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## 5. Mental illness in India: Human Rights Perspective

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### Abstract

Mental illness is any illness experienced by a person which affects their emotions, thoughts or behaviour, which is out of keeping with their cultural beliefs and personality, and is producing a negative effect on their lives or the lives of their families. According to the World Health Organization, over 80% of people suffering from mental disorders such as epilepsy, schizophrenia, depression, intellectual disability, alcohol use disorders and those committing suicide are living in low- and middle-income countries. Mental disorders are responsible for twelve to fifteen percent of the total global burden of disease—a greater percentage than cardiovascular disease and twice as much as all cancers combined. By 2030, depression is forecasted to be the single highest contributor to the burden of disease in the world. All people with mental health problems have the right to live their lives without arbitrary or inappropriate interference. People affected by mental illness are among the most vulnerable and disadvantaged in our community. They are doubly challenged. On the one hand, they are suffering and struggling with the symptoms and the disabilities due to the disease and on the other, they are experiencing stigma and discrimination that stem out from the misconceptions about mental illness till this century. They suffer from widespread, systemic discrimination and are consistently denied the rights and services to which they are entitled. As a result of these, good jobs, safe shelter and satisfactory health care services i.e. their quality of life have been denied. This paper seeks to pay attention to the stigma and discrimination prevailing in the society for people with mental illness. This paper also discussed few

National and International Standards meant to protect their Right to Health and also suggested some possible measures to help them to live with dignity.

**Key Words:** Mental Health, Mental Illness, Stigma, Discrimination, Right to Health, Human Rights, UNDHR, WHO, Constitution of India.

## Introduction

Human rights are moral claims, which have been translated into social, political, economic and legal right in both national and international. Article-1 of the Universal Declaration of Human Rights (UNDHR) stated that “All human being are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”(Indian Institute of Human Rights). So, human beings are born equal in dignity and rights. The values of dignity and equality of all members of the human race like many other basic principles which underlie what we today call human rights, can be found in every culture and civilization, religion and philosophical tradition. “Equal does not mean that all individual are similar in terms of physical or mental status and or respective characteristics. Keeping in mind, the ‘individual difference’, ‘Equal’ means everyone is entitled to enjoy all the rights irrespective of their race, colour, sex, language, religion, political or other opinion, birth or other status”. In order to make it possible for everyone to be treated equally, the Article-1 recognizes the duty of everyone to treat other people in a ‘spirit of brotherhood’, that is as fellow human beings are equal in rights and dignity. Negation or violation of this means negation or violation of human rights.

All people with mental health problems have the right to live their lives without arbitrary or inappropriate interference (Davidson Gavin, 2003). Surprisingly, the human rights of persons with mental illness had been ignored for decades by the international agencies vested with the protection of human rights on a global scale. A person with a healthy mind should be able to think clearly, should be able to solve the various problems faced in life, should enjoy good relations with friends, colleagues at work and family, and should feel spiritually at ease and bring happiness to others in the community. Mental illness is any illness experienced by a person which affects their emotions, thoughts or behaviour, which is out of keeping with their cultural beliefs and personality, and is producing a negative effect on their lives or the lives of their families. In recent decades both mental health and human rights have emerged as areas of practice, inquiry, national policy-making and shared international concern.

## Right to Health

WHO (1946) defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Mental health is the adjustment of an individual to his environment and people whom he surrounds with an ultimate effectiveness and happiness. The right to health is an inclusive right. Frequently the right to health is associated with access to health care and the building of hospitals. Besides that, the right to health extends further. It includes a wide range of factors that can help us to lead a healthy life. The Right to Health is a fundamental part of human rights to understand the right to live in dignity. The international and regional systems have addressed the human rights of persons with mental disabilities through treaties, declarations, and thematic resolutions. The right to the enjoyment of the highest attainable standard of health including physical and mental was first articulated in the 1946 Constitution of the WHO. The preamble of the WHO succinctly underscores the enjoyment of the highest standard of health as a fundamental right of every human being (Jiloha R C, 2010). The preamble further states that the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition (UNs High Commissioner for Human Rights, 2008).

