

MENTAL HEALTH: INDIA AND LAW

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ABSTRACT

The essence of law in India had been established from the Vedic period, followed till 1772, later to which Britishers adopted the rule of administration of justice in Bengal. It then considered being the first segment of the Indian law division, the Classical Hindu Law. Post the period comes the Anglo-Hindu law, originating from the classical Hindu law, covering years 1772-1947. Mental health legislation has given rise to the importance of protecting the rights and dignity of a person with mental illness. Depression, being the leading cause of disability, contributes to a count of suicides all over the world. The Mental Healthcare Act, 2017 provides for mental health and services, while at the same time protecting the rights of a person with mental illness during the delivery of mental health facilities to that person. Reception order was the order provided under the provision of the mental healthcare act, 1987 to get the mentally ill person detained and admitted to a psychiatric hospital or the psychiatric nursing home. However, the updated Mental Healthcare Act, 2017 has removed the provision of the reception order completely. The new Mental Healthcare Act has raised the bar for completion of provision stated under it. Lack of infrastructure, medical professionals, and staff might lead the act towards imagination only. It is evident that the Mental Healthcare Act is over-ambitious which makes it less realistic and impossible.

The mental health laws of India need to be compared with the mental health laws outside the country for a clearer picture. Apart from creating a new mental health crisis, Covid-19 creates a negative impact on the existing people with mental illness.

INTRODUCTION

Parents seek to conceal the mental health problem of their child by encouraging them to take medication and encouraging nobody or else you'd be called 'mad'. Law and mental health effects significantly each other. The intervention of legislation is required in situations relating to regulation of mental health, malpractice, and restrictions on human experimentation. In the case of *Jackson v Indiana*ⁱ, it became clear that Jackson was unable to stick to his problems at a place with a lack of facilities. Law was inevitable in situations like those.

The essence of law in India had been established from the Vedic period, followed till 1772, later to which Britishers adopted the rule of administration of justice in Bengal. It then considered being the first segment of the Indian law division, the Classical Hindu Law. Post the period comes the Anglo-Hindu law, originating from the classical Hindu law, covering years 1772-1947. Later came the modern Hindu Law consisting of the Hindu Marriage Act (1955), Hindu Minority and Guardianship Act (1956), Hindu Succession Act (1956), and the Hindu Adoptions and Maintenance Act (1956)ⁱⁱ.

Good health is a basic requirement for life to function. Public health expenditure as a percentage of GDP was 1.28 in the year 2019ⁱⁱⁱ. Health laws, in their ever-developing nature, encompass rights and protection for the sick person.

MENTAL HEALTH

Definition of mental health, offered by ROBERT G. MEYER CHRISTOPHER M. WEAVER, recites- 'We define mental health broadly to include clinical practice areas, and more purely "forensic". More research-oriented (as opposed to "clinical") areas are also discussed' (Weaver, 2006)^{iv}. Mental illness is a change in human behaviour or understanding capacity or human nature, causing trouble to himself or any other person around him. Mental illness can occur by various events like stress during job or education, family pressure, societal pressure, overthinking, and many more.

Mental illness is prevalent. The latest statistic from WHO states:

1. Almost 19 percent (one in every 5) of U.S. adults deal with mental problem.
2. Almost 4.1 percent (one in every 24) has serious mental illness.

3. Almost 8 percent (one in every 12) deals with a diagnosable substance use disorder^v.

Depression

Depression is one of the most common mental disorder which is faced by the population. WHO recorded, in 2015, that more than 300 million of all ages are dealing with depression recently. Depression, being the leading cause of disability, contributes to a count of suicides all over the world. Depression is more effective for females. It can be severe, moderate, or mild. In India (MNHS 2015-16), one out of every 20 people suffers from depression.

Depression could be categorized as:

1. Recurrent depressive disorder: in this case, a person has periodic depressive episodes for weeks.
2. Bipolar Efficient Disorder: In this case, a person is dealing with both manic and depressive episodes.

MENTAL HEALTH LAWS IN INDIA: ORIGIN AND JOURNEY

Mental health legislation has given rise to the importance of protecting the rights and dignity of a person with mental illness. The scope of mental health laws in the United Kingdom began with the Lunatic Removal Act, incorporated in 1851. Indeed, the year 1857 was the overtaking phase of British law by the Indian administration. Acts like the Lunacy (Supreme Courts) Act 1858, the Lunacy (District Courts) Act, 1858 and the Indian Lunatic Asylum Act, 1858 were passed in the particular year^{vi}.

