Analytical study on the laws and rights for the mentally ill in India from the past to the present

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ABSTRACT

Mental illness, defined by the affliction of an individual's health in terms of clinically significant changes in their emotion regulation, cognition and behavior; is found in a majority of individuals in diagnosed or undiagnosed form. This makes the person vulnerable and or prone to abuse and eventually being violated or even being devoid of their basic legal rights. Thus, laws and rights have to intervene to ensure that even such individuals are provided with basic human rights, with a special focus on how they have to be treated at all stages of their treatment ranging from the moment they are coming in with their ailments to post-cure treatments, primarily supported by counseling services. The laws and rights of an individual, especially in India, caters primarily around psychiatric care, focusing less on the counseling and clinical aspect of the treatment. India as a developing country has come a long way in the ways in which a person identified as mentally ill is and must be treated backed by legal aid. This paper aims to analyse the laws and rights available for people with mental illness, from the past to the present.

Keywords: *Counseling, Laws, Mental Illness, Rights, Treatment.*

1. Introduction

In an attempt to fully understand a law or a rule, it is essential to understand the time and place of when it was or is formulated; referred to as 'zeitgeist' and 'ortgeist'. 'Zeitgeist', also known as the "spirit of the times", defined as certain practices that are influenced by situational factors yet are specific to a particular time period (Krause, 2019). Similarly 'ortgeist', also regarded as "the spirit of a place", defined as the ways in which social, economic etc. aspects are influenced by the physical and or cultural environment *(APA Dictionary of Psychology, n.d.; APA Dictionary of Psychology, n.d.-b)*. The 'zeitgeist' and 'ortgeist' reflect upon the needs of the society then, influencing the norms that are required to be made, maintained and followed. Such norms are later formalized as laws. Formulation of laws ensuring the rights of people is no easy task, a law must be formed such that it caters to the needs of the present and the upcoming generations (Mccubbins & Turner, 2013).

Keeping these few things into consideration the Government of India came up with several laws to safeguard the rights of the people with mental illness. A few of these prominent laws, prevalent during the post independent era comprises the following: The Lunacy (District and Supreme Courts) Act, 1858; The Indian Lunatic Asylum Act, 1858; The Military Lunatic Act, 1877; The Indian Lunacy Act, 1912. Additionally a few of the prominent laws for people with mental illness, during the post independent era includes: Mental Health act,1987; Persons with Disability (Equal opportunities, protection of rights, full participation) Act, 1955; Convention on the rights of persons with disabilities, 2006 (CRPD), Mental Healthcare Act, 2017, etc. These laws were formulated in an attempt to safeguard the rights of people with mental illness and protect them from any forms of abuse.

This paper intends to analyze and provide the readers with an insight on the laws and rights of the people with mental illness, thus focussing on the overall development of the laws for people with mental illness from the past to the present. Thus, providing an insight on the development of the present day laws to safeguard the rights of people with mental illness, with an exclusive focus on the benefits and limitations of these laws. Furthermore it provides an insight of the laws and rights that are still unavailable for people with mental illness.

2. Mental illness: definition, importance

The term, 'mental illness' is briefly defined by the Mental Health Care Act, 2017; published by authority as, "a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognise 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

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Received: 5 June, 2023
Available online: 20 September, 2023

retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by subnormality of intelligence" (*The Mental Healthcare Act, 2017 No. 10 of 2017, an Act to Provide for Mental Healthcare and Services for Persons With Mental Illn*, n.d.). This definition acts as an operational definition, by serving as observable measures in order to understand the underlying construct (Beins, 2013). Additionally the Government of India, under the Mental Health Care Act, 2017, has provided operational definitions for several terms, a few of them are: "advance directive", "appropriate government", etc. in order to refrain from any scope of misunderstanding; and safeguarding the rights of people with mental illness, fending for them due to their inability to look after themselves.

3. Need of laws for people with mental illness

More than 70 million reported cases of people with mental illnesses have been identified, as of 2021 (Bharti & Fatma, 2021, 1362). Inability of people with mental illnesses to be socially accepted and to fend for themselves makes them prone to several forms of abuse, a few of them are: verbal abuse; physical abuse that is over medication, excessive use of force during restraint etc; emotional abuse that is terrorizing, intimidating, ignoring, etc; sexual abuse; neglect that is restraining under , unhealthy and unsafe conditions, etc. (C., 2016, 145). There is a need for the law to step in and help those who cannot fend for themselves, partly by facilitation of social acceptance.

