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Dr. Jyoti Bhakare
Professor, Department of Law,
Savitribai Phule Pune
University, Pune,
Maharashtra, India

Nikita Bhakare
University of Cambridge,
Cambridge, United Kingdom

Mental health ethics and sustainable development in India: Legal perspectives

Jyoti Bhakare and Nikita Bhakare

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Abstract

Mental Health issue is misconceived in many ways without being identified as a medical issue in the context of social, legal and human rights perspectives. A purely medical model to address mental health issues by keeping the social legal determinants away will not achieve success. The issue needs multidimensional approach and efforts in all sections from law making to sensitising society and healthcare professionals and most importantly strengthening and empowering the people with mental health issues. The sustainable development inclusivity Goals direct the policies and action plan in that direction by going to the root causes of exclusion. The laws and policies need to have a strong basis of medical ethics to make them sustainable.

This paper tries to explore linkage between the principles of medical ethics, principles of sustainable development and the development in India at the level of laws, policies and judicial trend. It also examines how these efforts have led to contribute towards social justice to the section of people with mental health issues.

Keywords: Mental health issues, sustainable development, supreme court, medical ethics

Introduction

The World Health Assembly in 2013, adopted a comprehensive action plan that focuses on four key objectives: “to strengthen effective leadership and governance for mental health; provide comprehensive, integrated and responsive mental health and social care services in community-based settings; implement strategies for promotion and prevention in mental health, and; strengthen information systems, evidence and research for mental health”. The plan stressed upon the importance of protecting and promoting human rights and includes a central role for the provision of community-based care and support. The plan highlights strengthening and empowering civil society working in the area of mental disorders and psychosocial disability to involve them actively in policy debates and decision-making processes ^[1].

A large multi country survey supported by WHO showed that between 35% and 50% of people with serious mental disorders in developed countries, and between 76% and 85% in developing countries, received no treatment in the year before the study. Many people with mental health conditions do not receive mental health care despite the fact that effective interventions exist, including medication ^[2]. Nearly 31% of the world's disability is accounted by mental disorders. It was found that five of the ten leading causes of disability worldwide are in the category of mental illnesses: major depression, alcohol dependence, schizophrenia, bipolar affective disorder and obsessive-compulsive disorder ^[3]. World health report 2001 by the WHO assessed the leading causes of disability using disability adjusted life years (DALY). Mental illnesses accounted for 25% of total disability ^[4]. Disability not only affects individuals but also impacts on the entire community as these people are deprived of taking an active part in community leading to diminished productivity and losses in human potential. The United Nations estimates that 25% of the world's population is adversely affected in one way or another as a result of disabilities ^[5].

Aims and objectives

- To analyse the mental health issues in India from the perspectives of Medical Ethics and sustainable development.
- To assess whether the principles of bioethics/ medical ethics are incorporated in Indian Laws relating to mental health.

Corresponding Author:
Dr. Jyoti Bhakare
Professor, Department of Law,
Savitribai Phule Pune
University, Pune,
Maharashtra, India

- To verify whether the laws and judicial trend in India can contribute to sustainable development.

Materials and Methods

The present study is doctrinal in nature and is based on secondary data sources that include reference books, research journals, study reports, bare Acts and international conventions.

Relevance of the study

The study is useful for the stakeholders who have the relevant work field viz. mental health professionals, social workers, NGOs, law and policy makers, students and researchers.

Concept of Mental Health Ethics

Mental health ethics is the study of ethical principles and problems within mental healthcare. It assumes a multidisciplinary approach that include psychiatry, psychotherapy, and social work, law and policy. It focuses on implementing bioethics principles in Health care while considering individual rights, social justice and the broader implications of mental health policies. Mental health ethics provides a basis for mental health professionals to bring ethical decision making in the process of informed consent, ethical care for well-being of the patients, and promote for a more just and equitable society.

Bioethics/ medical ethics Principles of mental health include

- **Respect for autonomy:** Individuals should have the right to make decisions about their own care, within the bounds of their capacity to do so.
- **Non-maleficence:** Mental health professionals have a duty to avoid causing harm to their clients.
- **Beneficence:** They are also obligated to act in the best interests of their clients, promoting well-being.
- **Justice:** Mental health services should be accessible and equitable for all individuals, regardless of their socioeconomic status or other factors.
- **Confidentiality:** Protecting the privacy of client information is crucial.
- **Informed consent:** Clients should be informed about their treatment options and have the right to refuse care.
- **Social justice:** Mental health ethics also extends to advocating for policies that address systemic inequalities and improve access to mental healthcare for all.

