

Psychiatric Care in India and the Laws Pertaining to It

Srinibas Nayak¹, Sidhartha Das²

^{1,2}Asst. Professor, Faculty of Legal Studies, Siksha O Anusandhan

Email - ¹srinibasnayak@soa.ac.in

ABSTRACT

Psychiatric care is an essential requirement for every individual. The requirement is downplayed by the fact that such a disability is not present physically, it cannot be seen through the eyes and therefore the importance is not realized. On 2008 UN Convention on Protection of People with Disabilities which came into effect. The convention aimed at improving the approach and resolving the attitudinal obstacles and environmental perception that an individual faces. This moved towards a more positive perspective by taking step aside from the "medical model" of such disability towards social model, or it could be described as change from "charity approach" to such "right-based approach" towards disability. The convention resulted into the adoption of two legislations in India, the 2016 Legislation on providing the rights of persons with disabilities, and the 2017 Mental Health Act. Both acts provide provisions relating to psychiatric health. This paper talks about both of the Acts and the salient features of the Act which ensure better care of the mentally disabled in the country.

Keywords

Disability, Law, Psychiatry, Rights, United Nations.

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

Introduction

The draft of UN- CRPD was prepaid on 2006 but came into act on 2008. Till now over 160 countries has been ratified the convention and India became signatory in the year 2007. Under the UN- CRPD persons with such disabilities also include mental or intellectual disabilities in the long term. The UN-CRPD seeks to change the approach and resolve the attitudinal obstacles and stereotyping of the world that an person faces. This has contributed towards a more inclusive perspective by taking a step aside from the "medical model" of disability towards "social model" or as move from a "charity approach" to "right-based approach" towards the disability.

Unlike International human rights treaties UN-CRPD is a long and complex piece of drafting as different entities played crucial role in shaping the convention. The International Network of Psychiatrist Survivors and Patients put their views, and it recommended to ban forced institutional treatment care. One of the key debate happened on the point of emergency circumstances but due to paucity of time no provision were made for such circumstances. This leads to the concern over UN-CRPD ability to cover all the mental health issues. UN-CRPD provides support to all of its approved countries for the legislative structure on mental health.

The Convention allows the signatory countries to amend domestic legislation in order to make them adhere to the Convention. As the result India's mental healthcare legislation needed the reform and UN convention played an important part in drafting of two important legislation in India: The 2016 Legislation on the Rights of persons with disabilities, and the 2017 Mental Health Act.

India's mental health issue is one of the major concerns. According to reports; "Primary depressive disorder is one of such leading cause of the years of impairment and ninth leading cause is anxiety. It is estimated that there is a mental health problem for just over one in ten people in India, one

in 20 people suffer from such depression and 0.8% have a "serious and significant mental illness." The number of mentally ill people impaired is enormous; schizophrenia is calculated in 2,5 million, 8,8 million, 36,8 million and alcohol misuse is 13,4 million .. Bipolar affective disorder (BPAD). During 2013 disorders of behaviour, neurology and misuse of medications accounted for nearly 31 million modified life years (DALY) for people with disabilities. 1,7 million, of which BPAD 1,8 million, 11,5 million, alcohol and drug abuse 3 million, and dementia 1.8 million were registered. In regard to the impact on the people and respective families, the 30–49 age group of men have had the highest rate of psychiatric morbidity."

Only 10% of Indian population ever received mental health treatment despite of having such a large number of mental issue. Treatment requires funding and funding provided is also inadequate. As per the reports of The Technical committee on mental health - "India spent 4.16% of its gross domestic product on health in 2011, of which 0.06% was allocated for outpatient psychiatric care at national level."

As mental health issues are increasing, funding needs to be increased too in order to ensure that more number of people receive high quality of treatment. In order to resolve this need, India has introduced several care disparity interventions and the DALYs lost to physical, neurological, behavioral and substance addiction disorders.

India's constitution makes every state in India accountable for health care rather than such central govt. This therefore makes every such state responsible for "growing its people's nutrition and living standards and improving public health as one of its key responsibilities"

"Persons with such mental illness (PMI) may be disproportionately vulnerable violence and infringement of their rights." Such an illness does not only make the individual suffer, but the whole family suffers, especially if the person is the sole breadwinner of the family. Discrimination against illness violated the most fundamental human rights underneath the United Nations (ICCPR) (1966), the ICESCR (1966) and even the United Nations

Convention on either the rights of the child, as well as the ICCPR (1966) international convention. "those are all United Nations legislation / instruments to ensure the provision of effective, effective, timely and humanitarian health services / help in countries which signed the agreement. It also promotes the defense of human rights for poor, persecuted but instead disabled children."

