



An Overview of the Human Rights of Mentally Challenged People

Dr.Santosh Kumar

Assistant Professor

Faculty of Law, Dr.Rammanohar Lohiya Avadh University ,Ayodhya

ABSTRACT

Man has the most fickle nature. Man is a hedonist and wants to attain maximum happiness. In this sequence, he invests his entire energy in collecting material resources. In this way an infinite chain starts. Man's needs can be fulfilled but his greed can never be fulfilled. A person never gets happiness from material resources. The scriptures describe it from the Indian perspective. In such a situation, when a person is not able to achieve his objectives, he experiences depression. The greed of any person can never be satisfied because the limit of greed is infinite. When he does not achieve what he wants, it is natural for him to become depressed. A depressed person brings with him a mental illness. A mentally ill person deserves sympathy. He also has many human rights which need to be protected. It is often seen that the society does not consider such people and the person himself does not consider himself mentally ill, but he is mentally ill. If his interests are not protected, he faces many consequences. Legal order is also violated. Many incidents are seen in which an educated person commits such incidents like breaking the legal system and one wonders how a sensible person can do such a thing. The society is also responsible somewhere behind it. This is a matter of social concern and it is also a matter of legal concern. Therefore, it is important to think about the rights of such a mentally ill person. In the presented article, it has been examined which human rights a mentally ill person has, what are their limitations, what else would be appropriate to be done to protect their interests.

Key points- Mentally ill Person, Need, Greed, Depression , Social Concern ,Human Rights, Legal response.

Introduction –

Every human being has certain irreducible barest minimum needs such as right to fresh air, potable water, nutritious food, clothing, health, medical care and treatment, clean and hygienic living accommodation, proper sanitation, personal hygiene, speedy trial if involved in criminal offence, and so on. Deprivation from any one of these needs amounts to violence to the person. Human dignity is the quintessence of human rights. Every human being is entitled to be treated with dignity, decency and equality regardless of the fact that they are born differently, grow differently, have different mental makeup, thought process and life-style. Denial of dignity would mean denial of human rights ,it is guaranteed under article 21¹.A mentally ill person is neither a non-human nor a half human; he/she is as much a complete human being and is entitled to the same inalienable human rights as available to other normal human beings. He/she is entitled to be treated with dignity, decency and equality as any other human being and cannot and should not be discriminated against. He also has a right to rehabilitation and reintegration with family, community and mainstream society. Mental illness represents a range of diverse conditions where serious infringement of human rights can occur from deprivation of a person's dignity and right to life, to complete denial of rights to lead a fulfilling life. Since a mentally ill person is unable to fend for himself/herself, having regressed into that state of body and mind where he/she has lost the insight into the essence of human existence, he/ she is in need of social defense . Such a defense must be jointly provided by the caregiver members of his family as well as care givers of the mental health hospital, i.e. Medical Officers and paramedics. In case, the caregivers of the family do not rise to the occasion, the care givers of the hospital should not fail in helping the patients.

Human rights of the mentally ill at home- The mentally ill person should be treated with dignity, decency, kindness and compassion; Information that someone at home has been afflicted by mental illness should not be suppressed on account of prejudices that such disclosure will adversely affect the interests of that person and image of the family; Mentally ill person should be taken to mental health hospital immediately without any delay for check-up, diagnosis and admission if considered necessary by the Psychiatrist/Clinical Psychologist. Once a decision is taken by the treating physician to admit mentally ill person as In Patient Department patient, family members and relatives of the patient should respect such a decision and volunteer to stay with the patient in open/family ward, furnish accurate postal address to hospital authorities at the time of admission and their relationship with the patient; Ensuring that after the person has been effectively treated and fit for discharge, he/she is taken home, treated kindly and given the best care and attention, ensuring strict and timely compliance with prescribed medicines to avoid relapse of illness; The family members should bring patient to the hospital for follow up and collection of medicines (normally they are issued for 30 days) and need to ensure drug compliance issued by the treating physician in the

¹The Constitution of India,1950

wake of such follow up; Family members should Infuse hope, faith and confidence in the mind of the recovering person all the time that he/she can be effectively treated, cured and can resume a normal life like in any other illness; extend cooperation to the psychiatric social worker follow-up home visits.

