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LEGISLATION RELATED TO PERSONS SUFFERING FROM MENTAL ILLNESS IN INDIA

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Abstract: *India is a developing country with democratic and civil society which still faces the problem of exploitation, injustice, violence of right or social exclusion towards marginalized & vulnerable groups such as child, women, SC/ST/OBC, disable person. To protect these groups various policies, laws, programmers have been established by state and central government. But person suffering from mental illness were scant included in these vulnerable groups. The person suffering from mental illness are particularly vulnerable to abuse and violation of their rights. They can be susceptible to abuse by anyone in society including family members, spouses, caregivers, professionals, friends, fellow citizens and even law enforcing agencies if protective system for them is not available. Therefore legislation play important role in ensuring appropriate, adequate, timely and humane health care services and protection of human rights. The paper focused with the evolution of Indian legal system in relation to mental health and right given to the mentally ill person in proposed act that is Mental Health Care Bill 2013.*

Keywords: *Mental Health Act, Mental Health Legislation, Mentally Ill Person*

INTRODUCTION

Since the rise of civilization, the human society hence had been shifting from one to another paradigm. Follow with the charitable, philanthropic, welfare, and humanitarian approaches. But the person suffering from mental illness has been not included in the main stream or in front row of any programmer, policy, scheme, legislation during upliftment of human society. There are many right and acts regarding the care and protection of vulnerable groups

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such as child, women, SC/ST/OBC, disable person in India but a few in contexts with the person suffering from mental illness.

The concept of mental illness, the treatment of the person suffering from mental illness and the laws related to them, having dynamic relationship between each other (Nambi cited in Narayan, & Deepshikha, 2013). Agrawal said in the article –"Mental health and law" that the primarily concerned of psychiatrist is with the diagnosis and treatment of mental disorders and the welfare of the patient & his/her family where as the court is concerned focused on determination of competency, dangerousness, diminished responsibility and the welfare of society (Narayan, & Deepshikha, 2013).

The mental health policy's framework must include legislation for protection of the basic human and civil rights of people suffering from mental illness. In world, only 135 countries which represented only 69% of the world's population have laws related about mental health whereas the rest do not have specific legal protection for person suffering from mental illness (Saxena, Thornicroft, Knapp, & Whiteford, 2007). It is note that discrimination against person suffering from mental illness is prevalent from time to time and can be physical or psychological from which can be formal or informal and codified in legislations (Saxena, *et al.*, 2007; Gadit, 2008). Most of countries have policy regarding disability benefits for person suffering from mental illness but only 41 (22%) of countries worldwide and 26 (45%) of low-income countries, specifically exclude mentally ill person from such provision (Saxena, *et al.*, 2007). In countries like USA, some European countries, and China, there are exclusion of mental disorders from some social and private insurance schemes for health care (Saxena, *et al.*, 2007).

Therefore most of the earlier legislations in respect of the person suffering from mental illness were not concerned with the person's right but it is changing with time span in world as well as in India.

Indian legal system related to person suffering from mental illness: Scenario

In India the historical evolution of laws related to the person suffering from mental illness, say that at ancient times the religious

prescriptions and philosophical discourse were consider as law to regulate the persons in the society (Narayan, & Deepshikha, 2013). The Hindu scriptures and texts such as Arthashastra and Manusmriti were considered authoritative legal guidance for nature of government, law, civil and criminal court systems, ethics, economics, markets and trade, diplomacy, theories on war, nature of peace, and the duties and obligations of a ruling king and its territory (Narayan, & Deepshikha, 2013). They also explores issues of social welfare, the collective ethics that hold a society together, guiding the king that in times and in areas devastated by famine, epidemic and war. The rights of the person suffering from mental illness were received scant care and concern from community because of their unproductive value in the socioeconomic value system (Gautam, Jain, Batra, Sharma, & Munshi, n.d.). They were labeled as "pagal", "bhoot", "god's devil", "witches", "insane" etc (Parkar, Dawani, & Apte, 2001) and were consider dangerous, (untouchable) violent and need to be secluded from main stream of society.

