

Is Legal Care For Mentally Disabled Persons Enough?

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Abstract

Mentally ill patients have always received the insufficient care and concern of the community because of their insignificant worth in the socio-economic value system. They have not only been mistreated but are completely ignored by health planners especially in the developing countries. It was only after the appeal of reformist integration of the norms of human rights and liberal jurisprudence in the respective legal system of nation states that created the resolve and necessity of initiating proper steps for the care and treatment of mentally ill persons. The founding fathers of the Constitution also directed the future government to constantly work for developing public health.

In Ancient India although there was a rich tradition of legal system, the existing legal system of the country was derived mostly from the British common law, a system based on recorded judicial precedents. Formerly, the statutes in respect of mental health were primarily concerned with custodial aspects of persons with mental illness and protection of the society. United Nations Convention for Rights of Persons with Disabilities (UNCRPD) which was adopted in 2006 marked an exemplar shift in respect of disabilities (including disability due to mental illness) from a social welfare concern to a human right issue. The new paradigm was based on presumption of legal capacity, equality and dignity. Following ratification of the convention by India in 2008, it became mandatory to review all the disability laws to bring them in coherence with the UNCRPD. Therefore, the Mental Health Act – 1987 and Persons with Disability Act – 1995 were under process of revision and draft bills have been prepared.

Even after that, the provisions relating to the human rights of mentally ill patients have yet been neither explicitly documented in any code nor been prescribed or elaborated by Judiciary in India. But it was admitted on all grounds that barring few concessions, the mentally ill person deserves the same privileges as enjoyed by any other human being. Evaluating the possibilities of enactment of separate elaborate statutes which can provide distinct rights of better and more accessible care, to good recovery and increased hopes of

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reintegration into society to the mentally ill and Disabled Persons, this paper also identifies the need for codification of such laws.

Introduction

People have stood up for themselves to be the most astute species to have at any point strolled on planet earth. The human mind is to such an extent that until the point that today restorative science has not possessed the capacity to clarify it in total. For example, regardless we don't know how memories are stored. It is a result of this cerebrum that people have made huge revelations and carried on with the best life for themselves, however once in a while there happens a disorder which we allude to as frenzy or madness or insanity The American Psychiatric Association (APA) has defined insanity as a 'psychological pattern or syndrome marked by distress and disability' while the Indian Mental Health Act, 1987 defines mentally ill person as 'a person who needs treatment for mental disorder.

There is a dynamic connection between the idea of psychological sickness, the treatment of the rationally sick and the law. As Rappeport has noted, for the therapists the court is "another house ... with its diverse intentions, objectives and tenets of conduct." While the specialist is concerned basically with the finding of mental issue and the welfare of the patient, the court is frequently chiefly worried about assurance of competency, risk, lessened obligation and additionally the welfare of society. Therefore, in India likewise, a large portion of the prior enactments in regard of mental illness were worried about these perspectives. Be that as it may, enactments drafted after eighties tend to give some weight on the privileges of mental illness too.

Legal Frameworks

Constitution of India

Mentally and physically challenged people have all the fundamental rights guaranteed to any citizen by the Constitution of India. No statute bars them from enjoying these rights. However for mentally challenged the most important constitutional rights are:

Right against discrimination

By Article 15(2) of Constitution of India any citizen, including mentally challenged people, can't be denied access to public goods. Also, they need to be provided equal opportunities to prosper in life.

Right to Health

Article 21 gives the right to life and personal liberty. Right to health flows directly from right to life and the same has been laid down by the Supreme Court in many cases.