A psychiatrically diagnosed illness has the potential of hampering the performance of basic functions by the patient such as caring for one self and performing the very basic of life functions such as moving, working and getting around, interpersonal activities, participation understanding and communication.

Mental illness, a lot of time goes undiagnosed and undetected and leads to dysfunctional families and the people suffering from it are often made fun of and discriminated against. It is difficult in lower and middle income countries to provide the people with the adequate care and social welfare measures. The people are made to bear a lot of challenges because of the following reasons:

- a. It is often termed as invisible disability because of the fact that it cannot be seen.
- b. They cannot be diagnosed easily. A proper assessment of their behavioural patterns is required before the person can be said to be suffering from a mental disability.
- c. The nature of mental disabilities is confusing at times as they might not be permanent but only episodic.
- d. The persons suffering from it are often unable to communicate the challenges that they have been facing.
- e. Segregation against the prevalent mental illness, myths but rather marginalization can contribute to about there rights being denied and
- f. Giving in some cases appropriate and early care will substantially reduce the impairment.

Salient Features Of Rights Of Persons With Disabilities Act, 2016

- The Act, consists of 17 chapters and 102 sections, describes a disabled individual as " any individual long-term physical, emotional, intellectual, long-term physical, mental or sensory impairments that impede successful and equitable growth in society by engaging with barriers." The Act further describes " Benchmark disability individual "as an individual with no < 40% of the specified disability.
- The Act also provides for free health care in the surroundings of the disabled person, specifically in the rural area. "The spirit of the law on the basis of citizenship" will be clarified in the RPWD Act. The plan would amend the clause because 'everyone has the right, with income restrictions, to seek medical and mental health services. It is the only equal rights provision for disabled people. Basically, the RPWD Act 2016 says: 'There must be economic potential and growth of the State authorities," which runs contrary to the notion of having "Rights" and enables the "Government" to relieve itself of its duties. The act requires that PwD is required to live within the society. Nevertheless, PMI or extreme intellectual disability may need to remain in (closed) rehabilitation centers for a long

time, in order to obtain appropriate treatment, bearing in mind the PMI's greater value.

- The Act sets out crucial guidelines for persons with mental disorders in accordance with persons with physical disabilities and Sections such as 12, 13, 14 and 15 are very important for individuals with mental disability. Section 12 of the Act addresses the right to justice for disabled persons. The Section stipulates that persons with disabilities may exercise the right of access, without discrimination based on disability, to any judge, Judicial or quasi-judicial or investigative forces of the Court, officials, commissions or many other entity. The provision helps people with disabilities to enter the court without having to show they are affected if they are not consistently symptomatic.
- Section 13 grants equal proprietary rights to disabled persons as are available with others. It provides that disabled persons can own or own property or have access to finance, different forms of financial credit and mortgages. This clause ensures And the disabled persons Act guarantees such individuals with disabilities have access to legal resources to own a property similarly to the persons who do not have any mental disability and this is a highly necessary provision in order to ensure that these people do not suffer any prejudice in the society because of their disability as well as that they do not have any financial problems because of the same.
- Section 14 of the Act talks about the provision of guardianship to the persons with disability. The Act talks about limited guardianship as well as total guardianship as per the need of the person who is disabled. When it is found that the disabled person will not be able to make decisions that are legally binding on his own, he will have to be provided with a guardian who can do the same on their behalf.
- The person may be required to have a total guardianship and such authority grant him a total guardianship which is ensuring support to the person who requires help with day to day tasks such as cooking, and washing. The National Trust Act describes the referral procedure together under protection of control, intellectual illness, add and other limitations.
- The Rights of Persons under the disability Act also talks about the punishment to be provided to the persons who inflict atrocities against the individuals with physical or mental disability. For these offences, imprisonment punishable under the statute is 6 months, extendable to 5 years with or without fine.
- The Act also provides for the setting up of Special courts to hear the grievances of the people with mental or physical disability regarding the noncompliance by any individual or instrument. This provision would be of greatest benefit to PMI, which is discriminated against, stigmatized and can be especially vulnerable to violence and infringement of its rights.

