

Legislative framework of Mental Health in India

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“Mental illness is nothing to be ashamed of but stigma and bias shame us all”¹

Abstract-

In Indian society, people consider mental retarder person as a stigma, which needs to be vanished by various methods. Every person is not born equally. There is some person who is born with a special kind of physical and mental illness. But unfortunately, still, in the 21st century, we have not proper legislative measures and other techniques to deal with such a grave matter of Mental Health. Approximately 200 million people are suffering from depression or related issues, which is equivalent to 3.3% of the world's total population. Unluckily, Despite this condition, the major burden of Mental Health problems is continues to be a misunderstanding in developing countries like India. The present and landmark legislation i.e. Mental Healthcare Act, 2017 rescinds/revoked the existing Mental Healthcare Act 1987 which had been widely criticized for not recognizing the rights of a mentally ill person in the country.

Keywords: - Mental Health, physical, disease, mental disorder, Anxiety Disorder, Panic disorder, Mood disorder etc.

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Introduction

The health of a person can be defined as a physical as well as Mental Health. The Mental Health of a person is a state of mind, in which a person unable to understand his or her capabilities. He can coordinate with the routine life and consequently, unable to contribute

towards his or her society. Mental Health of a person can affect his or her daily routine, relationship bonds, or even physical health. It also includes the inability of a person to enjoy his or her life, inability to maintain the balance between day to day activities of life and efforts to achieve a targeted goal. In India, 7.5% of the people are affected by any kind of Mental Disorder.

Good physical and Mental Health is the fruit of a reciprocal relationship between a person and various environmental factors. Apart from environmental factors, there are so many other factors which deal with it such as a family history of the mental disease, which may be genetics or otherwise, unhealthy lifestyles like habitually using an overdose of drugs, smoking, the stress of work at the workplace, exposure of trauma, anthropological reasons, unemployment, poverty, increasing divorce cases, extravagant and so many social, economic hardship and other situations, which may vary from person to person

Meaning and Definition of Mental Health

The mental health of a person may be recognized as a medically diagnosable disease which resulted in the impairment of a person his cognitive, affective, or rational capability. This kind of disease is resulted from psychosocial, biological, or genetics, anthropological reasons and can be treated through prevention, diagnosis treatment, and by process of rehabilitation.

Definitions:-

- “Mental health is emotional, behavioral and social maturity or normality.”² It is a state of psychosocial well being in which one person have to achieve a satisfactory level of integration of person's Instinctual drive accepted to oneself as well as one's social milieu, can say a balanced approach between romance, work and his leisure.

- “A state of well being in which a individual realize his or her own abilities, can cope with the normal stress of life, can work productively and fruitfully, and is able to make contribution to his or her community.”³

Types of Mental Health/ Mental Illness

There are several identified and unidentified types of mental disorder all over the universe. The most common type of mental illness is Anxiety Disorder, Mood Swing, Schizophrenia, and Bipolar Disorder. Now we are going to explain these types in detail:-

- **Anxiety/Chronic Disorder:** - It is the most common and popular type of mental disease. In this disease, a person suffers from the severed kind of fear and anxiety which is directly linked with the particular fact and condition. Most of the person who suffers from anxiety is trying to avoid the exposure from society, wherever he gets more trigger due to anxiety [1].
- **Mood Disorder/ Mood Affective Disorders:-** It also have known as an affective disorder or depressive disorder the person dealing with these conditions have very tremendous changes in their moods, commonly involving whether mania or depression some of the examples of mood disorder is:-
 - a) Major depression
 - b) Bipolar disorder
 - c) Persistent depressive disorder
 - d) Seasonal affective disorder
 - e) Schizophrenia disorder
- **Phobia:** - Phobia includes not only Simple Phobia (fear of some object or thing) but also includes Social Phobia (fear from the observation from the society like what the other says about me) and Agoraphobia (fear from the situation of breaking or in difficulty).we actually not aware of the kinds of phobias in the universe. Its kind may vary from person to person.

