

Account on Indian Laws for the Human Rights and Welfare of the Mentally Disables

Pardeep Kumar*

LL.B., LL.M.

Abstract – The Right to Life is the most primordial of all rights as additionally the most transcendent. The plain first couplet of the Ramayan by Maharishi Valmiki embraces clearly and strongly the quintessence behind security everything being equal – man or creature alike. It is this: "Secure, safeguard and advance human life and its substance and doesn't wreck it (or its pith) for once pulverized it can't be reproduced". Each human body and psyche has an uprightness which is sacred. Each human being has sure final barest least needs, for example, right to air, consumable water, sustenance, apparel, wellbeing, therapeutic consideration and treatment, perfect and clean conditions for living convenience, environmental sanitation, individual cleanliness, etc. Hardship of any of these sums to viciousness to the individual. In this article we studied about the human rights, Laws for protecting the Disables, their treatment and other aspects.

-----X-----

I. INTRODUCTION

Indian Legal Systems refers to the system of law operative in India. In the ancient days, there was a distinct tradition of law, which had a historically independent school of legal theory and practice. Law as a matter of religious prescriptions and philosophical discourse has an illustrious history in India. There is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the law. As Rappeport has noted, for the psychiatrists the court is "another house with its different motives, goals and rules of conduct." While the psychiatrist is concerned primarily with the diagnosis of mental disorders and the welfare of the patient, the court is often mainly concerned with determination of competency, dangerousness, diminished responsibility and/or the welfare of society. Therefore, in India also, most of the earlier legislations in respect of persons with mental disorders were concerned with these aspects. However, legislations drafted after eighties tend to give some stress on rights of persons with mental disorders also.

1.1 The Constitution of India

The Constitution of India provides under Article 21 that no person shall be deprived of his life or personal liberty except according to procedures established by Law. It has been held that right to life and personal liberty under this article includes facility for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

The Representation of the People Act, 1950 (Sec 16) A person is disqualified for registration in an electoral role if he is of unsound mind and stand so declared by a competent court. Therefore the person so disqualified cannot hold public offices under the constitution like president, vice-president, ministers or Member of Parliament and state legislatures.

II. MENTAL DISABILITY

For individuals with psychiatric disabilities, realize that every human right choices that apply to other ensured groups, for example, race, sex, etc., additionally apply to them. For a situation, the Supreme Court of India decided that an insurance company's approach of giving long haul disability advantages to the age of 65 for those with physical disabilities, yet for just two years to those with mental disabilities except if they were organized, established discrimination. The decision indicated that all groups ensured in the human rights legislation must get equivalent treatment. Albeit mental disability is incorporated as an ensured ground in the BC Human Rights Code, it isn't characterized in our legislation. Therefore, it is important to swing to different locales and to the current case law for definitions. A standout amongst the most thorough statutory definitions is that found in the Saskatchewan Human Rights Code; Section 2(1) characterizes disability and explicitly incorporates reference to "mental disorder."

The accompanying test, taken from The Law of Human Rights in India: Practice and Procedure, has been affirmed and connected in numerous human rights jurisdictions. The test says that a mental

condition ought to be viewed as a disability for human rights assurances where it meets all the accompanying criteria: 1) it keeps the individual from performing noteworthy capacities that can be performed by a great many people; 2) it is continuous in nature; and 3) it is past the individual's control. The courts have determined that alcohol and chronic drug use comprise a mental disability for the reasons for human rights legislation too. A pressure related disorder may—yet at the same time won't really—sum to a disability. It is a verifiable inquiry with regards to the effect on the person's ability to work. Much of the time, stress may flag—or even veil—a bigger mental disorder.

