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Relevance of Forensic Psychiatry in Postgraduate Training

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ABSTRACT

Forensic Psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues and has a long history, modified with time and experience, into its current form. The Law concerning mental health came in the form of first Lunacy Act, which was introduced in India in 1858 and amended in 1912.The Mental Health Act (MHA) of 1987 took over the Lunacy Act based on the recommendations of Colonel Taylor and Bhore Committee and implemented in 1993.Recognizing major flaws in the 1987 MHA, the Ministry of Health & Family Welfare brought out a draft of the Mental Health Care Act 2011, based on the inputs from the 5 Regional consultations and those provided by the professional bodies and other stake holders. Recognizing the need for a new Law for Persons with Disabilities (PwD), Ministry of Social Justice and Empowerment constituted a Committee which submitted its report in the form of "The Rights of Persons with Disabilities Bill, 2011".In formulation of this Bill the Committee has been guided by the basic principles mentioned in Article 3 of the UNCRPD(United Nations Convention on the Rights of Persons with Disabilities).

Forensic Mental Health Assessment (FMHA) holds a very important place in forensic psychiatry in ascertaining the Civil and Criminal Responsibility of persons with mental illness and their fitness to stand trial.In India, there are many instances in which fitness to stand trial has delayed the proceedings for decades.

History , Concept and Definition of forensic psychiatry

The word 'forensic' derives from the Latin word *forensis* (meaning of or before the forum or court). The scope of forensic psychiatry can be broadly

defined as those areas where psychiatry interacts with the law. The American board of Forensic Psychiatry definition: "Forensic Psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal and correctional or legislative matters ;forensic psychiatry should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry" (Adopted May 20, 1985). This may include admission of a mentally ill person in a mental hospital , crime committed by a mentally ill person , validity of marriage , being a witness , will , consent, right to vote and drug dependence.

It may be impossible to find the earliest expert witness, but literature records that Antisius examined the corpse of Julius Caesar and opined that only the thoracic sword thrust was fatal; the other 22 stab wounds were not.

The concept of Criminal Responsibility has its roots in the Babylonian legal system, known as the Code of Hammurabi, where the importance of intention in judging the actions of someone was evident. The Greek philosopher Plato and his student, Aristotle, described 'moral responsibility' for the crime. These approaches have endured to influence today's Psychiatric Expert Witness.

In ancient India around 880 B.C., the laws gave special consideration to retarded persons and children younger than 15. The *Corpus Iuris Civilis* was compiled under Emperor Justinian in 5th century AD which mentioned an insane person as *compos mentis non est* (later known as *non compos mentis*) with no control over his mind and cannot understand the consequences of his acts ,therefore not accountable in justice.[1] Paulus Zacchias[2], the personal physician of the pope in 17th Century is considered 'The father of Forensic Psychiatry'.

Mental Health Laws

The first Lunacy Act was introduced in India in 1858 with a view "to segregate those who by reasons of insanity were troublesome and dangerous to their neighbors." The amendment to the Lunacy Act in 1912 brought the mental hospitals under the charge of Civil Surgeons instead of the Inspector General of Prison as in the earlier times. For the first time, psychiatrists were appointed and the control of such asylums handed over to the central government. Further, the names of all asylums were changed to mental hospitals in 1920. Although occupational therapy and family units were introduced, they remained primarily designed for custodial care and detention rather than treatment.

The Mental Health Act (MHA) which took over the Lunacy Act[3], was drafted in 1987, based on the recommendations of Colonel Taylor and Bhore

Committee and implemented in 1993. While there is much to commend in the new Act, merely changing the old terminology for new one, may serve as window dressing and be ineffective in making a difference.

The Act fails to address the removal of social stigma , mandate medical opinion to licensing authorities of service organizations, more stress on institutionalization, lack of after discharge care and rehabilitation measures, providing for research possibilities as long as guardians' agree, lack of measures to restrict unnecessary detention by families or law agencies and adopting a different view of government and private hospitals are some of the serious limitations of the Act.[4]

Furthermore, the MHA remains silent on and fails to correct the basic human rights violations of numerous earlier Acts and legislations. Some of these are; precluding the right of mentally ill individuals to marry and sanction divorce if the spouse is likely to remain mentally-ill under the Hindu and Parsi Personal Laws; Forbiddance of voting and standing for elections under the 1950 and 1951 Representation of the People Act, allowing for the subjective bias of the Property and Inheritance Rights under the Indian law to remain in force which increases the possibility that individuals recovered from mental illness will lose control of their own assets. Thus, inspite of the modern and scientific language used in the MHA, the law continues to severely curtail the civil, social and political rights of persons with Mental Illness.

The Mental Health Act,1987 is divided into 10 chapters consisting of 98 sections.[5]

Chapter I : Deals with the preliminaries of the act, definitions and changes made in the terminologies used in the Indian Lunacy Act, 1912. A *mentally ill person* here has been defined as "a person who is in need of treatment by reason of any mental disorder other than mental retardation." Chapter II lists the procedures for establishing mental health authorities at central and state levels whereas chapter III highlights the guidelines for establishing and maintaining a psychiatric hospital or nursing home. Chapter IV briefs about the procedures for admission and detention of a mentally ill including involuntary admissions. Chapter V gives an overview with regards to inspection , discharge ,levels of absence and removal of mentally ill persons. Chapter VI gives the procedures in cases of judicial inquisition for management of property possessed by mentally ill persons. Chapter VII focuses on the maintenance of mentally ill persons in psychiatric hospitals or nursing homes . Chapter VIII protects the rights of mentally ill. Chapter IX deals with the penalties and procedures and chapter X with miscellaneous issues. Under the National Mental Health Programme ,1982, Primary Health Centres (PHCs) have been identified as the epicentre for psychiatric

treatment.

Mental Health Care Bill , 2011 : The Ministry of Health & Family Welfare has brought out a draft of the Mental Health Care Act based on the inputs from the 5 Regional consultations and those provided by the professional bodies and other stake holders.[6]

TITLE : MENTAL HEALTH CARE ACT (2011)

Description : An Act to provide access to mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of persons with mental illness during the delivery of mental health care and services. Management of property aspect has been omitted in this draft, which may be covered by an amended National Trust Act, and likely to be named as 'Legal Capacity Act'.

Statement of Objects and Reasons :

The statement of objects and reasons are as follows:.[6,7,8]

Recognizing that :

- ✓ Persons with mental illness constitute a vulnerable section of society and are subject to discrimination ; the families bear disproportionate financial, emotional and social burden .
- ✓ Persons with mental illness should be treated like other persons with health problems and the environment around them should be made as conducive to facilitate recovery, and participation in society;
- ✓ The Mental Health Act, 1987 has failed to protect the rights of persons with mental illness and promote access to mental health care in the country.