Indian Constitution gives the mentally disabled a privilege of justice, liberty of thought, expression, belief, and worship, equality of status and opportunity. There can be no segregation based on race, religion, sex, position and so forth and guarantees dignity of people. To carry on with a noble life is a human right which is perceived by numerous arrangements of the world. Article 41 states that each State needs to anchor ideal to work, instruction and open help for old, wiped out and disabled persons. Right to get treatment and appropriate human services under Article 21 of the Constitution is connected even to rationally impeded people. At the point when a rationally impeded individual is given treatment their agreement must be acquired earlier beginning such treatment to them. To give others conscious living conditions in every single mental healing centre and some other spots of living to each rationally impeded people. State lawful administrations ought to compose preparing program by setting up exceptional legitimate guide facilities in mental healing facilities and nursing homes and co-appointment of NGOs and other volunteer social associations to manage the issues identifying with rationally impeded people. Lawful administrations are given to all the mental healing centre who give lawful guide to rationally hindered people. Legitimate administrations will likewise be given to such people who are compellingly admitted to mental healing facilities.

In one of the leading cases, *SuchitaSrivastava v. Chandigarh Administration*,³ the lady was slightly suffering from mental disorder was raped and got pregnant but the lady refused to terminate pregnancy, while Punjab High Court rejected the plea the Supreme Court upheld the plea and said it is a fundamental right of a woman to protect their motherhood. Court held that termination of pregnancy should be done only with the woman's consent even if she has any disability and thus this was a landmark judgment relating to mentally ill person.

Indian Laws and Mental Treatment

Many laws came in force regarding mental disorder treatment after the British took over like The Lunacy (Supreme Courts) Act, 1858, etc. but none of them was effective thus after signify treaty with the UN under the supervision of UN a new bill was drafted later to be an act known to be Mental Health Act (MHA-87).

Main features of the Act are as follows;

1. 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.

³(2009) 9 SCC 1.

2. 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.
3. Admission in special circumstances in psychiatric hospital/nursing homes. Provisions of voluntary admission and admission on the reception orders were retained.
4. Role of Police and Magistrate to deal with cases of wandering PMI and PMI cruelly treated.
5. Protection of human rights of PMI.
6. Guardianship and Management of properties of PMI.
7. Provisions of penalties in case of breach of provisions of the Act.

In spite of the fact that having numerous positive highlights, the MHA-1987 has been the objective of feedback since its initiation. It is asserted to be concerned primarily with the lawful technique of permitting, controlling confirmations and guardianship matters of Mental Illness. Human right issues and psychological well-being care conveyance are not legitimately tended to in this Act. Because of an expansive number of exceptionally muddled strategies, deformities and absurdities in the Act and furthermore in the Rules made under the Act, it can never be enforced properly. Human right activists have scrutinized the protected legitimacy of the MHA, 1987 on the grounds that it violates constitutional rights without the arrangement of appropriate audit by any legal body. MHA-87 is presently under procedure of correction to make it United Nations Convention for Rights of Persons with Disabilities (UNCRPD) agreeable.

Objective

Since the genesis of human evolution, mentally ill patients have received the inadequate attention and concern as they are always completely non-existent on the economic graph of any developing country. They have not only been completely overlooked but received scornful treatment from the governments in the developing countries. However there have been various pleas of liberal integration of the norms of human rights and jurisprudence in the respective legal system of nation states that has created the resolution and compulsion of initiating appropriate steps for the attention and conduct towards mentally ill persons. Thus as a consequence of the growing of socialistic values it was now admitted on all hands that a mentally ill person needs more care and concern for his treatment and well-being.

The laws in relation to the rights of mentally ill persons have always been in the need for explicit documentation in any code or to be proposed or elaborated by lawmakers and in India which have also been addressed in shape of the enactment of various statutes such as

The Mental Healthcare Act 2016 and 2017 which were enacted recently. Further the judiciary has also many times stepped to protect the rights of mentally ill persons such under the case *Supreme Court Legal Aid Committee v. State of MP*,⁴ where the Supreme Court interfered to improve the function of the Gwalior Mental Asylum.

The subject of well-being of mentally ill persons falls under the concurrent list in the Indian Constitution enabling both the central government and states to devise measures including the authority to legislate. The Mental Health Act 1987 is social equality legislation with an emphasis on regulating standards in mental health institutions. Various serious questions have been raised over the efficiency of this Act in ensuring protection to person's property and supervision of persons covered.

