

Legal Welfare Provisions of Patients Suffering from Mind & Behavioral Problems

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Abstract

Legal Welfare Provisions and Human Rights are important components in the implementation of mental health care. Legislation is an expression of society with regard to the way it views and cares for mentally ill individuals. It has long been known that there is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the Law. Mentally ill persons are vulnerable and require protections and access to treatment programmes, significant degree of choice and respect for autonomy. Though there are several laws, these laws are not able to protect the rights of the mentally ill and people with disabilities. This paper is emphasized on the Legal Welfare Provisions of Patients Suffering from Mind & Behavioral Problems. We described the different Legal Welfare Provisions, their importance for the welfare of mentally ill and also emphasized on the drawback of them.

Key Words: Legal Rights, Welfare Provisions and Psychiatric Patients

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I. INTRODUCTION

Human Rights can be briefly defined as those preconditions for the good life of mankind, which are legitimized as such by the state mechanism. Rights are generally categorized under two headings: Legal rights and Human rights. Legal rights are those privileges enjoyed by citizens whom the state recognizes and legitimates through the mechanism of legal code. Legal rights are of two kinds: Civil and Political. Civil rights are those privileges in the absence of which one cannot enjoy a decent civic life. It is essential for a civilized society. Political rights are recognized and guaranteed by the law of the state. Human rights on the hands are basically the claims of the individual for the fullest realization of the innate characteristics which nature has bestowed him or her with as a human being. In other words, these rights are universal moral rights available to everybody irrespective of his or her gender, race, colour, language, national origin, age class, religion or creed. Human Rights are those rights which every person is inherent with, just because of his or her human status. No one can take away the human right or ideally not to be taken away because they are a part of human society. Human Rights are inseparable from science and social work theories, values and ethics and practice. Most of the Fundamental Rights are thus falling under the human right which also includes economic, social and cultural rights. Legislation forms an important component in the implementation of mental healthcare. Legislation is an expression of society with regard to the way it views and cares for mentally ill individuals. It has long been known that there is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the Law.

According to Maurice Cranston, there are three criteria of human rights, to ascertain whether a particular right is a human right or not. These criteria are universality, practicality and paramount importance. Cranston established the fact rather than social rights, the traditional civil and political liberties meet the three criteria.

The subsequent landmark events related to human rights were the American Declaration of Independence (1776), French Declaration of Rights of Man (1789), The Bolshevik Revolution in Russia (1917), Universal Declaration of Human Rights (1948), European Convention on Human Rights (1950), International Convention of Civil and Political Rights (1966), the 'Helsinki' Accords (1975) etc.

All human beings are born free and equal in dignity and rights (Article 1, 1948). The Universal declaration of Human Rights says so. Dignity without choice is meaningless; and the choice should be ours. But the fact reveals that the choice is not really left to us. So is the case of mentally ill persons. Everyone should be entitled to all rights and freedom without distinction of any kind. Merely a disease can't snatch away right of a human being.

Common Human Right for Indian Citizens:

India is a developing country and also is a welfare state and the Constitution of India 1956, described the basic Fundamental Human right to Indian Citizens. These rights are given in Chapter No III- Fundamental Human Rights:

- **Right to Equality (Art. 14-18)**
 - Art 14- Equality before Law
 - Art 15- Prohibition of discrimination on ground of religion, caste, sex or place or birth
 - Art 16- Equality of opportunity in matter of Public Employment
 - Art 17- Abolition of Untouchability.
 - Art 18- Abolition of titles
- **Right to Freedom (Art. 19-22)**
 - Art 19- Protection of certain rights regarding freedom of speech, etc.
 - Art 20- Protection in respect on conviction for offences
 - Art 21- Protection of life and personal liberty
 - Art 21 (A) - Right to Education.
 - Art 22- Protection against arrest and detention in certain cases
- **Right Against Exploitation (Art. 23-24)**
- **Right to Freedom of Religion (Art. 25-28)**
- **Cultural & Education Rights (Art 29-30)**

Evolution of the Human Rights in Psychiatric Care : The Humanitarian Reform

In the Middle Ages, 'madness' was seen as a manifestation of possession by the devil or evil spirits, hereby or some form of immorality. The 16th and 17th centuries saw large-scale institutionalization of those considered lunatics. In the early asylums or hospitals, the inmates were treated cruelly. The other people of the society had dealt with them with utter inhuman attitudes. Humanitarian reform of the mental hospital and 'moral treatments' of the mentally ill received its first great impetus from work of Psychiatrist Philippe Pinel (1745-1826) in France. He transformed the custodial care system somehow and thought to use the environment of the hospital in a benevolent way to cure the patients (Ridgway, 1997). Consequently, in England a layman & Quaker named John Tuke also tried to develop the healthy and supportive environment in the hospitals.