2.1 Social, Economic, Cultural and Religious Challenges of Mental Illness

- a) **Discrimination and Stigma:** Discrimination of individual with mental illness in all circles of life and stigma may have genuine effect on access to sufficient treatment and care and different everyday issues, for example, employment, education, marriage and safe house. Persons with mental illness dodge or oppose conference or treatment from mental health professionals since they are concerned that they will be marked with mental illness and they wish to or need to save themselves from the tension caused by dread of dismissal from family, companions and society. Different examinations have additionally featured that stigma and discrimination are imperative obstructions to giving mental healthcare to the poor.
- b) **Causation Theories of Mental Illness:** Large piece of the uneducated and educated networks trust that mental illness happens on account of different heavenly powers, for example, fallen angel, phantom, past life karma, black magic, magico-religious spells and so forward. Subsequently, help looking for conduct straightforwardly relies on the conviction arrangement of the all-inclusive community. Another vital issue is the absence of learning of mental health and illness which assumes a vital job in looking for treatment. It is a religious, social and standard practice in India for people experiencing mental illness to go to religious spots for confidence mending crosswise over India. This demeanor can result from different reasons, for example, customary set of convictions, religious convictions, social components, and lack of education, neediness, simple availability and the deficiency of statutory mental health administrations at the network level.
- c) **Absence of Resources:** The accessibility of mental health framework (psychiatric beds) in India is for the most part constrained to substantial mental hospitals, which give

administrations to a small amount of the population. Number of psychiatric beds is roughly 35,000 crosswise over India, which is horribly deficient. These establishments are an incredible wellspring of stigma. Two surveys of mental hospitals were embraced in 1998 and 2008 to recognize the lacunae in these organizations and the progressions that happened over 10 years. These assessments represent that there is a need to enhance these offices and contact with essential health parental figures to enhance mental healthcare of the network. On one hand the quantity of therapists in India is around 3500, which is to a great extent deficient for 125 crore population.

III. LAWS GOVERNING MENTAL HEALTH CARE

The mental health legislations drafted at first were gone for shielding people in general from unsafe patients by separating them from people in general. This was to a great extent in light of the fact that around then, there was negligible treatment or no treatment accessible. However, in the contemporary world there has been a paradigm shift from custodial consideration to network care and from a philanthropy based to rights based methodology due to the following reasons:

- ✓ Proactive legislation;
- ✓ Progresses in medicinal innovation in appraisal and treatment of mental disorders;
- ✓ The human rights development;
- ✓ World Health Organization's (WHO) more extensive and progressively comprehensive definition of 'health' 'what's more,
- ✓ Promotive, preventive, curative, rehabilitative and moderation of disability parts of health have given another viewpoint into the consideration of mental disorders and have prompted the audit of mental health legislation.

IV. INDIAN LAWS REGULATING TREATMENT OF PERSONS WITH MENTAL DISORDERS

After the takeover of the administration of India by the British crown in 1858 a large no. of laws were enacted in quick succession for controlling the care and treatment of mentally ill persons in British India. These laws were

- The Lunacy (Supreme Courts) Act, 1858

- ▶ The Lunacy (District Courts) Act, 1858
- ▶ Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889)
- ▶ The Military Lunatic Act, 1877

These Acts gave guidelines for establishment of mental asylums and procedure to admit mental patients. The various Acts of 1858 naturally reflected the legalistic frame for the management of the mentally ill. During the first decade of the 20th century, public awareness about the pitiable conditions of mental hospitals accentuated as a part of the growing political awareness and nationalistic views spearheaded by the Indian intelligentsia. As a result, The Indian Lunacy Act, 1912 was enacted. Lunatic asylums (named mental hospitals in 1922) were now regulated and supervised by a central authority. After the Second World War, Universal Declaration of Human Rights was adopted by the United Nations General Assembly. Mental Health Act, 1987 was finally enacted in 1987. Though having many positive features, the Mental Health Act, 1987 has been the target of criticism right since its inception. It is alleged to be concerned mainly with the legal procedure of licensing, regulating admissions and guardianship matters of Persons with Mental Disorder. Human right issues and mental health care delivery are not properly addressed in this Act. Because of a large number of very complicated procedures, defects and absurdities in the Act and also in the Rules made under the Act, it can never be implemented properly. Human right activists have questioned the constitutional validity of the Mental Health Act, 1987 because it involves curtailment of personal liberty without the provision of proper review by any judicial body. Mental Health Act, 1987 is currently under process of amendment to make it United Nations Convention for Rights of Persons with Disabilities compliant.