Due to the detention policies (retaining the patient for an indefinite time) of these acts, the Indian lunatic act was introduced in the year 1912. This act, thus, led to an establishment of a mental hospital, formally called a mental asylum. Loopholes were drawn out of the act. It was observed that the act was focusing on segregating the mentally ill people from stable ones. This act, thus, was not interested in the protection of the mentally ill people. The act was inclined towards the protection of society from the dangerous (mentally ill, as they considered) people. With the glitches observed in the MHA, 1912 a new mental health bill was drafted. This bill then passed in 1987. The new mental health act (despite being focused over the provisions like reception order, special circumstances, protection of human rights, and property) lacks

information regarding the rehabilitation and treatment of patients after their discharge from the hospital. The act curtails the patient from its rights and liberty. Observing the amendments and provisions required in the act, the Mental Health Care Act, 2017 was passed. This act changed the structure of the previous one, making it conceited towards the legal rights of the mentally ill person rather than human rights.

THE MENTAL HEALTHCARE ACT, 2017

The Mental Healthcare Act, 2017 provides for mental health and services, while at the same time protecting the rights of a person with mental illness during the delivery of mental health facilities to that person. It enables the patient to provide free assistance, treatment insurance and also provides a private consultation fund (if the state is unable to provide it).

This act is drafted in the XVI chapter which comprises of 126 sections^{vii}. This act, thus drafted with various new provisions.

Section 2(a) consists of '*Advance directive*' which means the earlier stated direction by the patient (in case of involuntary admission, *nominative representative*) to be followed during treatment (chapter III)

Section 2(I) consists of '*informed consent*' which means the consent given for the specific interference, without any force and undue influence. Before the gain of consent, all the related information is to be revealed.

Section 14(c) describes '*nominative representative*' as a person (not a minor), competent enough to discharge the duties and functions assigned to him under this act, showing his consent in writing to the mental health professionals.

Section 89 includes '*supported admission*' which means admission and treatment of persons with mental illness, with high support needs, in mental health establishment, up to thirty days.

Further, section 90 deals with the issue of high supported admission (admission or dismissal of the patient after thirty days)^{viii}.

Section 115 decriminalized the offense of attempting to commit suicide by a person with a mental illness who considers it to be stress caused by a reduction in mental health. Rather, the person is to be admitted to the rehabilitation centre for a reduced risk of recurrent suicide attempts.

Criticism

The new Mental Healthcare Act has raised the bar for completion of provision stated under it. Lack of infrastructure, medical professionals, and staff might lead the act towards imagination only^{ix}. Moreover, the statistics from the Indian Union Ministry of Health and welfare states that India currently requires 13000 psychiatrists. Instead, India currently has 3500 psychiatrists achieving the ratio of one psychiatrist for over 2 lakh individuals^x. Also, section 88(1) and provisions related to minor are vague. Detailed explanation is required regarding acclaimed discharge of the previously admitted patient.

RECEPTION ORDER

Reception order was the order provided under the provision of the mental healthcare act, 1987 to get the mentally ill person detained and admitted to a psychiatric hospital or the psychiatric nursing home. This concept was covered under Chapter IV Part III of THE MENTAL HEALTHCARE ACT, 1987.

A reception order was to be acquired from the magistrate to prove that the said person is mentally unstable and requires to be held under special care. This step is required for a person when he is unable to reach up to the voluntary decision.

According to the section here were supposed to be two modes for involuntary admission of a person. The first one was Special Circumstances (SC). In this form of involuntary admission, the family or friends can request admission if it were supported by two medical certificates from two different doctors of which one has to be that of government. This validates the admission for the maximum time of 90 days. Further stay requires a Reception Order. Once

the order is passed by the magistrate, the assigned doctor has a period of 30 days to prove the mental illness of the patient, failing to which the order lapse^{xi}. If the doctor proves the mental illness of the patient, then he isn't allowed to leave until he is discharged from recovery.

However, the updated Mental Healthcare Act, 2017 has removed the provision of the reception order completely. Section 89 of the Mental Healthcare Act, 2017 states about admission and treatment of persons with mental illness, with high support needs, in mental health establishment, up to thirty days (supported admission). Subsection (1) of section 89 states that if the person with acclaimed mental illness has been examined independently by one psychiatrist and the other being the mental health professional or a medical practitioner, and both results in the urgent need of the admission of the person in the mental health establishment, then the medical officer or the healthcare professional can admit the person for a maximum thirty days.