In United States, this humane treatment of mental patients was reflected in the work of Benjamin Rush (1745-1813), the founder of American Psychiatry. An energetic New England schoolteacher named Dorothea Dix (1802-1897) followed his early work of reformation. In modern era, notable work was done by Maxwell Jones (1945) after World War II. His' theme was that of transformation of hospital staffs into therapeutic communities to supporting the patients.

In ancient India the mentally ill were accepted as the part of the society and they were cared for in various temples and religious institutions. Attempts were made to segregate the mentally ill towards the middle and latter part of the 19th century. They were kept confined in forsaken stables, barracks and prisons, left to the care of keepers and rods. Lunatic asylums were entirely a British concept. Two landmarks during that time were the passing of Indian lunacy act (1912). In 1922 lunatic asylums began to be called 'Mental Hospitals'.

International Human Rights to Psychiatric Patients in Mental Health Field by UN Convention:

The human rights of Psychiatric patients have to be considered against the following development

(A) Fundamental Freedom and basic Rights of Psychiatric Patients:

This has been developed fully in the United Nations principle for protection of person with mental illness, 1991 as given below:

A1: Fundamental freedom and basic rights:

- All persons with a mental illness have the right
- To the best available mental health care,
- To be treated with humanity and respect,
- To protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.
- Not to be discriminated on the grounds of mental illness.
- "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights.
- To exercise all civil, political, economic, social and cultural rights as recognized in the universal declaration of human rights.
- If a person lacks legal capacity due to mental illness, a person's appointed and any decision shall be made only after a fair hearing impartial tribunal established by domestic law.
- Where a court or competent tribunal find that a person with a mental illness is unable to manage his or her own affairs, necessary measures shall be taken, to ensure the protection of his or her interest.

A 2: Protection of minors to protect the rights of minors

A 3: Life in the community: Every person with a mental illness shall have the right to live and work, to the extent possible, in the community.

A 4: Determination of mental illness (present or future) shall.

- Be made in accordance with internationally accepted medical standards.
- Never be made on the basis of political, economic or social status and
- Beliefs prevailing in a person's community, and background of past treatment or hospitalization

A 5: Medical examination: No persons are compelled to undergo medical examination to determine whether or not he or she has mental illness except according to a procedure authorized by domestic law.

A 6: Confidentiality: rights of Confidentiality of information concerning all persons to whom the present principles apply shall be respected.

A 7: Role of community and culture:

Every patient shall have the right to

- Be treated and cared for in the community in which he or she lives.
- Be treated near his or her relatives or friends when treatment takes place in a mental health facility and
- To return to the community as soon as possible.
- Treatment suited to his or her cultural background.

B) Standards of care:

This is the next aspect of human right. The Standards of care refer to i) treatment ii) consent to treatment iii) conditions in mental health iv) Resources for mental health

B 1: Standards of care: Every patient shall have the right to receive health and social care appropriate to his or her health needs. This include no harm, unjustified medication, abuse by other patients, staff or other acts causing mental distress or discomfort.

B 2: Treatment:

- Every patient shall have the right
- To be treated in or with the least restrictive or intrusive environment and treatment appropriate to the patient's health needs and the need to protect the physical safety of others.
- To be treated and taken care of based on a individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
- To be provided mental health care in accordance with applicable standards of ethics for mental health practitioners.
- That treatment shall be directed towards preserving and enhancing personal autonomy.

B 3: Medication: Medication shall

- Meet the best health needs of the patient.
- Shall be given to a patient only for therapeutic or diagnostic purposes.

- Never be administered as a punishment or for the convenience of others.
- Be prescribed by a authorized mental health practitioner.
- be recorded in the patient's record

B 4: Consent to treatment

- Will include informed consent and provide sufficient information on
- Diagnostic assessment
- Purpose, method, likely duration and expected benefit and risk of procedure /treatment
- Alternative modes of treatment; and their benefit and risk
- Benefit and risk of 'no treatment'
- Patient has the right to refuse or stop treatment
- Patient shall never be invited or induced to waive the right to informed consent.
- Physical restrain or involuntary seclusion of a patient shall not be employed unless required to prevent harm o the patient or others.
- Sterilization shall never be carried out
- Psychosurgery and other intrusive and irreversible treatment for mental illness shall never be carried out on an involuntary patient in a mental health facility.

C) Review procedure for admitted patients- the need comes from the recognition of the possibility of involuntary admission and the need for safeguards to prevent misuse

C 1: Notice of rights: Patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language, which the patient understands of all his or her rights.