The first human rights legal resolutions, such as the 1948 Universal Declaration of Human Rights, did not specifically address the rights of mental health consumers (Bali, 2003). According to Article 25 of UNDHR, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Indian Institute of Human Rights). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. It has been spelled out in Art 12 of ICESCR which proclaims the right of everyone to enjoy the highest attainable standard of physical and mental health.

The UN International Covenant on Civil and Political Rights 1966 sets out fundamental rights such as the rights to be free of cruel inhuman or degrading treatment or punishment, to be treated with respect and dignity and with humanity if deprived of liberty, to freedom of movement and choice of residence, equality before the law and by the law.

The UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care 1991 specifies the rights of people with mental illness. The Principles provide a landmark for the protection of and treatment of people with a mental illness and reiterate a number of fundamental

freedoms and basic rights, as well as outlining the standards for treatment that can be expected from a mental health system (Robert S. Allan, 1997). These principles are further complemented by the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the UN in 1993. The Rules uphold the principle of equality and claim, inter alia, that the use of resources must be planned so that every individual has the opportunity to participate equally. So, Right to health for people with mental disorders means availability of mental health services, accessibility to the services and quality services with regard to both physical and mental health care (Suresh et. al. 2011).

### **Historical perspective on Violation of Human Rights of Mentally ill people**

Human society has a long history of treating people with mental illness as inferior (Govindasami, 2011). Violations of the basic human right, like right to live with dignity and to be treated equal, of mentally challenged people occur worldwide. Traditionally they received treatment as second class citizens under our legal system or under society. The so called first class citizen have tended to perceive them as somehow not fully human and therefore not entitled to equal citizenship status. In the community, mentally retarded persons are also too frequently deprived of fundamental rights enjoyed by "normal" citizens, including the right to education, to enter into a contract (to marry or even to buy a television set "on time"), to be licensed (for such diverse activities as selling real estate or being a beautician), to buy insurance, to vote, and to be free from discrimination in securing suitable employment and housing (Friedman Paul R, 1977). Many mentally ill people who deserve special care and attention are picked up by the police and dumped into the jail with other criminals without any psychiatric help. Staying together with the criminals makes the case of mentally ill persons much more distressing instead of alleviating their depression (Mohanty, 2006). Like people with other disabilities, people with mental disabilities face degradation, stigmatization, and discrimination throughout the world today. This stigma gets its fuel from media, public attitudes and stereotypes etc. For people with mental disabilities, in particular, the development of human rights protections may be even more significant than for people with other disabilities.

Women with mental disabilities have been an especially vulnerable population in many countries (Benko Debra and Benowitz Brittany, 2002). They are discriminated due to both of their gender and mental illness. So they are often marginalized. Besides, social stigma and poverty further aggravate their survival in the society (Govindasami, 2011). The vulnerability of these women towards terrorism, deadly diseases, and incest is hardly bringing into notice. If they are not protected by the any society or

law, they may fall easier prey for domestic violence. Problems related to incest involving them are not publicly discussed. But, the growing demand from the parents of the mentally challenged daughters opting for sterilization shows the invisible threat. Another issue involving them is the ritual burying in mud. In July 2009, 60 children in Karnataka State had been buried up to their necks during a solar eclipse (Sonnad M. 2009). The ritual was performed in the belief of a cure, but the children only suffered through a torturous ordeal in mud. Also, some families abandon the mentally challenged children because of the taboo deeply rooted in shame (Govindasami, 2011).