Under British Empire, many different laws by ruling kings of various past of India were replaced by the common law which result in the present judicial system of the country derives largely from the British system and the roots of most of the legislations related to the person suffering from mental illness (Narayan, & Deepshikha, 2013).

In rapid sequence a number of laws were enacted by British Empire in 1858 in India as follow

- 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

These acts of 1858 formed legalistic frame and guiding principle for establishment of mental asylums and procedure for management of the person suffering from mental illness (Narayan, & Deepshikha, 2013). These acts gave emphasize to segregate those persons who

by reason of insanity were considered as troublesome and dangerous to their neighbors. Therefore the asylums then constructed for detention and not for treatment purpose (Sharma, 1990). The people suffering from mental illness were given no right and been abused and exploited.

The Indian Lunacy Act, 1912

With begin of the 20th century; there is shift in mental health care approach from charity/moral treatment to mental hygiene with scientific orientation. The reformers and philanthropist who are working in field of mental health care created the public awareness and resentment about the pathetic conditions of mental asylums in India (Banerjee, 2001).As a result, the Indian Lunacy Act, 1912 was enacted. This act play important role in the destiny of Psychiatry in India (Somasundaram citied in Narayan, & Deepshikha, 2013).

The main feature of the act of 1912 were that "lunatic asylums" named is change into mental hospitals, which were regulated and supervised by a central authority (Narayan, & Deepshikha, 2013; Banerjee, 2001; Sharma, 1990). Their procedure of admission and certification was clearly defined. The provision of voluntary admission for the person suffering from mental illness was introduced (Narayan, & Deepshikha, 2013; Banerjee, 2001). It recognized the need of specialized medical teams such as psychiatrists and were appointed as full time officers in these hospitals for treatment purposes (Narayan, & Deepshikha, 2013; Banerjee, 2001). Still, the main concern of act was on preventing the society from dangerousness of mentally ills and taking care that more attention to increase the legal safeguard against wrongful detention of person and proposed rigorous criteria for certification of the mentally ill which gave the framework of "custodial care approach" in India (Narayan, & Deepshikha, 2013; Narayan, & Jaiswal, 2011; Banerjee, 2001). The act ensured a superseding paramount power of the magistrate in the certification process and highlighting the clinical approach which essentially was overshadow by a legalistic approach (Banerjee, 2001).

The Mental Health Act, 1987

There was shift in paradigm concerning the mental health care and attributed to these factors: the strides made in psychopharmacology; with the discovery of new classes of drugs; and the human rights movement (Bali, 2003). The Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948 and efforts to incorporate the mental component into the concept of health, leaded by the World Health Organisation (Bali, 2003).

The "Bhore Committee" report says that 'the majority of mental hospitals in India are quite out of date, and are designed for detention and safe custody without regards for curative treatment' and the Indian Lunacy Act of 1912 had outlived its utility (Banerjee, 2001). After independence, the Indian Psychiatric Society took a lead and submitted a draft Mental Health Bill in 1950. Mental Health Act was finally enacted in 1987 after a long and stretched course. Thereafter after framing of the Mental Health Rules in 1990, it was finally notified to come into force in all the States and Union Territories only on April 1, 1993(Narayan, & Jaiswal, 2011). Main features of the Act of 1987 are as follows (Narayan, & Deepshikha, 2013; Trivedi, n.d.)

- To define "mental illness" and change offensive terminologies of Indian Lunacy act to new ones
- To establish Central and State Mental Health Authority to regulate power in licensing, controlling and supervising the psychiatric hospitals/nursing homes and to advise Central/ State Governments on Mental Health matters
- To provide for the custody of the person suffering from mental illness who are unable to look after themselves and are dangerous for themselves and others
- To regulate procedure of admission and discharge of the person suffering from mental illness to the psychiatric hospitals or nursing homes either on voluntary basis or on request (reception order)
- To protect the human rights of these detained individuals
- To protect citizens from being detained unnecessarily

- To provide for the maintenance charges of the person suffering from mental illness undergoing treatment in such hospitals
- To provide legal aid to poor mentally ill criminals at state expenses
- Role of Police and Magistrate to deal with cases of wandering and cruelly treatment of the person suffering from mental illness
- Provisions of penalties in case of breach of provisions of the Act