C 4: Rights and conditions in mental health facilities will stress on full respect of mentally ill person's-
a) Recognition as a person before the law; b) privacy; c) freedom of communication; and d) freedom of religion or belief. Similarly there will be adequate a) facilities for recreation; b) facilities for, c) facilities to purchase, d) facilities for entertainment, e) they should not be subjected to forced labour, and f) labour of a patient in a mental health facility shall not be exploited.

C 5: Recourses for mental health facilities will have access to the same level of resources as any other health establishment, and in particular appropriate professional care, equipment, supplies of medication, etc.

D) Admission and discharge procedures: Application of proper procedure and the implementation of the admission and discharge procedure of mental patient to hospital can ensure human rights. This also includes process for involuntary admission. Aspects of these are:

D 1: Admission principles: Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission and

D 2: Involuntary admission will be allowed only if there is a serious likelihood of immediate or imminent harm to that person or to other persons and only for short period

D 3: Review body: There shall be a judicial or other independent and impartial body established by domestic law to have a review body which will periodically review the case of involuntary patients

D 4: Procedural safeguards:: The patients shall be entitled to choose and appoint a counsel to represent the patient as such including presentation in any complaint procedure or appeal.

D 5: Access to information: A patient shall be entitled to have access to the information concerning his or her health and personal records maintained by a mental health facility.

D 6: Criminal offender: This principle applies to persons serving sentences of imprisonment for Criminal offences, or who are detained in the course of criminal proceedings or investigations against them

Indian Legislation for Psychiatric Patients :

Human right is a neglected issue in third world countries and human rights of mentally are the most neglected one. A glaring example is the horrific incidence at Erwadi in our country, in which 26 persons with mental illness died in a tragic fire accident on 6th August, 2001. Erwadi is a small village in Tamilnadu where several mentally ill were chained and shackled in a dargah (Mosque) without any medical treatment. This is an

instance of severe violation of human rights which is an eye opener focusing the need for organized mental health care in the country.

1) Indian Lunacy Act, 1912:

The Indian laws related to mental disorders were based on British Acts. For example Indian Lunacy Act (ILA), Act 4 of 1912, was based largely on the earlier English Lunacy Act of 1880 and repealed the existing Indian Lunatic Asylums Act. The ILA had 8 chapters. Chapter 1 defined a lunatic as an Idiot or person of unsound mind. In 1950 three eminent psychiatrist appointed by Indian Psychiatric Society prepared a draft "Indian Mental Health Act" and forwarded it to Govt. of India. There was no act taken on the draft for next ten years. In 1987 it was passed by Rajya Sabha in November 1986.

2) Integration of Mental Health with Primary Health Care (1975) :

The most striking aspect of mental health care initiatives, of the last 2 decades, is the community based mental health care. Following the initial efforts at Chandigarh and Bangalore (1975-1981), models of mental health care relevant to population units of 1-2 million have been developed.

Bellary District Mental health project requires special mention. As a pari of this effort, manual of Mental Health of different categories of health personnel, simple recording system, training videos, assessment forms and public education materials have been developed.

3) National Mental Health Program (NMHP) of India (1982):

The change in health policy from a vertical program to programs involving the community resulted in the National Health Policy of the Government of India in 1983 with a thrust towards primary health care, decentralization of services and primary, secondary and tertiary prevention initiatives, including rehabilitation. The inadequate care in mental hospitals and the concerns of professional bodies resulted in the adoption of the National Mental Health Policy (NMHP) by the central council of health in 1982. The formulation of NMHP was a milestone in the history of mental health care.

The main objectives of the NMHP are:

- a) To ensure availability and accessibility of minimum health care for all in the foreseeable, future, particularly to the most vulnerable and unprivileged sections of the population.
- b) To encourage application of mental health knowledge in general health care and social development.
- c) To promote community participation in the mental health service development and to stimulate efforts towards self help in the community.
- d) The NMHP envisaged operationalization of the program at least in one district of every state in the country within a reasonable period of time.

4) Improvement of Mental Hospital, 1982:

The other initiative, since 1984, is the judicial intervention to protect the right of the mentally ill person. These have occurred at level of court of India and the different high courts in Delhi, Ranchi, Poona, and Trivandrum. As a result standard of care in institutional setting have been identified.