Salient Features Of Mental Healthcare Act, 2017

- This Act gives a much required wider definition to mental illness which encloses within its ambit a vast number of mental illnesses. A serious condition of mind, temperament, vision, attitude and memory that seriously

influences reasoning, behavior, understanding of the facts, required to implement demands of ordinary lives, psychological issues related to alcohol and drug abuse but does not include clinical delays due to delayed or incomplete development of the mind the following is the depiction:.'

- The Act calls for people who have attempted suicide to be found suffering from extreme stress, and thus care and rehabilitation shall be given and therefore suicide shall not be punished.
- A person's state of mental illness shall not be assessed on the basis of factors such as his or her political, social or economic status or allegiance to a cultural, ethnic or religious community.
- This Act has also introduced the concept of advanced directive which enables the person suffering from a mental illness to give directives regarding his treatment in case he becomes too incapacitated to be able to decide later. These directives are revocable and amendable if the patient wishes so.
- The person with mental illness shall not be secluded from society and steps shall be taken to give him the right of community living, and Where the person was abandoned by his family and relatives, or where it is not possible for him to live with them, it shall be the responsibility of Govt. to provide him with legal aid and family home.
- The Act directs the states to take measures such as providing the patients with wholesome food, proper sanitary facilities, and facilities for leisure and education. Special provisions should also be made for old people, women and children. The authorities should also maintain safe environment free from violence, sexual, physical and mental abuse
- Two authorities have been set up under the Act, Central authority for mental health and the State authority for mental health. The Mental Health Review Boards shall be set up by the State Authority to register, review, alter, modify or cancel an advance directive for a district or group of districts; appoint a nominated representative; visit and inspect jails or prisons, and conduct an inspection at the mental health facility, etc.

Conclusion

Mental Health is an important subject matter and needs to be addressed by the government through legislations. The government recently came up with two legislations in furtherance of the need to look after the mental health of its citizens. Psychiatric care is a necessity and the same has been emphasised upon by the makers of law through these legislations.

Nonetheless, the effort by the Act to comply completely with UN-CRPD has resulted into some vagueness and ambiguousness. The Act does not talk about the required qualification of the medical professionals treating the mental patients. The Act also does not make any directive regarding the keeping of a record of the patients undergoing treatment, the illness suffered by them and the kind of medication they are being prescribed which could help keep a track of the

improvements in the health and could be referred for similar cases.

Laws in place which would protect the interests of disabled people as well as society that respects these laws and treats the people with disability with respect, both of the things together will ensure the well fare of the people with disability and will make them feel like they are an intrinsic part of the society.

Reference

- [1] United Nations, "Convention on the Rights of Persons with Disabilities. Geneva: United Nations Publications; 2006.
- [2] The rights of persons with Disability Bill, 2014: How "enabling" is it for persons with mental illness? Rao GP, Ramya VS, Bada MS Indian J Psychiatry. 2016
- [3] Sabatello M, Schulze M, editors. Human rights and disability advocacy. Philadelphia: University of Pennsylvania Press; 2014. pp. 70–96
- [4] Fina VD, Cera R, Palmisano G, editors. The United Nations convention on the rights of persons with disability: a commentary. Cham: Springer; 2017. pp. 1–40
- [5] Narayan CL, Shikha D Indian J Psychiatry, "Indian legal system and mental health" 2013 Jan; 55(Suppl 2):S177-
- [6] Jugal Kishore (2005). National health programs of India: national policies & legislations related to health. Century Publications.
- [7] Math SB, Nirmala MC. Stigma haunts persons with mental illness who seek relief as per disability act 1995. Indian J Med Res 2011; 134:128 30.
- [8] Math SB, Nagaraja D. Mental Health Legislation: An Indian Perspective. Mental Health Care Human Rights.
- [9] Section 92, Rights of Persons with Disability Act.
- [10] Ibid.
- [11] Section 5, The Mental Healthcare Act, 2017
- [12] Sec. 19, the Mental Healthcare Act, 2017.
- [13] Sec. 20, the Mental Healthcare Act, 2017.

[14] Sections 73 and 82, the Mental Healthcare Act, 2017.