This act is social welfare measure which provides relief from the obsolete and anarchic Indian Lunacy Act of 1912 to the person suffering from mental illness and professionals who are working in mental health field (Trivedi, n.d.). Even though having many positive features, the act has many weaknesses and inadequate in providing mental health care & protection services in India such as did not promote community-based mental health care; widespread access to mental health services or integrates mental health care into primary health care network. (Rastogi, 2005 cited in Trivedi, n.d.). The act also never is implemented properly due to large number of very complicated procedures, defects and absurdities in it (Dutt, 2001 cited in Narayan & Jaiswal, 2011 & Narayan, & Deepshikha, 2013).

Critical aspects of act of 1987 as a whole is highlighted by the Trivedi as follow-

1. This act doesn't implement any suggestion which are discussed in the government policy on mental health of 1978 and Mental Health Programme of 1987
2. WHO guidelines related to mental health has been ignored by this act
3. This act focused more on legal implications than medical ones
4. This act gives stress on hospital admission and treatment which further increases the cost of health care. Thus there are no provisions for home treatment and no importance given to family therapy and community psychiatry

5. Under this act, once a person is admitted to mental hospital he/she is termed insane or mad by the society. There are no provisions in the act to educate the society against these misconceptions and for punishing the relatives and officers requesting unnecessary detention of a person to such hospitals

Internationally and nationally, there are the advancement of knowledge and understanding of the nature of mental disorders and their treatment process. With the passing of various legal resolutions by UN there is a demand for amends in the Mental Health Act of 1987 so that it gives priority in protecting the rights of person suffering from mental illness, promotes development of community-based care and improves access to mental health care in India (Trivedi, n.d.). the following table shows the various resolution with year of passing and have effect on mentally ill person's rights.

Table
International Treaties, Declarations and Guidelines affirming/ reaffirming rights of persons with mental illness (Mishra citied in Nagaraja, & Murthy, 2008)

	Years
The Universal Declaration of Human Rights	1948
The International Convention on the Elimination of all forms of racial discrimination	1965
The International Convention on the Elimination of all forms of racial discrimination	1965
The International Covenant on Civil and Political Rights (ICCPR)	1966
The International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966
The Declaration on the Rights of Mentally Retarded Persons	1971
The Declaration on the Rights of Disabled Persons	1975
The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)	1979
The Convention against torture and other cruel, inhuman or degrading treatment or punishment	1984

contd. table

	Years
The Declaration on the Right to Development	1986
The Convention on the Rights of the Child	1989
International Conventions on the Protection of the Rights of all Migrant Workers and members of their families	1990
The Declaration of Caracas	1990
UN Principles for the protection of persons with mental illness and improvement of mental health care	1991
The Declaration of Madrid	1996
The WHO Technical Standards (Mental Health Care Law: Ten Basic Principles & Guidelines for the Promotion of Human Rights of Persons with Mental Disorders)	1996
The UN Convention on the Rights of Persons with Disabilities	2006

The UN principles for the protection of persons with mental illness and the improvement of mental health care (1991) recognise the enjoyment of the highest attainable standard of physical and mental health as the right of every human being. In 1996, WHO developed the Mental Health Care Law: Ten Basic Principles as a further interpretation of the MI Principles and as a guide to assist countries in developing mental health laws (Mishra citied in Nagaraja, & Murthy, 2008)

Mental Health Care Law: Ten Basic Principles (WHO, 1996)

1. Promotion of mental health and prevention of mental disorders
2. Access to basic mental health care
3. Mental health assessments in accordance with internationally accepted principles
4. Provision of least restrictive type of mental health care
5. Self-determination
6. Right to be assisted in the exercise of self-determination
7. Availability of review procedure
8. Automatic periodic review mechanism

9. Qualified decision-maker (acting in official capacity or surrogate)
10. Respect of the rule of law

United Nations Conventions for Rights of People with Disabilities (UNCRPD)

UNCRPD was adopted by UN in 2006 and consent by the Parliament of India in May, 2008. Therefore the state parties are required to bring their own laws and policies in harmony with the Convention. It gives the new pathway of movement in right of people with disabilities. Before this resolution they are view as "objects" of charity, medical treatment and social protection but now as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free, and informed consent as well as being active members of society (Mishra citied in Nagaraja, & Murthy, 2008).