5) Mental Health Act (MHA) 1987: Now The Mental Health Care Act 2017 (Revised):

The Act was enacted by Parliament to replace the Indian Lunacy act of 1912. Significant changes were incorporated in this act. The term lunatic which was considered to be pejorative was replaced by the term 'Mentally Ill person'. The act provides for the establishing authorities in mental health at the Central and the State level to regulate and oversee the management and treatment of mentally ill. In 1987, the Mental Health Act was enacted and became law in 1990, and came into force in all states and Union Territories on 1st April, 1993. Further The Mental Health Care Act 2017 was passed on 7 April 2017 and came into force from July 7, 2018. The law was described in its opening paragraph as "An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto. "This Act superseded the previously existing the Mental Health Act, 1987 that was passed on 22 May 1987.

6) Restriction on Jailing of Mentally ill Persons:

The Supreme Court passed a historic judgment on 18th August, 1993 that 'admission of non-criminal mentally ill persons to jails is illegal and unconstitutional'. The mental health professionals had been demanding for the abolition of the practice of admitting mentally ill into the jails for many decades.

7) Mental Illness & Criminal Responsibility:

According to the code of criminal (CrPC) 1973, the committal proceeding or trial of a person who is incapable of defending himself due to unsound of mind may be in capacitated due to unsoundness of mind in not denied basic human right to a fair trial and arbitrarily deprived of personal liberty. However, critics say this benefit is a double-edged sword. It may ideally aid the trial of the accused, but in reality may indefinitely postponed trial and result in lifelong incarceration in safe custody of mental hospital or jail without right to treatment.

Other Social Provisions:

- ✓ **Mental illness and Marriage and Divorce:** Under the Hindu Marriage Act, 1955, a marriage with a person who is an idiot or a lunatic at the time of marriage, can be declared as null and void on application.
- ✓ **Judicial separation:** If lunacy starts after marriage and continues for two years, even with treatment, the other party can apply for legal separation.
- ✓ **Divorce:** Divorce can be decreed if the other party has been incurably of unsound mind for a continuous period of at least three years. But the other party has to pay for the maintenance of the lunatic.
- ✓ **The Special Marriage Act 1954:** Applicable to persons from any religion undergoing a civil marriage. Have provisions similar to the Hindu Marriage Act except that a marriage under the Special Marriage Act is valid.
- ✓ **Muslim Law:** A person of unsound mind cannot a marriage and such a marriage if contracted is void. However, if the guardian of the person of unsound mind considers such marriage to be in his interest and in the interest of society and is willing to take up all the monetary obligations of the marriage, then such a marriage, than such a marriage can be performed.

To the extent that law either prevents the initiation or contributes to the breakdown of the marriage of a person with mental illness, it hampers normal living (Zawadsky, 1979). Studies by Vergehesse and Beig ("1974), Prabhu (1975) and Malhotra et.al. (1981) have found marital relationship most affected by the stigma of mental illness.

Unsoundness of mind is not only a disqualification for marriage as a ground for divorce and judicial separation. The ground is available under all personal law except Christian law. Christian law does not permit this ground given the Sacramental nature of a Christian marriage wherein the spouses are intended to live together in health and sickness.

- ✓ **Before 1976, Hindu Marriage Act and Special Marriage Act:** Respondent has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition.
- ✓ **Suicide and law:**

India is probably the only country in the world to punish its citizen who attempts to commit suicide under section 309 of Indian Penal Code. The punishment (imprisonment for 1 year or with fine or both) though mild, but the stigma attached to a person having been prosecuted and convicted for an offence is too serious. As per the law, it tries to prevent a person taking his own life by punishing him as such act should not be allowed since life itself is precious to the community.
- ✓ **Property Rights of Persons with Psychiatric Disorder**

Persons of unsound mind cannot acquire property through executor contracts but through executed contracts, beneficiary of a gift of a property. Such a person can be a legatee under a will, though neither probate nor letters of administration can be obtained by his/ her.

Under the **Transfer of property Act, 1882** (Section 7) only persons competent to contract, are authorized to transfer property.

A mentally ill person is divested from the right to manage his property only subsequent to a judicial inquisition determining unsoundness of mind and the consequent incapacity. The dichotomy of

ownership and management can be resolved by putting the property in a trust with the permission of civil court.

✓ **Political Rights of Psychiatric Patients**

The Indian constitution does not permit a person with mental illness to exercise his or her role to political right to vote and right to stand for election (The Representation of People Act (RPA) 1950 and 1951).

II. CONCLUSION:

As per report of National Human Right Commission of India, there are instances of violations of Human Rights of Mentally Ill in different countries as well as in India. A better infrastructure of awareness and education regarding human rights of those working with mentally ill and in disabled settings, strict supervision by the govt. and an increase in the number of mental health professional would improve the situation. Only by doing so, there is some hope of reaching closed to the realistic goal of protection of human rights of mentally ill in this country

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