

TIME TO REVAMP THE MENTAL HEALTH LAWS OF THE COUNTRY ON CHILD RIGHTS

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ABSTRACT

The paper aims at elucidating the lacuna in the existing laws which deal with the mental health care of children. Along with pointing out the issues with the existing laws, the researcher has articulated his suggestions also for revamping the laws. The paper discusses the inconsistencies and flaws with the Rights of Persons with Disabilities Bill, 2012 and Mental Health Care Bill, 2013 with the primary focus on the latter since the bill was passed in Rajya Sabha recently and is scheduled to be tabled in Lok Sabha. Hence it is important to look at the intricacies of the bill to understand how far it will go in addressing the mental health care concerns of children. Apart from the analysis of the Bill, the researcher has also furthered suggestions which could be constructive in improvising the laws. The paper at large is a suggestive where the researcher tried touching upon the unaddressed issues in the field of child health care.

INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children.” These words by Nelson Mandela, the former President of South Africa clearly depict how invaluable asset children are for any country. They are the torchbearers of the future and the building blocks of a nation. Children are immature, inexperienced and dependent on adults for taking care of them, this makes them more vulnerable and dependent on others. This calls for a greater attention for the protection of their rights. Child rights do not merely include providing good food, shelter and education to them. The ambit of child rights extends to catering to the psychological development of children, an area in child rights that remains neglected. Securing a good mental health is equally important as providing them food, clothes and shelter. The definition of mental illness is no more “any mental disorder other than mental retardation.” It is

broader and more inclusive. Mental illness is defined as “a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise 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.¹”

Amongst others, one of the major issues faced by children is the denial of access to proper healthcare. There has been a blatant violation of the rights of the children from a long time. It is true that the Convention on the Rights of the Child is the most widely ratified rights treaty. The Convention sets standards in health care, education and legal, civil and social services². Unfortunately, there is a wide gap between precept and practice. The actual implementation of the actions and policies to reach standards specified in the Convention remains at best incomplete in most countries. Independent India has taken steps in addressing issues like child education, health and development. But, it has failed to implement program which is progressive, promotional, performance based, preventive and protective to the child mental health. Examining the government policies and national program for promoting child mental health it becomes evident that there is a huge gap between the children's needs and existing resources. There is absence of an independent as well as integrated child mental health policy in India. The multiple needs of a child are currently covered by different policies and subsequently different ministries. It is crucial to develop a comprehensive policy to cover all aspects of children's mental health, fewer than one umbrella.

There could be various reasons behind the abysmal state of implementation of the policies for children. One of the reasons could be scarcity in the funding to poor education about mental health issues³. Also, there is a sense of apathy and lack of commitment on part of the government to develop effective national and regional policies and plans for child mental health policies.

¹ Divya Srivastava, Mental Health Care Bill: A much-needed reform that still has a long way to go, Firstpost India, August 16th, 2016

² United Nations Convention on Rights of the Child <http://www.unicef.org/crc/>

³ Supra 1

This leads to the creation of a vicious cycle that goes from lack of services to lack of diagnosis, treatment and prevention, to lack of appropriate data to inform planners and policy makers. Until that cycle gets destroyed by a well coordinated central and state effort, the tragedy children live today concerning mental health will go on forever. The researcher through this paper has endeavored to indentify similar such issues and impediments in providing access to mental health care to children along with expounding on certain suggestions to rectify the same so that we are able to build a conducive environment for them.

ISSUES WITH THE EXISTING LAWS

Rights of Persons with Disabilities Bill, 2012⁴- While the earlier version of the Bill emphasizes equally on special schools (catering only to children with disabilities) and inclusive schools (catering to all children in a common environment), the new version of the Bill aims at the integration of children with disabilities into an inclusive education framework. The new law aims at providing inclusive education and the burden for the same is on all the schools funded and recognized by government On the face of it certainly this approach is laudable and in consonance with the principles mandated by UNCRPD but at the same time this approach is risky as there is no transition plan at present to meet this requirement. There is lack of trained teachers and adequate infrastructure to serve the purpose. And without a proper plan in hand if this law is implemented then certainly children with some types of disabilities such as children who are deaf-blind (requiring specialized training) and children in wheelchairs (requiring accessible infrastructure) who join the ill-equipped mainstream school system immediately after enactment will also be disabled to attain education. The government must address this and elaborate the long term strategy for inclusive education.