The purpose of the UNCRPD is to promote, protect and ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity (Narayan, & Jaiswal, 2011). It covers a number of key areas such as accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, equality and non-discrimination. The convention marks a shift in thinking about disability from a social welfare concern to a human rights issue, which acknowledges that societal barriers and prejudices are themselves disabling (Narayan, & Jaiswal, 2011).

According to UNCRPD (UNCRPD, 2006)

Article 2, States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

Article 3, States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Article 4, States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests

Mental Health Care Bill 2013 (MHCB)

The process of amendment in MHA-87 was set in motion by the Ministry of Health and Family Welfare and a draft Mental Health Care Bill 2013 (MHCB) has been prepared and been passed by Rajya Sabha on August, 2016.

The person suffering from mental illness deserves the same privileges as enjoyed by any other human being expect in few cases (Gautam, *et al.,* n.d.). The stigma, the residual disability and its intolerance, and more importantly the inability of the person suffering from mental illness to protest against homelessness, incarceration and exploitation-these all made the basic human rights relating to them a reason to create the necessity and urgency to begin integrate the norms of human rights in legal system of nation (Gautam, *et al.,* n.d.).

In a country like India, mental health care is not perceived as an important aspect of public health care. Hence, mental health legislation will play a very important role in upholding the rights of the mentally ill. The primary aim of mental health legislation is to protect, promote and improve the lives and mental well-being of people. It also plays a vital role in dictating the terms and conditions of mental health care and protecting the human rights of the person suffering from mental illness (Math & Nagaraja citied in Nagaraja, & Murthy, 2008).

The **MHCB** Act to provide access to mental health care and services for persons with mental illness and to protect, promote and

fulfill the rights of persons with mental illness during the delivery of mental health care and services. (The Mental Health Care Bill, 2011-Draft)

Recognizing that

- Persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society;
- Families bear disproportionate financial, physical, mental, emotional and social burden of providing treatment and care for their relatives with mental illness;
- Persons with mental illness should be treated like other persons with health problems and the environment around them should be made conducive to facilitate recovery, rehabilitation and full participation in society;
- The Mental Health Act, 1987 has not been able to adequately protect the rights of persons with mental illness and promote access to mental health care in the country;

And in order to

- Protect, promote and fulfill the rights of persons with mental illness during the delivery of health care in institutions and in the community;
- Ensure health care, treatment and rehabilitation to persons with mental illness is provided in the least restrictive environment possible, and in a manner that does not intrudes on their rights and dignity. Community-based solutions in the vicinity of the person's usual place of residence, are preferred to institutional solutions;
- Provide treatment, care and rehabilitation to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life;
- Fulfill obligations under the Constitution of India and obligations under various International Conventions ratified by India;

- Regulate the public and private mental health sectors within a rights framework to achieve the greatest public health good;
- Improve accessibility to mental health care by mandating sufficient provision of quality public mental health services and non-discrimination in health insurance
- Establish a mental health care system integrated into all levels of general health care;
- Promote principles of equity, efficiency and active participation of all stakeholders in decision making;

The key features of the Bill (MHCB)

Rights of persons with mental illness: The chapter II (Mental Illness & Capacity to Make Mental Health Care & Treatment Decision); chapter IV (Nominated Representative); chapter V (Right of Persons with Mental Illness) of the bill state the right of persons with mental illness. Each & Every person of nation shall have the right to access standard mental health care and treatment services run or funded by the government.

The rights to accessibility, affordability, quality in relationship of mental health care and services have been ensured without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.. 'Persons with mental illness' is consider as capable human being who has right to live with dignity. S/he have the right for equality and capacity to make mental health care and treatment decision; protection from inhuman and degrading treatment, free legal services, and access to their medical records, and complain regarding deficiencies in provision of mental health care while maintaining the right to information and confidentiality also. Due to the right of community life, the persons with mental illness are not segregated from society and government provides or supports the establishment such as half-way homes or sheltered home for them.