Human rights of the mentally ill at hospital-No person seeking help for mental distress or illness should be refused examination at the Out Patient Department (OPD) on any ground what so ever; Similarly no patient should be refused admission as an inpatient if the same is considered necessary by the physician examining him/her; No mentally ill person or their caregivers should be subjected to any abuse or offensive treatment or treatment that borders on cruelty or torture; instead they should be treated with utmost civility, courtesy and consideration; No patient, howsoever violent or aggressive, should be brought with fetters and should be allowed to remain with fetters. If violence and aggression persists, the patient should be put under sedation and kept in an observation room till such time he/she is fully tranquillized and brought to the Medical Officer in the OPD for examination, diagnosis and a decision taken whether the patient should be admitted as an IPD patient; There should be proper seating arrangement for patients along with their family members/relatives and provision of clean potable water, toilet, newspapers (through a stand) and television; a hospital canteen in the OPD. At the OPD there should be sufficient number of registration counters to cater to the needs of people in different age groups (adults, adolescents, elderly and the children) as also women and men; People at the registration counter should be given orientation and training to be civil, courteous and considerate with everyone seeking care, particularly the elderly; Entire information pertaining to personal history, family history, case history, nature of ailment etc., should be collected at the time of registration in a friendly and humane manner and family members/ relatives accompanying the patient should extend full cooperation to the process of collection; The drug dispensing unit should be located within the OPD premises for the benefit of outdoor patients.

Many of the mentally ill persons brought to the OPD also suffer from other associated complications like appendicitis, cardio vascular and respiratory complications, complications relating to kidney, liver, pancreas, intestine, pelvis, prostate, urinary tract etc. These associated complications must receive due and timely attention. If facilities for investigation, diagnosis and treatment are not available in the concerned mental health hospital the patient should be referred to a general hospital for specialized treatment through a prior consultation and formal arrangement. The Medical Officer referring the case should maintain a proper liaison and coordination with the specialist in the general hospital in regard to progress in investigation, diagnosis and treatment; In case of critically ill patients the endeavor should be to save the life of the patient at any cost. This would involve maintaining a close and constant vigil over the condition of the patient from time to time.

In case a decision is taken to admit a mentally ill patient in the hospital, certain rights accrue to patient in IPD. These include right to wholesome, sumptuous, balanced and nutritive food according to certain prescribed scales i.e. 2500 kilo calories for women and 3000 kilo calories for men; adequate quantity of water for washing, bathing, clean and potable water for drinking and cooking; personal hygiene including mechanized laundry and clean and hygienic kitchen, adequate number of clean toilets; books, journals, periodicals and newspapers in local language; recreation (television in the room, dance, drama, music, other cultural activities, games and sports); communication.

The mentally ill persons at home and in hospitals have certain rights which they are particularly vulnerable to abuse and violation of their rights. If a protective mechanism is not in place, they can be susceptible to abuse by anyone in society including family members, caregivers, professionals, friends, fellow citizens and even law enforcing agencies. In a country like India, mental health care is not perceived as an important aspect of public health care. Hence, mental health legislation will play an important role in upholding the rights of mentally ill and ensuring them appropriate, adequate, timely and human health care. The fundamental aim of mental health legislation is to protect, promote and improve lives and mental well-being of citizens. It also plays a vital role in laying down the terms and conditions of mental health care and protecting the rights of disadvantaged, marginalized and vulnerable people with mental disorders.

The available laws should address not only curative but also preventive, primitive and rehabilitative aspects. Legislation is needed to prevent discrimination against persons with mental disorders. Discrimination takes many forms, affects several fundamental areas of life and is pervasive. Discrimination and stigma may impact access to adequate treatment and care as well other areas of life, including employment, education, marriage and shelter. The inability to integrate into society as a consequence of these limitations can increase isolation experienced by individuals, which can in turn aggravate mental disorder. The presence of mental health legislation, however, does not in itself guarantee respect and protection of human rights until there is commitment from political and social structures as also the people concerned in implementation.

Role of Legislature in Protecting Human Rights of Mentally Ill Persons-

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. WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008; AND WHEREAS India has signed and ratified the said Convention on the 1st day of October, 2007; AND WHEREAS it is necessary to align and harmonize the existing laws with the said Convention. It is enacted by Parliament in the Sixty-eighth Year of the Republic of India, as the Mental Healthcare Act, 2017. In section 2(s)² of the act “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence.

