

Human Rights and Persons with Mental Illness in India

Background:

“The chain is blackened and the ring is horribly twisted but still fastened to the charred stump – of a leg. Mentally challenged and physically shackled he was, yet Murugaraj had desperately tried to free himself. Twenty seven more mentally ill people died with him in the early hours of August 6, 2001 when a fire engulfed the thatched roof of the Moideen Badhusha Mental Home at Erwadi, a fishing village 27 k.m. south of Ramanathapuram town in southern Tamil Nadu in India. They were stripped of dignity when they lived- chained, confined and ill treated. The manner of their death was even worse.”¹

Their death highlights the deplorable state of mental health care in the country and the need for the government to reach out to the mentally ill. The most of the persons with mental illness are deprived from their basic human rights and right kind of treatment not only medical from civil society also. On the contrary, the disability rights movements in India have achieved laudable goals on various fronts, but its greatest drawback has been neglect of the rights of persons with mental illness. The Government of India has passed two acts, Mental Health Act 1982 and Persons with Disability Act 1995 to protect the

¹ Volume 18- Issue 17, August.18-31, 2001, Frontline Magazine article written by Asha Krishnakumar

rights of persons with mental illness, mainstreaming of these people into the society. The violation of human rights is committed in hospitals where basic amenities and services are not provided, inhuman and degrading treatment is very common and patients are subjected to ill treatment and abuse. The human rights violation starts from very beginning from their admission to treatment and rehabilitation till their discharging from Mental Health hospitals or Private institutions.

The main focus of the article is to highlight human rights violation in mental health institutions. The persons with mental illness are deprived from their right to health, dignity, Right to inhuman and degrading treatment, force labor, civic and other rights during their institutionalization in mental health hospitals.

Key words: Persons with Mental Illness, Human Rights, Mental Health Hospital, Violation.

Mental Health Services in India:

“For all individuals, mental, physical and social health is vital strands of life that are closely interwoven and deeply interdependent. As understanding of this relationship grows, it becomes even more apparent that mental health is crucial to the overall well being of individuals, societies and countries. ” (WHO Report 2001). Perhaps, mental health is failed to get enough attention in health sector rather than physical illness in last

50 years. The persons with mental illness are highly stigmatized and discriminated in society in all sphere of their life.

According to the World Health Report “some 450 million people suffer from mental or behavioral disorder, yet only small minorities of them receive even the most basic treatment”. (World Health Report 2001).

“On other hand, Mental and Behavioral disorder are estimated to account for 12% of the global burden of disease and majority of the countries spends less than 1% for mental health in their health budget”.² That is totally disproportionate in relation between disease burden and amount spends. “It is very strange that 40% of the countries in the world don’t have mental health policy and over 30% have no special programs related to mental and behavioral disorders Moreover, health plans frequently don’t cover mental and behavioral disorders at the same time as other illness.”(WHO Report,2001).

In India, at the time of independence, mental health care was not recognized, after tragedy of Erwadi incident, it is acknowledged as part of public health agenda. It is also considered as part of primary health system but the real situation in the health sector is totally different, primary health centers are not well equipped with medicines and staffs.

“There are 42 mental hospitals in the country with the bed availability of 20,893 in the government sector. In the private sector, there are 5096 beds. These facilities have to

² World Health Organisation (2001) World Health Report

manage an estimated 1, 02, 70,165 of people with severe mental illness and 5,12,51,625 of people with common mental disorders needing immediate attention.”(Janardhan and Bitopi Deka) That creates significant difficulties in accessibility and affordability of health services for persons with mental illness and their families.

Human Rights Violation in Mental Health Hospitals:

Enjoyment of the human right to health is vital to all aspects of a person’s life and well being, and crucial to the realization of many other fundamental human rights and freedoms. It is explicitly mentioned in the Universal Declaration of Human Rights in Article 25(1) that ‘Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services’. The inclusion of “Health” and “medical care” in the UDHR has led to an Article each in the ESCR Covenant(Article 12),³

Though, the figures given in W.H.O. Report,2001 indicates that Human rights violation occurs in case of persons with mental illness across the world, and India is not an exception.

