

CHANGING INDIAN SCENARIO IN THE CONTEXT OF MENTAL HEALTH

Dr Deepa Kaushik,

Assistant Professor,

VIPS (Affiliated to GGSIPU), Delhi

deepa.kaushik@vips.edu

Pooja Sharma,

Senior Faculty, Maxfort school, Delhi

poojasharma@maxfortdwarka.com

With the urbanisation and modernisation of society, mental illness stands among the leading causes of diseases and disability in the world.[1] Persons suffering with mental illness are subject to discrimination, torture and violation of their Human Rights.

It has become a mandate to create awareness among people regarding mental health especially in countries like India where there exist many misconceptions. Foremost the most common example of a misconception prevailing in our society is that there is very low percentage of people suffering from mental disorders which needs to be dealt in order to increase the approachability to mental health services. Though, the actual rate of mental disorders is surprisingly high in India, the concept of help and treatment is only for seriously ill or persons admitted to the mental hospitals. There has been a recent trend in which very few people have started acknowledging the relevance of mental health. Mental disorder has been observed as a taboo in most of the cultures around the world. People from different races, ethnicity, color, sex, age group, socio economic background may suffer from mental illness. At least one fifth of total population suffers from mental illness at some point of time in their life time. Stigma towards mentally ill people is a matter of great concern as it affects their ability to perform duties, revival, treatment, procedure, support they receive and their recognition in the group of people. Concept of mental disability occurs due to insanity, which implies a degree of mental disturbance so menacing and so disabling that the person may be considered from the legal point of view to be immune from certain responsibilities and may disallow him certain privileges that may require a degree of competence.

Mental Illness under the Mental Healthcare Act, 2017 means, a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence[2].

The expression mental disorder under the Hindu Marriage Act, 1955, means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia [3]. The word Mental illness under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, means any mental disorder other than mental retardation [4].

The expression psychopathic disorder means, “persistent disorder or disability of mind, whether or not including sub-normality of intelligence which results in an abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.”

Depression can be defined as a clinical disorder which may be caused by various social factors. Most experts agree that while depression disorders decrease with age, depression symptoms decrease. The relationship between age and depression symptoms is curvilinear: younger and older people have the highest number of depression symptoms whereas middle aged people have the lowest.[5]

The term Mental Infirmary and Mental Unsoundness has been discussed in the case of *Jai Prakash Goel v. State* [6]. The Court observed that, a person may not be adjudged as of unsound mind yet the court may nevertheless consider it appropriate to appoint guardian ad litem under Order xxxii Rule 15. However, the Court is not bound to make a rigorous or formal enquiry as contemplated by the Lunacy Act, 1912 and is competent to pass an order as soon as it is satisfied as to the party’s mental competence. There is a vast difference between mental unsoundness and incapacity

by reason of mental infirmity, the latter being of a lesser degree. The Collins/Co build English Dictionary defines infirm as weak or ill and usually old. The Concise Oxford Dictionary states that infirm refers to a person who is not physically strong, especially through age. In Black's Law Dictionary infirm has been defined as weak, feeble, lacking moral character or weak of health. Incapacity has been defined in the same treatise as want of legal ability of act. A person suffering from a low intellectual quotient (IQ) may not be viewed as of unsound mind, but there can be no gainsaying that he would be incapable of protecting his interests in all together. The Mental Health Act, 1987, in Section 2(1) defines mentally ill person one who is in need of treatment by reason of any mental disorder other than retardation, thereby drawing a distinction between these states of health. The Court held that there is no manner of doubt that Respondent, Shri Brahm Prakash is incapable of protecting his interests in the litigation by reason of his infirmity and infliction of an abnormally low IQ. Accordingly, the Court appointed Mrs. Meena Goel, wife of Shri Brahm Prakash, as his guardian ad litem.

The problem is not prevalent in adults but is also emerging in the children. Despite the strong commitment to child protection enshrined in the Indian Constitution and child related policies; the country's progeny is at profound risk. The mental health problems cause great suffering to the child, their families, and communities and great loss to the society and nation. A healthy childhood lays the foundation for a healthy adulthood. Children and adolescents are valuable assets to families and nations and thus their overall wellbeing is a matter of a grave concern [7].

Both late-life mental disorders were attributed to abuse, neglect, or lack of love on the part of children towards a parent. There was evidence that the system of family care and support for older persons was less reliable than has been claimed. Care was often conditional upon the child's expectation of inheriting the parent's property. Care for those with dependency needs was almost entirely family-based with little or no formal services. Not to the surprise, fear for the future and in particular dependency anxiety was commonplace among elderly [8].