And in order to :

- ✓ Protect and promote the rights of persons with mental illness during the delivery of health care in institutions and in the community;
- ✓ Ensure health care, treatment and rehabilitation in the least restrictive environment possible while maintaining their rights and dignity. Community-based solutions are preferred to institutional solutions;
- ✓ Provide treatment, care and rehabilitation to develop his or her full potential and to facilitate his or her integration into community life;
- ✓ To fulfil obligations under Constitution of India and other

International Conventions ratified by India; regulate the public and private mental health for greatest public health good;

- ✓ Improve accessibility to mental health care; provision of quality public mental health services and non-discrimination in health insurance;
- ✓ Establish a mental health care system integrated into all levels of general health care; promote active participation of all stakeholders in decision making;

Mental Health Care Bill, 2011: [8] has been divided into IX chapters and 68 sections as follows. Title; Description; Statement of Objects and Reasons; Chapter I (Sections 1-6): Preliminary; Chapter II (Sections 7-16) : Rights of Persons with Mental Illness; Chapter III (Sections 17-20): Duties of Government; Chapter IV (Sections 21- 31): Mental Health Review Commission; Chapter V (Sections 32-38): State Mental Health Authority; Chapter VI (Sections 39-41): Mental Health Establishment; Chapter VII (Sections 42-55) : Admission, Treatment and Discharge; Chapter VIII (Sections 56-60): Responsibilities of Other Agencies; Chapter IX (Sections 61-68): Penalties and Miscellaneous provisions

The following are some of the important points put forward by the Mental Health Care Bill, 2011 (Draft).

The term 'mentally ill' has been replaced with the term "person(s) with mental illness" across the entire Act.

Chapter 1: Preliminary; Sec. 2 : Definitions: In this Act, unless the context otherwise requires:.[8]

Care-giver means any person who stays with a person with mental illness and/or is predominantly responsible for providing care to that person; he/she may be a relative or any other person.

Family means a group of persons related by blood, adoption or marriage.

Informed Consent means consent given to a specific intervention, without any force or undue influence after disclosing to the person adequate information including risks and benefits of, and alternatives to, the proposed intervention in a language and manner understood by the person.

Least Restrictive Alternative or Less Restrictive Option means offering a setting for treatment which meets a person's treatment needs and imposes the least restriction on a person's rights.

Psychiatrist means a medical practitioner with a post-graduate degree or diploma in psychiatry awarded by any University recognized by University Grants Commission (UGC) /Medical Council of India and includes, in relation to any State, any medical officer who, having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act.

Relative means any person related to the person with mental illness by blood, marriage or adoption.

Prisoner with Mental Illness means a person with mental illness who is under trial or convicted of an offence and detained in a jail or prison, for whose detention in, or removal to, a mental health establishment, an order referred to in Section 59 has been made.

Mental Health Establishment (will replace all the earlier terms for use in the act) means all health establishments called by whatever name, either wholly or partly meant for the care of persons with mental illness, established or maintained by the Central or State Government, Local Authority, Trust (private or public), Corporation, Co-operative Society, Organization or any other entity or person, where persons with mental illness are admitted and or kept in for care, treatment and/or rehabilitation; this excludes a family residential place where a person with mental illness resides with his or her relatives or friends.

Section 2 also mentions the definitions of Mental health professional, Medical Practitioner with few other definitions. Mental health professional includes psychiatrist, clinical psychologist, psychiatric social worker, registered mental health nurse with degree in psychiatric nursing and an AYUSH practitioner having a specialized degree in 'Manas Rog'.

Chapter 1; Section 3: Mental Illness

- ✓ 'Mental illness' for the purpose of this Act, means a disorder of mood, thought, perception, orientation and/or memory which causes significant distress to a person or impairs a person's behavior, judgment and ability to recognize reality or impairs the person's ability to meet the demands of normal life and includes mental conditions associated with the abuse of alcohol and drugs, but excludes mental retardation.[8]
- ✓ Mental illness shall be determined in accordance with national/international accepted medical standards such as the latest edition of the International Classification of Disease of the World Health Organization.

- ✓ No person or authority shall state that a person has a mental illness, except for purposes directly related to the treatment or in other matters related to the Act or as required by law.
- ✓ A determination of mental illness shall in no way imply that the person lacks legal capacity or the capacity to make treatment decisions.

Section 4: Capacity to make Mental Health Care and/or Treatment Decisions : means a person has ability to understand the information relevant to the mental health care and/or treatment decision, is able to retain that information, weigh it as part of the process of decision making and communicate by any means, his or her decision.[8]

Section 5: Advance Directive

- ✓ Every person who is not a minor has a right to make an 'Advance Directive' in writing, specifying a) the way the person wishes to be cared /treated for a mental illness and/or the way the person wishes not to be cared for; a Nominated Representative(s) may be appointed by the person.[8]
- ✓ An Advance Directive may be made by a person whether or not the person has had a mental illness, for which the person has received treatment or not. It may be invoked in case the person writing an advanced directive does not have the capacity to do so. A person in capacity , can make any changes to an earlier written advance directive.

  An Advance Directive shall be made in writing on a plain paper with the person's signature or thumb impression on it. The Advanced Directive shall be either registered with the State Panel of the Mental Health Review Commission in the district of residence of the person, or signed by a medical practitioner that he/she has the capacity to write the same and that it has been made of his/her own free will. There shall be no fees for registering an Advance Directive and the medical practitioner shall not charge any fees for countersigning an Advance Directive.
- ✓ If a person makes an Advance Directive which contains a refusal of all future medical treatment for mental illness, then it has to be first validated by the State Panel of the Mental Health Review Commission, following a hearing for the same.
- ✓ Medical officer in charge of a mental health establishment and/or the psychiatrist in charge of a person's treatment is duty bound to follow a valid Advance Directive.

- ✓ If a mental health professional or a relative /care-giver of the person desires to over-rule an Advance Directive during the process of treatment, they need to apply to the State Panel of the Mental Health Review Commission, which may take the appropriate decision.
- ✓ Notwithstanding any provision in this section, any Advance Directive shall not apply to emergency treatment given under Section 50.
- ✓ A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences on following a valid Advance Directive and shall not be held liable for not following it, if he or she has not been given a copy of the valid Advance Directive.