Mental Health Care Bill, 2013⁵ : Mental Health Care Bill,2013 is certainly a laudable step in addressing the concerns of mentally disabled people. The most remarkable feature of this bill is the introduction of elaborate guidelines which gives people suffering from a mental illness the right to choose their mode of treatment, and by nominating representatives who will ensure that their choices are carried out. Providing the freedom to people diagnosed with a mental illness the

⁴ Rights of Persons with Disabilities Bill, 2012

<http://www.prsindia.org/uploads/media/draft/Draft%20Rights%20of%20Persons%20with%20Disabilities%20Bill.%202012.pdf>

⁵ Mental Health Care Bill,2013 <http://www.prsindia.org/billtrack/the-mental-health-care-bill-2013-2864/>

freedom to choose conveys a strong message to the society that suffering from a mental disorder does not curtail the right and capacity of an individual to make decisions for himself. It reinforces the idea that everyone, even those diagnosed with a mental illness, are entitled to a life of dignity, and they must not have to live in isolation, away from their families or the community, at large.

The bill identifies inhuman and deteriorating treatment of the mentally ill as a crime, and for the first time, takes into consideration the issue of forcibly admitting the mentally ill patients in institutionalized care.

Primary focus of the bill:

Certainly it is a progressive bill but in the arena of reforming the mental health care of children it does little. The bill only recognizes the role of psychiatrists in the treatment of a mental illness⁶. It still does not acknowledge the roles of counselors and psychologists who also work with patients suffering from mental and emotional distress especially when these people play a significant role in the treatment of children. The bill at large emphasizes on the requirements of people who are in mental asylums, but not every person diagnosed with a mental illness is in a need to be institutionalized. While the bill mandates insurance companies to provide medical insurance or the mentally ill on the same grounds that they would issue insurance for physical illnesses, counseling services would probably not be covered even in the new insurance schemes⁷. This certainly will discourage the poor parents of the mentally ill children to reach out to the counselors or child care specialists who are in a better position to address the issues of children. Considering that there is acute scarcity of child psychologists and counselors and budget cuts in investment to the health sector, the success in implementation of the law is highly questionable. Also in the new bill the issues related to the guardianship of mentally ill persons is not at all looked into, making the position of mentally ill children more vulnerable since these children are on a high risk of being abandoned by their parents due to the stigma attached to mental health⁸. The bill also fails to address the stigma and discrimination a person with a diagnostic label is

⁶ Supra 5

⁷ Ibid

⁸Anirudh Kala, Time to face new realities; mental health care bill-2013, Indian Journal of Psychiatry, July- September 2013

forced to endure Clearly the primary focus of the bill has been to address the issues of adults who suffer from mental illness paying little heed to young children.

Imposing ban on unmodified ECT and restrictions on ECT to Minors:

Electro-convulsive Therapy (ECT) is a very effective method of treatment in many acute and chronic psychotic conditions, many of which occur for the first time during childhood and adolescence. But unmodified ECT has been prohibited in the Bill. This seems to be based on the popular and misconstrued notion rather than scientific evidence Such a ban would prevent the administration of ECT at small and remote places, where there is no availability of anaesthetic support even for routine surgery. In our country, lack of adequate resources is a serious problem. Even many district hospitals do not have anaesthetists. Severe restriction has been put on the usage of ECT to minors in the Bill, where prior approval from the Mental Health Review Board has to be obtained⁹. This seems to be based on sentiments rather than on scientific evidence. The requirement to get approval from the Board is fallacious, as ECT is an emergency and often life-saving procedure and it will place a great burden on the families or the psychiatrist doing the treatment to obtain approval from the Board so quickly. In fact any idea of prescribing or prohibiting any particular form of treatment in mental health legislation is anachronistic and improper.

Marginalization of families of persons with mental illness:

In our country, where manpower resources in mental health care are extremely scarce, family is a very important asset in management of mental illness. In many cases family will have to move to the Board to get approval of mental health decisions and involuntary admissions. Provisions of nominated representatives and advance directives has also put limitation on the role of the families and may put the person suffering from mental illness and his family on opposite fronts¹⁰. It may damage goodwill and bonding in the families. It will also make families less willing to be

⁹ Supra 5

¹⁰ Ibid

as proactive in the treatment of their wards as at present, which will be an unmitigated disaster. This may lead to disruption in the families and untreated mentally ill children may go on aimless wandering and become aggressive rebels leading to disruption in the society.

