

MENTALLY AFFLICTED PERSONS: HUMAN RIGHTS ABUSE AND LAW

Dr. Veena

*Assistant Professor, Faculty of Law, Icfai Foundation for Higher Education (IFHE),
Hyderabad, State of Telangana, India*

Abstract: Article 21 of India Constitution articulates for the 'right to life', i.e. right to live with dignity. The Human Right Conventions argues for the protection of human rights which include the right to life, liberty and security of persons and live with dignity without any discrimination. Article 5 of Human Right Declaration 1948 advocates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. But, in reality, the mentally afflicted persons are treated inhumanly by keeping them in secluded places and jails. They are tied-up, beaten, reprimanded, isolated and ultimately human rights are dissolved. They are treated worse than that of the animals. The incident that took place at Erwadi (Tamilnadu) is a living example of heights of ill treatments and abuse of human rights of the mentally disabled people. The Courts have issued guidelines and directed the state and central governments to pay utmost care in protecting and disposing the mentally ill people in hospitals. The Mental Health Act 1987 is one of the exhaustive legislation in India against all previous legislations. It has provided norms and standards for treatment of mentally ill people in psychiatric hospitals. Even then, there is no improvement. The UNHCR and World Health Organization made guidelines for improvement of the mentally disabled persons. The 'Convention on the Rights of Persons with Disabilities, (CRPD) passed by the UN General Assembly in 2006 has laid down certain principles for the protection of the human rights of inmates of psychiatric hospitals and mentally ill people. Based upon the aforesaid recommendations, India has passed a legislation 'Mental Health Care Act in 2016. It incorporated many provisions and principles laid down by the UN General Assembly and CRPD. In addition to the appropriate legislation, there is a need for involvement and commitment of the people serving the cause for effective implementation of the provisions of the law and protecting the human rights of the mentally afflicted people.

Keywords: mental illness, sexual abuses, human rights, World health organization.

Introduction: Article 21 of Indian Constitution envisages the 'right to life'. The right to life has a wider meaning than living physically. It means 'something more than mere animal existence and the inhibition against the deprivation of life extends to all those entire limits and facilities by which life is enjoyed.' Thus, every individual has a right to live in the society without any discrimination with dignity and 'are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.'² Article 1 of the Universal Declaration of Human Rights 1948 states that, 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brother hood'. Article 3 advocates for 'right to life, liberty and security of persons'. Article 5 of the Declaration states that, 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.

Mentally Afflicted Persons and Treatments: Mental health is one of the important elements of health services in India and abroad. According to available unauthorized information nearly 10% of Indian population is suffering from mental disorders. Mental disorders are sicknesses of the mind like any other physical diseases and are also curable by proper diagnosis and treatment. The treatment to the mentally afflicted persons is different from that of physically sick people, Many times they are kept in jails instead of the hospitals for treatments. Though they are not the criminals, they are considered as lunatic non-criminals and kept under special custody.

Unlike the treatment to the people with physical diseases, the people with mental disorders are treated inhumanly at different isolated and secluded places, generally known as mental hospital, away from other class of patients. Human Rights commissions found 'appalling and unacceptable' conditions when they visited several psychiatric hospitals in Central America and India during the last five years. Similar conditions exist in many other psychiatric hospitals in other regions, in both industrialized and developing countries. In some countries, the basic human rights of people with mental illnesses are not realized, often in the institutions designed to care for them--the psychiatric hospitals.^{3"} They include filthy living conditions, leaking roofs, overflowing toilets, eroded floors, and broken doors and windows. Most of the patients visited were kept in pyjamas or naked. Some were penned into small areas of residential wards where they were left to sit, pace, or lie on the concrete floor all day y many patients were observed tied to beds ... Many a times the mentally ill people during the treatment, they are not considered as human beings. They are tied-up, beaten, reprimanded, isolated and ultimately human rights are dissolved. They are dead for the society. Irrespective of causes and status of the mental illness, the alleged people suffer from cruel treatment.

Mentally Afflicted Persons and Human Right Abuse: Though the Indian Constitution granted the fundamental rights and Human Rights Conventions have articulates equal rights for the people, irrespective of their status and nature of their living and health conditions, at every stage during the treatment in the mental hospitals, their human rights are violated and infringed. They are not treated basically as human beings. They are being handled worse than the animals. They are chained, tied-up, beaten, reprimanded, isolated and treated at secluded places, away from their near and dear. Most of them are considered as danger to the society and precluded from the access of common people. Their freedom is taken away. Special permission is required to meet them. Special magistrates' orders are required to discharge them from hospitals after the completion of treatment. Nobody pays attention to the statements or the requests of the patients. The state of human rights abuse in psychiatric hospital is not specific to one country. All most in all the countries, the abuse of human rights is noticed.

