

Beyond Ethics: Human Rights Approach in Mental Health Issues

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ABSTRACT

Mental health issues are subjected to ethical issues. These dilemmas are based on extrinsic ethical value, which includes the right to socio-economic and the privacy right. Such situations call for a human rights approach to assist mentally ill people to make their decisions. While attention to human rights in Malaysia has improved over the past decade, it is still far from satisfactory with a mental health issue. This paper enlightens the legal framework and extent to which Malaysia's international obligations concerning the right to health are being met. The paper explicates the legal system of the country and the role human rights plays in addressing ethical issues in mental health. The paper then suggests the mechanisms to protect the rights of persons with mental illness.

Keywords

Ethical issues, mental health, human rights, legal protection.

Article Received: 10 August 2020, Revised: 25 October 2020, Accepted: 18 November 2020

Introduction

Individuals with mental disabilities may be more vulnerable to disturbances in regular emergency procedures and less likely to be trained or protected from serious harms than others. Anticipating their needs and designing plans to reduce the harm people with mental health problems can face in an emergency is ethical. Many with mental health problems can be subject to inadequate treatments or restrictions during an emergency. Maintaining commitments in response to fundamental principles of efficacy and obligation, even in crisis times, is critical, especially for those who have been stigmatised and, critically, may not always understand the purpose of specific actions. Privacy rights in an emergency can often be compromised. It does not mean that he cannot exercise citizenship rights simply because a person has a mental disorder.

This article attempts to clarify how we can transcend ethical questions about equality and fair treatment using human rights terminology and doctrine. Human rights, unlike ethics, offer a framework to implement statements in fairly explicit ways. First, this paper discusses the ethical issues relating to mental health. Second, this paper discusses the existing regulatory mechanism with regards to mental health care as well as the relationship between mental health and human rights. It is submitted that, the international

human rights law and national laws could become a practical resource for promoting mental well-being from the perspectives of bioethical issues.

ETHICAL ISSUES RELATING TO MENTAL HEALTH

There are several ethical issues involved in mental health research. These concerns include conflict of interest, informed consent, confidentiality, vulnerability, misuse, and organisational challenges.[1] Beauchamp and Childress advocate a set of principles governing ethics. These principles have a strong relation to key concepts in human rights including respect for a person's autonomy, non-maleficence, beneficence and justice.[2]

The patient has the autonomy and must aware of the possible risks and benefits of the treatment given and he/she should free neither undue influence nor coercion in making his/her decision.[3] Nonmaleficence means mitigating the damage that can be done by deliberate decision-making and preparation. Beneficence discusses optimising rewards to promote participant and community well-being. Justice requires equal distribution of resources; the incentives must be shared by society equally.[4]

Ethical issues relating to mental health parties include the opportunity for the mental health person to be given fair treatment in social and

economic sector. Another ethical issue is the stigma of the society towards the person who have mental health issues and being judged unfairly. Hence, human rights are needed protect the rights and freedoms of this mental illness persons. Human rights are necessary to protect the person from abuse based on social, political, or cultural stigma.

MENTAL HEALTH AND HUMAN RIGHTS

Human right is one of the devices that can be used to protect human dignity, welfare, and endurance in living in this kind of environment.[5] Human rights play a crucial role in mental health as it upholds the right of the mental health person from the aspect of civil rights and to encourage the free expression of beliefs.[6] Gostin's example in his article shows how mental health issues can influence human rights exercises in the society. Therefore, it is submitted that mental health and human rights is a vital relationship.[7] Culturally, people suffering from mental illness are subjected to social stigma and exclusion from society worldwide.[8] Hence, issues of human rights relating to a mentally disabled person have been perceived as too complicated and perplexing.[9] This makes it difficult for the human rights protection system to identify the rights of mental health person.[10]

However, this trend has changed for the better and can be demonstrated when in 1991, the United Nations General Assembly adopted the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles).[11] The law reforms in this area are to prevent discrimination towards the mentally disabled person. The MI Principles emphasizes that the mental disorder person shall exercise his rights despite his mental disabilities.[12] Principle 1 also accentuates that the reason for mental illness shall discriminate no person.[13]

In the Special Rapporteur Report on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health 2019, mental health is recognized as important matter towards the achievement of social and core determinants of health.[14] This report also highlights the States' obligations in providing an environment that encouraged a well-being and life of dignity for its' people.[15] It is

submitted that, human rights and mental health has correlation among each other.[16] Watters, in his article, identifies that an individual with the right to participate equally with other society members should be protected by human rights policies.[18]

Human RIGHTS PROVIDES protection for persons with disabilities.

