

LAW AND MENTAL HEALTH IN INDIA

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ABSTRACT

In this paper, we're going to have a basic understanding of the definition of law. Even though there is no unanimously fixed definition of law. The definition which is satisfactory today, may not be satisfactory tomorrow. And know about Salmond's theory or definition of law. Then I have also answered questions like, who do we consider mentally ill? and why are they considered mentally ill? I have also mentioned the mental healthcare act 2017 and how it will reform the viewpoint from which law would see the mentally ill as potential harm and how they would treat them just based on that. There are a few points or sentences where I've also written about how a society we failed to have treated them equally and how we should not just rely on our laws or laws for them to be given humane treatment.

Keywords: Law, Mental Health, Health.

INTRODUCTION

There is no universally accepted definition of law. The definition of law keeps on changing with the changing society. According to John Salmond, "Law is the body of principles recognised and applied by the state in the administration of justice." It preserves and promotes the common good of society. It regulates people's behaviour and maintains a healthy environment when they interact with each other. It helps in meeting the needs of people and others in society.

Law provides rights to every individual in society. And when it is provided it is necessary to see where that individual stands and what rights that individual needs to enjoy or practice. Especially when we talk about someone who's mentally challenged or mentally ill. A mentally ill individual does not have the capacity or capability to think reasonably. Their mental health affects their mood, thinking, and behaviour. Their grasping capability is comparatively slower than that of an individual who can think reasonably and has proper control over his or her mood, thinking, and behaviour.

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The aim of this paper is to understand the relationship between law and mental health. It'll also cover areas where law and mental health go hand in hand.

WHO'S CONSIDERED A MENTALLY ILL INDIVIDUAL?

A Mental Ill Individual is someone with an abnormal mental condition because of which their mental and emotional behavior is interfered with through an internal behavioral control issue. It is a condition that affects a person's ability to function at an ordinary level in the family, home, and community. He/she can't understand or learn things quickly. Who's behavior is irrational at times. Someone who needs to be taken care of because of their behavioral issue. Someone who doesn't and can't think reasonably in certain situations or places. Who can be potential harm to someone due to their mental condition and their inability to think rationally or reasonably? They can't make decisions on their own.

There's an impact on their mental health because of personal traumas or because of their generic medical conditions. There is a wide variety of different types of mental conditions such as anxiety disorder, panic disorders, depression, schizophrenia and OCD, ADHD, etc. Their perspective and attitude are very child-like. According to World Health Organisation, "Mental Health is a state of well-being in which the individual realises his or her own abilities, can cope with the normal stresses of life, can work productively and faithfully, and is able to make a contribution to his or her community." The Act defines "Mental Illness"² as "a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, especially characterised by subnormality of intelligence."

FAILURE OF LAW IN UNDERSTANDING MENTAL ILLNESS

People fail to understand how important mental health is and how and in what way it affects one's life and the environment around them. This has been continued for ages now. Word "mentally ill" is understood in a most misunderstood manner. People refrain from talking about their mental health because they are too afraid of "what will society say?". And also we are well aware of the fact that there's a stigma around the concept of mental illness, even in today's time.

Mentally ill individuals have been failed by the law enforcement authority as well, an example of this is The Mental Healthcare Act 1987. In this act important issue of prevention and promotion of mental well-being has been neglected. Under this act electroconvulsive therapy was practiced on mentally ill patients. They were tied to their beds in order to prevent them from harming or hurting anybody, just based on them being mentally ill. For most of the time, they were kept isolated. Crimes against the mentally ill were increasing but no actions were taken because of the loopholes in the act. This act has a criminal-centric approach toward the understanding of the word “mentally ill”. In 2001 Erwadi mental home fire, in which patients were charred to death, is a reminder of how terribly the mentally ill have been treated in past, and also somewhere or the other is still being treated ill in certain sections of the society.

MENTAL HEALTH AND INDIAN LAWS

During the initial years when the constitution was newly made, the legislation was mainly concerned with the safety of society from mentally ill individuals. Due to such an attitude towards them they were abused and have their basic rights violated. And the sources of abuse and violation are caretakers, family, friends, professionals, and unrelated members of the community and law enforcement authorities. To overcome all these issues there have been laws to help mentally challenged or mentally ill individuals to enjoy their rights. There is a critical requirement for family members to be involved in caregiving. If no family members are available, the medical board (which consists of two mental health specialists) can establish measures to waive the necessity for a family member.

THE MENTAL HEALTHCARE ACT 2017

On March 27, 2017, Lok Sabha in a unanimous decision passes The Mental Healthcare Act 2017. It was passed in Rajya Sabha in August 2016 and later got approved by Honourable President of India in April 2017. The Mental Healthcare Act 2017 defines “mental illness” as, “A substantial disorder of thinking, mood, perception, orientation or memory that grossly impair judgement or ability to meet the ordinary demands of life mental conditions associated with the abuse of alcohol and drugs.” The Mental Healthcare Act 2017 revoked the existing The Mental Healthcare Act 1987 which had been widely criticised for not recognising the rights of mentally ill people and isolating them from the society for its safety. And this act has overturned 309 of IPC which criminalises attempted suicide by a mentally ill person. The Mental Healthcare Act 2017 aims to provide mental healthcare services for people with mental

conditions. And to protect their rights from being violated and also help them live their life with dignity instead of being discriminated against and harassed by society. It also provides access to treatment and aids the individual with how they want to be treated for their illness. This act empowers accessibility to mental health services for all. It ensures that the services are accessible, affordable, and of good quality.

It is mandatory to avail of mental health services in every district of the country under this act. It gives the patient more power to decide certain aspects of their own treatment, this has been picked up from the west. Rights recognised under this act are, “the right to community living; right to live with dignity; protection from cruel, inhuman or degrading treatment; treatment to persons with physical illness; right to relevant information concerning treatment; other rights and resources; right to confidentiality; right to access their basic medical record; right to personal contacts and communication; right to legal aid.” The punishment for violating any of the above-given rights of a mentally ill person is imprisonment for up to 6 months or rupees 10,000 one or both. And if one repeats the violation of these rights then the period of imprisonment increases up to 2 years and a fine of rupees 50,000 to 5,00,000 or both.

PROVISIONS UNDER THE MENTAL HEALTHCARE ACT

- Right of persons with mental illness
- Admission of persons with mental illness
- Decriminalising suicide and prohibiting electroconvulsive therapy
- Responsibility of certain other agencies
- Financial Punishment

CONCLUSION

There's this stigma that mentally ill individuals are a danger to society, whereas it is just that they need help. They have no control over how their thought process works or when to control their behavior. The new Mental Healthcare Act 2017 is supposed to change the perceptive approach of the old law that is criminal-centric approach to a patient-centric approach, in India. This act has an optimistic outlook for the patients after years of them being treated inhumanly. People's mental health is a reflection of their personal traumas or associated with the abuse of

alcohol or drugs. Traumas like domestic abuse, abandonment issues, attachment issues, and more. Sometimes it's when family, friends, or authority fails to perform their duty of care towards the mentally ill. An example of authority as mentioned above in the paper is The Mental Healthcare Act 1987.

