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Mental Health Rights in India in Accordance with Human Rights

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ABSTRACT

Within the framework of human rights legislation, this research study seeks to examine the present situation of mental health rights in India. This article examines the mental health regulatory and legislative landscape, focusing on recent landmark legislation like the Mental Healthcare Act of 2017. This article seeks to examine how well these laws protect the rights of those with mental health conditions, including the freedom from discrimination, autonomy, and dignity. This text also discusses a number of challenges, such as stigma, getting the right treatment, and how mental health relates to other human rights issues. By reviewing all of the pertinent literature, case studies, and legal provisions, this article aims to provide a critical evaluation of the present state of mental health rights in India. The results of this study will also include suggestions for how to move the field forward. In order to assess the gap between the policy objective and the actual situation on the ground, this study examines the implementation of mental health rights in India. It delves into the current responsibilities of healthcare providers, governmental entities, civil society organizations, and international organizations in the context of protecting and promoting mental health rights. Special consideration is given to vulnerable populations in order to alleviate the disproportionately high barriers to mental health treatments and the realization of human rights experienced by women, children, the elderly, and members of economically disadvantaged communities. This study adds to the ongoing discussion on how to better protect mental health rights in India in a way that is consistent with global human rights standards. It accomplishes this by keeping track of the field's successes, failures, and emerging trends.

KEYWORDS

Rights, India, Health, Mental

INTRODUCTION

The Rajya Sabha, the highest house of Indian parliament, eventually passed the Mental Health Care Bill 2013 in August 2016 after 134 amendments made by the central government. In August of 2013, it was first unveiled. Adequately enacted mental health legislation like this one do a great deal to advance social justice for all persons impacted by mental disease, guarantee treatment access for those with mental illness and their loved ones, and safeguard the rights of those who suffer from mental illness. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 2006 provides a real opportunity to improve the position of individuals with disabilities and chronic mental illness within this context. Particularly in the domains of mental capacity, alternative decision-making, and forced treatment, the CRPD has posed significant challenges for legislators and mental health care practitioners. But we can't let this opportunity to fix things go to waste; the CRPD makes a strong argument for reform. There are many positive and progressive aspects of legislation that is comparable to India's 2013 Bill. Included in this are enhanced methods for involuntary admission, higher treatment requirements, and better system-wide administration. As mentioned in the preamble to India's 2013 Bill, this form of legislation does advance the concepts of the CRPD, while there are specific cases when it falls short. People with mental illness have rights to treatment, social care, social engagement, political empowerment, and liberty, all of which should be prioritized in programs like these. All around the globe, individuals with mental illness have been disregarded for far too long. This has to be resolved immediately.

Modern conceptions of human rights have their roots in the 1948 United Nations ratification of the Universal Declaration of Human Rights. Several countries, including India, have put their names to this statement. This work combines two separate but connected concepts around the concept

of "human rights." To begin, there is the concept of individual liberty, which holds that the state's primary responsibility is to safeguard its inhabitants against despotism and that some rights are intrinsic or inalienable ¹. This set of rights includes things like "life, liberty, and the pursuit of happiness" as an example. The second human right is the right to social entitlement, which means that the government and society should work to make sure that everyone has a fair shot at getting what they want out of life.

Because it is against the law for society to violate people's rights in an effort to safeguard them, most rights are negative. Because of this, most rights are seen negatively. On the plus side, there is a unique form of right to health since society strives to impart benefits via the increase of health. Because this right is not enforceable, no one has ever been able to fulfill the social duties it imposes. The connection between "rights" and "obligation" is a relatively fresh and fascinating finding. Thus, practicing one's rights becomes virtually obligatory, and freedom is transformed into responsibility ²

Controversial institutional psychiatric treatments based on European treaties have come under heavy fire for violating the rights and freedoms of persons living with mental illness. The right to be free from unreasonable government intrusion includes those with mental illness. Let me tell you something crucial. As a result of the support of European organizations and the United Nations, the human rights movement was able to grow and spread over the world.

"Privacy, individual autonomy, physical integrity, equality and non-discrimination, information and participation rights, freedom of religion,

¹ Kelly, B. D. (2016). Mental health, mental illness, and human rights in India and elsewhere: What are we aiming for?. *Indian journal of psychiatry*, 58 (Suppl 2), S168-S174.