- **Early Age:** Prior to the psychological development of psychiatry, the attitude of the people toward abnormal behavior was completely superstitious. That behavior was considered as an outcome of devils, evil spirits and other supernatural being. The treatment of such behavior was through physical torture by priests or *tantriks*. The treatment was consisted of different technique to make the demons to leave the sufferer's body through mantras, prayer, noise making, flogging, starving, burning, forcing to take wine, dung or urine (Mangal S K, 2008); and they were usually struck hard and chained in a dark and dingy room (Sharma Rachana, 2004).
- **Middle Age:** During this period, when medieval Europe was overrun by plague, religious and political dissension the people with mental illness came to be considered as witches. They became hapless scapegoats in the revival of witchcraft (Korchin, 2004). Those people were thought to have friendship with evil spirit willingly. They are responsible for natural calamities like draught, floods, storms and diseases and death. Those unfortunates were subjected to brutal tortures like the cutting of the tongue, burning alive, etc. Women were marginalized because their presumed lustful natures made them easy preys of the devils. Those mentally ill people were brought before tribunals, accused of bartering with the devils to do his work, tortured to extract confessions, and put to painful deaths (Korchin, 2004).
- **Age of Reason and the Enlightenment:** The fifteenth to eighteenth century is labeled as age of reason and enlightenment as reason and the scientific method came to replace faith and dogma as ways of understanding the natural world (G Sarason and R Sarason, 2002). Philosophers like Baruch Spinoza approached that human behavior is influenced by unconscious mechanism. In 1547 first mental hospital called asylum was established by the king of England, Henry VIII. Later, in other parts of Europe and America such asylums were established. But, for the people of mental illness, those asylums were nothing but prison where patients were treated more like wild animals than

human beings. Their living rooms were nothing but dark cells. Instead of love and care, they were chained to posts, beds etc. Foods were given in such a manner that fit only for beasts. So, that was the place where they lived and died in the most inhuman conditions.

- **Recent Trend:** Even in this century, superstitious people of the grass root level consider that mental illness is a God given accident or an evil accident and so incurable. However, contributions of Freud and other eminent psychopathologists have been able to establish that mental abnormality is not a curse but an ill state of mind, a mental disease which can be treated and cured, like any other physical diseases (Mohanty, 2006). Modern youth in India is experiencing a lot of frustration, stress and depression due to poverty. They fail to fix any clear cut goal for their life. So, unable to satisfy their primary needs conflict in moral values and lack of ability to adjust with the changing social environment, have increased their anxiety. All of these have put burden on them and as a result incidence of mental illness is increasing significantly.

#### Effects of Stigma on the people with mental illness

Stigma makes a person to feel lonely and socially alienated. As a result, they lose attachment and contact with family, friends and society. They receive bullying, harassment, physical violence, and sometimes are raped. They feel shy, embarrassed and discouraged. They may not be conscious of their symptoms and may be reluctant or hesitant to seek treatment. This is due to the adverse attitudes that they have faced towards their behavior. They are scared of discrimination due to their mental illness and hide their conditions to influence the impression they make on other people around them and form negative attitude towards self which is self stigma. They hardly get any opportunities for work or job, school and finding accommodation. They are discriminated in the workplace, community etc. It also affects adversely the provision of mental health services due to inappropriate attitudes and behaviours of health professionals (National Mental Health Consumer & Carers' Forum, 2010). All these hinder their recovery.

#### Constitution of India, Legal system and Right to Health for People with Mental Illness

In the constitution of India, the people with mental illness are entitled to enjoy all those fundamental and human rights which are guaranteed to each and every citizen. Nothing can act as barriers to enjoy those rights. The right to life in Article 21 of the Constitution means something more than survival of human existence. It would include within its ambit the right to live with human dignity, right to health, right to

potable water, right to pollution free environment and right to education etc., which have been held to be part of right to life. In the context of mentally ill person, apart from above narrated rights, it also includes right to live, work as far as possible in the community, to privacy and to lead a normal family life (GoutamShiv et al. 2009).

According to the Representation of People Act, 1950 (sec 16), a person is disqualified for registration in an electoral roll if he is of unsound mind and stand so declared by a competent court. Therefore, the person is disqualified, if he is not mentally sound, and cannot hold public offices under the Constitution like President, Vice-President, Ministers or Member of Parliament and State Legislatures.