The examination is made upon the occurrence of the below-mentioned cases:

If the person

- (I) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or
- (ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or
- (iii) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself.

Furthermore, for the continuous admission of the person under section 89, the provisions under 90 have to be followed. Section 90 states the continuation of the admission depending upon the independent examination, this time, performed by two psychiatrists. The examination is made upon the occurrence of the below-mentioned cases:

If the person

- (I) has consistently over time threatened or attempted to cause bodily harm to himself or

(ii) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him or

(iii) has consistently over time shown an inability to care for himself to a degree that places the individual at risk of harm to himself.

If the above-mentioned situations satisfy the examination, the mental health professional, or the medical officer in charge of the said establishment shall continue admission of the person with mental illness. The admission to the person under section 90 remains for the tenure of ninety days initially, further, maybe, extended for a period of one hundred and twenty days later to which one hundred and eighty days each time for extension after complying the provision of subsection (1) to (7) of the section.

It was observed through various reports by the magistrate regarding the reception order stating that the said case does not record proper sections or acts or provisions. The admission of the mentally ill person was not made applying the stated provisions under the act. It might lead to complications in due management of the establishment. The regulation between judiciary, police, and mental health professionals were required.

COVID-19 AND MENTAL HEALTH LAW IN INDIA

The mental health facility for a person with a mental illness during an outbreak of COVID-19 was disturbing. The Government of India has issued guidelines for general medical and specialized mental health care provided by the Bengaluru National Institute of Mental Health & Neurosciences. The guidelines stated that they would not interrupt the management and treatment of a person with a mental disorder^{xii}.

Section 18(2) of the mental healthcare act, 2017 provides the person with mental illness the right to access mental health services at affordable cost, sufficient quantity, and are accessible geographically. However, some are unable to either afford or acquire the medicines. The unavailability of medicines in the market makes the situation worse^{xiii}.

Section 18(8) of the same act states that ‘the appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no

discrimination be made in the quality of services provided to persons with mental illness.' It is observed that patient is unable to visit its regular doctor amid corona prevalence. This also results in the deteriorating health of the person with mental illness as the patient is unable to acquire its medicine.

Section 21 of the same act states that every person with mental illness shall be treated equally as the person will physical illness. But it is observed that the corona outbreak has lowered the importance of mental illness in comparison to physical illness as they are not able to acquire their basic treatment.

RECOMMENDATIONS

With the above-mentioned information, it is evident that the Mental Healthcare Act is over-ambitious which makes it less realistic and impossible.

The mental health laws of India need to be compared with the mental health laws outside the country for a clearer picture.

Norway: This county is among the most prominent mental health care promisor. Norway has been providing an abundance of facilities along with a psychiatric causality clinic. It comprises rooms for emergency treatment of the patient.

Argentina: In this country, mental health treatment is not stigmatized. Rather, this is the country with the maximum psychiatrists per capita in the world.

Luxembourg: This country has been the top-rated mental healthcare provider, nearly achieving the life expectancy of 82 years. This country adopts this unique education system named 'positive education'. It encourages students to embrace their interest skills rather than unwillingly follow the traditionally accepted education process^{xiv}.

Coming back to the MHA, this does not take into cognition as to what will happen during some inevitable situations?

Section 88(1) speaks about the immediate discharge of a person with mental illness upon his statement of being wrongly detained under section 86(3) or if he is simply admitted under section 86. How can we rely on the fact that the person being released is fit to be discharged? The provision regarding this section is concerned.

The rights of a person with mental illness are written under section 21-28 of the Mental Healthcare Act, 2017. These rights are to be taken into consideration instead of just being drafted under the act. This act should be inclined towards the protection of the rights of the person with mental illness.

CONCLUSION

The importance of mental health laws is emphasized. Mental Health laws have been society oriented until the latest Mental Healthcare Act, 2017. Depression is found to be the leading cause of mental health problems in India. The current MHA is focused on the protection of the rights of persons with mental illness. The new MHA is observed to be unachievable as it is drafted with many changed provisions. Reception order was an important chapter of the Mental Healthcare Act, 1872 which was completely removed from the new MHA. The chapter of the order is segregated and drafted under it in an elaborative manner. Covid-19 has a different reflection on mental health processing. Apart from creating a new mental health crisis, Covid-19 creates a negative impact on the existing people with mental illness. Mental health law observed from outside the county can help in improving the existing mental health law towards a more realistic and achievable approach.

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ENDNOTES

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