India as a developing country has formulated and is following numerous laws to safeguard the rights of people with mental illness, ensuring a healthy living to whatever extent that is possible. A few of the prominent laws of the past, that has shaped the present laws to safeguard the rights of the people with mental illnesses are: The Lunacy (District Courts) Act, 1858; The Lunacy (Supreme Courts) Act, 1858; The Indian Lunatic Asylum Act, 1858; The Military Lunatic Act, 1877; The Indian Lunacy Act, 1912; Mental Health act, 1987; Persons with Disability (Equal Opportunities, Protection of Rights, full participation) Act, 1955; Convention on the Rights of Persons with Disabilities, 2006 (CRPD), Mental Healthcare Act, 2017, etc. The Mental health care bill, 2013 is one of the prominent bills responsible for shaping the the Mental Health Care Act, 2017; decriminalising suicide (*The Mental Healthcare Act, 2017 No. 10 of 2017, an Act to Provide for Mental Healthcare and Services for Persons With Mental Illn*, n.d.).

4. Laws: pre-independent India

4.1 *The Lunacy (District Courts) Act, 1858; The Lunacy (Supreme Courts) Act, 1858; The Indian Lunatic Asylum Act, 1858, 1886, 1889; and The Military Lunatic Act, 1877*

During post-independent India, numerous laws were formulated and enacted. This was done in order to regulate the process of caring and regulating the treatment for the mentally ill in pre-independent India (Bharti & Fatma, 2021, 1364). Central idea was to highlight and spread awareness about the pitiable conditions in which they were kept (Bharti & Fatma, 2021, 1364). The environmental conditions in which people with mental illness were kept in, were such that it offered little chance of recovery and or discharge, additionally under these acts the patient or the supposed patient was detained for an indefinite span (Firdosi & Ahmad, 2016).

4.2 *The Indian Lunacy Act, 1912*

Proposed as a bill in 1911 and implemented as an Act in 1912, the Indian Lunacy Act (ILA), was the first act that had actually begun to promote mental health in India. Notable achievements include, the term 'asylum' was replaced with 'mental hospitals' (Firdosi & Ahmad, 2016). Additionally this law had identified people with mental illness as a danger for the society, thus protecting the public from them by promoting custodial sentences which had led to a cardinal change in the management of now, mental asylums. Thus, facilitating neglect of human rights for the people with mental illness (Firdosi & Ahmad, 2016). It was thus declared as inappropriate by the Indian Psychiatric Society (Firdosi & Ahmad, 2016).

4.3 *Limitations of the laws or pre-independent India*

The previous mental health acts, had focussed less on the mentally ill person per se and more on protecting the public from the mentally ill person. Thus, promoting institutionalization which had led to severe neglect in the humane treatment of the mentally ill person, a few of these neglects were as severe as curtailment of personal liberty in the absence of a review from a judicial body, etc. (Firdosi & Ahmad, 2016; Bharti & Fatma, 2021).

5. Laws: post-independent India

5.1 *Mental Health Act,1987*

Drafted as a bill in 1950 and approved by the President of India in the month of May, 1987 was implemented as an act in 1993 (Firdosi & Ahmad, 2016; Trivedi, 2002). Focus of this act was on amendment of the procedures involved in the care and treatment of the mentally ill, by focusing more on the area of Psychiatry. Ultimately deemphasizing on putting them under custody. It was attained by formulating detailed procedures for hospital admission, protection of rights, guardianship and management of their property, etc. (Firdosi & Ahmad, 2013, 65; Trivedi, 2002). Additionally one of the greatest achievements of this act is a clear differentiation amongst: Government mental hospital and private mental hospital; private general hospital and a private psychiatric hospital; psychiatrists and various specialists (Trivedi, 2002).

This act had several criticisms, a few of these includes: least amount of consideration for a few aspects of mental illness, namely clinical and medical aspect; no attempts

made to demarcate the patients seeking voluntary or involuntary treatment/ hospitalization (Trivedi, 2002). Further, in 1993, despite being implemented in various states and union territories, the act was not implemented due to the following reasons: difficult to understand procedures, etc. And due to the lack of consideration by the Indian Psychiatric Society, the proposed suggestions were never incorporated (Trivedi, 2002).

5.2 UN's Principles For The Protection of Persons with Mental Illness And The Improvement of Mental Health Care, 1991

The UN had laid down 25 principles in 1991, proposed to be applied to anyone and everyone irrespective of anything which may pose a threat for discrimination (*Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care*, n.d.). The UN has also provided with an operational definitions for few terms, namely: 'counsel', 'independent authority', 'mental health care', etc. it includes the following principles: fundamental freedoms and basic rights; protection of minors; life in the community; determination of mental illness; medical examination; confidentiality; role of community and culture; standards of care; treatment; medication; consent to treatment; notice of rights; rights and conditions in mental health facilities; resources for mental health facilities; admission principles; involuntary admission; review body; procedural safeguards; access to information; criminal offenders; complaints; monitoring and remedies; implementation; scope of principles relating to mental health facilities; and saving of existing rights (*Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care*, n.d.).