Eventually it was agreed by majority that barring few exceptions, the mentally ill person deserves the same rights as enjoyed by any other fellow human being. This included a right to better and more accessible care, good recovery and increased hopes of reintegration into society which in some areas have been fulfilled by the statutes but still the condition of the majority of the mentally ill persons remains grave due to various lacunas which have to be addressed as the incapability of the mentally ill to object against abuse and mistreatment is a major factor because of which it is has always been the responsibility of the government and the general public because if not them then who will.

Role of Legal Structure

Citizens with disabilities, particularly those suffering from mental illness and other obstacles like mental hindrances are usually not those who catch the attention of the authorities that be. They are side-lined and are viewed only from the prism of the protective "social welfare" which looks upon them merely as persons who are in need of special safeguard by the State and the society. India was a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) 2008 and since it endorsed the Convention, it was mandatory for its legal system to ensure that human rights and fundamental freedoms of persons with disability (including mentally ill persons and persons with mental disabilities) were granted on equal basis with others and to ensure that they get equal acknowledgement before the law and equal protection of the law.

The Constitution of India guarantees certain Fundamental Rights to all its citizens. Article 21 of the India Constitution states, Right to life and liberty states that no person shall be deprived of his life or personal liberty except according to 'procedure established by law'.

⁴1994 SCC (5) 27.

Hence, in any institution where Right to life and liberty are infringed by putting the mentally ill in a closed ward, this amounts to infringement of fundamental rights of a citizen if there is no 'procedure established by law'. It is considered a severe crime and is punishable under the Indian Penal Code Sec 340, Sec 342, Sec 343 and Sec 344 which deal with wrongful confinement of any person..

Presently under The mental healthcare act, 2017 the rights of mentally ill persons have been completely codified which provides the basic rights such as right to free legal aid under section 27 which states

“A person with mental illness shall be allowed to receive free legal services to exercise any of his rights given under this Act. It shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987) or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.”

Further it also provides right under section 28 to make complaints about deficiencies in provision of services. Even after that there still are some basic lacunae in the legal system which prevents the mentally ill persons from accessing their rights which have to be dealt with in order to enable them to access their legal right in the present legal system.

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.

In case *SeralliWaliMohammad v. State of Maharashtra*⁵ case before the Supreme Court was that accused was charge sheeted and committed under section 302 of IPC for having caused the death of his wife and a female child with a chopper. Rejecting the plea of insanity the Supreme Court observed that the law presumes every person of the age of discretion to be the same unless the contrary is proved.

Has the Government Really Tackled with the Deficiencies?

⁵AIR 1972 SC 2443, 9.

In spite of the numerous changes and social strategies presented in India, the reports accentuate the requirement for restoration and HR. Mental Health Care, dissimilar to different sorts of medicinal services, requires HR, high planning and foundations/offices.

To solve such problems, the Mental Health Care Act was passed on April 7, 2017 which came into force from July 7, 2017. This act tries to protect, promote and fulfil the rights of persons with mental illness.

PM Narendra Modi likewise talked about the issue of mental illness in his month to month radio program Mann Ki Baat in which he underlined the need to make a mentally favourable condition to guarantee individuals have a shot of having a healthy existence. Modi's discourse is noteworthy in that he plans to lift the cloud wrapping psychological instability. It likewise cultivates a domain which treats those in misery, with rise to nobility as the rest.

However like any other laws it also has shortcomings. The greatest hindrance to the best possible and broad usage of the arrangements given by the bill is the rate offer of the financial backing apportioned to the wellbeing area. With a pitiful one to two percent of the Union spending plan committed to the whole wellbeing area, India sensibly would not like to roll out an unmistakable improvement in killing the emotional wellness emergency. This is horrifying, contrasted with created nations who devote 10 to 12 percent of their financial plan towards giving human services.