Mental health care decisions in the hands of non-experts:

Mental Health Review Board, which has six members out of which only one is a psychiatrist, is vested with vast powers to take decisions in respect of mental health care as also to regulate the professional conduct of psychiatrists. Moreover, Mental Health Authorities both at central and state levels have been assigned duties to set norms and standards. In both these authorities, there are only two or three psychiatrists among more than twenty official and non-official members. All these provisions constitute an elaborate system of making crucial decisions in the field of mental health in the hands of non-experts.

CHILD MENTAL HEALTH CARE : A NEGLECTED AREA

ADDRESSING THE ISSUE AND REFORMATIVE SUGGESTIONS

The importance of psychological well-being in children and adolescent, for their healthy emotional, social, physical, cognitive and educational development, is well-recognized. Despite the fact that mental health problems constitute a significant amount to the global burden of disease in the 21st century this there hasn't been much improvement in this regard. The lack of qualified mental professionals who can prevent, identify and intervene at the earliest in the treatment of mentally ill children remains a huge stumbling block. There are limited child and adolescent mental health services in India and too most of these services are restricted to urban areas. Access to mental health services for children with a mental, emotional or behavioral disorder is substandard and accessible only to a fraction of children and adolescents.

There are tertiary care centres which attend to mental illness in hospital setting. Their primary aim is treatment and rehabilitation of the children back into society. However, a large gap exists in the area of prevention, mental health promotion and early intervention programmes.

Even WHO acknowledges the gap in the treatment gap in mental health care? World Health Organisation, asserts that many people suffering from psychiatric illnesses remain untreated, although effective treatment exists. WHO report examines the extent of this gap between the

prevalence and treatment of psychiatric disorders globally¹¹. One in every 5 child has a mental health issue. If there is proper investment in identifying the problems early and there is intervention at the right time then not only will it help the children at the earliest but also it will be more cost effective, as we will be preventing further breakdown and avoid an adult treatment and rehabilitation programme which is much more expensive. It is possible to prevent and curb the majority of behavior disorders in preschool and school environment itself.

There is certainly a dire need for a sustained improvement in the health of children. For this there can be standards set for high quality integrated health and social care for children from before birth and extend right through to adulthood. And while doing this one of the main focus areas has to be the mental health and psychological wellbeing of children and young people.

.This needs to be understood that supporting children and adolescents with mental health problems is not the responsibility of specialist services alone. The services which contribute to the mental health care of children and adolescents, whether provided by health, education, social services or other agencies also play an instrumental role.

The plan to improve mental health care should include primary mental health workers, psychologists and counselors working in pediatric clinics, schools and youth services. Along with offering consultation to families and other practitioners, they can help in identifying severe or complex needs which require more specialist interventions, assessment, treatment and training where needed.

There should be a multi-disciplinary team or service working in a community mental health clinic or child psychiatry outpatient service, providing a specialised service for children and adolescents with more severe, complex and persistent disorders.

Also services for children and adolescents should be provided irrespective of their gender, race, religion, ability, culture or sexuality. In India, traditionally, the sole responsibility to take care and protect the children is on the families and communities. In most the families fail to recognize the rights of the children and pay less heed in this direction. Child and adolescent mental health is

¹¹ WHO/Wonca joint report: Integrating mental health into primary care - a global perspective, http://www.who.int/mental_health/policy/services/mentalhealthintopriarycare/en/

the fundamental right of the children, and the approach to ensure the fulfillment of these rights so far has always been more need based rather than rights based.

Definitely the government has been unsuccessful in alleviating the position of mentally ill children but the lackadaisical attitude of parents has also been discouraging. The families in most cases as it is seen, are reluctant to take help. Mostly it is because of the absence of faith in the statutory services, fear of confidentiality and the stigma being attached to their children. Hence the role of community becomes pivotal to ensure there is a supportive environment for the children that promotes their mental health. There needs to be a normalization of mental illness by spreading awareness about the same and by penalizing the activities of bullying and exclusion to such children.

.Given that some forty per cent of children with learning disabilities have a diagnosable mental disorder and this rate is even greater in those with severe learning disabilities, the low level of resources available to the children and their families represents serious inequity and a significant challenge for the development of appropriate services. A nurturing social environment in childhood, good early education and academic success in school are related to protecting the mental health of young growing generation.

As mentioned earlier the training of the medical officials to deal with the issue of mental health should be given attention. Training should be appropriate to the developmental level and cultural context of the children and adolescent's population. All staff working directly with children has sufficient knowledge, training and support to promote the psychological well-being of children and their families and to identify early indicators of difficulty. Concepts of mental health and illness and the understanding of the origins of children's emotional and behavioural difficulties vary across cultures. Services and the medical staff need to be sensitive to these differences and ensure that they are equipped with the knowledge to work effectively with the different groups represented within the community they serve.