Challenges in mental health ethics include

- **Balancing individual rights with the needs of society:** e.g. In cases where individuals pose a risk to themselves or others, or is unable to decide about the mental Healthcare, there may be a need for involuntary treatment or interventions.
- **Addressing stigma and discrimination:** Mental health requires combating stigma and promoting fair treatment to ensure equitable access to Healthcare.
- **Acceptance of cultural differences:** Mental health professionals must be sensitive to the cultural values and beliefs of their clients.
- **Ethical issues in research:** Clinical Trials and Research on the persons with mental Health issues

require stringent adherence to ethical guidelines to protect participant rights.

In essence, the challenges are multidimensional and need to be addressed by multiple means without narrowing them under medical aspects only. The socio legal and Human rights approach taken up at international level by World Health Organization (WHO) has guided the issue from these perspectives. The legal issues are observed mostly due to lack of awareness about the rights, inefficient existing laws and poor implementation of the same.

Social issues

- Preconceived notions about the mentally ill - that these people are lazy or dangerous.
- Stigmatization and discrimination resulting to increasing vulnerability to disability, magnifying the impact of illness, depriving care and treatment.
- Barriers for the disabled to access the due benefits. e.g. poor knowledge about the government schemes, fear of Misuse of Certificates, discomfort to approach government hospitals, time constraints, rigid negative thinking about legal issues, denial of disability, and 'outside' pressure to issue disability certificates ^[6].
- Poor infrastructure- Inadequate number of mental health care asylums; poor standard of care; lack of facilities, qualified and enough staff worsening the situation.
- Challenges and barriers unrelated to their illness e.g. Reduced self-confidence and internalized stigma, Pessimism regarding recovery, Insufficient counseling services and employment opportunities, lack of disability support programs, Employer attitudes bearing fears about productivity, inability to cope.
- Denied autonomy – for example, involuntary sterilization, confinement in institutions against the will, status as legally incompetent. Thus, no decisions making enabling an individual to have control over their life, actions and decisions ^[7].

Human rights Issues

- Denial of the basic right to health based on the principles of accessibility, availability, affordability, acceptability and justice. E.g. difficulties accessing health care, especially in rural areas, slums and suburban settings; non-availability of affordable treatment, gender-insensitive services to women with disabilities; medical practitioners sometimes treat persons with such disabilities as objects of treatment rather than rights-holders and without even free and informed consent.
- Experience inequalities – for example, denial of equal access to employment, education, social status or political participation.
- Violations of dignity, violence, abuse, prejudice, or disrespect.
- Restricted choice due to an assumption of incapacity affecting autonomy, responsibility and self-determination ^[8].

Mental Health and sustainable development

Key Aspects of Sustainable Development Inclusivity include Social Inclusion, Economic Empowerment, creating

opportunities for marginalized groups, Reducing Inequalities, Addressing the disparities and Leaving No One Behind. Sustainable development requires addressing the needs of all, including those who are most vulnerable and marginalized. The persons with mental health issues need the help in addressing, identifying and tackling the factors that lead to exclusion, such as poverty, discrimination, and lack of access to healthcare. Sustainable Development Goal SDG Target 3.4 aims to reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being. In 2021, more than 700 000 people took their own life and there are many more people who attempt suicide. Suicide occurs throughout the lifespan and was the third leading cause of death among 15-29-year-olds globally in 2021. Suicide does not just occur in high-income countries, but is a global phenomenon in all regions of the world. In fact, about 73% of global suicides occurred in low- and middle-income countries in 2021 ^[9]. There are many prevention control measures adopted by WHO. However, the challenges remain to be addressed.

WHO estimates that the burden of mental health problems in India is 2443 disability-adjusted life years (DALYs) per 100 00 population; the age-adjusted suicide rate per 100 000 population is 21.1. The economic loss due to mental health conditions, between 2012-2030, is estimated at USD 1.03 trillion ^[10]. It is no surprise that the state of mental health of a country, correlates positively with its economic growth. Projections show that India will suffer massive economic losses owing to mental health conditions. As of 2015, on a global level, over 322.48 million people worldwide suffer from some form of depressive disorder and as of 2017, more than 14 percent of the total population in India suffer from variations of mental disorders. The majority of this share includes older adult females in India. In India, every seventh person suffers from some form of mental disorder ^[11].