India is a vast country with multiple models of health care services operating within the country. These include government services, private services and non governmental services. Mental Health Services includes long term hospital services and community

³ *The Essentials of Human Rights* , Smith, Rohna K.M & Christien van den Anker. Page 148.

mental health services. “The Indian experience with institutionalization has not been edifying. A report prepared for the National Human Rights Commission (NHRC,1999), after an empirical study of mental health hospitals in the country, made a damning indictment of the state of mental health institutions. The findings reveal that there are predominantly two types of hospitals,” the report said. “the first type does not deserve to be called ‘hospitals’ or mental health centers. They are ‘*dumping grounds*’ for families to abandon their mentally ill member, for their economic reasons or lack of understanding and awareness of mental illness. The living conditions in many of these settings are deplorable and *violate an individual’s right to be treated humanely and live a life of dignity*. Despite all advances in treatment, the mentally ill people in these hospitals are forced to live a life of incarceration”. “The second type of ‘hospitals’, the NHRC report continues, are those that provide basic living amenities. Their role is predominantly custodial and they provide adequate food and to keep patients manageable and very little effort is made to preserve or enhance shelter.”(NHRC (India) Report, 1999)”⁴. On the contrary, the families hesitate to take their kin back because, “according to the Dr. C. Ramasubramanian, a psychiatrist and member of the District Mental Home Regulatory Committee, many of them consider the homes a convenient place to abandon their mentally ill wards in order to escape the stigma attached to

⁴ Indian Journal of Social Psychiatry (2005), 21 (3-4). 103-108

mental illness. As a result, such institutions have proliferated.”⁵ The conditions of persons with mental illness in institutions have been cause for human right concern.

Human Rights of Persons with Mental Illness.

In many hospitals in India, there are anecdotal reports of violation of human rights of the persons with mental illness. Human rights nothing more than entitlement due legally and morally, to an individual. “All Human beings are born free and equal in dignity and rights ”⁶ It has led in the preamble of the ICCPR and ICESCR, “recognizing that these rights derive from the inherent dignity of human person “⁷ The dignity of persons with mental illness is not respected in mental health institution. Sometimes they are found in worst condition like naked, in dirty and old clothes, unhygienic conditions, sometimes women were found in dreadful condition, not “wearing any undergarments and intimate parts of their bodies could be seen through the ill fitting clothing.”⁸ Not Providing the necessary clothes, to protect personal dignity, and not providing items to maintain menstrual hygiene, are both human rights violations.

Human Rights in Article 25(1) that ‘Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services’. The inclusion of

⁵ Frontline, Asha Krishnakumar, Volume 18- Issue 17, August. 18 -31, 2001.

⁶ Article 1 Universal Declaration of Human Rights

⁷ Preamble, International Covenant on Civil and Political Rights, resolution 2200 A (XXI), International Covenant on Economic, Social and Cultural Rights, resolution

⁸ Akhtar, Indian Journal of Social Psychiatry (2005), 21 (3-4), 103-108

“Health” and “medical care” in the UDHR has led to an Article each in the ESCR Covenant(Article 12),⁹ Article 47 of Indian Constitution in part IV directive principles of state policy explicitly mentioned that it is duty of the State to raise the level of nutrition and the standard of living and to improve public health. “The Supreme Court has also laid down the maintenance and improvement of public health is one of the obligations that flow from Article 21 of the Constitution. This means that mentally ill have the fundamental/human right to receive equality mental health care and to humane living conditions in the mental hospitals. The right to life in Article 21 of the Constitution means something more than survival of animal existence.”¹⁰ On the contrary, the mental illness has not got enough attention by the state in health policy and programs. These people are deprived from their right to treatment and health services. Only Hospitals for Mental health and some District Hospitals are main sources for treatment. But “study conducted by NHRC in 37 mental hospitals during November 2001 and January 2002 reveals that even most of the hospitals have inadequate infrastructure, staffs, clinical services, availability of medicines and treatment modalities, quality of food, availability of clothing and linen, recreational facilities, vocational rehabilitation facilities.”¹¹ The other sources of mental illness related treatment are mental home or asylum are run by religious institution and traditional healing is main practice for treatment purpose. For example, Moideen Badhusha Mental