4.1 Persons with disability (equal opportunities, protection of rights, full participation) Act, 1995

Persons with Disability Act was enacted in 1995 to remove discriminations in the sharing of developmental benefits vis-à-vis non-disabled persons and to prevent abuse and exploitations of persons with disability. It provided for barrier-free environment and spelled out responsibilities for the government to plan strategies for comprehensive development programmes, to special provision for integration of person with disability into the social mainstream. Under this act, mental retardation and mental illness are categorized as conditions of disabilities. Thus, the Person with mental disorder are entitled to benefits available to persons with disability as provided under the Act. There is a provision of 3% reservation in government jobs, but it is not available to the person with mental disorder. This Act is also currently under

revision in light of the United Nations Convention for Rights of Persons with Disabilities, 2006.

4.2 National trust Act-1999

This Act was enacted in the year 1999 for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities to enable and empower them to live as independently and as close to the community to which they belong and to facilitate the realization of equal opportunities and protection of rights. The Act provides for many welfare measures. This Act is also under revision to make it United Nations Convention for Rights of Persons with Disabilities, 2006 compliant and make it more comprehensive. Management of properties of Persons with Mental Disorder is supposed to be covered under the amended Act.

4.3 United Nations convention for rights of persons with disabilities-2006 and Indian laws

United Nations Convention for Rights of Persons with Disabilities was adopted in December, 2006. It was ratified by the Parliament of India in May, 2008. Countries that have signed and ratified the United Nations Convention for Rights of Persons with Disabilities are required to bring their laws and policies in harmony with it. Therefore, all the disabilities laws in India are currently under process of revision. According to Article 2 of the convention, person with disability will enjoy legal capacity on an equal basis for all aspects of life. Article 3 calls the state to take appropriate measures to provide access to support by person with disability to exercise the legal capacity. Article 4 calls for safeguards to prevent abuses of the system of support required by person with disability.

4.4 Indian contract laws

According to Indian Contract Act, 1872, any person of sound mind can make a contract. Section 12 of the Act stipulates that a person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. It means Persons with Mental Disorder who is currently free of the psychotic symptoms can make a contract, whereas a person who is currently intoxicated or delirious cannot make a contract.

4.5 Marriage and divorce

Under Hindu Marriage Act, 1955, conditions in respect of mental disorders, which must be fulfilled

before the marriage is solemnized under the Act, are as follows.

- √ Neither party is incapable of giving a valid consent as a consequence of unsoundness of mind.
- √ Even if capable of giving consent, must not suffer from mental disorders of such a kind or to such an extent as to be unfit for marriage and the procreation of children.
- √ Must not suffer from recurrent attacks of insanity.

The expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia. The expression "psychopathic disorder" means a persistent disorder or disability of the mind which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.

Marriages in contravention to the provision in respect of mental disorders come under voidable category. Voidable marriages (Sec 12) are those which may be annulled by a decree of nullity on the given grounds but may continue to be legal till the time it is annulled by a competent court. According to the Section 13 of the Act, divorce or judicial separation can be obtained if the person has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

The expression "incurably" of unsound mind cannot be so widely interpreted as to cover feeble minded persons or persons of dull intellect who understand the nature and consequences of the act and are therefore able to control them and their affairs, and their reaction in the normal way. When there was sufficient evidence for the court to conclude that the slight mental disorder of the wife was not of such a kind and to such an extent that the husband could not reasonably be expected to live with her, divorce could not be granted. Each case of schizophrenia has to be considered on its own merits.

4.6 Testamentary Capacity

Testamentary capacity is the legal status of being capable of executing a Will, a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. Indian Succession Act, 1925 (sec 59), stipulates among other things:

- √ Any person of sound mind can make a Will.

- √ Persons, who are ordinarily insane, may make a Will during an interval while they are of sound mind.

- √ No person can make a Will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, so that he does not know what he is doing.

