care Programs across all states.

VI. ISSUES TO BE ADDRESSED

It is stated that India has highest number of suicides in the world. The high crime and drug

⁶ The Mental Healthcare Act, 2017

⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6482691/>

addiction rate is also high in India and has direct link with mental health. The pandemic has worsen the mental health issues which has major drawbacks in the existing mental health infrastructure and in our laws and policies. This pandemic has showed the real picture that India's mental healthcare system needs more strengthened and more support should be granted from the Central or State governments. There is a complete lack of integrated mental healthcare system and failure on implementation of the DMHP across India.

The consequences of the COVID-19 pandemic are totally visible on people's mental well-being, and this is just the start to show up such things. Unless we make serious commitments to improve up investment in mental health infrastructure right now, the health, social, and economic consequences will be more disturbing.

The lost productivity which is said to be result from depression and anxiety - are two of the most common mental disorders which has the effect on the global economy each year. In low and middle-income countries, more than 75% of people with mental disorders or issues receive no treatment at all in their conditions.

In India, mental health conditions are poor due to lack of resources and allocation of budget. It is high time to take action on mental health by investing and integrating mental healthcare into the private and public sectors.

VII. MEASURES REQUIRED

Experts state that effective implementation of the DMHP is only the key to resolve this critical issue and to insure that mental healthcare improves in India.

The new Act requires the government to provide more community-based programs and to establish group homes.

Rehabilitation facilities are missing and are not sufficient in India's mental healthcare services. The Central and State governments are yet to comply with the 2017 Supreme Court direction to set up and expand such half-way homes. As of current scenario, the states and government have only provided a basic framework towards implementation.

Treatment of mental health conditions needs to be taken seriously and should be given equal or rather more importance than even physical health as there is 'no health without mental health'. The policymakers need to promote mental health care and easy access to cost-effective treatment of common mental disorders at the primary healthcare level without the stigma attached to it.

The present mental health situation in India requires major policy change and resource

distribution by the government. There is urgent need to use media and social media effectively and other helpful community services to increase awareness and reduce the stigma around mental health issues by implementing nationwide programs.

Reports from all across the world shows that the pandemic has led to serious psychological consequences and issues like anxiety, stress, depression, fear and insomnia etc.

India Today reported a 20% increase in the mental health cases in India as an effect post imposition of the lockdown in March 2020.

Some initial steps to improve on the mental healthcare system and infrastructure have been provided under the NMHP. Appropriate understanding about the issue, and easy accessibility of professionals to society are the ways to improve the situation. This requires social, public and private teamwork for the betterment of situation. There is an urgent need for providing psychological help with trained mental health professionals as first aid, to reduce distress and ensure easy access to mental-health facilities for citizens. Mental disorders also need to be covered under insurance, as a plea pending before the Supreme Court has prayed for.

VIII. MENTAL HEALTH CARE LEGISLATION IN INDIA

(A) Indian contract laws

According to Indian Contract Act, 1872, any person of sound mind can make a contract. Section 12 of the Act stipulates that a person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. It means a PMI who is currently free of the psychotic symptoms can make a contract, whereas a person who is currently intoxicated or delirious cannot make a contract.

(B) Marriage and Divorce

Under Hindu Marriage Act, 1955, conditions in respect of mental disorders, which must be fulfilled before the marriage is solemnized under the Act, are as follows.

Neither party is incapable of giving a valid consent as a consequence of unsoundness of mind. Even if capable of giving consent, must not suffer from mental disorders of such a kind or to such an extent as to be unfit for marriage and the procreation of children must not suffer from recurrent attacks of insanity.

(C) Criminal Liability

Indian Penal Code, 1860 states that “Nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” McNaghten Rules define the criminal responsibility of mentally ill in our courts and it has been incorporated in the sec 84. It has been held by the Supreme Court that the law presumes every person of age of discretion to be sane and defense on ground of insanity needs to be proved. If defense is established on ground of insanity, such persons are committed to the Psychiatric Hospitals as per sec 471 (i) of the Cr.P.C., 1973. There have been instances of lesser sentence on account of mental illness. Where the feeling of life unbearable on account of domestic quarrels, a woman (accused) jumped into a well with her children, it was held that the only sentence that could be passed was the lesser sentence of imprisonment for life.⁸

Sec 89, IPC provides protection for any action done in good faith for the benefit of a person of unsound mind by or by consent of the guardian or other person having lawful charge of that person. Sec 305, Indian Penal Code (IPC) provides for punishment of death or imprisonment of life for abetment of suicide by an insane person.

IX. PATH BREAKING JUDGEMENT BY THE SUPREME COURT IN LIEU OF MENTAL HEALTH

- The Supreme Court, in a judgment delivered last month, noted that under the Mental Health Care Act, 2017, there is a statutory right for mentally ill persons to live with dignity.

The bench comprising Justice NV Ramana, Justice Mohan M. Shantanagoudar and Justice Indira Banerjee observed that Section 20 (1) of the Mental Health Care Act explicitly provides that ‘every person with mental illness shall have a right to live with dignity’.

No.57 – All human beings possess the capacities inherent in their nature even though, because of infancy, disability, or senility, they may not yet, not now, or no longer have the ability to exercise them. When such disability occurs, a person may not be in a position to understand the implications of his actions and the consequence it entails. In this situation, the execution of such a person would lower the majesty of law.⁹

- The Supreme Court on Tuesday asked Regulatory and Development Authority (IRDA), the apex insurance regulatory body, to explain what steps it had taken to give effect to a

⁸ AIR 1953 MB 61

⁹ R.P.(CrI.) No.-000301-000301 / 2008.

statutory provision which mandates all insurance companies to provide insurance cover to mental illness just like any other physical illness.

X. CONCLUSION AND SUGGESTIONS

This pandemic has emerged as an eye-opener to show that India's mental healthcare system needs strengthening and more support from the Central or State governments.

While handling the consequences of the COVID-19 pandemic, the mental health of people needs to be handled hand in hand. There is an urgent need to depute specialized mental health professionals to work.

The pandemic and the rise in the number of suicides and the crime rate show the need for an integrated mental healthcare policy covering mental health issues. There is an urgent need to develop infrastructure and prioritize mental health care resources, so that the mental health of most vulnerable groups is well-served. In the national interest, there is need for reforms in policies and appropriate implementation of the existing legal framework.

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