²TheMentalHealthcareAct,2017

Under section 18³ right to mental healthcare is defined as (1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

Role of Judiciary in protecting human rights of mentally ill persons

Since mental health takes a back seat and is largely ignored, public litigation and media exposure plays a role in highlighting gross violations of human rights. Judiciary therefore, plays a specific role in addressing some of the critical mental health care needs of the country. Supreme Court and State High Court decisions have tried to address the issues pertaining to denial of rights to mentally ill people. The courts in India have held in a number of cases that mental health is an integral and inseparable part of health and have repeatedly extended that there lies a positive duty on the part of the Government to promote health and right to live with human dignity which are fundamental rights enshrined in Article 21⁴ of the constitution of India. The guiding principles enunciated by the Apex Court in some of these judgments are referred as under:-

In *Hussainara Khatoon (No.1) vs. Home Secretary, Bihar*⁵, it was held by the Apex Court that "right to a speedy trial, a fundamental right, is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution". Speedy trial is the essence of criminal justice. These principles were reiterated in *Abdul Rehman Antuley vs. R.S. Nayak*⁶ in which detailed guidelines for speedy trial of an accused were laid down even though no time limit was fixed for trial of offences.

In a public interest litigation (PIL), involving *Veena Sethi vs. State of Bihar* case⁷ in 1982, the court was informed through a letter that some prisoners, who had been insane at the time of trial but had subsequently been declared sane had not been released due to inaction of the state authorities, and had remained in jail for 20 to 30 years. The court directed them to be released forthwith, considering the requirement of protection of right to life and liberty of the citizen against the lawlessness of the state.

In a Public Interest Petition *Dr. Upendra Baxi vs. State of Uttar Pradesh & others*⁸ was filed before the Hon'ble Court (1981) to enforce human rights of protective home inmates at Agra, UP, who were kept in abject dehumanized living conditions, the Hon'ble court issued various appropriate directions from time to time in order to ensure that the inmates of the Protective Home at Agra do not continue to live in inhumane and degrading conditions and that the right to life with dignity enshrined in Article 21 of the Constitution is made real and meaningful for them.

In a set of Public Interest Petitions *B.R.Kapoor & others vs. Union of India and others*⁹ filed before the Hon'ble Court regarding Shahdara Mental Hospital, Delhi, Hon'ble court observed that the Mental Hospital located at the capital of the country should be run by the Union of India and not by Delhi Administration. The Hon'ble court directed that the Mental hospital located at Shahdara should be modeled on the lines of similar psychiatric specialty obtaining at the institution run by NIMHAS at Bangalore, and also directed to examine as to whether the hospital could be attached to a teaching institution which has post graduation specialization in Psychiatry, Neurology and Neuro - Psychiatry. This led to the formation of the Institute of Human behavior and Allied Sciences, IHBAS.

In the case of *Chandan Kumar Bhanik vs. State of West Bengal*¹⁰ the apex Court observed: "Management of an institution like the mental hospital requires flow of human love and affection, understanding and consideration for mentally ill persons; these aspects are far more important than a routinized, stereotyped and bureaucratic approach to mental health issues".

In the case of *Sheela Barse vs. Union of India and others*¹¹ (1993) the apex Court observed that admission of non-criminal mentally ill persons in jails is illegal and unconstitutional; All mentally ill persons kept in various central, district and sub jails must be medically examined immediately after admission; Specialized psychiatric help must be made available to all inmates who have been lodged in various jails/sub jails; Each and every patient must receive review or reevaluation of developing mental problems; A mental health team comprising clinical psychologists, psychiatric nurses and psychiatric social workers must be in place in every mental health hospital.

The apex Court in its judgment in *Rakesh Chandra Narayan vs. State of Bihar*¹² had laid down certain cardinal principles. These are: Right of a mentally ill person to food, water, personal hygiene, sanitation and recreation is an extension of the right to life as in Article 21 of the Constitution; Quality norms and standards in mental health are non-negotiable; Treatment, teaching, training and research must be integrated to produce the desired results; Obligation of the State in providing undiluted care and attention to mentally ill persons is fundamental to the recognition of their human right and is irreversible.