Testamentary capacity requires a person's full sense and mental sanity to have confirmed and signed the Will after understanding what his assets comprised and what he is doing by making a Will. He understands in full mental capacity to whom he is naming the assets to and how are they related to him and what repercussions it may have later.

4.7 Criminal Liability

Indian Penal Code, 1860 states that "Nothing is an offence, which is done by a person who, at the time of doing it, by reason of act, or that he is doing what is either wrong or contrary to law." McNaghten Rules define the criminal responsibility of mentally ill in our courts and it has been incorporated in the Sec 84. It has been held by the Supreme Court that the law presumes every person of age of discretion to be sane and defense on ground of insanity needs to be proved. If defense is established on ground of unsoundness of mind, is incapable of knowing the nature of the insanity, such persons is committed to the Psychiatric Hospitals as per Sec 471 (i) of the Criminal Procedure Code, 1973. There have been instances of lesser sentence on account of mental illness. Where the feeling of life unbearable on account of domestic quarrels, a woman (accused) jumped into a well with her children, it was held that the only sentence that could be passed was the lesser sentence of imprisonment for life. Sec 89, Indian Penal Code provides protection for any action done in good faith for the benefit of a person of unsound mind by or by consent of the guardian or other person having lawful charge of that person. Sec 305, Indian Penal Code provides for punishment of death or imprisonment of life for abetment of suicide by an insane person.

V. CONCLUSION

The issue of mental health is critical as mind drives an individual. Individuals with mental clutters have been confronting ceaseless human rights infringement in each circle of life beginning with family, organizations, and so on. These individuals, however once in a while representing a risk for others in light of their maladies which are outside their ability to control, have confronted shame, separation, social abuse in many circles of life. The issue is progressively dynamic in a general public like India where the issue of mental health is as yet viewed as the outcome adversity, and individuals superstitiously

trust that mental clutter is considered sometimes to be the aftereffect of transgression with respect to the guardians of the patient. Individuals are as yet hesitant to acknowledge this typically like different infections influencing different parts of the individual. In addition, the issue of mental health is no more a separated therapeutic issue since genuine human rights issues are additionally included with this. To total up, human rights are not the select protect of any individual and gathering. They are neither possessed by anybody nor can be doled out as a blessing by to each other. They have a place with us all – separately and all things considered. They are all inclusive and resolute.

REFERENCES

1. Sinha S.K. & Kaur J. (2011). National mental health programme: Manpower development scheme of eleventh five-year plan. *Indian J Psychiatry* 53: pp. 261-265.
2. Drew N., Funk M., Tang S., Lamichhane J., Chávez E., et. al. (2011). Human rights violations of people with mental and psychosocial disabilities: An unresolved global crisis. *Lancet* 378: pp. 1664-1675.
3. Bharathi G., Swaminathan N. (2010). India is failing the mentally ill as abuses continue. *Lancet* 376: pp. 1633-1634.
4. National Mental Health Programme for India. New Delhi: Ministry of Health and Family Welfare, Government of India; 1982. Directorate General of Health Services (DGHS).
5. Nagaraja D. & Murthy P. (2016). *Mental Health Care and Human Rights*. New Delhi: National Human Rights Commission
6. Lopez A.D., Mathers C.D., Ezzati M. (2016). Measuring the Global Burden of Disease and Risk Factors, 1990-2001. In: Lopez AD, Mathers CD, Ezzati M, et al., eds. *Global Burden of Disease and Risk Factors*. Washington (DC): World Bank 1-13.
7. Mental Health Act, 1987. Bare act with short comments; Commercial Law Publishers, Delhi, 2007.
8. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Published in part 11, section 1 of the extraordinary gazette of India, Ministry of Law, Justice and Company Affairs, New Delhi, the 1st January, 1996.
9. The Convention on the Rights of Persons with Disabilities, United Nations 2006.
10. Bearak B. (2001). 25 Inmates die, tied to poles, in fire in India in mental home. *The New York Times*.

Corresponding Author

Pardeep Kumar*

LL.B., LL.M.

pardeepkumar0858@gmail.com