The families who are refugees or are seeking asylum, particularly those from conflict torn zones, have gone through highly traumatic experiences. The provision of effective mental health care can be extremely challenging, especially if there is existence of language barriers. For localities

with a significant population of such families, specific arrangements may need to be made to provide appropriate mental health care for the children and adolescents within these families

Child mental health is a shared responsibility, and for any intervention to be successful, there should be coordinated efforts being made by different stakeholders to address the lurking issues. There is a need to create a mechanism that will make such a co ordination possible.

The media should be productively used to spread awareness on child mental health. Debates and discussions with participation of children can be a regular feature on electronic media in order to enhance people's knowledge and sensitivity on child mental health issues

Mental health problems in children are associated with educational failure, family disruption, disability, offending and antisocial behaviour, placing demands on social services, schools and the youth justice system. Almost 20 per cent of all children and adolescents are affected by mental health problems and at least half of these show impaired schooling and social development

All children and adolescents, from birth to their eighteenth birthday, who have mental health problems and disorders, need to have access to timely, integrated, high quality, multi-disciplinary mental health services to ensure effective assessment, treatment and support, for them and their families

In many cases, the intervention that makes a difference will come from another service. For example, a child presenting with behavioural problems may make better progress if his/her literacy problems are also addressed, in which case an input is required from education. The lack of provision in one service may impact on the ability of other services to be effective. Partnership working is an essential requirement of high quality service provision.

The lack of understanding of the respective roles, duties, responsibilities and organisation of the different agencies and professionals and of their different language, may lead to poor communication, misunderstandings and frustration. Effective partnership working can improve children and adolescent's experience of services and lead to improved outcomes.

Services ensure that children and adolescents receive treatment interventions which are guided by the best available evidence and which take account of their individual needs and circumstances. Currently such services are largely provided at a large scale by various NGOs,

private institutions and professionals. There was a pervasive concern that while multiple public and private entities had important roles to play in meeting the mental health needs of children and families, there was an absence of overall comprehensive planning, accountability was as fragmented as the rest of the system, and as a consequence there was a sense that nobody was responsible at the national and government level.

Children and adolescents with mental health problems are most often handled by the school or juvenile justice systems, which are generally ill-equipped to recognize and address mental disorders.

Successful programs involve long-term intense interventions and address an array of factors such as family conflict, depression, social isolation, school failure, substance abuse, delinquency, and violence.

Mental health promotion (MHP) and mental disorder prevention (MDP) among children and adolescents need to shift its focus. The change needed is to move from existing patterns of institutionalization and medicalization to modern public health approaches based on involvement of children, youth, parents and communities which is essentially an exclusive approach.

Another big challenge in the field of child mental health is to plan and organize effective parenting programs for mentally ill parents. These programmes would need special skills and training to make it effective for both parents as well as children.

The country has to take care of an enormous number of children. While envisaging its vision of progress, development and equity, India recognizes the fact that when our children are educated, healthy, happy and have access to opportunities, they are the country's greatest human resource. This will require commitment to the integrity of programs, their adaptation for and engagement with local communities, and the incorporation of evaluations of program effectiveness. More attention is now being given to the need for programs to provide quality norms for good practice that are determined by theory, evidence based outcomes, cost effectiveness and feasibility of widespread implementation. We must assist the implementation of innovative and effective mental health initiatives in this relatively new field in mental health services for children and adolescents across India.

CONCLUSION

The nation's children are a supremely important asset. Their nurture and solitude are our responsibility. Children's programmes, should find a prominent part in our national plans for the development of human resources in each sector, so that our children grow up to become responsible citizens. Equal opportunities for development to all the children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

The legal framework relating to these vulnerable children, being largely borrowed from that for adults, can never fully take into account the specific developmental needs of children, or of the differences, inconsistencies and, in particular, the multi-agency nature of children's services. These deficiencies in the legal framework for the treatment of children with mental disorder cannot be addressed by a simple add-on to adult mental health legislation: a more specific statutory framework is necessary. Only then will the law be able to address adequately the important issues for children. The legislation will need to confront the challenging issues of how the child may be subject to de facto detention, and integrate sufficient safeguards to protect the child's own rights. In the current scenario in which children's services operate, this more multi-agency approach would have the added advantage of opening the whole process to greater external scrutiny. There is the additional safeguard for the child provided by the involvement of other professionals who are able to take a different and perhaps broader view of the child's best interests.