³Ibid

⁴The Constitution of India,1950

⁵ AIR 1979 SC1369

⁶ AIR 1988 SUPREME COURT 1531

⁷ AIR1983 SC 339

⁸ (1983)2SCC308

⁹ AIR 1990 SC 752

¹⁰ 1990 LawSuit(SC) 264

¹¹ (1993)4SCC204

¹² AIR 1989 SUPREME COURT 348

The apex Court in *Rakesh Chandra Narayan vs. State of Bihar*¹³ case requested the National Human Rights Commission (NHRC) to be involved in the supervision of mental health hospitals at Agra, Ranchi and Gwalior w.e.f. 11.11.1997. It stated as under: "Having dealt with this matter for some time, we have formed the opinion that a better method for supervision of the functioning of Agra Protective Home is necessary. Now that the benefit of the National Human Rights Commission (NHRC) with statutory powers under the Protection of Human Rights Act, 1993 is available and since most of the problems associated with the functioning of Agra Protective Home are such that they can be better dealt with by NHRC we consider it expedient to make this order to involve the NHRC in the exercise. It is likely that the pendency of this matter and the directions made by this court may have to some extent inhibited the NHRC in exercise of its ordinary functions relating to Agra Protective Home so far. The order we make herein will also have the effect of removing any such impression or inhibition""We have today made an order in WP (Criminal) No. 1900/81 (Dr. Upendra Baxi Vs. State of U.P. and Others) requesting the "we now request the NHRC to be involved in the supervision of the functioning of Agra Protective Home to ensure that it functions in the manner as is expected for achieving the object for which it has been set up."The Hon'ble court further observed "This matter pertains to the functioning of the Agra, Gwalior and Ranchi mental Asylums. We have today November 11th 1997 in Dr. Upendra Baxi vs. State of Uttar Pradesh & others requested the NHRC to be involved in the supervision of the functioning of Agra Protective Home in the manner indicated in the order. We are of the opinion that the same kind of order needs to be made in this matter also relating to Agra, Ranchi and Gwalior asylums. Accordingly, we request the NHRC to perform this exercise in the same manner".

The Hon'ble court vide order dated 12.5.2000 disposed of the Writ Petition Dr. Upendra Baxi, observing "Now that the National Human Rights Commission is seized of the matter it will not be appropriate for this court to proceed any further in this writ petition. The petition is accordingly consigned to the records if and when the Commission requires any help or assistance from the court it is at liberty to make an appropriate application. The writ petitions are disposed of".

Initiatives taken by National Human Rights Commission

Upon being entrusted by the Hon'ble Supreme Court to be involved in the supervision of the functioning of three mental hospitals in Agra, Gwalior and Ranchi; and mandated under section 12 of the Protection of Human Rights Act 1993 to visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government, NHRC has 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 view. It has hitherto used monitoring as a tool of correction and promotion of human rights of the mentally ill persons. National Human Rights Commission prepared a Plan of Action for improving the conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities. The significant initiatives taken by the Commission since the year 1997 are summarized below:

The Commission on its part conceptualized and translated to action a Project in collaboration with NIMHANS Bangalore on 'Quality Assurance in Mental Health Care' in the country with Justice Shri V.S. Mali math, former Member of NHRC as Project Director and Dr. S.M. Channabasavanna, former Director and Vice Chancellor, National Institute of Mental Health and Neuro Sciences (NIMHANS) as the Principal Investigator along with a team of specialists as investigators. The objectives of the project were to analyze the existing status of mental health hospitals, shortcomings and inadequacies; comprehensive recommendations to achieve the object of ensuring quality mental health care in the country. The NIMHANS team took enormous pains to visit and intensively review the functioning of 37 mental health hospitals all over the country in a very short time.

The review ended with a series of recommendations including steps to improve physical facilities, treatment and care of patients, occupational therapy as a tool of rehabilitation, training and research, and community outreach programmes. The recommendations included immediate abolition of cell admissions; gradual conversion of closed wards into open wards; construction of new wards of smaller capacity (not more than 20) for use as open wards; streamlining admission and discharge procedure in accordance with provisions of the Mental Health Act, 1987; up gradation of investigation facilities; in service training of all staff members; providing each patient a cot, mattress, pillow, bed sheet and adequate clothing for change; improving supply of water and electricity; ensuring supply of nutritive food of 3000 kilocalories per day to each patient; developing occupational therapy facilities; improving recreational facilities; developing rehabilitation facilities including day care centres. The report on 'Quality Assurance in Mental Health' was published by NHRC and released by Union Home Minister in June 1999. The report was sent to all the mental hospitals as well as to the Union Ministry of Health and the State Governments/ Union Territory Administrations for necessary follow up action. The States/ UTS were requested to apprise the Commission periodically on progress of implementation of the report, a matter which it continues to pursue till date.