The 2010 MDG Report ^[12] is the first to mention disabilities, noting the limited opportunities facing children with disabilities, and the link between disability and marginalization in education. The Ministerial Declaration of July 2010 recognizes disability as a cross-cutting issue essential for the attainment of the MDGs, emphasizing the need to ensure that women and girls with disabilities are not subject to multiple or aggravated forms of discrimination, or excluded from participation in the implementation of the MDGs.

International Law on Mental Health

The 'Declaration on Rights of Mentally Retarded Persons 1971' adopted by the UN general assembly was the first active attempt to grant disability rights to the mentally ill people. The 1996 convention by the WHO on Mental Health Care laid down ten basic principles for the betterment of mentally challenged people. It was recommended that a large number of asylums with best healthcare facilities need to be opened in the developing countries. In 1992, The Declaration of Hawaii was adopted by the General Assembly of U.N. It was the first international treaty that recognized human rights of mentally challenged people ^[13]. It enlisted some rights as the pre-requisites to be complied with to ensure the protection of human rights. E.g. a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential; a

right to economic security and to a decent standard of living; a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities; a right to live with his own family/ foster parents and participate in different forms of community life etc. The Preamble to the CRPD stresses that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others" ^[14].

Development of Law in India

Constitution of India provides the right against discrimination under Article 15(2) and equal opportunities to prosper in life whereby they cannot be denied access to public goods; Right to Life under Article 21 gives the right to health as laid down by the Supreme Court in many cases. The laws to address mental health issues in India are based on the principles of Bioethics i.e. Autonomy (informed consent), Beneficence, Non-maleficence, Justice. In the past three decades, the concept of disability has changed the focus from individual impairment to a more social phenomenon ^[15]. Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual and that individual's contextual factors ^[16]. The Indian Disability Act, 1995 adopts a medical model defining disability that includes Mental retardation, Mental illness. It aims to promote and ensure equality and protect and promote the economic and social rights. The Act relates to prevention and early detection, education, employment, affirmative action, non-discrimination/barrier free access, research and manpower development, institutions for persons with severe disabilities. It makes special provisions for rehabilitation and opportunities for employment and education. In 2007, India became a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and was expected to make appropriate changes in law and policy. National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act 1999 aims for empowerment of persons with the said disabilities by enabling them to live independently and close to the community and to facilitate the realization of equal opportunities and protection of rights. National Policy on Disability, 2006 covered critical areas like education, employment, support services, access, social security, etc. Unfortunately, most of the states of India do not have a state level disability policy in place. Mental Health Care Act 2017 defines mental illness to mean a disorder of thinking, mood, perception, orientation or memory. Such a disorder impairs a person's behaviour, judgment, capacity to recognize reality or ability to meet ordinary demands of life. This definition does not include mental retardation ^[17]. The Act provides the following rights to the mentally ill. Viz., the right to specify how he would like to be treated for mental illness and who is the person responsible for taking decisions with regard to the treatment, his admission into a hospital, etc. the right to access mental health care and treatment from the government including affordable, good quality, easy access to services; Decriminalization of Suicide, requiring every insurance company to provide medical insurance for mentally ill persons.

Judicial Trend in India

In *Chandan Kumar v State of West Bengal* ^[18], the judiciary condemned the mismanagement of mental asylums by state governments. In the mental hospital in West Bengal, the patients were kept chained with iron ropes and were physically tortured and denied food and water. This was all done in the name of treatment. The Supreme Court ordered the cessation of this inhuman practice, held the state liable and also recommended reforms of mental health asylums all over the country. In *Legal Aid Committee v State of MP* ^[19], the Supreme Court highlighted the need to have stricter enforcement of laws made for the betterment of mentally ill. In a most tragic case *Death of 25 mental asylum patients v. Union of India* ^[20], 25 people were charred to death on outbreak of fire as they were chained to their beds. During the day, they were tied to trees with thick ropes and at night, to their beds with iron chains. The Court took suo motu action and appointed Mr. Abhishek Manu Singhvi, learned senior counsel as Amicus Curiae whose report stated about non compliance of the Mental Health Act. The Court gave the directions to undertake a district-wise survey of all the bodies, offering psychiatric/mental health care and conditioned the grant/ refusal of license based on compliance with minimum prescribed standards. The court also ordered the Central and State Governments to undertake a comprehensive awareness campaign with a special rural focus to educate people on the law relating to mental health, rights of mentally challenged persons, the fact that chaining of mentally challenged persons is illegal and that mental patients should be sent to doctors and not to religious places such as Temples or Dargahs.

