

Legal Status of Mentally Ill Patient

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Abstract : According to World Health Organization Mental health is a state of well being in which individual realizes his or her own abilities, can cope with normal stresses of life, can work productively and fruitfully and is able to make a contribution to his or her community. Mental disorders are on the increase because of increasing stress in modern life. The most common mental disorders which need focus attention are - Depression, Schizophrenia, Alzheimer's Disease, Epilepsy, Mental retardation, Substance-abuse disorders and disorders of childhood and adolescence. Legal rights of the mentally ill patient are protected and covered under the Mental Health Act, 1987 which has replaced old Indian Lunacy Act 1912 which are now being amended by 134th amendment of Mental Health Care Bill 2013. Currently, attempting suicide is punishable with imprisonment for up to a year and/or a fine under section 309 IPC. The New Bill decriminalizes suicide. It states that whoever attempts suicide will be presumed to be under severe stress, and shall not be punished for it. It is the duty of the State to prevent human rights of its citizen. In order to achieve that objective and with the motive to provide justice to all, Legal Services Authorities Act was enacted in the year 1987 and came into force in year 1996. Under this Act, Free Legal Services Authorities are created at National level, State level, District Level and Sub Divisional Level. Aim of the legal aid clinic is to provide free legal services to all the patients in the form of legal counseling, mediation, alternate dispute resolution, advocate services and also to assist in court related procedures such as payment of court fee, filing affidavits etc. National Legal Services Authorities has also issued guidelines to be followed by the legal services institutions while they provide legal services to the mentally ill persons and to those with mental disabilities.

Keywords: Alzheimer's Disease, cognitive, Depression, Epilepsy, Hysteria, Mental retardation, Schizophrenia, Substance-abuse disorders.

According to World Health Organization Mental health is a state of well being in which individual realizes his or her own abilities, can cope with normal stresses of life, can work productively and fruitfully and is able to make a contribution to his or her community.¹ Mental disorders are on the increase because of increasing stress in modern life. One in four people in the world will be affected by mental or neurological disorders at some point in their lives. Mental health problems are more common than cancer and heart diseases combined and there are strong indicators that mental health care in the country is not sound. Untreated mental disorders are known to lead to mental and physical disability, violence and high suicide rate. Globally around 450 million people currently suffer from such conditions, placing mental disorders among the leading causes of ill health and disability worldwide. Depressive disorders are already the fourth leading cause of the global disease burden (WHO); they are expected to rank second by 2020, after ischemic heart disease.² The most common mental disorders which need focus attention are - Depression, Schizophrenia, Alzheimer's Disease, Epilepsy, Mental retardation, Substance-abuse disorders and disorders of childhood and adolescence.²

Disease burden due to neuropsychiatric diseases in India in terms of DALYs losses was 6.1% as per world development report 1993.³ This will arise substantially by 2020. Mental disorders are not fatal but responsible for great loss of healthy life. In India, Joint family system support continues to absorb many ill effects of disease and provide stable environments for shaping and developing lifestyles and personality traits. This support is gradually diminishing due to rapid urbanization and industrialization and large scale migration of young people to urban areas. Because of stress and strain of life, unemployed youth and disturbed sex ratio the mental disorders are on the rise. Meta-analysis of various epidemiological studies on psychiatric morbidity in India was done in 1998 and 2000. According to these studies, mental disorder's prevalence was arrived at 58.2(Venkataswamay, 1998) and 73(Ganguly, 2000) per thousand population respectively.^{4,5} Available data of meta-analysis from ICMR studies and NIMHANS indicated that there were 15 million people suffering from severe disorders (psychosis) in India (point prevalence). Prevalence rates are significantly higher in urban areas as compare to rural areas except for epilepsy and hysteria which were more in rural areas. It is higher among

female as compared with male. Mental disorders are more prevalent in nuclear family members and 35 to 44 year age group was most affected. Lower socio-economic status suffered most. Treatment is available but nearly 2/3rd of people with a known mental disorder, never seek help from health facility or institution or health professionals. Stigma, discrimination and neglect comes in the way of treatment and this problem is well spread in India. People tend to hide and seldom disclose the mental disorders even to most near and dear ones till these become unmanageable. Currently, 50% of Medical Colleges have a psychiatry department. It is estimated that there is one psychiatry bed per 30000 population. 50% of beds are occupied by patients undergoing long term treatment. Only 10 % of mentally ill patients have access to appropriate care. Less than one psychiatrist is available for every three lacs population in India and one per million in rural area. A recent study by Indian Council of Medical Research reveals that, in India, the rate of psychiatric disorder in children aged between 4 to 16 years was about 12 percent. Every year only 550 doctors passed out in the discipline of psychiatry. This amount to shortage of 87 percent.