There is an unprecedented violation of human rights in case of patients suffering from mental illness. Erwadi aslymsis a glaring example, but a similar type of picture emerges in almost all hospitals, asylums, nursing homes, irrespective of the management whether it is a government or private. The degree of violation of human rights of mentally patients has the similar note in all most of all places of the world including in the so called developed countries also. The living conditions of the patients are below the minimum standards. There is no proper place with good air and hygienic conditions. Instead most of the patients are placed in a limited area leaving them adjust with resources available therein. In many cases no proper shelter, food and clothing are being provided which are considered as the basic needs for living. On number of occasions, under the disguise of mental insanity, people are placed in the mental asylums and psychiatric homes, for political, social and economic reasons. Number of times the psychiatry is abused in all most all countries of the world. The freedom of people was curtailed. For a long time during the stay of the mental patients in the hospitals, no diagnosis is carried. No proper medication is provided. No regular checkup is conducted. Access to medical facilities and doctors is far away. No separate places for male and women are allotted on number of occasions. There are complaints against the sexual abuses of patients. The patients are being subjected to brutal beatings, cruel handling, and inhuman approaches during the treatment period.

The unprecedented tragedy that occurred in the early hours of 6th August 2001at Moideen Badusha Mental Home at Erwadi, a fishermen village near Ramanathapuram town in southern Tamilnadu in which 28 unfortunate mental patients were burnt live is a climax of violation of human rights. It was the most heinous incident of the century. The victims were 'mentally challenged and physically shackled'. The cause of fire was identified as the overturning of kerosene lamp in the hut where the mentally ill inmates were chained and shackled. The tragedy brought various issues into the light relating to the treatment of the mental patients and the way their rights were violated.

The National Human Rights Commission (NHRC), India report states that 38% of the hospitals they served still retained jail-like structures, and patients were referred to as inmates; less than half the

hospitals had clinical psychologists and psychiatric social workers, and less than one-fourth had psychiatric nurses; 80% did not even have routine blood and urine tests available; floor beds were a common occurrence; and less than half the hospitals provided patients with any privacy. The NHRC concluded that there were so many deficiencies in the government psychiatric hospitals "that the rights of the mentally ill are grossly violated in mental hospitals."⁴

Mentally Ill and Human Rights Protection Law: In India the Mental Health Act 1987, (here-in-after referred as the Act), was enacted as 14th Act of 1987 repealing the existing legislations such as Indian Lunacy Act, 1912 (4 of 1912), and the Lunacy Act, 1977 (Jammu and Kashmir Act 25 of 1977). The Act was succeeded by the Persons with Disabilities Act 1995 focusing on the equal opportunities, protection of rights and full participation of disabled persons including the mentally ill persons. The previous Act and the present Act provides for the protection of mentally ill persons from the cruel treatment, either during the treatment or after the treatment. The patients should be protected from using them for medical research without written permission from them or otherwise beneficial to them. The objective and purpose statement annexed to the Act reflects the positive attitude of the government towards the unfortunate persons and it further states that the purpose of the Act is to treat mentally ill persons like any sick persons and expose them to normal and natural environment which helps them to recoup. But, inherently it explodes the rancour it has towards them. The ill-fated persons are considered as violent and danger to themselves and others. They are treated with a presumption that they cause harm to others if they are allowed free. They are kept in separate hospitals away from their near and dear unlike other patients. The law also provides for regulated admissions, detention and discharge of the mentally afflicted persons. The Act also regulates the practicing of psychiatric consultants and hospitals by granting licence to practice and establish the mental hospitals and nursing homes. At the instance of Supreme Court, and National Human Rights Commission, the Government has adopted the mental health policy initiated measures to improve the quality of treatment by allocating special budgets to the mental hospitals. Even after five years of entering into new millennium, there is not much change in the attitude of the administrators and treatment of patients.

The World Health Organization (WHO) went on to articulate ten basic principles of mental health care law in 1996, further emphasizing many of the 1991 principles, and distilling them into ten key principles:⁵

- All persons should benefit from the best possible measures to promote mental well-being and prevent mental disorders
- All persons in need should have access to basic mental health care
- Mental health assessments should be performed in accordance with internationally accepted medical principles and instruments
- All persons with mental disorders should be provided with health care which is the least restrictive possible
- Consent is needed before any type of interference with a person can occur
- If a patient experiences difficulties appreciating the implications of a decision, although not unable to decide, the patient shall benefit from the assistance of an appropriate third party of his or her choice
- There should be a review procedure for any decision made by official, surrogate or representative decision-makers and health care providers
- For decisions affecting integrity or liberty, with a long-lasting impact, there should be automatic periodical review mechanisms
- All decision-makers acting in official or surrogate capacity should be qualified to do so
- All decisions should be made in keeping with the body of law in force in the jurisdiction involved and not on any other basis, or an arbitrary basis

Based upon the provisions of the 'Convention on the Rights of Persons with Disabilities, (CRPD) passed by the UN General Assembly in 2006 contains the principles for the protection of persons with mental illness and the implement of mental health care. It states that "Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and in other

relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁶ Key principles include as follows:⁷

- All people are entitled to receive the best mental health care available and be treated with humanity and respect,
- There should be no discrimination on the grounds of mental illness. All people with mental illness have the same rights to medical and social care as others,
- Everyone with mental illnesses has the right to live, work, and receive treatment in the community, as far as possible,
- Mental health care should be based on internationally accepted ethical standards,
- Each patient's treatment plan should be reviewed regularly with the patient,
- There shall be no misuse of mental health skills and knowledge,
- Medication should meet the health needs of the patient and shall not be administered for the convenience of others or as a punishment,
- For voluntary patients, no treatment should be administered without informed consent, subject to some exceptions (e.g., patients with personal representatives empowered by law to provide consent),
- For involuntary patients, every effort should be made to inform the patient about treatment,
- Physical restraint or involuntary seclusion should be used only in accordance with official guidelines,
- Records must be kept of all treatments,
- Mental health facilities must be appropriately structured and resourced,
- An impartial review body should, in consultation with mental health practitioners, review the cases of involuntary patients.