Persons with mental illness have right of selecting representative (called as 'nominated representative') on his/her behalf who will have right of information in design the mode of treatment and decision making regarding their admission, nature of their illness and treatment plan after their admissions and the right to appeal for review of their admission and right to complain about deficiency in services to the medical officer in charge of the Mental Health Establishment or to the State Mental Health Authority or to that Mental Health Review Board.

Advance Directive: The chapter III (Advance Directive) deals with it. It is new concept in medical health care practice especially in mental health field. It gave the person with mentally illness, right of decision; right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.

'Advance Directive' is kind of 'will' of person with mentally illness in regard to guidelines for his/her treatment process. A mentally ill person shall have the right to make an advance directive that states how s/he wants to be cared for and treated for the illness or not during a mental health situation and who his nominated representative shall be. The advance directive has to be certified by a medical practitioner or registered with the Mental Health Board. If a mental health professional/ relative/caregiver does not wish to follow the directive while treating the person, he can make an application to the Mental Health Board to review/alter/cancel the advance directive.

Central and State Mental Health Authority: The chapter VII (Central Mental Health Authority) & VIII (State Mental Health Authority) deals with it. These are administrative bodies are required to (a) register, supervise and maintain a register of all mental health establishments, (b) develop quality and service provision norms for such establishments, (c) maintain a register of mental health professionals, (d) train law enforcement officials and mental health professionals on the provisions of the Act, (e) receive complaints about deficiencies in provision of services, and (f) advise the government on matters relating to mental health.

Mental Health Establishments: The chapter X (Mental Health Establishments) deals with it. Every mental health establishment has to be registered with the relevant Central or State Mental Health Authority. In order to be registered, the establishment has to fulfill various criteria prescribed in the Bill. The Bill also specifies the process and procedure to be followed for admission, treatment and discharge of the persons with mental illness. Inspection and inquiry of the mental health establishment should done by board periodically.

A decision to be admitted in a mental health establishment shall, as far as possible, be made by the person with the mental illness except when he is unable to make an independent decision or conditions exist to make a supported admission unavoidable.

Mental Health Review Commission and Board: The chapter XI (Mental Health Review Commission) deals with it. The Mental Health Review Commission will be a quasi judicial body that will periodically review the use of and the procedure for making advance directives and advice the government on protection of the rights of person with mental illness. The Commission shall with the concurrence of the state governments, constitute Mental Health Review Boards in the districts of a state. Powers and functions of Commission are (a) appoint and remove members of the Board; (b) give guidance to the Board on interpretation of the provisions of this Act and the procedures to be followed by the Board; (c) review periodically the use of advance directives and make regulations with regard to the procedure for advance directive; (d) advise the Central Government on matters relating to the promotion and protection of rights of persons with mental illness.

The Board will have the power to (a) register, review/alter/ cancel an advance directive, (b) appoint a nominated representative, (c) adjudicate complaints regarding deficiencies in care and services, (d) receive and decide application from a person with mental illness/ his nominated representative/any other interested person against the decision of medical officer or psychiatrists in charge of a mental health establishment.

Prohibiting electroconvulsive therapy: The section no. (104) of bill give guidelines regarding to electroconvulsive therapy. It can be allowed only with the use of muscle relaxants and anesthesia. This therapy is prohibited for minors.

Decriminalising suicide: The section no. (124) of bill state regards to presumption of mental illness in case of attempt to commit suicide by person. A person who attempts suicide shall be presumed to be suffering from mental illness at that time and will not be punished under the Indian Penal Code section 309 unless proved otherwise. The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having mental illness and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

CONCLUSION

The Mental Health Care Bill is a revolution in healthcare services in our country. Its paradigm is based on presumption of legal capacity, equality and dignity to the person suffering from/ with mental illness. There is disagreement between the human right activists groups who are pressing for provisions for legal capacity for persons with mental illness in absolute terms, whereas the psychiatrists are in favor of retaining provisions for involuntary hospitalization in special circumstances. We will have to see the results when this bill being implemented in country and how efficient and effective it is.

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