India being a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) 2008 and since our country has ratified the Convention, it is obligatory for our legal system to ensure the human rights and fundamental freedoms of persons with disability (including mentally ill persons and persons with mental disabilities) are enjoyed on equal basis with others and to ensure that they get equal recognition before the law and equal protection of the law (National Legal Services Authority, 2010). Most of the countries in the World have laws regulating treatment of psychiatric patients. Though there are elaborate descriptions of various forms of mental disorders in various treatises in Ayurveda. British innovated the care of mentally ill in the asylums in India. In India, the first mental hospital was started in Bombay (now Mumbai) in 1745, which was followed by Calcutta (now Kolkata) in 1787(Sharma SD and Chadda RK, 1996). After the takeover of the administration of India by the British crown in 1858, a large number of laws were enacted in quick succession for controlling the care and treatment of mentally ill persons in British India (ChoudharyLaxmi Narayan and Deep Shikha, 2013). These laws were -

- The Lunacy (Supreme Courts) Act, 1858
- The Lunacy (District Courts) Act, 1858
- The Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889)
- The Military Lunatic Acts, 1877.

The Lunacy Act, which was enacted in 1958, to establish asylums mandatory was remained untouched till 1987. Then it was refined as Mental Health Act (Mental Health Act, 1987). The Indian Lunacy Act, 1912 was the result of the public awareness about the merciful conditions of mental hospitals during 20<sup>th</sup> century. In 1922 lunatic asylums were renamed as mental hospitals and were now regulated and supervised by a central authority. In this act the provision of voluntary admission was introduced.

After the adoption of Universal Declaration of Human Rights by the UN General Assembly, Indian Psychiatric Society submitted a draft Mental Health Bill in 1950 to replace the outmoded ILA-1912. The Mental Health Act (MHA) was finally enacted in 1987 after a long and protracted course. Main features of the MH Act, 1987 are as follows (ChoudharyLaxmi Narayan and Deep Shikha, 2013):

- Definition of mental illness in a progressive way and introducing modern concept of their treatment with stress on care and treatment rather than on custody.
- Establishment of Central/State Mental Health Authority to regulate and supervise the psychiatric hospitals/nursing homes and to advise Central/State Governments on Mental Health matters.
- Admission in special circumstances in psychiatric hospital/nursing homes. Provisions of voluntary admission and admission on the reception orders were retained.
- Role of Police and Magistrate to deal with cases of wandering PMI and PMI cruelly treated.
- Protection of human rights of PMI.
- Guardianship and Management of properties of PMI.
- Provisions of penalties in case of breach of provisions of the Act.

Person with Disability (PWD) Act was enacted in 1995 to remove discriminations in the enjoying the benefits of development vis-à-vis non-disabled persons and to prevent abuse and exploitations of persons with disability (PWD). The Act provides for both preventive and promotional aspects of rehabilitation. Areas covered include access to education, employment, vocational training, job reservation and research and manpower development. It also includes provisions for state-funded public infrastructure such as transportation and hospital facilities (Bali, 2003). It seeks to create a barrier-free environment, rehabilitation of persons with disability, securing unemployment allowance for the disabled, providing special insurance scheme for disabled employees and establishment of homes for persons with severe disability. This act guarantees legal protection for the mentally challenged from exploitation in society. It provided for barrier-free environment and spelled out responsibilities for the government to plan strategies for comprehensive development programmes, to special provision for integration of PWD into the social mainstream. Under PDA-95, mental retardation and mental illness are categorized as conditions of disabilities. Thus, the PMI are entitled to benefits available to PWD as provided under the Act. There is a provision of 3% reservation in government jobs, but it is not available to the PMI. This Act is also currently under revision in light of the UNCRPD-2006.

National Trust Act was enacted in the year 1999 for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities to enable and empower them to live as independently and as close to the community to which they belong and to facilitate the realization of equal opportunities and protection of rights. The Act provides many welfare measures for them such as, strengthening facilities to provide support to persons with disability to live within their own family, Dealing with problems of persons with disability who donot have family support, promoting measures for the care and protection of disability in the event of death of their parent or guardian (Office of the National Trust, 1999). This Act is also under revision to make it UNCRPD-2006 compliant and make it more comprehensive. Management of properties of PMI is supposed to be covered under the amended Act.