Section 6. Nominated Representative

- ✓ Any person who is not a minor has a right to appoint a Nominated Representative, to be made in writing on plain paper with the person's signature or thumb impression. If no such person has been nominated, a relative, care-giver or a person appointed by the State Panel of the Mental Health Review Commission shall act as a Nominated Representative. However if a person has been nominated in the advance directives he/she has priority over other nominated representatives.[8]
- ✓ A representative of registered organizations working with persons with mental illness, may temporarily undertake to perform the duties of a Nominated Representative pending appointment of a Nominated Representative by the State Panel of the Mental Health Review Commission.
- ✓ In case of minors, the legal guardian shall be the Nominated Representative, unless the State Panel of the Mental Health Review Commission orders otherwise.
- ✓ If no suitable individual is available for appointment as Nominated Representative, the Commission shall appoint the Director, Department of Social Welfare, or his designated representative, as the Nominated Representative for the person with mental illness.
- ✓ The person nominated to be representative must not be a minor, must be competent to fulfill the role as described in this Act, and must signify, in writing, his or her willingness to perform the role.
- ✓ The Nominated Representative has a duty to support the person, has a right to information on the diagnosis/treatment aspects, right to access family based rehabilitation services and right to be involved in discharge planning.

- ✓ The Nominated Representative has the right to apply to the State Panel of the Mental Health Review Commission on behalf of the person with mental illness for admission, discharge or violation of rights of the person with mental illness in mental health establishments. He may appoint a suitable attendant for the person with mental illness.

Chapter II : Rights of Persons with Mental Illness

Section 7 : Right to Access Mental Health Care Services run or funded by the Government.[8]

- ✓ The Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.
- ✓ Mental health services shall be integrated into general health care services at all levels of health care including primary, secondary and tertiary care level .
- ✓ As a minimum provision, mental health services should be made available at all general hospitals which are run or funded by the Government in every district in the country and basic and emergency mental health care services shall be available at all Community Health Centers (CHC) run or funded by the Government so that no person would have to travel for long distances.
- ✓ Long term hospital based mental health treatment shall be used only in exceptional circumstances, as a last resort when appropriate community based treatment has failed.
- ✓ If minimum mental health services as outlined are not available in the district, any other mental health service in the district may be taken and the costs of treatment at such establishments in that district will be borne by the Government.
- ✓ Persons with mental illness living below the poverty line, in possession with or without the Below Poverty Line (BPL) card, or destitute or homeless are entitled to mental health services free of any charge.
- ✓ Mental health services shall be of equal quality to other general health services with no discrimination and the minimum quality standards shall be as prescribed by the State Mental Health Authorities.
- ✓ As a minimum, essential medicines used for the treatment of mental illness as enumerated in the World Health Organisation (WHO) Essential Drug List shall be available free of cost to all persons with

mental illness at all times at health establishments starting from community health centres and above in the public health system.

Section 8: Right to Community Living

- ✓ No person with mental illness shall continue to remain in a mental health establishment merely because he or she does not have a family or is not accepted by his or her family or is homeless or because of the absence of community based facilities.
- ✓ The Government shall therefore provide for and/or support the establishment of less restrictive community based establishments.

Section 9: Right to Protection from Cruel, Inhuman and Degrading Treatment

All persons with mental illness

- ✓ have a right to live with dignity, in safe /hygienic environment with facilities for recreation, education and religious practices.
- ✓ need to be protected from all forms of physical, verbal, emotional and sexual abuse.

Section 10: Right to Equality and Non-discrimination

- ✓ There shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability.
- ✓ Public and private insurance providers shall make provisions for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.
- ✓ Emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness.
- ✓ Persons with mental health services are entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness.

Section 11 : Right to Information

- ✓ A person with mental illness and his or her Nominated Representative shall have the right to know the criteria for admission, rights to apply to the State Panel of Mental Health Review Commission, right to know the nature of the person's mental illness and the proposed

treatment plan.

Section 12: Right to Confidentiality

- ✓ A person with mental illness has a right to confidentiality in the context of his mental health, mental health care and physical health care.
- ✓ Information related to care and treatment of persons with mental illness may be disclosed: to a nominated representative, for discharge of his duties; to a health professional for care and treatment; to protect other person from harm; on the order of Supreme Court or Mental Health Commission; in the interest of public safety.

Section 13: Access to Medical Records

All persons with mental illness shall have access to their medical records, except in cases where such disclosure may harm, the person with mental illness or others.

Section 14: Right to Personal Contacts & Communication

- ✓ A person with mental illness admitted to a mental health establishment has the right to refuse or receive visitors, make telephone/mobile phone calls, send and receive emails.
- ✓ These activities may be prohibited by a medical officer , if it interferes with the treatment or puts the person in danger. The medical officer cannot prohibit communication from Court, Mental Health Commission, member of Parliament and nominated representative.

Section 15: Right to Legal Aid

A person with mental illness shall be entitled to receive free legal services to exercise any of his or her rights given under this Act.

Section 16 : Right to make Complaints about Deficiencies in Provision of Services

Section 17: Promotion of Mental Health & Preventive Programmes

The Government shall have a duty to plan, design and implement programs for the promotion of mental health and prevention of mental illness in the country.

Section 18: Creating Awareness about Mental Health and Illness and Reducing Stigma associated with Mental Illness

Section 19: Human Resources and Training

Sufficient numbers of trained health professionals should be made available by the Government by planning and implementing educational and training programs in collaboration with institutions of higher education and training.

Section 20: Co-ordination within the Government

Chapter IV : Mental Health Review Commission

Section 21 : Constitution of a Mental Health Review Commission

- ✓ The Central Government shall constitute the Mental Health Review Commission within 3 months of the Act coming into force, which will have jurisdiction all over the Country with headquarters in Mumbai.
- ✓ The Commission shall consist of a President (qualified to be appointed as Chief Justice of a High Court and appointed by the President of India), a Psychiatrist with at least 15 years experience , one member who is a person with mental illness or representative, one member who is a representative of families and care-givers to persons with mental illness or non-governmental organizations and one member with a background in public health administration

Section 22 : Constitution of State Panels of the Mental Health Review Commission

- ✓ The functions, powers and authority of the Commission shall be exercised by the State Panels of the Commission.
- ✓ Each State Panel of the Commission shall consist of a District Judge, or an officer of the state judicial services who is qualified to be appointed as district judge or a retired District Judge who shall be Chairperson of the Panel; a representative of the District Collector/District Magistrate/Deputy Commissioner of the districts within the jurisdiction of the Panel; two members who are mental health professionals of whom one shall be a psychiatrist; two members who shall be persons with mental illness or care-givers or persons representing organizations of persons with mental illness or care-givers or nongovernmental organizations working in the field of mental health.

Section 28: Functions of the Mental Health Review Commission and State Panel of the Mental Health Review Commission

The Mental Health Review Commission shall appoint /remove members from the State panel, guide the State panel in discharge of duties, review use of Advance Directives, advice the Central Government on matters relating to persons with mental illness, to decide on applications /complaints regarding deficiencies in care and services, carry out inspection on receiving a complaint against a mental health establishment and take appropriate action.

