

RIGHTS OF INDIVIDUALS SEEKING TREATMENT FOR MENTAL ILLNESS

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Abstracts:

Individual with mental illness who either voluntarily or involuntarily involved in mental health treatment system has certain legal rights i.e. entitled to be treated with dignity, decency, equality and freedom regardless of the fact that we are born differently, grow differently, different in our mental make-up, thought processes and life-style.

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“What mental health needs is more sunlight, more candor, more unashamed conversation about illnesses that affect not only individuals, but their families as well.” - Glenn Close

The United Nations (UN) Convention on the Rights of Persons with Disabilities (UNCRPD) and, more specifically, by the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, set forth in 1991. These international documents specify three important points which should be taken into consideration: 1) the right of the person to be treated without discrimination; 2) the presumption of legal capacity, unless incapacity can be clearly proven; and 3) the need to involve users and families in the development of policies which directly affect their lives (UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.). This evolution is characterised as a shift from a so-called ‘medical model’ of disability to a ‘social model’ in which “people are viewed as being disabled by society rather than by their bodies” (WHO 2011). The latter adopts a

rights-based approach to disability, where the person is at the centre of all decisions affecting him or herself (Quinn and Degener, 2002). In 2007, India was among the many countries that ratified the UN Convention on the Rights of Persons with Disabilities, which includes People with Mental Impairment (*The Convention on the Rights of Persons with Disabilities, United Nations 2006*).

Following are two cases for the study in the research

Case-1:

Name: R.M. Gender: Female; Age-20

She was caught roaming on the roads of Kerala, India by an NGO working for the treatment of mentally ill people. On assessment it was found that the patient was unable to respond properly to any question, the clinical diagnosis was found mental retardation. After the patient's improvement in health she was able to speak-up her name and place from where she belonged. She belongs from state Jharkhand, India. Then the patient was brought to RINPAS hospital



for her restoration. The psychiatric social workers failed to trace her village and family members. In such case the institution has the full right to provide universal rights to the patients, as per the legislations for mentally ill people.¹

Case-2:

Name: (Anonymous). Gender Male: Age-24.

He was brought to hospital for his intolerable behaviour. The chief complaints reported were intake of ganja for since the age of 12 years. For the 3 months the patient was behaving in abnormal way like not taking proper food, moves out of home at any time without any purpose, distributes money and sweets to the community people, sing and dance all the time, claims to have relation with higher authorities and can make other people's work easier if they ask. He would even say that the people are jealous of his power due to which they want to harm him. If the family members challenged his beliefs he would at once showed aggressive behaviour and often abuse and assaults them.

This case illustrates an example of psychiatric emergency where there is threat to harm other people around him. The patient can only be treated in institutional setting. In such case there is a provision to admit the patient in the hospital without his consent.

The rights which both the cases highlight in institutional care are:

- **Right to health:** For mentally ill person, right to health means availability of mental health services, accessibility to the services and quality services with regard to both physical and mental health care.
- **Right to treatment/ access to mental health care:** The patient in this case is unable to take decision regarding her

admission or treatment, in such a case it is the duty of the institution to provide treatment, safety and protection to the patient. The right to treatment holds the issue of informed consent for treatment. It lies in establishing the patient's competence to give consent. If a patient is judged competent to give consent, her or his refusal to accept treatment also has to be protected.

In exceptional circumstances, the legislation may allow treatment to proceed without informed consent. Say if a person with severe mental disorder is found to be lacking competence (capacity) and the treatment is likely to improve the condition of the patient or there is a likelihood of further deterioration of the patient's condition if treatment is not given.

- **Right to life:** It lays down that no person shall be deprived of his life except according to 'procedure established by law'. Hence, in any institution where Right to life is violated by putting the mentally ill in a closed ward, this amounts to violation of his/her fundamental rights. It is considered a serious crime and is punishable under the Indian Penal Code Sec 340, Sec 342, Sec 343 and Sec 34412. All these sections deal with wrongful confinement of any person.

- **Right to dignity:** Every person living with a mental illness must be treated with dignity, and accepted by their family and the community. To make dignity in mental health a reality, every person of society needs to work with each other to make mental health visible and not something to be ashamed of. People need to know that mental illnesses are like other physical illnesses. When we think of treating a person with mental illness, we come across many treatment modalities to help the person recover. These would range from hospitalization, medication, skills building, etc. Even after the use of these modalities, if the patient is treated

¹ The 1971 Declaration on the Rights of Mentally Retarded Persons adopts a restrictive view, stipulating that "the mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings" (UN General Assembly (1971), Art. 1).



without respect and dignity these services become meaningless. Patients should not be subjected to any cruelty or indignity and cannot be used for the purpose of research except when the research is of direct benefit to him.

- **Right to confidentiality or privacy:** here the confidentiality refers to the right of an individual not to have communications that were imparted in confidence revealed to third parties. It guards the individual against a variety of intrusions on an individual's freedom from unwanted attention. Mentally ill persons are considered similar to medical patients, have the right to talk to their therapist in almost complete confidence. Only under a very few circumstances a professional reveal anything about their patients.
- **Rights to basic amenities (food, shelter, and clothing):** In-depth qualitative research shows that many factors are important in promoting well-being and preventing mental ill-health, including medication, relationships with friends, family members and professionals, complementary therapies, religious and spiritual beliefs, self-help strategies, sport and physical exercise, and creative expression (Faulkner & Layzell, 2000). A key factor that is associated with both mental health and diet is poverty (Rogers and Pilgrim 2003). This is closely tied to employment and levels of earnings and these issues also relate to what, why and how people eat.
- **Right to education:** The right of Mentally Retarded individual is to get education on the basis of equal opportunity and for the development of their mental, physical abilities and creativity to their fullest potential. As per the Right to education act (2010) covers two objectives: 1. Provides educational opportunity in a normal school settings, 2. Provides special attention for leaning if it is necessary.
- **Right to protection from harm:** It lays emphasis on the right of patients to be free from any kind of abuse or physical assault. The patients are entitled to be

protected from staff abuse by careful screening of the employees and appropriate supervision. The staffs working at the weekend should be given special attention. The staffs should be given proper training and support to prevent abuse from occurring.

Conclusion:

Earlier in 1970's, the discussion centred on the individual and his/her "functional limitations or psychological losses", current debate locates the "problem of disability within society", insisting that "it is not individual limitations which are the cause of the problem but society's failure to provide appropriate services and adequately ensure the needs of persons with disabilities are fully taken into account in its social organisation" (Oliver,1990).Protection of the rights of individual seeking treatment for mental illness from institution could be successfully applied only by the government effort. It even needs full participation of each individual, not only individuals with mental illness.

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