- **Panic Disorder:** - This type of effected person experiences sudden paralyzing terror or a sense of sudden disaster or feeling angrier as compare to normal anger.

Historical Perceptive of Law Related to Mental Health in India

Law on mental health for the mentally retarded person of any category has undergone various reforms to date. In India the Lunatic Removal Act, 1851 was the first legislation on this concept under the British Empire. The Lunatic Removal Act, 1851 deals with the transfer of a mentally retarded person under British person back to England.

Thereafter Indian government also introduces various laws to deal with the care and protection of mentally ill person-i.e. the Indian Lunatic Asylum Act, 1858 and the military lunatic act, 1877. According to the provisions of these Acts, mentally ill persons were detained with inhuman conditions for indefinite periods. Due to the negative response in the health of the mentally ill persons, the Government passed 1912, but this act was also not that much effectively implemented.

Again with the new approach and ideology government passed the mental health act, 1987. this act mainly focused on improving the living conditions and ensuring the proper treatment of the mentally ill person. Although this act was much better from the previous law still there are lots of lacunas in this legislation. In 2017, According to a study conducted by the National Institute of Mental Health and Neurosciences, India, across 13 different states, the problem of depression is increased for both current and lifetime is 3.7% and 6.2%, respectively. Approximately 1 in 50 and 1 in 30 people are suffering from past and current episodes of depression all over the country. This survey has shown that the lifetime prevalence of the mental disorder is 14.7% as a whole, which would mean at least 140 million Indians require urgent treatment. Mental illness in vulnerable age groups such as adolescents and the geriatric population accounts for more than half of the total burden. Another report regarding the projected burden of mental illness conveys that it will increase more rapidly in India, than the other countries over the next 20 years and will

account for one-third of the global burden of mental illnesses, a figure greater than all developed countries put together. Despite this big burden of mental health issues, unfortunately, it continues to be misunderstood in developing countries like India.

Mental Health Care Act, (MHA) 2017

As the previous Mental Health Act, 1987 does not effectively address the needs of individuals suffering from mental disease; it also lacks any special kind of remedial measure for their rehabilitation and rights of the mentally ill person. So, to overcome these lacunas Mental Health Care Act (MHA), 2017 was passed by the Government of India⁴.

The important features of the Act are as under:-

- The present Act defines “mental illness”^[1] as a substantial disorder of thinking, mood swing, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions dealing eighth the abuse of alcohol and drugs.
- The present Act rescinds and revokes the previous Act of 1987 because the previous Act was not providing any kind of rights to the mentally ill person. On the other hand, present law stressed the rights of various rights of the mentally ill person.
- Mental Health Care Act (MHA), 2017 specifically overturned section 309 of the Indian Penal Code, which criminalized the Attempt to Suicide by the mentally ill person.
- One of the important features of this Act that it clearly provides for the protection of the rights of the mentally ill person and not only rights but provision for access to the treatment by an advance directive way which is more convenient, affordable and accessible.

- This Act further provides for the protection of a mentally ill person from the inhuman treatment, free access to legal aid and right to file a complaint against the doctor in case deficiencies in the services.
- Under the provisions of this act, a mentally ill person can the way by which he or she can be treated and also have a right to appoint the nominated representative of his or her choice for this purpose.
- Under this Act, the Government has to establish the Central Mental Health Authority or the State Mental Health Authority in every state. Every mental health petitioner or every mental health institute compulsory have to be registered under the authority.
- Provision related procedure, a process for admission, treatment and subsequent discharge of mentally ill persons is also provided under the Act.
- If any person will violate the provision of the Act, then imprisonment up to 6 months or fine of rupees 10,000 or both will be provided to him.
- This Act also provides for the right to community living that means right to live with human dignity, protection from cruel inhuman or degrading treatment, provide equal treatment for the mentally ill persons, right to confidentiality, right to access their basically medical recorder right to personal contact or communications.