Legal rights of the mentally ill patient are protected and covered under the Mental Health Act, 1987 which has replaced old Indian Lunacy Act 1912. Now, 134th Amendment of Mental Health Care Bill 2013 has been passed by Rajya Sabha and is expected to be discussed in Lok Sabha soon, which seeks to bring revolutionary changes in the lives of mentally ill patients. Currently, attempting suicide is punishable with imprisonment for up to a year and/or a fine under section 309 IPC. The New Bill decriminalizes suicide. It states that whoever attempts suicide will be presumed to be under severe stress, and shall not be punished for it. It also does away with Electro Convulsive Therapy of mentally ill children. The Bill rightly speaks of not separating a mentally ill mother from her child, circumstances permitting, while she undergoes treatment. The Bill states that every person would have the right to specify how he would like to be treated for mental illness in the event of a mental health situation. An individual will also specify who will be the person responsible for taking decisions with regard to the treatment, his admission into a hospital, etc.

The Bill guarantees every person the right to access mental health care and treatment from the government. This right includes affordable, good quality, easy access to services such as minimum mental health services in every district. Persons with mental illness also have the right to equality of treatment and protection from inhuman and degrading treatment.

The Bill requires that every insurance company shall provide medical insurance for mentally ill persons on the same basis as is available for physical illnesses.

The Bill mandates the Central and State governments to ensure access to mental health services in every district. These will include outpatient and inpatient services, hospitals and community based rehabilitation establishments.

As far as legal rights of a mentally ill patient are concerned, mental illness, mental retardation and certain neurological conditions may incapacitate cognitive, emotional and behavior faculties of an individual, consequently having serious impact on the ability to defend the case. Assessment of the mental abilities of individuals to defend their case is called, 'fitness to stand trial' or 'competence to stand trial'. Accused, who are unfit to stand trial are usually excluded from criminal prosecution and the trial is usually postponed until such time as the person is judged competent. So, people found psychiatrically incompetent for trial are usually sent for treatment and will be treated to regain competence. In civil proceedings, fitness for proceedings is termed the capacity to sue and be sued and is not identical in its requirements with fitness for proceedings under criminal law. The capacity to sue and be sued is related to contractual capacity. Order 32 Rule 15 of C.P.C, applies to persons adjudged before or during the pendency of suit to be of unsound mind or due to mental infirmity unable to protect their interest and they can sue or be sued through their next friend⁶.

In criminal cases, the investigating officers are sometimes threatened by the accused that they will commit suicide if the interrogation is done. In such cases, investigating officers request mental health professionals to assess the individual's fitness for interrogation, which is the capacity to understand the meaning of questions posed during police investigations and in court and to answer such questions meaningfully. In India, there are many instances in which fitness to stand trial has delayed the proceedings for decades. Various reasons have been attributed for the delay, such as ignorance, non-availability of psychiatrist, non-availability of psychotropic medicines and family members not wanting the person with mental illness to be released. It is compounded by lack of resources to provide care and restore such individuals to their mental competency to fight their case. One Mr. Machang Lalung, was arrested at his home village of Silsang near Guwahati in 1951 under Section 326 of the Indian Penal Code for causing grievous hurt. He was detained at the age of 23, he could secure his release only when he was 77 years old. Less than a year after he was taken into custody, Lalung was transferred to a psychiatric hospital in the Assamese town of Tezpur. Sixteen years later, in 1967 doctors confirmed that he was fully fit to be released but instead he was transferred to Guwahati Central Jail, where he was imprisoned until 2005. He spent his valuable 54 years of life behind bars and could secure his release only after the intervention from the Hon'ble Supreme Court of India in 2005. He was able to enjoy life outside the prison for only two years. He passed away in the year 2007.

The court may order an assessment of the accused's mental condition if it believes that such evidence is necessary to determine (a) fitness to stand trial (b) whether the accused was at the time of the commission of the alleged offence, suffering from a mental disorder (c) whether the mental disorders impairs reasoning power of the accused and (d) for placement of the individual in an appropriate place such as mental hospital, rehabilitation or high security prison.

The question is why need arose for assessment of fitness to stand trial. The principle of natural justice is based on two legal maxims;1) that no body should be a judge in his own cause 2) No body should be condemned unheard. In case *Maneka Gandhi vs Union of India*, it is held by the Hon'ble Supreme Court that aim of principle of natural justice is to secure justice and to prevent miscarriage of justice. They cannot supplant the law but supplement it. These two fundamental principles are widely held to be legally necessary for a fair and valid decision in a legal system.

Here, we are concerned only with the rule that a person should not be condemned unheard. Right to fair trial is a human right.

1. Article 14 of the International Covenant on Civil and Political Rights, which has been ratified by India and is now part of the Protection of Human Rights Act, 1973, recognizes the right to fair trial as a human right.
2. The concept of a fair trial is a constitutional imperative recognized in Articles 14, 21, 22 and 39 A.
3. The Code of Criminal procedure 1973 (Procedure in case of accused being lunatic, Cr.P.C Sections 328, 329 and 330)⁷.

If the accused is not able to provide counsel with complete information, then reliability of the criminal process is jeopardised, which means the trial would not be fair.