India burns through 0.06 percent of its wellbeing spending plan on mental medicinal services, which is fundamentally not as much as what Bangladesh burns through (0.44 percent). Most created countries spend over four percent of their financial plans on psychological wellness investigate, foundation, systems and ability pool, as per this World Health Organization (WHO) report.

The bill orders the arrangement of therapeutic wellbeing administrations run or supported by the legislature be accessible in each locale of the nation. In any case, with officially insufficient medicinal foundation at area and sub-locale levels, the money related weight to be borne by the state governments will be monstrous except if the central government distributes a bigger lump of the financial backing to acquire the use.

Additionally, the execution of the bill will shift crosswise over various parts of the nation with southern states of Tamil Nadu or Kerala accepting better scope because of the effectively sufficient essential wellbeing framework than the states like Bihar or Uttar Pradesh.

The Advance Directive provision of the medicinal services charge has additionally brought a few eyebrows up in the medical world. The arrangement basically permits the individual

experiencing psychological sickness to determine the type of treatment to be given ahead of time and furthermore engages that individual to name a delegate to guarantee that mandates are being clung to. The discussion encompassing the provision is over the accompanying inquiry: Up to what degree does the bill really enable the rationally distressed? It neglects to think about the situation of those anguish from serious mental issue (like schizophrenia and insane issue) who decline to recognize their psychological state, not to mention be fit for settling on discerning choices and giving assent in composing, in regards to their treatment. The bill is being condemned for neglecting to give exchange strategies in light of the seriousness of the psychological illness as opposed to having a summed up process material over the range.

The restorative human services specialists have called out the bill on the absence of its reasonable approach, referring to the intense lack of specialists, particularly therapists, clinical clinicians and specialist social labourers. An ongoing WHO report, titled 'Discouragement and Other Common Mental Disorders - Global Health Estimates', assessed that about 7.5 percent of India's populace experiences some type of psychological maladjustment (major or minor). The report uncovered that the aggregate number of cases recorded in 2015 of depressive issue were almost 57 million or 4.5 percent of the populace while those of tension issue were about 38 million or 3 percent. Prompt master intercession is required as it is additionally recommended that this measurement is probably going to ascend and influence around 20 percent of the populace by 2020.

The bill commands the constitution of a Mental Health Review Board to secure the privileges of people with psychological maladjustment and oversee propel orders. Alongside that, setting up the Central Mental Health Authority at the national level and State Mental Health Authority in each state to look after registries, preparing law requirement and psychological wellness callings on the arrangements of the demonstration, and prompting the administration on all issues identifying with mental social insurance and administrations are additionally part of the bill. Be that as it may, as a few reports have called attention to, these semi legal bodies at central, state and local level should be constituted deliberately in order to involve legitimate portrayal instead of prior examples where sheets comprised of religious pioneers, and individuals working with social welfare dwarfing the human services experts.

The bill additionally contains no command for the arrangement of an audit board with a specific end goal to evaluate, review and give an account of the wellbeing and state of existing patients in various mental foundations the nation over.

The most challenging test in the years ahead is the requirement for a deliberate drive to enhance HR in the field of psychological well-being. It must be accentuated that a definitive point of any demonstration or law or other legitimate arrangement ought to be the welfare of the PMI and the general public on the loose.

The list isn't comprehensive however it indicates that alongside bounty right which this bill accomplishes, it likewise has its deficiencies. Some minor defects can be remedied through corrections. Be that as it may, others will take genuine responsibility and expectation to see them through. India should begin spending more on mental social healthcare (and wellbeing segment as a rule) since psychological wellness infections constitute up to 13 percent of the aggregate wellbeing trouble. The rules and guidelines for usage, which have not yet been given, will decide the viability of the bill later on. It will be up to the Central government to guarantee that the arrangements of the bill are executed and that they don't simply remain on the paper as a convention.