Chapter V: State Mental Health Authority

The State Government shall establish the State Mental Health Authority

Section 35: Functions of the State Mental Health Authority

- ✓ The Authority shall register all mental health establishments in the State, develop quality and service provision norms, supervise and receive complaints against mental health establishments in the State.
- ✓ The authority shall train all relevant persons including judicial officers, law enforcement officials, health professionals, advise the State Government on all matters relating to mental health care and services, and submit an annual report.

Section 36: Proceedings of the State Mental Health Authority

Section 37 : Budgetary Provisions

Section 38: Power to make Regulations

Chapter VI: Mental Health Establishments

Section 39: Registration and Standards for Mental Health Establishments

- ✓ Registration of mental health establishment is mandatory. Until the State Mental Health Authority publishes the standards for mental health establishments a provisional registration shall be provided.
- ✓ Once the standards are published the mental health establishments shall provide an undertaking within a period of six months, to the State Mental Health Authority that the mental health establishment fulfills the minimum standards as prescribed.
- ✓ For registration and continuation of registration, every mental health establishment shall maintain minimum standards of facilities, qualified staff, maintenance of records

Section 40: Procedure for Provisional and Permanent Registration,

Inspection and/or Inquiry of Mental Health Establishments

- ✓ For the purpose of registration of the mental health establishment, an application in the prescribed proforma along with the prescribed fee shall be furnished to the State Mental Health Authority, in person, by post or online. For an already existent mental health establishment an application for its provisional registration shall be made within six months of constitution of the State Mental Health Authority.
- ✓ The Authority shall within a period of ten days from the date of receipt of such application, issue to the mental health establishment a certificate of provisional registration without the need for prior enquiry.
- ✓ The Authority shall within a period of 45 days from the date of provisional registration, publish in print and in digital form online, all particulars of the mental health establishment. The provisional registration shall be valid for a period of 12 months and shall be renewable with an application 30 days prior to expiry /or renewable with enhanced fees in case of late application.
- ✓ In states where standards have been defined a permanent registration will have to be obtained within a period of 6 months from notification of these standards.
- ✓ The evidence provided by the mental health establishment shall be displayed publicly for 30 days (on the website) by the Authority for filing objections, if any, before processing for grant of permanent registration.
- ✓ If the Authority has not communicated any objections nor has passed an order within a period of 90 working days from the date of application for permanent registration it will be deemed that the Authority has allowed the application for permanent registration.
- ✓ The Authority may cancel the registration of a mental health establishment if norms laid are breached and not rectified even after sufficient time has been provided to the establishment to act.
- ✓ The Authority may act either suo moto or on a complaint received from any person order an inspection and/or inquiry of any mental health establishment. An establishment aggrieved by an order of the may appeal to the High Court in the State within a period of 30 days from the date of the order.

Section 41 : Certificates, Fees and Register of Mental Health Establishments

Every mental health establishment shall display the certificate of registration in a place visible to everyone . The registration is non-transferable but shall remain valid in case of change of ownership, in the mental health establishment.

Chapter VII : Admission, Treatment and Discharge

Section 42 : Independent (without Support) Admission and Treatment

- ✓ An independent patient or an independent admission refers to the admission of a person with mental illness to a mental health establishment, on request, who has the capacity to make treatment decisions or requires minimal support in making such decisions, and is not a minor. As far as possible, all such cases should be independent admissions except in cases where supported admission is unavoidable.
- ✓ An independent patient shall not be given treatment without his or her informed consent.

An independent patient may discharge himself from the mental health establishment without the consent of the medical officer or psychiatrist in charge of the establishment, which should be communicated to the person at the time of admission.

Section 43 : Admission of a Minor

- ✓ A minor may be admitted to a mental health establishment only in exceptional circumstances, on application of a nominated representative, in which case a minor may be admitted if two psychiatrists, or one psychiatrist and one mental health professional or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding 7 days and concluded that admission is required.
- ✓ A minor so admitted shall be accommodated separately from adults, in an environment that takes into account the developmental needs, and should be accompanied by a nominated representative/ attendant for the entire duration of stay.
- ✓ The minor can be admitted with informed consent or discharged on request, from his/her nominated representative.
- ✓ Any admission of a minor, has to be reported to the Panel of the Mental Health Review Commission within a period of 72 hours; the State Panel shall have the right to visit and interview the minor or

review the medical records if it desires to do so. Also any admission for a period of 30 days shall be immediately informed to the State Panel, which will carry out a mandatory review within 7 days of all admissions of minors, continuing beyond 30 days and every subsequent 30 days.

Section 44 : Discharge of Independent Patients

A mental health professional may prevent discharge of a person for a period of 24 hours, to allow assessment if in his/her opinion the person with mental illness: is unable to understand the nature and purpose of his or her decisions and requires support from a nominated representative; is at risk of harm to self/others;

Section 45: Admission and Treatment of Persons with Mental Illness, with High Support Needs, in a Mental Health Establishment, upto 30 days (Supported Admission)

- ✓ Upon application by the Nominated Representative of the person, he/she may be admitted only if he/she has been independently examined on the day of admission or in the preceding 7 days, by one psychiatrist and the other being a mental health professional or a medical practitioner, and both conclude that admission is required.
- ✓ If the person has to remain admitted after a period of 30 days, either conditions in Sec. 46 have to be met and/or the person can remain admitted as an independent patient under Sec. 42.
- ✓ If the level of support required is of such high degree that the Nominated Representative has temporarily consented to treatment, the medical officer or psychiatrist in charge of the mental health establishment shall record this in the notes and review this every 7 days.
- ✓ All admissions under this section shall be informed to the State Panel of the Mental Health Review Commission within 7 days (3 days in case of women) from date of admission which has the right to visit and interview the person and/or review the medical records.
- ✓ A person admitted under this section or his or her Nominated Representative or a representative of a registered non-governmental organization with the consent of the person, may apply to the State Panel of the Mental Health Review Commission for review of the decision to admit the person in which case a decision has to be made by the state Panel within 7 days.
- ✓ Following discharge under Section 45, a readmission under the same

section shall not take place for a period of 7 days from the date of discharge. Any readmission within 7 days shall be considered as continuation of the admission, and provisions of Section 46 shall apply.

Section 46:Admission and Treatment of Persons with Mental Illness, with High Support Needs, in a Mental Health Establishment, beyond 30 days (Supported Admission beyond 30 days)

- ✓ Upon application by the Nominated Representative of a person with mental illness, the medical officer or psychiatrist in charge of a mental health establishment shall continue admission of a person with mental illness in the establishment under this section if (I) The person is already admitted under Section 45 and (ii) Two psychiatrists have independently examined the person on the day of admission or in the preceding 7 days and both conclude that admission is required.
- ✓ All admissions or renewals under this section shall be informed by the medical officer or psychiatrist in charge to the State Panel of the Mental Health Review Commission within 7 days of date of admission or renewal and has to be approved by the State Panel within 21 days.
- ✓ Admission of a person with mental illness to a mental health establishment under this section shall be limited to a period upto 90 days, and can be renewed upto a period of 120 days in the first instance and upto a period of 180 days thereafter, upon application by the Nominated Representative of the person, to the medical officer in charge of the mental health establishment and has to be approved by the State Panel.