5.3 *Persons with Disability (Equal Opportunities, Protection of Rights, Full Participation) Act, 1995*

Came into force on January 1, 1996. It aimed to ensure that all people irrespective of their disability are treated equally, ultimately safeguarding the People with Mental Illness (PMI) from any forms of abuse and exploitations. Under disabilities, PMI was also included. Additionally, under the point 33 of the act gave the right to reserve 3% of the vacant job in the government sector for the disabled people, here in PMI was excluded (PWD Act, 1995 The Persons with Disabilities; Equal Opportunities, Protection of Rights and Full Participation Act, 1995 Publish, n.d.).

5.4 *Mental Health Care Act, 2001*

Amongst other things, the Mental Health Care act 2001, provides guidelines pertaining to the admission of psychiatric patients in the psychiatric hospitals (*Rights of Psychiatric Patients – Mental Health*, 2020) (Citizens information. Ie, n.d.). The rights that were provided to the patients were almost the same as that of the UN's Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991.

5.5 *Convention on the Rights of Persons with Disabilities (CRPD), 2006*

Adopted on 13 December, 2006 and had been open for signature 30 March, 2008. It was aimed at altering the attitudes and approaches pertaining to people with disabilities; promoting, protecting, and ensuring full and equal enjoyment of all human rights and fundamental freedom by everyone (*United Nations Convention on the Rights of Persons With Disabilities (UNCRPD)*, n.d.; *Internationl Policy*, 2022) (*Internationl Policy | Department of Empowerment of Persons With Disabilities | MSJE | Government of India*, n.d.).

5.6 *Mental Health Bill, 2013*

Formulated explicitly with an intention to bring India into compliance with the requirements of the CRPD. Since the existing act did not serve its function adequately in neither protecting the rights of people with mental illness nor in promotion of their access to mental health care, this bill was introduced. Key features of this bill includes: rights of persons with mental illness ensuring right to access affordable mental health care treatment by the government; advance directives on the course of treatment plan and nomination of a representative; central and state mental authority to maintain a record of the professionals, health care facilities, etc; mental health establishments to provide with every requited procedures for the professional as well as the patient; prohibition of the electro convulsive therapy and most importantly decriminalisation of suicide (*The Mental Health Care Bill, 2013*, n.d.).

5.7 *Mental Healthcare Act, 2017*

Aims to protect, promote, fulfill and provide mental healthcare and services to people with mental illness. Chapter 5 of the act, focuses on the following rights, rights to: access mental healthcare facilities of good quality and sufficient quantity, with ease in accessibility; community living; protection from cruel inhuman and degrading treatment; rehabilitation services, community living; equality and non discrimination; information; confidentiality; restriction of release of information in respect to their mental illness; access mental records; personal contacts and communication; legal aid; and the right to make complaint about deficiencies in provision of services (*The Mental Healthcare Act, 2017 No. 10 of 2017, an Act to Provide for Mental Healthcare and Services for Persons With Mental Illn*, n.d.).

6. Rights not given to persons with mental illnesses

6.1 *Right to enter into a contract*

Section 12 of the Indian Contract Act, 1872 states a person in their sound mind can make and enter into a contract.

PMI may make and enter into a contract when they are in their lucid interval (Narayan & Shikha, 2013).

6.2 *Right to marriage & divorce*

Several marriage and divorce acts, a few of them being: Hindu Marriage Act, 1955; Special Marriage Act, 1954; Muslim law, Parsi and Christian law states that marriage is a form of contract and thus a person in their sound mind may enter into a contract. Thus, marriage by a PMI is not valid (Narayan & Shikha, 2013).

6.3 Right to vote or hold public office

A PMI cannot register in an electoral roll under the Representation of People Act 1950 (Narayan & Shikha, 2013).

6.4 *Right to not be accountable for a criminal offense*

The Indian Penal Code, 1860 exempts the persons with the unsound mind from criminal liability, IPC 84 act of a person of unsound mind (Narayan & Shikha, 2013).

7. Conclusion

India has come a long way to ensure the rights of people with mental illness, as a means of promoting equality. Yet the same cannot be ensured due to several reasons, a few of them being: nature of illness of PMI; lack of adequate number of mental health professionals and facilities; most of the laws and acts has their origins in the British colonial period; a greater emphasis on the psychiatric part of the mental illness, with lesser focus on the clinical and the counseling aspect, etc. The laws that are presently available and followed is partly an amalgamation of the UNCRPD-2006 and its adaptation in the Indian context. With an ultimate goal of safeguarding the rights of the PMI.

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