² Poreddi, V., Reddemma, K., & Math, S. B. (2013). People with mental illness and human rights: A developing countries perspective. *Indian Journal of Psychiatry*, 55(2), 117-124.

assembly and movement, and mental health policies and programs should be promoted," according to 2001 research conducted by the WHO. Furthermore, as stated in General Assembly Resolution 46/129 on the Protection of Persons with Mental disease and for the Improvement of Mental Health Care, it is crucial to acknowledge the rights of those who suffer from mental disease. Rights guaranteed by international treaties are supplementary to the civil and political protections afforded to persons with mental illness. In particular, it is worth noting the European Court of Human Rights' implementation of the European Convention for the Protection of Human Rights ³, although there are also regional accords that guarantee the rights of persons with mental illness. The United Nations and several regional human rights treaties ensure that governments are held responsible for safeguarding and promoting human rights and mental health. These organizations exemplify the qualities of accountable leadership.

MENTAL HEALTH, MENTAL ILLNESS, AND HUMAN RIGHTS: WHAT ARE THE STANDARDS?

The extraordinary humanitarian horrors of World War II prompted the formation of the United Nations in October 1945, with the stated goals of fostering international stability and preventing future conflicts of this kind. The new organization aimed to establish a worldwide human rights culture and provide member nations with a theoretical and legal framework to support human rights defense ⁴. The newly formed group had this as one of its main objectives.

The United Nations General Assembly met in Paris's Palais de Chaillot on December 10, 1948. During that session, the UDHR was approved by the

³ Bhugra, D., Campion, J., Ventriglio, A., & Bailey, S. (2015). The right to mental health and parity. *Indian journal of psychiatry*, 57(2), 117-121.

⁴ Paul, S. (2018). Are we doing enough? Stigma, discrimination and human rights violations of people living with schizophrenia in India: Implications for social work practice. *Social Work in Mental Health*, 16(2), 145-171.

General Assembly as a way to achieve these goals. The United Nations General Assembly initiated the process that culminated in the creation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights in 1966. This was a watershed moment since it signified the UDHR's formal acceptance. It was originally intended to be a rights declaration that would not be legally binding.

The United Nations Declaration of Human Rights (UDHR) is an introductory document that consists of thirty articles and a brief preface. The aim of this preamble, which stresses the importance of human rights being protected by legislation, is to prevent man from having to revolt against oppression and tyranny. A last note: "the inherent dignity (and) the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" (Preamble).

To begin with, the Universal Declaration of Human Rights asserts that "all human beings are equal in dignity and rights and are born free ⁵." Humans are rational and moral beings; the least they can do is treat each other with respect (Article 1). In accordance with Article 2 of the Human Rights Declaration, "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." This further proves that rights are universal and do not discriminate. This term stresses that rights are relevant on a global scale.

For several reasons, including the fact that previous rights declarations were frequently interpreted in a way that excluded some people, it is beneficial and essential to stress universality. Mental illness does qualify as "other status," even if it was not expressly included among the traits

⁵ Saxena, S., & Hanna, F. (2015). Dignity-a fundamental principle of mental health care. *Indian Journal of Medical Research*, 142(4), 355-358.

that may not be used to justify discrimination. In its 1991 Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, the United Nations declared 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 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 Imprisonment," as reiterated here. This is the first assumption.

The latter portions of the UDHR went on to outline a plethora of rights, one of which was "the right to life, liberty, and security of person," a notion fundamentally grounded in freedom (Article 3). A clear articulation of this right, particularly within the context of human rights, is particularly urgently needed for individuals with mental illness since they are more likely to be subjected to extended periods of involuntary confinement in different types of facilities. The 1991 United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care reaffirmed the necessity of protecting the right to liberty, among other rights listed in the Universal Declaration of Human Rights (UDHR).

HUMAN RIGHTS IN INDIA

In an effort to fortify safeguards for human rights, India's parliament approved the Protection of Human Rights Act 1993 on January 8, 1994. Numerous human rights commissions, human rights tribunals, and the National Human Rights Commission (NHRC) were established as a result of this legislation. The definition of human rights under this legislation is "the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Indian constitution or embodied in the international

covenants and enforceable by Indian courts." In this view, human rights are inherent in every person. Being a signatory to the treaties mentioned before, India is granted certain constitutional safeguards ⁶.

The Act requires the National Human Rights Commission (NHRC) of India to investigate claims of human rights violations, government collusion, or official indifference. This is a crucial component of the Act. Whether the victim or his representative voluntarily submits the complaints or the NHRC receives a petition, an investigation into the claims must be conducted. Interestingly, the Commission has the authority to intervene in any matter involving a potential human rights violation lawsuit, provided that the appropriate court grants the Commission permission to do so. Human rights literacy in all areas of society is essential, and one of our many duties is to educate the public about the protections that exist to uphold these rights ⁷.