Section 47 : Leave of Absence

- ✓ The medical officer or psychiatrist in charge of the mental health establishment may grant leave to any person admitted under Sections 43, 45 and 46 above, to be absent from the establishment subject to such conditions (if any) and for a duration as may be necessary, not exceeding beyond the period of the duration of admission permitted under Sections 43, 45 or 46.
- ✓ If an individual does not return to the establishment following the expiry or termination of his or her leave of absence, the medical officer or psychiatrist in charge of the mental health establishment shall contact the person/nominated representative and if they feel that admission need not be continued the person may be discharged.
- ✓ However, if the medical officer or psychiatrist in and the Nominated

Representative agree that admission is required and the person with mental illness refuses to return to the hospital, the Police Officer in charge of the police station within the limits of whose station the mental health establishment is located, on request of medical officer/psychiatrist has to convey the person back to the mental health establishment.

- ✓ A person not returned by the Police Officer within one month of expiry or termination of his or her leave of absence, may not be returned and will be considered as discharged from the establishment.

Section 48: Absence without Leave or Discharge

If a person admitted to mental health establishment under Sections 43, 44, 45, 46 and 59 absents himself or herself without leave or without , he or she shall be taken into protection by any Police Officer at the request of the medical officer or psychiatrist and taken back to the mental health establishment immediately. Except for admission under Sec. 59 this action can be taken within a period of one month from the date of absence.

Section 49 : Transfer of Persons with Mental Illness from one Mental Health Establishment to another Mental Health Establishment

A person with mental illness admitted to a mental health establishment under Sections 43, 45, 46 or 59 may, subject to any general or special order of the State Panel be removed from such mental health establishment to another mental health establishment within the State or with the consent of the Mental Health Review Commission to any mental health establishment in any other State.

Section 50: Emergency Treatment

- ✓ Notwithstanding anything contained in this Act, any medical treatment, including treatment for mental illness, may be provided by any registered medical practitioner to a person with mental illness, subject to the informed consent of the Nominated Representative, if available, and where it is immediately necessary to prevent death or irreversible harm to the health of the person or prevent serious damage to property.

- ✓ Nothing in this section shall permit medical treatment that is not directly related to the emergency identified; nothing contained in this section shall permit the use of Electro-convulsive therapy as a form of treatment.

- ✓ Emergency treatment shall be limited to 72 hours or till the person has been assessed at a mental health establishment whichever is earlier. However in disasters or emergencies declared by the Government, the period of emergency treatment may extend upto 7 days.

Section 51 : Prohibited Treatments

Notwithstanding anything contained in this Act, the following treatments shall not be performed on any person with mental illness:

(i) Electro-convulsive therapy without the use of muscle relaxants and anesthesia.

(ii) Electro-convulsive therapy for minors.

(iii) Sterilization of men or women, when such sterilization is intended as a treatment for mental illness.

(iv) Chained in any manner or form whatsoever.

Section 52: Restriction on Psychosurgery for Persons with Mental Illness

Notwithstanding anything contained in the Act, psychosurgery shall not be performed as a treatment for mental illness unless an informed consent of the person on whom the surgery is being performed is obtained and approval from the State Mental Health Authority to perform the surgery is given.

Section 53: Restraints and Seclusion

- ✓ Physical restraint or seclusion may only be used after authorization from a psychiatrist, when it is the only means available to prevent imminent and immediate harm to person concerned or to others.
- ✓ The Nominated Representative of the person with mental illness shall be informed about every instance of seclusion or restraint within a period of 24 hours.
- ✓ All instances of restraint and seclusion at the mental health establishment shall be included in a report to be sent to the State Panel on monthly basis.

Section 54: Discharge Planning

Whenever a person is to be discharged into the community or to a different mental health establishment or where a new psychiatrist is to take responsibility of the person's care and treatment, the psychiatrist in consultation with the person with mental illness, the Nominated Representative, the family member or care-giver shall ensure that a plan is

developed as to how these services shall be provided, in future.

Section 55: Research

- ✓ Free and informed consent shall be obtained by the professionals conducting the research, from all persons with mental illness for participation in all research involving interviewing the person or psychological, physical, chemical or medicinal interventions.
- ✓ In case research is to be conducted on persons who are unable to give free and informed consent but do not resist participation in such research, permission to conduct such research must be obtained from concerned State Mental Health Authority.

Chapter VIII : Responsibilities of Other Agencies

Section 56 : Duties of Police Officers in respect of Persons with Mental Illness

- ✓ Every officer in charge of a police station has a duty to take into protection any person found wandering at large within the limits of the police station whom the officer has reason to believe: has mental illness and is incapable of taking care of himself or herself or; is at risk to self/others and taken to the nearest public health establishment within a period of 24 hours for assessment of the person's health care needs.

Section 57 : Report to the Magistrate of a Person with Mental Illness in a Private Residence who is Ill Treated or Neglected

- ✓ Every officer in charge of a police station, who has reason to believe that any person residing within the limits of the police station has a mental illness and is ill-treated or neglected shall forthwith report the fact to the concerned Magistrate. Any person who comes to know about such a person with mental illness, can give such information to the concerned police officer.
- ✓ The Magistrate may authorise admission of the person with mental illness in a mental health establishment for a period of ten days for enabling assessment of the person and to plan for necessary treatment, if any.

Section 59 : Prisoners with Mental Illness

- ✓ An order under the Prisoners Act 1900 or the Air Force Act 11, 1950 or the Army Act, 1950 or under the Navy Act, 1957 or under the Code

of Criminal Procedure 1973 (2 of 1974), directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission.

- ✓ The responsible medical officer of a prison or jail shall send quarterly reports to the State Panel that there are no prisoners with mental illness in the prison or jail. The State Panel may visit the prison or jail if it wishes to do so.
- ✓ The medical officer in charge of a mental health establishment wherein any person is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

Section 60: Question of Mental Illness in Judicial Process

- ✓ Notwithstanding anything contained in any other Act, proof of a person's current or past admission/treatment to a mental health establishment shall not by itself be ground for granting divorce.
- ✓ If during any judicial process before any competent court proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the State Panel of Mental Health Review Commission.