The Assessment is usually done by a forensic psychiatrist. Presence of a mental disorder is a necessary but not sufficient condition to determine that accused is unfit. Even if a person is suffering from mental disorder, it should be assumed that he has the mental capacity to decide on various matters unless the contrary can be shown. Mental disorder affects the accused's performance on adjudicating process. Unfitness may be reversible ie; treatable condition such as schizophrenia, bipolar disorders, acute psychosis, delirium, or irreversible such as mental retardation, dementia, irreversible brain damage. It is the responsibility of the professional to inform the court whether condition of the accused is reversible or irreversible and time required for the same. The absence of forensic psychiatrists to do the assessment is a serious limitation in India, where few hospitals are providing inpatient forensic psychiatry services.

There are certain ethical and legal issues regarding fitness to stand trial, which revolve around the individual rights of the accused. In certain cases, accused may refuse treatment and even threaten self-harm if coerced, which gives rise to a conflict between an individual's right to refuse treatment versus restorability of the fitness to stand trial through forced treatment. Forensic psychiatrists usually get into a dilemma between the respect for the individual's right of privacy and duty to do forensic assessment of the accused and provide accurate report to the court or to the investigating agency. No doubt, they should maintain confidentiality to the extent possible, but there is need to disclose the role of assessment and submission of report to the court.

The fitness to stand trial is different from insanity defence. The fitness to stand trial refers to current ability to understand and participate in the adjudicating process. The insanity defence refers to one's state of mind at the time of alleged crime. Section 84 of the Indian Penal Code, which deals with **Act of a person of unsound mind**⁸, provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Insanity needs to be proved. In case *Seralli Wali Mohammad vs. State of Maharashtra*, AIR 1972 SC 2443,⁹ case before the Supreme Court was that accused was charge sheeted and committed under section 302 of IPC for having caused the death of his wife and a female child with a chopper. Rejecting the plea of insanity the Supreme Court observed that the law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive was proved as to why the accused murdered his wife and child nor the fact that he made no attempt to run away when the door was broken open, could not indicate that he was insane or that he did not have the necessary mensrea for the commission of the offence. The insanity defence is concerned with the state of mind during commission of crime and is considered static. It is the retrospective assessment of the state of mind during the crime but fitness to stand trial is a prospective assessment of the state of mind. A person suffering from schizophrenia may commit a crime during his active phase of illness. Immediately after initiating the treatment his fitness to stand trial is restored within a few weeks. In such a scenario, the primary concern will be the insanity defence the state of mind during commission of the crime. In another scenario, a normal person may commit a crime and become mentally ill after incarceration or he may develop illness during the adjudication of the case. This distinction sounds simple but mistakes are often made by both psychiatrists and lawyers. In many cases, persons with mental illness need to undergo a medical examination called 'fitness to stand trial' under Sections 328 and 329 of the Code of

Criminal Procedure, 1973. A person found psychiatrically incompetent for trial is usually sent for treatment to regain competence.

The World Health Organization defined health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. While physical and mental health is well defined, social well-being is ignored. An important measure to ensure social well-being of a person is to ensure social justice. It is the duty of the State to prevent human rights of its citizen. In order to achieve that objective and with the motive to provide justice to all, Legal Services Authorities Act was enacted in the year 1987 and came into force in year 1996. Under this Act, Free Legal Services Authorities are created at National level, State level, District Level and Sub Divisional Level. Free legal services are available to the scheduled castes, scheduled tribes, women and children, victims of human trafficking, persons with disabilities, persons with mental illness, persons in custody and person with income less than Rs.1,50,000/- per annum. Such persons are entitled to legal counseling ie; advice and guidance concerning a legal matter, legal representations ie; providing free legal aid counsel. A person to whom legal aid is provided does not need to spend anything on the litigation once it is supported by the Legal Services Authority. Aim of the legal aid clinic is to provide free legal services to all the patients in the form of legal counseling, mediation, alternate dispute resolution, advocate services and also to assist in court related procedures such as payment of court fee, filing affidavits etc. National Legal Services Authorities has also issued guidelines to be followed by the legal services institutions while they provide legal services to the mentally ill persons and to those with mental disabilities.

References

- [1]. WHO. Strengthening mental health promotion. Fact sheet 220. Geneva: WHO; Revised 2001.
- [2]. WHO. The World health report – Mental disorders affect one in four people. Press release WHO/42. Geneva.
- [3]. World Bank. World Development Report 1993. New York: World Bank. 1993.
- [4]. Reddy VM. Chandra Shekhar CR. Indian J Psychiatry. 1998. 40(2): 149-57.
- [5]. Ganguli HC. Epidemiological findings on prevalence of mental disorders in India. Ind J. Psychiatr 2000, 42(1): 14-20.
- [6]. The Code of Civil Procedure Order 32 rule 15:260-261.
- [7]. The Code of Criminal Procedure, 1973:186 to 188 .
- [8]. The Indian Penal Code, Section 84: 382 to 383.
- [9]. Mathew, J.AIR 1972 SC 2443, 1972 CRiLJ 1523, (1973)4 SCC 79, 1973 (5) UJ 204 SC