⁹ Ebid

¹⁰ Rights of Mentally Ill Persons, Lakhawat Manish, Legal Service India.com

¹¹ Janardhan and Bitopi Deka, Express Health Care Management, 1-5 August, 2003, Vol.4, No 14, Pgs.17

Home Erwadi, at where 27 people died in fire accident in 2001. The people are treated inhuman way, sometimes they are chained and malnourished. There is no attention on treatment part and beating is the only treatment. The “Article 6 (1) of the Mental Health Act prohibits the running of a home without license and Article 11 (1b) says, the licensing authority can revoke the license if the maintenance of the home is being carried on in a manner detrimental to the moral, mental or physical well being of the inpatients”¹² Even though illegal mental home are running in the country and less intervention have been done by the state authority and this is the place where the chances of human rights violation is high.

Article 5, UDHR states no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This article is included in article 7 of the ICCPR which is explicitly says, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. These people often treated in human and degrading treatment. Sometimes there is question about their right to autonomy or self determination in case, when they are not informed or consented for treatment of ECT and any side effects of any drugs. “Intervention for violence among rehabilitating patients must include both prevention aspect as well a crisis management.

¹² Indian Mental Health Act, 1987

Method such as anger management, communication skills, healing crisis, sedation and more human ways of dealing with violence can be implemented”¹³

Article 22 UDHR and Article 9 of the ICESCR recognizing the rights of everyone, as member of society, has the right to social security for his/her dignity and the free development of his personality. Article 66(1) of Persons with Disability Act states, “The appropriate Governments and the local authorities shall within the limits of their economic capacity and development undertake or cause to be undertaken rehabilitation of all persons with disabilities.”¹⁴ Mental Illness is also recognized as disability according to the section 2 of the PWD Act, 1995. Persons with mental illness is not treated as disabled person and they have not been benefited by any social security benefits like concession, scholarship for education etc. comparing to other categories of disabled people. Some of the state doesn't have budget allocation for social security, social insurance of persons with mental illness. It is assumed that civic rights are suspended during admission in a mental hospital(Curran and Harding,1978). Among others rights can be suspended during hospitalization are right to vote, right to enter into a contract, right to drive a car, right to practice profession and right to marry and social life and privacy. Institutionalization put ends in social life and there is no any rights and freedoms to enjoy human life.

¹³ Life behind walls... Human Rights Within Institution Anand Ramya and Davar Bhargavi, Pg 26

¹⁴ The Persons with Disability Act 1995, (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

Conclusion:

The incident of Erwadi has opened up the eyes of Government and civil society. Government took lots of affirmative actions to improve mental health sector in country like district wise “survey of all registered and unregistered bodies purporting to offer mental health care and licence to be granted on standards are maintained”¹⁵. Government has implemented District Mental Health Program which incorporates with WHO Community Mental Health Car model. It focuses on Treatment availability at primarily level, Community awareness and Renovation and construction of Hospital for Mental Health in the state. It also covers training components for human resource development in the field of mental health. Government should take as much as necessary steps to improve mental health sector keeping in mind other barriers; stigma and discrimination prevailing in the society, second one is the wrong public health choice in the matter of allocating money for mental health. Most of the money are spent on mental health institutions which were supposed to take care of mentally ill patients but basic human rights are violated. The most important intervention strategy is community based. It explains why people don't seek treatment. If the only option is a psychiatric hospital, very far from village and one that is terribly maintained, people will turn to strange healing system. The third barrier is not having enough specialist like Psychiatrists, Psychologists, Social workers, nurses, health workers to deal with the

¹⁵ 1 reply to PIL in Supreme court by Government of India.

problems of mental illness. The fourth important barrier is discrimination of persons with mental illness. For example Insurance schemes are not recognizing the parity between physical and mental illness and only reimburse expenses on physical ailments but not mental ailments. The problem is huge in a country but its solutions are available at very little cost. We need more awareness among politicians, policy makers, NGOs working in health and disability sectors, and civil society about the consequences of non-treatment rather than treatment. Only by doing so, there is some hope of reaching close to the realistic goal of protection of human rights of persons with mental illness in the country.

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