Chapter IX : Penalties and Miscellaneous Provisions

Section 61: Penalties for Establishing or Maintaining a Mental Health Establishment

- ✓ Whoever carries on a mental health establishment without registration shall, be punishable by the State Mental Health Authority with a fine from fifty thousand rupees to five lakh rupees, for subsequent offences.
- ✓ Whoever knowingly serves in a mental health establishment which is not duly registered under this Act, shall be punishable with a fine upto twenty five thousand rupees.

Section 62: General Provision for Punishment of Offences

- ✓ Any person who contravenes any of the provisions of this Act, or of any rule or regulation made there under shall be punishable by a State Panel of the Mental Health Review Commission with imprisonment for a term which may extend from six months to two years or with a fine which may extend from ten thousand to five lakh rupees or both.

- ✓ Any person aggrieved by the decision of the State Panel of the Mental Health Review Commission may appeal to the High Court of the State within 60 days from the date of the decision.

Section 63 : Special Relaxation in Requirements for States in North East and Hill States

Section 64. Attempt to Commit Suicide due to Mental Illness

- ✓ Any person who has attempted to commit suicide shall be examined by a psychiatrist before any criminal investigation in to the attempt to commit suicide.
- ✓ If there are reasonable clinical grounds to believe the suicide attempt was a result of the mental illness, no complaint, investigation or prosecution shall be entertained against the person who attempted to commit suicide, notwithstanding anything contained in the Indian Penal Code.

Section 65 . Protection of Action taken in Good Faith

Section 66 . Effect of Act on other Laws

Section 67 . Power to Remove Difficulty

Section 68. Repeal and Saving

The concept of mental disability in the Law

The law does not regard any particular mental disorder as a proxy for incompetence. For good reasons , legal standards are rarely framed in terms of diagnostic category e.g. some people with Schizophrenia may lack testamentary capacity and it may even change with time. Legal standards address functional capacity. Diagnosis by itself, is unhelpful in the determination.[8]

In the World Report on Disability by W.H.O. the famous British theoretical physicist Stephen Hawking, who has amyotrophic lateral sclerosis (ALS) has stated in its Foreword -

"*We have a moral duty to remove the barriers to participation for people with disabilities, and to invest sufficient funding and expertise to unlock their vast potential. It is my hope this century will mark a turning point for inclusion of people with disabilities in the lives of their societies*"

The Persons with Disabilities (PwD) (Equal Opportunities, Protection of

Rights and Full Participation)) Act, 1995 received the assent of the President of India on 1st January, 1996.[9]

The Rights of Persons with Disabilities Bill, 2011

Ministry of Social Justice and Empowerment, constituted a Committee chaired by Dr Sudha Kaul on 30th April, 2010 with members representing persons with disabilities, NGO's and experts from the disability sector, to draft a new legislation to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995("PwD Act"). Incidentally, there was a single psychiatrist member who was Director, NIMHANS or his nominee.

Basic Principles guiding the New Bill

In formulation of this Bill the Committee has been guided by the basic principles mentioned in Article 3 of the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities)[10]

The CRPD has introduced a paradigm shift in the discourse relating to persons with disabilities based on the presumption of legal capacity, equality and dignity. It recognizes that persons with disabilities are an integral part of human diversity, and participation in society on an equal basis should be ensured.

This Bill has been put together by the Committee through a process of dialogue with the Disability sector, disability rights activists, members of civil society, and widespread State Level consultations across the country and deliberations with legal consultants.

Excluding the preliminary part the legislation has been divided into six parts. Part I contains rights and entitlements; Part II elaborates on powers, duties and responsibilities; Part III gives details on regulatory and monitoring authorities; Part IV addresses grievance redressal; Part V mentions offences and penalties; Part VI is miscellaneous segment and is followed by schedule on the named list of disabilities.

This Bill may be called the "The Rights of Persons with Disabilities Act,

2011" and extends to the whole of India except for the State of Jammu and Kashmir where it would be applicable by order of the President of India, only after the State gives its concurrence on the application of this law to that State;

Statement of Objects and Reasons

In fulfilment of the international commitment to United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), India is obliged to ensure and promote the full realization, through legislation, of all human rights and fundamental freedoms for all Persons with Disabilities without discrimination.

"The PwD Act of 1995 has been there for nearly 15 years and has been the basis of a largely empowering jurisprudence on the Rights of Persons with Disabilities. Whilst the need to retain the empowering jurisprudence is unequivocally acknowledged, it is also recognized that the present Act, either does not incorporate a number of rights recognized in the UNCRPD or the recognized rights are not in total harmony with the principles of the Convention." [10]

The UN CRPD recognizes that disability is an evolving concept which results from the interaction between persons with impairments and attitudinal & environmental barriers that hinder their full and effective participation in society. The Persons with Disabilities Act, 1995 on the other hand has provided for an impairment based exhaustive definition of disability. Consequently, people with impairments not expressly mentioned in the Act have often been denied the rights and entitlements recognized in the Act.

The salient features of the proposed legislation are as follows:

(i) To guarantee equality and non-discrimination and recognize legal capacity of all persons with disabilities and make provisions for support where required to exercise such legal capacity.

(ii) to recognize aggravated discrimination faced by women with disabilities and induct a gendered understanding in both the rights and interventions; to recognize the special vulnerabilities of children with disabilities and ensure non-biased treatment.

(iii) to mandate proactive interventions for persons with disabilities who are elderly, confined to their homes, abandoned or living in institutions; facilitate the formulation of disability policy and law by establishing National and State Disability Rights Authorities.

iv) Dismantle structural discrimination existing against persons with disabilities and enforce the regulations mentioned under this Act for the protection, promotion and enjoyment of all rights guaranteed in this Act and to specify civil and criminal sanctions for wrongful acts and omissions. [10]

Definitions

"Abuse means any act or series of acts including physical force on the body of the person with disability; or insulting, ridiculing or humiliating; or any conduct of a sexual nature that violates the dignity of the victim; or depriving with economic and financial resources; or depriving or denying support which the person with disability had demanded or which could be reasonably understood to have been demanded; with the intention to cause physical, emotional, mental, physical, or sexual injury and includes regular attempts at doing such act." [10]

The Bill defines 'Persons with Disability' as "*persons with any developmental, intellectual, mental, physical or sensory impairments including those mentioned in Schedule 1 of the Act, which are not of a temporary nature, and which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others*". [10] Obviously the definition includes persons with mental illness. Mental illness is included in the Schedule 1 as well and defined on the same line as in the Draft of Mental Health Care Act. [10]

"Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

In Part I (includes Sections 4 to 74), the Bill focusses on the right to equality and non-discrimination with special emphasis on women with disabilities, right to education, work and employment of such women, and their protection against all forms of abuse, violence and exploitation. Also women with disabilities have the right to health, home and family and access to justice.

Further, the Bill elaborates on the rights of children with disabilities, their right to health, leisure, culture & sports. access to justice, right to legal capacity and equal recognition before the law.