In the context of mental health, human rights are vital. It provides support for mental health policies and practices. It thus is said to have the capability to force sovereign states to respect the rights of its people.[19] This means that the state has the responsibility to assure the rights of the mentally disabled person are well protected and enforced.[20]

Mental well-being is a basic human right as mentioned in the Constitution of the World Health Organization 1946. It says that every person should enjoy the highest standard of health as their fundamental rights.[21] This Constitution put emphasis on that health includes physical, mental and social well-being [22]. For a country to attain peace and security, individuals and the States need to cooperate to achieve all people's health.[23] On top of that, the United Nations International Covenant on Economic, Social and Cultural Rights 1966 enunciates that everyone has the right to enjoy the highest achievable standard of mental health and physical.[24] A healthy mental state depends on cultural, social, economic, political and civil rights being enjoyed. The framework established by the international human rights would be the best guideline for the government to understand the essentials in developing healthy mental health of the population, including social, economic and political settings.

In mental illness and disabilities, the MI Principles have the most straight and direct expression involving human rights. There is three importance reason which makes the MI Principles as the most powerful and practical instrument. Firstly, it was responsible for enforcing the right to mental health. Secondly, it also explained the right to be applied in a practical wise and thirdly. It ensures effective monitoring by the international community, not-for-profit, and NGOs by producing a single standard of fair and decent treatment worldwide.

Meanwhile, the Universal Declaration of Human Rights (1948) (UDHR),[25] emphasizes on equality under the law, which includes a person who diagnosed with mental disabilities. In violation of UDHR and any incitement to such discrimination, human beings are qualified to receive equal protection against any form of discrimination. This same goes to what are stated in the Vienna Declaration and Programme of Action of 1993[26], where any discrimination or mistreatment to a person with mental disabilities is considered as violation of individual rights.[27]

On the other hand, the Resolutions 2002/31 of the Commission on Human Rights accentuates the rights to physical and mental health as mentioned in Articles 25 of the UDHR and Article 12 of the ICESCR to be enjoyed by everyone in the state parties.[28] The Convention on the Rights of Persons with Disabilities (CRPD) requires that the rights of equal recognition and equal basis under the law are recognized by the states parties to all citizens regardless their mental well-being.[29][30] Discrimination based on person's disability is not allowed.[32] Equal rights to an appropriate standard of living are also protected.[33] In addition, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits any acts of cruelty, inhumanity or degrading treatment punishment.[34][35]

Malaysia accedes to the concept, norm, and philosophy enumerated under the UDHR, which explained and highlighted the fundamental human rights to be globally protected.[36] Malaysia also adheres to the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic and International Covenant on Economic, Social and Cultural Rights (ICESCR).[37] The rights contained in the ICCPR afford individuals with the rights to freedom of expression and association, privacy and liberty, for example. At the same time, the ICESCR provides rights such as, among other things, rights to education, work, education and social security.[38]

Malaysia had also signed the Convention on the Rights of Persons with Disabilities (CRPD) on 8 April 2008 and ratified it on 19 July 2010.[42]

Malaysia ratified the CRPD because of the concern on persons with disabilities which facing various challenges to the enjoyment of health's right. For example, persons with mental illness or disabilities may not have access to an affordable treatment through the public health system at that current time. Such a situation is not only degrading, but it is also a denial of human rights under the CRPD. The CRPD has been established to provide a legal framework that covers the rights of people with mental illness and disabilities as a whole [43, in which persons with mental illness and disabilities and entitled to have access to benefit of social services.[44] This has gained attention and supported by the National Human Rights Institutions (NHRIs) that comply with the principles relating to national institutions' status, which is usually known as the "Paris Principles". They play an essential role in advancing human rights at the national level. This role is increasingly being accepted by the international community. The non-discrimination principles require a person with disabilities to be provided with equal rights. The nondiscrimination protections should protect health care, health services, food, and fluids.[45]

Mental Health Legislation in Malaysia

In Malaysia, in the Mental Health Act 2001, a person cannot be considered as suffering from a mental disorder *by* reason only certain conducts.[46] [47] The Interpretation Acts of 1948 and 1967 define mental disorder as insanity or idiocy, as a person of unsound mind or an idiot. According to Section 2 of the Trustee Act 1949, a mentally disordered person means any person who is of unsound mind and not able to manage his own affairs.[48]