MENTAL CAPACITY AND THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Secondly, with regard to the application of mental competence to the assessment of involuntary care choices, the Mental Health Care Bill (2013) of India appears to conflict with the Convention on the Rights of the Person. This is all connected to the fact that the measure passed in 2013 makes mental competency a consideration when making decisions about care. Individuals who "needs very high support from his nominated representative in making decisions and is unable to make decisions about mental health care and treatment independently" (Section 98(1)(c)) are required to undergo "supported admission," as outlined in the Section 98 prerequisites. The text made this quite obvious. Testing one's cognitive

⁶ Sarkar, J. (2004). A new mental health act for India: An ethics based approach. *Indian Journal of Psychiatry*, 46(2), 104-114.

⁷ Pathare, S., Funk, M., Bold, N. D., Chauhan, A., Kalha, J., Krishnamoorthy, S., ... & Khenti, A. (2021). Systematic evaluation of the QualityRights programme in public mental health facilities in Gujarat, India. *The British Journal of Psychiatry*, 218(4), 196-203.

talents is the crux of the matter ⁸.

The CRPD states in Article 12 that "people with disabilities have the right to legal capacity on an equal basis with others in all aspects of life" and also, "the right to recognition everywhere as persons before the law." On the other hand, the capacity to be recognized as a participant in the legal system is what an individual's legal ability is. The ability to think critically and formulate an opinion is one definition of mental capacity; this is very different. Nation states are obligated to "take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity," as stated in Article 12 of the treaty. Every nation It is the responsibility of the parties to ensure that adequate safeguards are in place to avoid the abuse of any procedures involving legal competence. Ensuring compliance with the regulations established by international human rights legislation is the objective here. These safeguards should be in place to guarantee that the exercise of someone's legal capacity is carried out in a manner that honors their wishes, preferences, and rights; that it is free from bias or conflict of interest; that it is customized to their unique circumstances; that it is time-limited; and that it is reviewed frequently by an impartial and capable court system. According to Article 12, safeguards ought to be commensurate to the extent to which the measures in question infringe upon the rights and interests of persons.

But the UN-CRPD Committee on the Rights of Persons with Disabilities (CRPD) makes it plain in a "General Comment" on Article 12 that "mental capacity is not, as is commonly presented, an objective, scientific, and naturally occurring phenomenon" and that it's unacceptable to use the term "mental capacity" to predict what supports might be needed for the exercise of legal capacity. Paragraph 14 explains that the most popular

⁸ Duffy, R. M., & Kelly, B. D. (2017). Concordance of the Indian Mental Healthcare Act 2017 with the World Health Organization's checklist on mental health legislation. *International journal of mental health systems*, 11, 1-24.

areas of study, occupations, and evaluation tools for gauging mental aptitude are all products of social and political conditions.

According to the Committee, the "functional approach" usually involves determining if an individual can "use or weigh the relevant information and/or whether he or she can understand the nature and consequences of a decision" when assessing mental capacity. That is the meaning of the word "functional approach." Furthermore, "this approach is flawed for two key reasons: (a) it is applied discriminatorily to individuals with disabilities; and (b) it makes the assumption that it can accurately assess an individual's mental state." Both of these issues require careful thought. Anyone who does not pass the exam will have their fundamental human right to equal treatment by the state infringed ⁹. All of these schools of thought agree that a person can lawfully be legally degraded and deprived of agency if they are disabled and/or lack the ability to make their own decisions. This biased disregard for a person's competence to stand trial is forbidden by Article 12 of the Constitution. Paragraph fifteen is what you're currently reading.

According to the panel's findings, "new, nondiscriminatory indicators of support needs are required in the provision of support to exercise legal capacity; the provision of support to exercise legal capacity should not hinge on mental capacity assessments" (Paragraph Number 29). This is the verdict handed down by the panel. That aside, the Committee is completely opposed to "substitute decision-making":

States In order to fulfill their commitment to replace alternative decision-making regimes with supported decision-making, the parties involved must provide supported decision-making alternatives and eliminate substitute decision-making regimes ¹⁰. Building assisted decision-making

⁹ Thapa, K., & Samson, V. W. (2017). A study to assess the knowledge and attitude of staff nurses regarding human rights of mentally ill patients at selected hospitals of Bangalore, India. *Journal of Kathmandu Medical College*, 6(1), 27-31.