Section 18 of Bill provides that persons with disabilities enjoy legal capacity on an equal basis in all aspects of life and have the right to equal recognition everywhere as persons before the law. Any express or implied disqualification on the grounds of disability prescribed in any legislation, rule, notification, order, bye-law, regulation, custom or practice, which has the effect of depriving any person with disabilities (PwD) of legal capacity, shall not be enforceable. All PwD have right on equal basis with others in financial matters, own or inherit property. All PwD have the right to access all

arrangements and support necessary for exercising the legal capacity according to their will and their legal capacity shall not be questioned irrespective of the degree and extent of support, by reason of accessing support to exercise legal capacity. Person providing support shall not exercise undue influence and shall withdraw from providing support in case of conflict of interest. A PWD may alter, modify or dismantle any support arrangement and substitute it with another.[10,11]

Section 19: For children with disabilities, any provision in any legislation, rule, regulation or practice which prescribes for the establishment of plenary guardianship shall be hereinafter deemed to be establishing a system of limited guardianship. Plenary Guardianship is a system whereby subsequent to a finding of incapacity a guardian substitutes for the person with disability as the person before the law and takes all legally binding decisions for him or her. The guardian is under no legal obligation to consult with the person with disability or determine his or her will or preference whilst taking decisions for him or her. Subsequent to the enforcement of this Act all plenary guardians shall operate as limited guardians. A limited guardianship is a system of joint decision making which operates on mutual understanding and trust between the guardian and the person with disability.[10]

Section 20 lays stress on the duty of governments to designate authorities to mobilize the community and create social networks to support persons with disabilities.

The appropriate governments shall take all measures to ensure that persons with disabilities enjoy the right to life (Section 22) and right to personal liberty (Section 23) guaranteed by Article 21 of the Constitution of India on an equal basis with others. Persons with disabilities have the right to a non-coercive, non-restrictive and supportive environment which respects their sense of space, safety and security.[10]

Section 24 provides persons with disabilities with the right to live in community on equal basis with others. Governments shall launch suitable schemes and programs to achieve this objective. The living arrangements such established shall be non-coercive, non-restrictive and supportive.

Sections 25 to 28 ensure right to integrity in PwD, protection of children with disabilities from abuse, violence, or exploitation, their protection and safety in situations of risk, and the right to home and family.

Sections 30 provides reproductive rights to PwD, particularly women and children with disabilities, the right to retain their fertility. Sections 31 and 35 provide freedom of speech and right to education. Section 38 provides the right to free childhood care and pre-school education.

Children with disabilities have the right to school admission (section 42) and the parents or guardians of children with disabilities shall be members of the School Management Committees (Section 46) established under Section 21 of the Right of Children to Free and Compulsory Education Act, 2009 (Act No 35 of 2009). Sections 49 and 50 gives PwD right to higher education and reservation in higher educational institutions.[10]

Section 57 provides for seven percent reservation in all posts and promotion in all establishments, divided among different categories of PwD. However, persons with mental illness combined with the categories of autism and intellectual disabilities have been given only one percent quota.

Sections 64 to 66 gives PwD the right to social security, right to health and the right to insurance.

Section 151 provides that penal provisions of not less than 6 months imprisonment &/or fine for whoever voluntarily injures, damages or interferes with the use of any limb or sense or faculty of a PWD, permanently or temporarily.

Section 162 provides that the provisions of this Act shall have the effect despite inconsistency with in any other law and to the extent of inconsistency the other law shall have no effect.[10,11]

SCHEDULE 1

List of Disabilities

(1) Autism Spectrum Conditions /Autism Spectrum (2) 'Blindness' with total absence of sight, visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses or limitation of the field of vision subtending an angle of 20 degree or worse. (3) 'Cerebral Palsy' (4) 'Chronic neurological conditions' (5) 'Deafblindness' refers to a condition in which people may have a combination of hearing and visual impairments causing severe communication, developmental, and educational problems. (6) 'Dwarfism' is characterized by disproportionate shortness of stature measured by height to age. It is usually it is less than three standard deviation of the average height to age. (7) 'Hemophilia' (8) 'Hearing Impairment' refers to loss of 60 decibels or more in the better ear in the conversational range of frequencies; such impairment in hearing, whether permanent or fluctuating, that hinders the communication with others. (9) 'Hard of Hearing' refers to those persons with hearing impairments with a permanent or fluctuating hearing loss which permits the use of the auditory channel for a certain amount of speech/language and information gathering functions. (10) 'Intellectual Disability' refers to a disability characterized by significant

limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills. (11) 'Leprosy cured' person (12) 'Locomotor Disability' refers to a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal and/or nervous system

(13) 'Low-vision' i)Visual acuity not exceeding 6/18 or 20/60 and less than 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or ii) Limitation of the field of vision subtending an angle of more than 20 degree and up to 40 degree. (14) 'Mental illness': same as defined in Mental Health Care Bill 2011. (15) 'Multiple disabilities' refers to two or more impairments occurring at the same time the combination of which causes significant needs. The term does not include deaf-blindness. (16) 'Muscular Dystrophy' (17) 'Multiple Sclerosis' (18) 'Specific Learning Disabilities' The term includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia. (19) 'Speech impairment' refers to an impairment of speech articulation, voice, fluency, or the impairment of language comprehension and/oral expression or the impairment of the use of a spoken or other symbol system. (20) Thalassemia"[10]

Clinical Assessment in Forensic Psychiatry

Moving forward and highlighting the basics. What are the essential themes here? First, the importance ofcareful assessment: "clearly ascertained." Then, the critical forensic question of possible malingering: "simulating insanity." Next, the importance of avoiding the "ultimate issue": "how he should be punished." Finally, the matter of clinical management: possible needs for restraint. Of utmost importance for a trainee is the assessment of a person's mental health, convicted for a crime and further writing a report to the concerned legal authority.

Forensic Mental Health Assessment (FMHA) refers to psychological evaluations that are performed by mental health professionals to provide relevant clinical and scientific data to a legal decision maker, such as a judge or jury, or the litigants involved in civil or criminal proceedings.[12]

The organization of the report into specific sections can facilitate the demonstration of many of these principles. The following sections have been suggested:[13]

- ✓ referral (with identifying information concerning the individual, his or her characteristics, the nature of the evaluation, and by whom it was requested or ordered),

- ✓ procedures (times and dates of the evaluation, tests or procedures used, different records reviewed, and third-party interviews conducted as well as documentation of the notification of purpose or informed consent and the degree to which the information was apparently understood),
- ✓ relevant history (containing information from multiple sources describing areas important to the evaluation),
- ✓ current clinical condition (broadly considered to include appearance, mood, behavior, sensorium, intellectual functioning, thought, and personality)
- ✓ forensic capacities (varying according to the nature of the legal questions), and
- ✓ conclusions and recommendations (addressed towards the relevant capacities rather than the ultimate legal questions).

