

Human Rights and Mental Health Care in India

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“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 brotherhood”

[United Nations Universal Declaration of Human Rights, 1948]

Concept of Human Rights

Human Rights encompass the “basic rights and freedoms to which all humans are entitled”. This covers a broad range of rights related to civil and political issues, such as the right to life and liberty, freedom of expression, right to equality before the law and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education. The importance of human rights also reflects the progress that has been achieved by mankind in many of the above mentioned spheres. Undoubtedly, these advances have occurred due to a better understanding of the evolution of the human brain and mind. It is critical that the rights of human beings in the event of an “unsound” mind or mental illness are contextualised and examined with careful consideration. Mental illness is a unique problem in that it affects the very basic faculty of human beings and can pose potential adverse impacts on both the suffering person as well as others.¹ Every human being is entitled to be treated with dignity, decency, equality and freedom regardless of the fact that we are born differently, grow differently. Negation of any of the above would mean negation of human rights.

Rights of the Mentally Ill

-The rights of the mentally ill include the following:

- The fundamental rights as their fellow citizens, including the right to a decent life, as normal and full as possible.
- Legal safeguards against abuse
- Right to appeal
- Right to necessary treatment in the least restrictive set up and as far as possible to be treated and cared for in the community
- Right to rehabilitation
- Right to personal autonomy, privacy, freedom of communication
- Right to education
- Right to training
- Right to economic and social security

¹G. Venkatasubramanian, 2008, Human rights initiatives in mental health care in India: historical perspectives, p.37

• Right to family and community life • Right to employment • Right for protection against exploitation and discriminatory, abusive or degrading treatment • Right for assistance, including legal, for protecting their rights.

International Treaties, Declarations on Human Rights and Mental Health Care

A series of international human rights treaties and other instruments have been in place since 1945. The UN provided an ideal forum for the evolution and adoption of these instruments. The international human rights law today comprises treaties, declarations, guidelines and principles – more than 100 in number. The member States of the UN have reposed and reaffirmed their abiding faith in fundamental human rights, in the dignity, integrity and worth of every human being as a person and in the matter of equal rights of women and men as also in certain special rights for children. Some of the international treaties, declarations, guidelines and principles which have affirmed and reaffirmed the human rights of every mentally ill person like any other human being are summarised as follows:

1. The Universal Declaration of Human Rights, 1948;
2. The International Convention on the Elimination of all forms of racial discrimination, 1965;
3. The Declaration on the Rights of Mentally Retarded Persons, 1971;
4. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979;
5. The Convention on the Rights of the Child, 1989;
6. UN Principles for the protection of persons with mental illness and improvement of mental health care 1991;
7. The WHO Technical Standards (Mental Health Care Law: Ten Basic Principles and Guidelines for the Promotion of Human Rights of Persons with Mental Disorders) 1996;
8. The UN Convention on the Rights of Persons with Disabilities, 2006.²

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

² L. Mishra, 2008, Human rights in mental health care: an introduction, p. 18

and as a guide to assist countries in developing mental health laws? The WHO also developed Guidelines for the Promotion of Human Rights of Persons with Mental Disorders, which is a tool to help understand and interpret the aforementioned UN principles 1991 (known as MI Principles) and evaluate human rights conditions in institutions

Mental Health Care Law: Ten Basic Principles

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) and 10. Respect of the rule of law.(WHO 1996)

Role of National Human Rights Commission (NHRC) in Mental Health and Human Rights

The National Human Rights Commission was constituted on October 12, 1993, by virtue of the Protection of Human Rights Act 1993. The NHRC is mandated under Section 12 of the Protection of Human Rights Act, 1993 to visit Government run mental health institutions to study the living conditions of inmates and make recommendations thereon.' Besides discharging this specific responsibility, the Commission has been, right from its inception, giving special attention to the human rights of mentally ill persons because of their vulnerability and need for special protection. The Commission's role is complementary to that of the judiciary. The Supreme Court has referred a number of important matters to the Commission for monitoring while the Commission has also taken specific cases of violation of human rights to the court.³

The NHRC can only play the role of a promoter, facilitator and catalytic agent as also a watch dog; it cannot, however, substitute the primary role or mandate of State Governments to ensure mental health as a matter of human right to every individual. Besides, it is not one department but a host of departments and agencies who are stakeholders in the process. NHRC has, however, adopted a totally open, transparent and participative style of monitoring the pace and progress of activities in the hospitals keeping the human rights dimension uppermost in

³ P. Murthy & D Nagaraja, 2008, Judicial interventions and NHRC initiatives in mental health care,p. 74

view. It has hitherto used monitoring as a tool of correction and promotion of human rights of the mentally ill persons.⁴

Mental Illness: Towards community care

Community care involves the care and treatment outside an institution of people who have or who are recovering from a mental illness. The concept of community care includes:

- Arrangement for the care and support of families;
- Care and treatment for the significant proportion of people with mental illness who have never been admitted to a psychiatric facility and who may never need to be if they are provided with appropriate care, support and treatment in their own environment.

Community care also includes issues affecting people who may need occasional inpatient care as well as community care. They may manage well in their usual environment for a substantial period of time but may periodically require hospital admission for treatment and stabilisation when an acute episode occurs. The irony of the situation which we face in India is that substantial resources are allocated to institutional care, leaving very little to promote or sustain community care. This is what has resulted in conspicuous absence of comprehensive community services linked with mental health.⁵

Future directions for mental health care in India

The following recommendations are made particularly recognising that the philosophy of mental health care in India has now moved from a custodial to a therapeutic approach, from a social cause to a rights based approach, from a tertiary care approach to community care, primary and secondary care.⁶

1. Mental health services should be accessible, equitable and affordable.

Community care is the best approach for providing broad-based mental health services in the country, especially given the shortage of trained human resources. All the districts of the country should be covered under DMHP. The Government should ensure that cost of drugs

⁴ Ibid. No.2, p.27

⁵ L. Mishra, 2008, Human rights in mental health care: an introduction, p. 33

⁶ D Nagaraja and Pratima Murthy, Mental Health Care and Human Rights, National Human Rights Commission, 2008, p. 285

used in the treatment of psychiatric disorders do not become prohibitive. Psychosocial interventions should be available at all levels.

2. Government should downsize large psychiatric hospitals

Efforts should be made to reduce hospital beds to manageable numbers. Duration of admission should be as short as possible. More open ward treatment facilities must be created

3. Human resources for mental health must be systematically enhanced through both short-term and long-term strategies

Each state must have at least one training institute that provides multidisciplinary training in psychiatry, psychology, social work and mental health nursing.⁷

Conclusion

To conclude, Human Rights are not the exclusive preserve of any individual and group. They are neither owned by anyone nor can be doled out as a gift by one to another. They belong to all of us – individually and collectively. “All human rights are universal, individual, inter dependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis. While the significance of national and regional peculiarities must be borne in mind it is the duty of the States regardless of their political, economic and cultural systems to promote and protect all human rights and fundamental freedoms” (the Vienna Declaration and Programme of Action adopted at the close of the World Conference on Human Rights).

⁷ Ibid., p. 286

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