¹⁰ Narayan, C. L., & Shekhar, S. (2015). The mental health care bill 2013: A critical

systems while simultaneously preserving alternative decision-making regimes is insufficient to be in compliance with Article 12 of the International Convention, as stated in Paragraph 28 of the Convention.¹¹

Since India's 2013 Bill defines mental ability as a prerequisite for "supported admission," it seems that the Committee's interpretation of Article 12 conflicts with it. The Committee's "General Comment" has taken a lot of heat for a number of reasons, such as the fact that it grants mental illness patients the right to be freed from jail on the grounds of mental infirmity and the fact that it fails to provide an other method of decision-making¹². Disabled people's lived clinical and social experiences differ greatly from these interpretations of the CRPD and its contents. Contributing issues are likely the Committee's lack of clinical specialists and its inadequate interaction with service-users¹³.

Since the CRPD cannot be put into reality, the Committee's "General Comment" could strongly imply that it is useless. Article 12 of the CRPD lays forth the rights of people with disabilities, including those who may be suffering from mental illness. This is problematic. Furthermore, it serves as a strong incentive for making improvements and adjustments. Laws enacted in the wake of India's 2013 Bill improved system-wide management, simplified processes for involuntary admission, and raised general care standards, among many other progressive aspects. This flawed law thus supports the goals laid out in the Convention on the Rights of Persons with Disabilities (CRPD), which is in keeping with the purposes of this sort of legislation and as stated plainly in the preamble of the 2013

appraisal. *Indian Journal of Psychological Medicine*, 37(2), 215-219.

¹¹ Duffy, R. M., & Kelly, B. D. (2019). India's Mental Healthcare Act, 2017: content, context, controversy. *International Journal of Law and Psychiatry*, 62, 169-178.

¹² Math, S. B., & Nagaraja, D. (2008). Mental health legislation: an Indian perspective. *Mental Health and Human Rights*. Bangalore: National Institute of Mental Health and Neuro Sciences (Deemed University), 49-68.

¹³ Rahman, M., Ahmed, R., Moitra, M., Damschroder, L., Brownson, R., Chorpita, B., ... & Kumar, M. (2021). Mental distress and human rights violations during COVID-19: a rapid review of the evidence informing rights, mental health needs, and public policy around vulnerable populations. *Frontiers in psychiatry*, 11, 603875.

Bill ¹⁴.

METHODOLOGY

This investigation makes use of a qualitative research methodology to investigate mental health rights in India. It does so by analyzing documents, conducting interviews with experts, and conducting case studies. The purpose of document analysis is to get an understanding of the context of mental health rights by concentrating on legal texts and policy papers. Interviews with subject matter experts are used to get feedback from stakeholders on implementation issues and improvement initiatives. Real-world applications and results of mental health rights are better understood via the use of case studies. It is planned to conduct both thematic and comparative analysis in order to identify the most important concerns, difficulties, and suggestions for improving the protection of mental health rights in India.

FINDINGS

ANALYSIS OF INDIA'S MENTAL HEALTH POLICIES AND THEIR ALIGNMENT WITH HUMAN RIGHTS

Despite the fact that India's mental health policies have made tremendous progress, there are still many obstacles to overcome before they can be brought into conformity with international human rights norms, as revealed by the examination of these laws. A number of important initiatives, such as the Mental Healthcare Act of 2017, have the goals of decriminalizing suicide, protecting patient rights, and promoting mental health treatment that is received in the community. Despite this, there are still gaps in the framework that ensures universal access to high-quality mental health treatments, particularly for populations who are marginalized. While the connection with human rights principles

¹⁴ Gupta, S., & Sagar, R. (2022). National mental health policy, india (2014): where have we reached?. *Indian journal of psychological medicine*, 44(5), 510-515.

highlights the necessity of policies that promote dignity, autonomy, and non-discrimination in the provision of mental health treatment, it also highlights the importance of equality.

EXAMINATION OF CASE STUDIES HIGHLIGHTING THE STATE OF MENTAL HEALTH RIGHTS IN INDIA

The implementation of mental health rights in India has been met with a wide range of experiences, which are highlighted by the case studies that were investigated in this study. Cases of rights breaches and inadequate access to care are compared with instances of advocacy efforts that were effective and resulted in changes to policies and improvements to services. The concerns of compulsory hospitalization, the absence of community-based alternatives, and discrimination motivated by stigma are frequently at the core of legal disputes. These instances highlight the need of having broad legal safeguards and effective enforcement procedures in order to successfully defend the rights of those with mental health conditions.