Likewise, Section 2 of the Domestic Violence Act 1994 (Act 521) applied the term '*incapacitated adult*' to define a person who is wholly or partially incapacitated because of physical or mental disability or ill-health or old age, who is living as a member of the offender's family. The Law Reform (Marriage and Divorce) Act 1976 has applied the phrase '*physical or mental disability*' in Section 95 concerning the duration of an order for custody or maintenance, where the custody or maintenance order shall expire upon the child reaching the age of 18 years old or if the child is a physical or mental disability, on the ceasing of such disability. However, the term regarding

'physical or mental disability' is not clearly explained by the legislators. As a result, the term was challenged in *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* [2004] 2 MLJ 401. In this case, the court was faced with whether financial dependents fell within the meaning of physical or mental disability. Abdul Hamid Mohamad FCJ decided that; "Even without looking at a dictionary the word 'disability' is always used concerning 'physical' or 'mental'. As far as I can remember, I have not come across an example when the word 'disability' is used concerning a 'financial' situation".[49]

The judge later proceeded to quote from the Concise Oxford Dictionary which defined 'disability' as referring to a physical or mental condition that limits a person's movements, senses, or activities, disadvantage or handicap especially one imposed or recognized by the law.[50] In this case, Abdul Hamid Mohamad FCJ explicitly defined the terms 'physical' and 'mental' and concluded that these two words were used to describe the two opposing or complementary elements of a human being; the physical and the mental aspects.[51] 'Physical' is defined as relating to the body instead of the mind, and 'mental' is a disorder or illness.[52]

It was argued that the concept of disability under Malaysian law is construed and restricted to mental disability only.[53] In the legal realm, disability was referred to either physical or mental disability, permanent or temporary. Disability is inevitable, regardless of age or conditions.[54] Depression, stress, grief and trauma were examples of clinical disorders. Studies have shown that these disorders could cause a person's developmental delay, which eventually would cause a development disability.[55]

Though there is ample evidence that mental health conditions may affect an economic burden on individuals and society, the extent of poor mental health's economic consequences is not well understood. [56] Mental health capacity and expertise in all sectors needs to be integrated. The proper financing of mental health will come from government, multilateral and bilateral organizations, including, the development of foundations, and economic resources.[58]

In Malaysia, one in three Malaysians suffers from mental health problems according to the Ministry of Health's National Health Morbidity Survey released in 2015/2016 with overwork being cited as one of the causes.[60] Approximately 6% suffering some form of depression in 2017. Mental health issues are expected to become the second-biggest health concern by 2020.[62] Given the current situation of the COVID-19 pandemic, this has become very real. Society members can experience fear, anxiety, depression, loneliness, and helplessness that could worsen their health condition and lower treatment adherence. Experts anticipate that more cases of high levels of post-traumatic stress disorder and depression could be reported.[63]

The right to mental health is provided under the Mental Health Act 2001.[64] The Act stipulates that a person can be admitted to the mental health facilities without his will if diagnose of being mentally illness. Detention can only be applied by a medical professional, unlike some other countries where the same person can also apply. For relatives or the patient, themselves to be eligible to apply for an involuntary discharge. The medical director then examines the patient and decides whether continued detention is necessary. The families can appeal the medical director's decision and ask for the hospital's board of visitors if they want to. Otherwise, they can appeal to the Malaysian director-general of health.[65]

The 2001 Act deals with procedures in handling mental illness persons in the mental health care facilities. [66] To facilitate this Act, the 2010 Mental Health Regulations explain on the patient's rights statements for public benefit in the mental health care facilities.[67]

There is an urgency for assessing the cost-effectiveness of prevention and promotion strategies in the health system.[68] It is submitted that promoting human rights in mental health and engaging in service development must go hand-in-hand. More substantial mental health strategies and interventions need to be strengthened for a holistic mental healthcare system to reduce the risk of scarcity, adverse impact on economic efficiency, and low educational accomplishment.[69]

Conclusion

Bioethical principles of mental well-being require justice and beneficence to people with mental illness to prevent discrimination. Mental health treatment has some specific needs that need to be addressed, and training is recommended. Recognizing mental health law is vital to the international monitoring of mental health policies and practices. Mental disability rights need to be upheld beyond bioethics principles in social and cultural ways.

It is important for governments to improve mental health protection through improving economic and social services. Ethically, government needs to provide assistance to person with mental disabilities to avoid unfair treatment. The regulation measures to ensure the rights are protected need to be in place and should be workable.

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