In the light of the above guidelines, a need was felt for improved legislation to protect the interests and human rights of mentally afflicted persons. The Mental Health Act, 1987 was thoroughly examined and felt a need for a comprehensive legislation to incorporate the best practices for the betterment of the patients and to incorporate the guidelines of the international conventions. As such in 2013 the Mental Health Care Bill 2013 was introduced to the Rajya Sabha in August 2013 and following 134 official amendments, passed in August 2016. It has prompted for mental health legislation which play a key role in protecting the rights of the mentally ill, ensuring access to care, and promoting social justice for the mentally ill, their families and careers. The Act offers much that is positive and progressive in terms of overall standards of care, revised processes for involuntary admission, and enhanced governance throughout the mental health system. In this way, this kind of legislation, although imperfect, promotes the principles enshrined in the CRPD, true to the goals of such legislation and as clearly outlined in the preamble to the 2013 Bill.

The Judicial Activism: The Supreme Court of India in the Public Interest Litigation relating to the Erwadi fire accident directed the governments to maintain the healthy environments for mentally challenged persons and directed to undertake the survey of existing psychiatric hospital conditions and abuse of the rights of the inpatients. It also directed to bring awareness about the rights of patients under treatment in such hospitals, define minimum standards to be maintained in the hospitals, frame the health policies for the protections of rights of mentally ill inpatients of the hospitals. It also directed the government to provide the legal aid to the victims of human rights abuses. The Supreme Court in 'Sheela Barse Vs Union of India'⁸ has commented that many a times the children and others are treated in the jails as lunatics and treatments given as mentally retarded persons which is a gross violation of human rights. They are deprived of their liberty on the pretext that he is interned from treatment. The commission appointed by the Court in its report states that currently there are no methods for the supervision of the care provided to the mentally ill. As a result patients are diagnosed after a single examination, do not receive any review nor is any revaluation of the developing mental problems undertaken.

National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore conducted a study on 'Quality Assurance in Mental Health' made recommendations to improve conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities. The study has

recommended for continuous monitoring of the mentally ill patients and provides sufficient facilities for them.

Conclusion: There is an every need for reduction of the incidence, prevalence and burden of mental and behavioral disorders, develop and evaluate the mental health services so that they become available and accessible to the total population, enhance the positive mental health of the population; and) create structures to promote long-term mental health research and dissemination of mental health information. It is undisputed fact that most of the mental disorders can be cured with the love and affection of the near and dears. Some medical treatment with personal attention of their own people will certainly mend most of the mental ills and temporary mental blockades. Secluded treatment, unless warranted medically and as a last choice, the patients should not be kept away from their own people, restrict the accessibility. They need more attention. The mentally ill are to be treated as human beings and are to be treated as mentally ill later. An opportunity should be given to them to live a dignified life. Unless otherwise warranted, freedom of the patients should be curtailed and no discrimination should be shown among the patients based on nationality, religion, income, social, and economic statuses of the families. The need of the patients and the root cause for their diseases should be diagnosed before proceeding for placing them in secluded place. In the process, there is a need to undertake research in the treatment used for curing the mentally ill patients. There is a need to develop new knowledge and therapeutic models and systems in the area. The Government should encourage the not-for-profit-organizations and charitable trusts to play active role in the process of capacity building to accommodate more number of patients who are otherwise left out. The process of licencing and treatment of patients should be further simplified and made transparent. The environment in the hospitals and treatment centres should be friendly, normal and near to the natural habitat to facilitate their fast recovery. Every citizen is required to participate in the process of supporting the cause of ill-fated patients. One of the important objectives of the Act is to strive for protecting the human rights of the mentally ill people who are not capable of questioning the abuse of their rights.

References:

1. Munn Vs Illinois, AIR 1963 SC 1295, Kharak Singh Vs State of UP
2. Dr. H. Agarwal, 'International Law and Human Rights', Seventh Edition, 2001, Central Law Publications, Allahabad, pg 642.
3. Gro Harlem Brundtland, Former , Director General of World Health Organization
4. • Arline Kaplan, *Psychiatry and Human Rights Abuse*, *Psychiatric Times* •October 2004 •Vol. XX •11
5. http://www.who.int/mental_health/media/en/75.pdf
6. United Nations. Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. New York: United Nations, Secretariat Centre for Human Rights; 1991
7. http://www.tjsl.edu/slomansonb/10.3_DetentionImprisonment.pdf
8. Writ Petition (Crl.) No 237 of 1989, decided on August 17, 1993