All persons with disabilities are largely thought of as having similar issues and facing similar violations, which assumes they need similar remedies. Access, housing, non-discrimination, violation of human rights, medical care, assistive aids and appliances may be amongst those concerns where both the mentally and the physically disabled stand on common ground. However, persons with mental disabilities have distinct and unique requirements, which can be classified into two line of thought. Firstly, the law has to provide the option of institutional care, subject to the need and informed consent of a mental health service user. This necessitates a complex analysis of the nature and extent to which institutional care and protection is required. It is as critical to study the element of consent involved in supervisory care and medication for which an independent legislation is required, which specifically and directly addresses the legal complexities of the issue. Secondly, the need is to address the vulnerability of the mentally ill and disabled who are constantly exposed to abuse and exploitation in their daily life. While addressing these needs it is important that the various aspects of human rights are kept in focus [9].

In India, as in other parts of the world, the traditional approach to the care of the mentally ill, during the last 200 years, was custodial rather than therapeutic. [10]

In 1851 the Lunatics Removal Act was passed. This Act has the dubious distinction of being the first mental health legislation in British India. In pursuance of this Act and the rules framed there under, the flow of patients gradually dwindled, till it came to an end in 1891[11]

In essence these Acts gave guidelines for establishment of mental asylums and codified the procedures of admitting patients. The aim of establishing asylums was to segregate those who were considered dangerous to the society by reasons of mental illness and not for treatment¹⁸. During the second half of 19th century, along with the proliferation of mental health legislation, number of mental hospitals also increased in different parts of India. They fail to match the need of the community. In the 20th century awareness about the pitiable conditions of mental hospitals accentuated as a part of the growing political awareness and nationalistic views spearheaded by the Indian intelligentsia. It resulted in the next phase of development of mental health legislation in India.

The enactment of India Lunacy Act, 1912 had a far-reaching consequence and impact on the whole system of mental health services and administration in India. Under this new legislation the central supervision of all mental hospitals became a reality. Attitudes of the society towards mentally ill persons had changed remarkably. Stigma associated with mental disorders also was on the wane. There was growing demands and aspirations of the people to get better facilities and less rigid procedures for admission, treatment and discharge of mental patients. As far as possible mentally ill persons should be treated at par with any other sick person and the environment should be natural and familiar. As a result, the Mental Health Act, 1987 was framed.

In the Indian context, Article 14 of the Constitution provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. It enjoins duty on the State not only to treat them at par but also it enjoins duty on it to bring them at par by taking remedial or assistive steps, if need be, so that both

the categories of persons can exercise their fundamental rights on the footing of equality. Even the preamble of the Constitution contains solemn resolution securing to all its citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship and equality of status and opportunity. Similarly, Article 39-A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Thus no one can be subject to any disadvantage because of any disability or disabilities. Article 41 also provides that the State, within the limits of its economic capacity development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want [12]. The Constitution of India, 1950 provides under Article 21 that no person shall be deprived of his life or personal liberty except according to procedures established by law. It has been held that right to life and personal liberty under this article includes facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.[13]

In India, The Mental Health Care Act, 2017 and The Rights of Persons with Disabilities Act, 2016 are the two major legislations currently in force regulating health and disability rights of Persons with Mental Illness. The Parliament has now enacted the Mental Healthcare Act, 2017, which repeals and replaces the Mental Health Act, 1987. The new Act is passed as the Mental Health Act, 1987 did not adequately protect the rights of persons with mental illness nor promote their access to mental health care. The government has passed the Rights of Persons with Disabilities Bill, 2016 replacing the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Under the Act, the types of disabilities have been increased from the existing seven to 21.

Possible solutions:

- Need to Create Awareness in the Society
- Mental Health Legislations to be implemented properly
- In India also, mental health tribunals should be established for the adjudication of disputes relating to treatment of persons with mental illness. In the near future, we hope that the law will be implemented properly to meet the obligations of the Mental Healthcare Act, 2017
- Primary Health Care needs to be Strengthened for Early Detection
- Government should pay more attention in caring for the mentally challenged across India.
- Non-Government Organisations and government agencies around the country should take up projects that seek to alleviate mental illness, as well as surrounding factors of gender based violence, homelessness, and drug abuse.

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