Major Criticism of the Mental Health Care Act, (MHA) 2017

The Present Act aims to provide mental healthcare facilities for persons, who are mentally retarded. Under the law, It ensures that these persons have a not only right to live life with human dignity but also availed the right not to being discriminated against or harassed by anyone. No doubt, there are many positive/constructive features provided in this legislation, but still, lots of shortcomings are prevailing [i].

- The present Act is not an ideal practical application in the Indian context. For example the present legislation i.e. Mental Health Care Act, (MHA) 2017 provided for the right to live life with human dignity and no discrimination on basis of sex, religion, culture, and caste. Every

person shall have a right to confidentiality in respect of his/her illness and treatment. As per new provisions, electroconvulsive therapy (ECT) has not to be performed without anesthesia, and there is no electroconvulsive therapy (ECT) for the minor. Sterilization shall not be performed in such patients neither they will be put into solitary confinement nor isolation.

- The present Act clearly empowers everyone to be the accessibility to all available Mental Health services in India. It is meant to ensure that services be accessible, affordable and of good quality. It also mandatory provision under mental health facilities is established and available in every district of India. Therefore, in our country, there is already inadequate mental healthcare infrastructure at district and sub-district levels, the expenditure to be borne by the state governments will be massive unless the central government allocates a larger portion of the finance to incur the expenditure.
- The provisions related to the advance instruction, which give patients more power to decide certain aspects of their treatment, has been picked up from the western countries. Therefore, unlike advanced countries, local-level factors such as existing mental health facilities and lack of consciousness about mental illness in India have not been taken into account by the people. Mentally retarded persons who suffer from serious kind of psychological disorders cannot generally make accurate decisions and do not always have sufficient intellect to speak on their behalf. In such a verse condition, the best way is to be treated by physician decisions making because patients or their legal representatives have less knowledge of mental health and mental illness of the patient. Moreover, from a doctor's perspective, this new directive will lengthen the time of admission of mentally ill persons.
- The current Act also provides the right to live with the community and right to live with all the bare requirements of human dignity .i.e. right against protection from cruel, inhuman, or degrading treatment; right to equal treatment to persons with mental illness; right to get relevant information concerning treatment, right to confidentiality; right to access their basic medical records; right to personal contacts and communication; right to legal aid; and recourse against deficiencies in the provision of care, treatment, various other rights, recourses and

services. Therefore, the estimate of expenses required to meet the obligations under the law is not specifically available under the Act. It is also not clear how the funds will be allocated between the Central and the State Governments.

- Practically, it is also not about the assures free quality treatment for indigoes persons or those who belong to below poverty line (BPL), even if they do not possess a BPL card. In our nation, where mental health is considered equal to depression or other related diseases, the government is unable to bear the financial burden. For the financial year 2018–20189, the proposed health expenditure of 1.3% of the gross domestic product in India. It is among the lowest in the universe and the public health expenditure has consistently declined since 2014–2015. India has only spent 0.07% of its health budget on mental health care, which is significantly less than what Bangladesh spends (0.44%). Most developed nations spend above 5% of their budgets on mental health research, infrastructure, frameworks, and workforce, according to 2012 World Health Organization report. While the new Act makes several provisions, it provides no proper and systematic guidelines or rules of implementation of the Act.
- Lastly, in developing countries like India, persons with mental illness and their situations are being aggravated due to socio-economic and cultural factors, such as a lack of access to healthcare services, overload superstition, lack of awareness, fear of social stigma, and discrimination of suicide. The present law does not direct any provisions to address these factors. So, the mental healthcare law does not offer much on prevention and early intervention.

Conclusion: - India is the second most populated and fastest-growing country in the world. The present legislation .i.e. Mental Health Care Act (MHA), 2017 is very much advanced legislation dealing with mental health issues which include much sensible patient-centric health care. But, on the other hand, without the strict implementation of this law, these are just provisions. Hence, the Government has to take the necessary step for its proper implementations mentally retarded person.

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