Criminal Responsibility of a mentally ill can be well understood in light of some famous cases, like the Hadfield case where James Hadfield was convicted for firing at King George III and the McNaughten case , which paved the way for McNaughten Rules , where Daniel McNaughten was convicted for killing Edward Drummond, secretary to the British Prime Minister Sir Robert Peel. [13] The Indian Law (Section 84 of Indian Penal Code), derived from McNaughten's rule, states that "nothing is an offence which is done by a person who ,at the time of doing it ,by reason of unsoundness of mind ,is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to Law." That goes to say that if a person is not criminally responsible, he is mentally ill as per the Legal system. Contrastly a person who is mentally ill on medical grounds may or may not be mentally ill on legal grounds.

Civil Responsibility of a mentally ill comes into play in cases of marriage , contract, adoption, witness, right to vote or stand for election, civil proceedings and Testamentary capacity. Testamentary disposition is regulated by the Indian Succession Act (Act 39 of 1925) which states that "no person can make a will while he is in such a state of mind , whether arising from intoxication or from illnesses or from any other cause, that he does not know what he is doing"

Also a psychiatrist may have to appear before a Court of Law as an expert witness and permitted to express opinions related to areas of professional expertise. A committee comprising of Prof. JS Neki , Prof. DN Nandi , Prof. A.K. Agarwal , Dr. VN Vahia and Dr. JK Trivedi were requested to prepare the recommendations for a code of ethics for psychiatrists in India . The

committee prepared the draft recommendations , which were approved by the Indian Psychiatric Society at its Annual Conference at Cuttack (Orissa) in 1989.

Psychiatric Disorders and the Legal framework

Individuals with psychiatric problems may get involved with the law.[15-18]

Substance Abuse : drugs and alcohol are major contributors to violence amongst both mentally disordered and non-mentally disordered offenders. Earlier research had linked violence with schizophrenic patients in particular but later studies have been more equivocal about this; however a recent meta-analyses suggests three-fold risk among those with psychosis; Current understanding is to give more relevance to psychiatric symptoms rather than diagnosis.

Acute Psychiatric Symptoms: threatening and assaultive behaviour may be seen in mania but serious intentional violence is rare. In depressed patients, violence can be either self-directed (suicide) or directed towards others, close to the individual. examples: depressed mothers who kill their children; depressed men who kill family members and then themselves. Research indicates consistent links between violent behavior and delusions particularly paranoid delusions. Erotomania, *pathological Love, pathological jealousy, paraphiliacs* are more likely to be contributors to violence. *Stalkers who Kill Strangers* are more often mentally ill than otherwise. They believe themselves to be unique, collect newspaper clippings, etc. and research their target victims thoroughly. They may even purchase a weapon for the particular "mission" they are on. *Command Hallucinations, Violent Fantasies:* approximately 70%of males in general population have had violent fantasies or homicidal thoughts at one time or another.

Antisocial Personality Disorders may begin in childhood as Oppositional defiant disorder or Conduct Disorder and is of higher prevalence in severely mentally ill population and in prison population (50-70%);has a strong association with substance abuse and is strong predictor of criminal recidivism, particularly violent recidivism, especially in women. Psychopathy often overlaps with Antisocial Personality Disorder and Narcissistic Personality Disorder with self-centredness, egocentricity, lack of empathy etc. Degree of psychopathy is measured effectively by Hare's Psychopathy Checklist-Revised (PCL-R) PCL-R score is a key feature in the Violence Risk Assessment Guide (VRAG) which assesses violence risk potential. Behavior of an individual with Dissociative Identity Disorder is necessarily "involuntary". Violence can occur in various sleep disorders. In Automatisms crime should be sudden and with no obvious motive – no planning or premeditation.

Presence of Organic Disorders and Learning Disorders increase the risk of violence; particularly elderly neurologically impaired are involved in violent incidents in health care facilities. Pre-Menstrual Syndrome is associated with violence by women against spouses (women who kill spouses are more often in the first five days of their cycle. Violence can be unintentional as a result of seizures and in inter-ictal period in temporal lobe epilepsy. Attention Deficit/Hyperactivity Disorder (ADHD) is strongly associated with childhood aggression and later conduct disorder. Biological Aspects like frontal lobe deficits should also be considered.

Early disruption in attachment of children with caregivers can lead to later psychopathology, mental disorders and criminality in some individuals. It may well be that prison environments tend to replicate or reflect lack of care that some offenders may have experienced as children. Peer Attachment and Social Functioning: maltreated children often begin early to relate inappropriately to people (eg. may respond with anger or aggression to friendly gesture from peers or signs of distress from them)

Fitness to stand trial

In India, there are many instances in which fitness to stand trial has delayed the proceedings for decades.[19-22]

Case Vignette

Mr. Machang Lalung, was arrested at his home village of Silsang near Guwahati in 1951 under section 326 of the Indian Penal Code for causing grievous harm. He was detained at the age of 23, he could secure his release only when he was 77 years old.

Less than a year after he was taken into custody, Lalung was transferred to a psychiatric hospital in the Assamese town of Tezpur. Sixteen years later, in 1967, doctors confirmed that he was fully fit to be released, but instead he was transferred to Guwahati Central Jail, where he was imprisoned until 2005. He spent his valuable 54 years of life behind bars and could secure his release only after the intervention from the Honourable Supreme Court of India in 2005. He was able to enjoy life outside the prison for only two years. He passed away on 26th Dec 2007.[23]

Case Vignette

Mr. R, 55 years old, was accused of killing his neighbour over a property issue. He was arrested and charges framed against him. During his stay in prison, he started behaving abnormally, forgetting his barrack, passing urine in his clothes. He was unable to remember his family members names and had

difficulty in remembering day-to-day events.

He was referred for assessment to NIMHANS. He was diagnosed to be suffering Alzheimer's dementia (early onset), and certified as unfit to stand trial.

Fitness to stand trial is different from Insanity defence

In simple, words "insanity defence" is concerned with the state of mind during the commission of crime and is considered static. Whereas, fitness to stand trial is the assessment of the state of mind during the adjudicating process and it is considered dynamic since it changes over a period of time. Therefore, it needs to be assessed periodically in vulnerable populations such as people with mental illness. Insanity defense is the retrospective assessment of the state of mind during the crime but fitness to stand trial is a prospective assessment of the state of mind.

Need for a screening instrument

Various instruments and screening questionnaires have been devised to assist in the assessment of fitness to stand trial of mentally ill patients. [19] Some of the well-known instruments are MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) [20] , Evaluation of Competency to Stand Trial-Revised (ECST-R) [21] and Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). [22]

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