In *Dr. Upendra Baxi v. State of Uttar Pradesh* ^[21], the Supreme Court was called upon to enforce the human rights of the occupants of State Protective Homes for women with varying degrees of mental disability and had not been examined at the time of admission to the Home. Despite this the Superintendent had released 14 of them without determining their mental state and with no money to cover even their train fare to their home towns. The Court recommended that psychiatric treatment be provided to the mentally ill inmates.

Sheela Barse v. Union of India ^[22] dealt with the human rights violations of the mentally ill persons in jails of West Bengal. The Supreme Court held that admission of non-criminal mentally ill persons to the jail is illegal and unconstitutional. The court further directed the state to improve mental health institutions and integrate mental health into primary health care. In another case of *Sheela Barse vs. Union of India* ^[23], Sri Gopal Subramaniam, Senior Advocate was appointed as an amicus curie to report on rehabilitation of non-criminal mentally ill patients in the State of Assam. The State had a splendid record of having confined 387 persons to jail only on the ground that they were mentally ill. In one case a person was confined to jail for merely being 'talkative'. The Supreme Court severely criticized the callous attitude of the administration and ordered the scheme for rehabilitation of the mentally ill.

Rakesh Chandra Narayan v. State of Bihar ^[24], was a case, which arose out of a letter written to the Chief Justice of India by two residents of Patna regarding conditions of mental hospital near Ranchi run by the state. The Court observed: "In a welfare State, it is the obligation of the State to provide medical attention to every citizen. Running of the mental hospital is in discharge of the State's obligation to

the citizens and the fact that lakhs of rupees have been spent from the public exchequer is not of any consequence. The State has to realize its obligation in an appropriate way. The court ordered to make an immediate arrangement for the restoration of proper sanitary conditions in the lavatories and bathrooms of the hospital; immediate supply of mattresses and blankets, cots to all the patients and removal of ceiling limit on cost of medicines. It ordered the State Government to take steps forthwith to appoint a qualified Psychiatrist and a Medical Superintendent for the hospital and establishment of Rehabilitation Centre and operate rehabilitation schemes for the homeless cured patients.

The Supreme Court appointed National Task Force recently to tackle mental health issues in education institution as a serious concern with rising number of suicides of students. *Gaurav Kumar Bansal v. Union of India & Ors* ^[25], the Supreme Court of India issued orders to file the status report in reply to allegations that despite the enactment of the Mental Healthcare Act, the statutory authorities were not fully functional and lacked transparency in their operations. The Act was enacted to ensure affordable and accessible mental healthcare services for all individuals and protect the rights of mentally ill persons. The Supreme Court is keen onto ensuring that the Act is implemented effectively.

Conclusion

The legal framework in India has included a wider range of mental illness under the legal province. It is based on the principles of medical ethics and has reflected a human right approach in its application. The sustainable development goals are enforceable through application of legal provisions. However, the law alone will not be able to achieve it as the ethico social dimensions need to be considered while working upon the mental health issues in the existing medical model. There is need for holistic approach wherein all the stakeholders are encouraged to contribute towards the issue.

Suggestions

Inadequate investment into human and financial resources for mental health care need to be corrected. Health policy planners and health professionals can help to enable this turn around by ensuring that promoting, protecting, and restoring good mental health.

The following areas need a good attention:

- Strong encouragement and assistance to the people with mental disability and their representatives to form organizations.
- Information regarding disability needs to be disseminated far and wide across the country
- Changes in attitude of the professionals and timely/ early intervention that can effectively transform the lives of disabled people, their families.
- Organized monitoring of disability services and benefits disbursement.
- More research on factors associated with disability and psychiatric disorders
- Expanding efforts to improve societal attitudes to people with disabilities, relying on public-private partnerships.

Strengthening essential components of mental health system development, e.g.: policy, plans and programmes, service

organization, financing, advocacy, information systems, quality improvement, human resources and training.

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Conflict of Interest

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