Since June 1999, when the 'Quality Assurance in Mental Health' report was released, the Chairperson, Core Member in charge of mental health and other members as also Special Rapporteurs have been regularly inspecting and reviewing the activities of all the 37 mental health hospitals including GMA, Gwalior, IMHH, Agra and RINPAS, Ranchi to know their functioning as well as find out the conditions of mentally ill patients admitted therein for treatment. The human rights dimension of mental health has occupied a significant place in all these visits, reviews and inspections. The Commission constituted a Central Advisory Group (CAG) headed by its Chairperson with a view to suggest appropriate course of action in the area of mental health. The CAG included Secretaries from the Ministries of Health, Social Justice & Empowerment and senior Advocates of the Supreme Court. The CAG further constituted a Sub Committee headed by a Member of the Commission, with representations from Secretaries of the Ministry of Social Justice & Empowerment and Department of Women & Child Development to advise it on the steps to be taken to rehabilitate patients who languished in the hospitals even after they were cured of mental illness. In 2003-04, the Commission constituted a core group on mental health. A series of recommendations

¹³ AIR 1989 SUPREME COURT 348

made by the Core Group on Mental Health during 2007-08 included that the basic needs of mentally ill persons should be met and they should have access to all entitlements such as old age pension which are available to ordinary citizens. In 2003-04, another research project "Operation Oasis A Study Related to Mentally Ill Persons was undertaken by the Commission in collaboration with Kolkata based NGO, SEVAC.

The Commission formulated guidelines on reporting every death that took place in the three mental hospitals during 2003-04. In 2008-09, the Commission brought out the latest status report on health entitled "Mental Health Care and Human Rights". It made a Video documentary in Hindi and English highlighting various issues pertinent to comprehensive care of mentally ill in hospitals. The documentary also emphasized the responsibilities of all levels of care givers in the mental hospitals.

The Commission urged the Medical Council of India and Ministry of Health & Family Welfare during 2008-09 to augment their efforts for meeting the demand of adequate manpower in the field of mental health. During 2008-09, NHRC in collaboration with NLSIU and NIMHANS, Bangalore organized a National Conference on Mental Health and Human Rights. Thereafter, five Regional Review Meetings on Mental Health were organized by the Commission during 2009-11 and a series of recommendations were made, such as, there is need to delegate powers to the Directors of Mental Health Institutions by their respective State Governments and there is also a need to ensure availability of free medicines to the patients. These recommendations were sent to all stake holders and its compliance is being monitored by the Commission.

It also needs to be understood and appreciated that many of the mental health hospitals are hangovers of the colonial era and are 100 to 150 years old (some even 200 years). Their problems and constraints remained unattended to for years. Their resources-human, material and financial are extremely limited in relation to the long list of deficiencies and shortcomings. Mental health in the overall scheme of development in the Departments of Health of the State Governments does not receive the same priority attention as general health.

In such a scenario, 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. Hence, there is a need for a coordinated and concerted effort on the part of all stakeholders to ensure a dignified care and treatment system for the mentally ill persons in the country.

Conclusion-Laws have also been made in India for the protection of mentally unhealthy people. The efforts of the judiciary are also praiseworthy. The Supreme Court has properly discharged its role in protecting the fundamental rights of every person. The National Human Rights Commission has also fulfilled his responsibilities from time to time. Despite this, mental health related problems still exist and are continuously increasing. A mentally unhealthy person does not reveal his problems publicly. The biggest reason behind this is discrimination.

It is a big truth that until a person does not present his problem to the people, it will not be solved. The main reason behind not sharing one's problem with people is that there is a possibility of misuse of information about one's condition. This can be stopped only when there is awareness among people regarding mental health. Awareness should be spread. Through awareness programs, it will be known that today this is the situation of all people. Somewhere or the other, everyone is troubled by this disorder. Common problems can be solved through joint efforts. There is a need to run more and more awareness programs at the government level.

References-

1. Universal Declaration of Human Rights, 1948
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)
3. The International Covenant on Civil and Political Rights (ICCPR)
4. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
5. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
6. The Human Rights Act, 1993.
7. The Mental Healthcare Act, 2017.