IDENTIFICATION OF GAPS AND CHALLENGES IN THE CURRENT LEGAL FRAMEWORK

Based on the findings of the study, there are a number of deficiencies and difficulties within the existing legal framework for mental health rights in India. Inadequate financing for mental health programs, poor integration of mental health care into primary health systems, and discrepancies in access to mental health services between urban and rural areas are some of the factors that contribute to these issues. The implementation of the principles of the Mental Healthcare Act is further complicated by legal ambiguities and inconsistencies, which further impede attempts to protect patient rights and assure equal treatment at the same time. In order to address these gaps, it is necessary to make concentrated efforts to develop implementation mechanisms, increase public awareness, and emphasize mental health as a fundamental human right in the process of policy

formation and practice. Furthermore, these findings highlight the significance of continuously evaluating and adapting policies on mental health in order to fulfill the ever-changing requirements of society as well as international human rights norms. In order to ensure that all persons have equal access to high-quality mental health services and safeguards, policymakers in India may move towards a more rights-based and inclusive approach to mental health care by addressing the gaps and problems that have been highlighted.

DISCUSSION

INTERPRETATION OF FINDINGS IN THE CONTEXT OF HUMAN RIGHTS PRINCIPLES

When the findings concerning mental health rights in India are interpreted through the prism of human rights concepts, it is clear that there has been progress, but there are still ongoing issues. The research highlights the fact that although India has taken major measures with the Mental Healthcare Act, 2017, to align its mental health policies with human rights norms, such as decriminalizing suicide, encouraging patient autonomy, and ensuring that non-discrimination is maintained, there are still gaps in the implementation of these policies. It is important to note that human rights principles underline the significance of dignity, equality, and accessibility in mental health treatment. These values also indicate areas in which existing policies and practices are lacking. There are still many obstacles that prevent the implementation of complete mental health rights. Some of these obstacles include stigma, insufficient resources, and inequality in access to care.

IMPLICATIONS FOR MENTAL HEALTH POLICY AND PRACTICE IN INDIA

The conclusions that may be taken from this study have significant repercussions for the policies and practices that are in place regarding

mental health in India. The importance of bringing mental health policy into closer alignment with human rights principles cannot be overstated when it comes to successfully addressing the difficulties that are now being faced. There is a pressing need for policymakers to prioritize the allocation of resources and funds in order to increase community-based mental health care, particularly in rural regions that are neglected. A better understanding of mental health as a fundamental human right may be promoted via the enhancement of public education and awareness initiatives, which can assist battle stigma for mental health. To add insult to injury, there is an urgent requirement to enhance legal frameworks in order to provide adequate protections against rights abuses and to enable persons to seek remedy for concerns linked to mental health treatment.

RECOMMENDATIONS FOR IMPROVING MENTAL HEALTH RIGHTS PROTECTION

For the purpose of enhancing the protection of mental health rights in India, a number of recommendations have been offered on the basis of the findings:

1. **Enhance Implementation of the Mental Healthcare Act:** Make certain that the laws concerning patient rights, involuntary hospitalization, and mental health treatment standards are effectively enforced.
2. **Expand Access to Community-Based Mental Health Services:** To facilitate the delivery of decentralized mental health care, including psychosocial support services and crisis intervention teams, it is important to make investments in infrastructure and appropriate training.
3. **Promote Awareness and Education:** To lessen the stigma that is associated with mental health difficulties and to educate the general people about their rights and the services that are available, public awareness campaigns should be launched.

4. **Ensure Equity in Access:** The gaps in access to mental health treatment that exist between urban and rural regions should be addressed, and vulnerable populations, including women, children, and LGBTQ+ communities, should be given precedence.
5. **Strengthen Collaboration and Accountability:** Encourage the formation of partnerships between government agencies, groups representing civil society, and international authorities in order to keep track of developments, discuss and exchange successful practices, and lobby for policy changes.

CONCLUSION

Within the context of human rights concepts, this paper has offered a thorough analysis of mental health rights in India. Despite the Mental Healthcare Act, 2017's passage, an examination of India's mental health policy has shown that the country has made great gains, there are still obstacles to treatment availability and implementation. The results demonstrated how critical it is to ensure that mental health services are accessible, equitable, and based on human rights values. The critical need of better enforcing current laws, increasing access to community-based treatments, and raising public awareness to fight stigma is underscored by the consequences for mental health policy and practice in India. Some of the suggestions made include making sure that everyone has equal access to mental health treatment, enhancing legislative frameworks, and encouraging stakeholders to work together to track improvements and push for systemic changes. If India is serious about progressing its mental health rights protection agenda, it must act on these proposals. India may strive for a future where everyone receives effective, equitable, and dignified mental health treatment that meets international standards by making human rights a priority in the development and implementation of mental health policies. This report is a rallying cry for activists, practitioners, and legislators to unite in realizing this goal and maintaining

mental health as a basic human right. The CRPD's aims are admirably broad, which is one of its finest features. The Convention aims, among other things, "to promote, protect and ensure that all persons with disabilities have the opportunity to fully enjoy all of their fundamental freedoms and human rights, and to promote respect for their inherent dignity"