## Discussion

Worldwide, approximately 450 million people suffer from a mental disorder with lifetime prevalence rates estimated to be as high as thirty-three percent (McLaughlin Daniel, 2012). According to the World Health Organization, over 80% of people suffering from mental disorders such as epilepsy, schizophrenia, depression, intellectual disability, alcohol use disorders and those committing suicide are living in low- and middle-income countries. Mental disorders are responsible for twelve to fifteen percent of the total global burden of disease—a greater percentage than cardiovascular disease and twice as much as all cancers combined. By 2030, depression is forecasted to be the single highest contributor to the burden of disease in the world.

People with mental illness are doubly challenged. On the one hand, they are suffering and struggling with the symptoms and the disabilities due to the disease and on the other, they are experiencing stigma and discrimination that stem out from the misconceptions about mental illness till this century. As a result of this, quality of life, that is, good jobs, safe shelter, satisfactory health care services has been denied.

Fighting discrimination and stigma against people living with mental illness is about giving people with mental health problems an equal place in society. Introducing legislative reforms that protect the civil, political, social, economic, and cultural entitlements and rights of the mentally ill is also crucial. However, this step alone will not bear the fruits expected by legislators without a concerted effort to erase stigmatization as one of the major obstacles to successful treatment and social reintegration of the mentally ill in communities. The public needs to be involved in words about the true nature of mental

illnesses, their devastating effects toward individual himself/herself suffering from mental illness, family and societal impacts, and the expectation of better treatment and rehabilitation alternatives. Side by side, stigmatizing attitudes and discriminative actions need to be tackled frontally through awareness campaigns and programmes aim at professionals and the public at large. Much works need to be done to fully realize the stigma and discrimination against people with mental illness to live their life with dignity.

### Recommendations

- A national mental health anti-stigma awareness campaigning needs to be urgently implemented.
- Government needs to foster respect for the rights and dignity of people with mental illness.
- Stigma, prejudice, stereotyping and discrimination must be identified and addressed within mental health care services.
- The development of a healthy workplace culture for employees with a mental illness must be encouraged.
- The employment of Peer Support Workers in health and community settings should be encouraged.
- The development of Peer Support Groups should be encouraged to help reduce self-stigma among people with experience of mental illness.
- Carers' need to be accepted by professionals and be given informed support, to be acknowledged and valued by health professionals, and seen as partners in the caring experience.
- Case study of personal experiences of mental illness from both affected person and carers' perspectives need to be shared publicly.
- Education and awareness program must be introduced to schools, workplaces and the general community about the cause and treatment of mental illness.
- The media needs to be educated so that it can report accurately and respectfully when depicting mental illness.
- Public mental hospitals must be improved by assuring adequate nutrition, shelter and health care.

- Practices, such as, beating patients, prolonged detention, forced admission must be prohibited.
- Organizations working with mental illness should take part in planning, implementing and monitoring govt. programs on mental illness.
- Existing criminal laws on assault to target brutal practices such as chaining, mandatory starving should be enforced.
- Trained and skilled mental health professionals must be recruited to improve health care service for mental illness.

### Conclusion

Mental health and human rights are both powerful modern approaches to advancing human well-being. But it is found that human rights violation of mentally ill is common in various ages in outside the home and in home setting. Various national acts or provisions and International standards exist for rehabilitation or treatment or protection of basic rights for people with mental illness. But, in spite of having positive features, all the acts are suffering from criticism for which all these can never be implemented at grass root level. As a result, the proper implementation of those International/ National conventions and act dealing with human rights of mentally ill people is unsuccessful. Besides, law or legal sanctions alone cannot provide adequate protection. This can only be done through the united efforts of the mental health professionals, Govt. and nongovernmental organizations. More, in order to bring desired goals in the mental health system in the country community participation, educating and community attitudes towards mental illness is strongly required.

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