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An Analysis On Right To Mental Health Care In India- A Human Right Perspective With Special Reference To The State Of Assam

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Abstract: There is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the law. The Courts in India were mainly concerned with determination of competency, dangerousness, diminished responsibility or the welfare of society and most of the earlier legislations were also concerned with these aspects. After the takeover of the administration of India by the British crown in 1858, a large number of laws were enacted in quick succession for controlling the care and treatment of mentally ill persons in British India. These laws were: The Lunacy (Supreme Courts) Act, 1858; The Lunacy (District Courts) Act, 1858; The Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889); The Military Lunatic Acts, 1877.These acts serve as a background of lunacy legislations in India. In the light of growing political awareness on lunacy and mental illness the Indian Lunacy Act 1912 was enacted. After the Second World War when the UDHR was adopted by UN General Assembly the Indian Psychiatric Society submitted a draft Mental Health Bill in 1950 to replace the outmoded ILA-1912. Mental Health Act (MHA-87) was finally enacted in 1987 after a long and protracted course which was further replaced by the Mental Healthcare Act 2017. Therefore, through this paper an attempt is made to analyse the various provisions of the enactment and to understand how far this law aligns with the human right to mental healthcare in India.

Index Terms **- Health, healthcare, rights.**

I. INTRODUCTION

Health is a State of complete physical, mental and social well being and not merely absence of disease or infirmity. Health is therefore best understood as the indispensable basis for defining a person's sense of well being.[1] Healthcare, on the other hand, is an act of taking preventative or necessary medical procedures to improve a person's well-being[2] Health care covers not merely medical care but also all aspects of pro preventive care too. It includes universal access, fair distribution of funds, competence of the service providers and special attention to vulnerable groups.[3]

Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An *impairment* is a problem in body function or structure; an *activity limitation* is a difficulty encountered by

[1] R. Srinivas, *Healthcare in India – Vision 2020 Issues and Prospects*, http://planningcommission.gov.in/reports/genrep/bkpap2020/26_bg2020.pdf

[2] http://www.businessdictionary.com/definition/health-care.html.

[3] Id.

an individual in executing a task or action; while a *participation restriction* is a problem experienced by an individual in involvement in life situations.[4]. Disability is thus a complex health problem, reflecting the interaction between features of a person's body and features of the society in which he or she lives.[5]

Definition of Disability

1. According to UNCPRD, "Disability is an impairment and the environment to which they are exposed to poses barriers that hinders their full and effective participation in society on an equal basis with others.[6]
2. According to Marriam Webster, "a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions."[7]
3. According to Section 2(i) of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 "disability" means blindness; low vision; leprosy-cured; hearing impairment; loco motor disability; mental retardation; mental illness."

Meaning of Mental Healthcare

Disabilities associated with mental health problems significantly interfere with activities of daily living. Both disability and interference in daily activities has a huge impact on the socio-economic functioning of the family.

According to the World Health Organization (WHO), mental health is "a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community"[8]

There is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the law. The Courts in India were mainly concerned with determination of competency, dangerousness, diminished responsibility or the welfare of society and most of the earlier legislations were also concerned with these aspects. After the takeover of the administration of India by the British crown in 1858, a large number of laws were enacted in quick succession for controlling the care and treatment of mentally ill persons in British India. These laws were: The Lunacy (Supreme Courts) Act, 1858; The Lunacy (District Courts) Act, 1858; The Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889); The Military Lunatic Acts, 1877.[9] These acts serve as a background of lunacy legislations in India. In the light of growing political awareness on lunacy and mental illness the Indian Lunacy Act 1912 was enacted. After the Second World War when the UDHR was adopted by UN General Assembly the Indian Psychiatric Society submitted

[4] https://www.who.int/topics/disabilities/en/.
[5] Ibid.
[6] Ibid.
[7] https://www.merriam-webster.com/dictionary/disability.
[8] Silvana Galderisi et al., *Towards a new definition of Mental Health*, 231-233World Psychiatry, 4th June(2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4471980/.
[9] L.N. Choudhary & Deep Shikha, *Indian Legal System and Mental Health*, 55(Suppl 2) IJP 177-181,(JAN 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705679/

a draft Mental Health Bill in 1950 to replace the outmoded ILA-1912. Mental Health Act (MHA-87) was finally enacted in 1987 after a long and protracted course[10] which was further replaced by the Mental Healthcare Act 2017.

INTERNATIONAL INSTRUMENTS ON MENTAL HELATHCARE

In the light of the International concern on Mental Helath care and services the following initiatives has been undertaken by the United Nation.

United Nations (General Assembly):

In 1971, the General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons which confers similar rights to mentally retarded persons as other human beings and accorded them some special rights corresponding to their needs in medical, educational and social fields. In 1975, the Declaration on the Rights of Persons With Disabilities was adopted by the General Assembly keeping in view "the necessity of preventing physical and mental disabilities in the most varied fields of activities and of promoting their integration as far as possible in normal life." It laid down the numerous civil and political rights of persons with disabilities. After a decade, the year 1981 was declared as the International Year of Persons With Disabilities.

The Report of the United Nations High Commissioner for Human Rights recommends a number of policy shifts, which would support the full realization of the human rights which includes measures to improve the quality of mental health service delivery, to put an end to involuntary treatment and institutionalization and to create a legal and policy environment that is conducive to the realization of the human rights of persons with mental health conditions and psychosocial disabilities.[11]

World Health Organization (WHO):

In 1996 WHO articulated ten key principles on mental healthcare law they are as follows:[12]

- All persons should benefit from the best possible measures to promote mental well-being and prevent mental disorders.
- All persons in need should have access to basic mental health care.
- Mental health assessments should be performed in accordance with internationally accepted medical principles and instruments.
- All persons with mental disorders should be provided with health care which is the least restrictive possible.
- Consent is needed before any type of interference with a person can occur.

[10] Ibid.

[11] U.N. General Assembly, *Report of the United Nations High Commissioner for Human Rights*,34th Session, 31st JAN (2017)

[12] BRENDEN D. KELLEY, *MENTAL HEALTH, MENTAL ILLNESS, AND HUMAN RIGHTS IN INDIA AND ELSEWHERE: WHAT ARE WE AIMING FOR?*58(SUPPL 2) IJP, 168-174 (2016).

- If a patient experiences difficulties appreciating the implications of a decision, although not unable to decide, the patient shall benefit from the assistance of an appropriate third party of his or her choice.
- There should be a review procedure for any decision made by official, surrogate or representative decision-makers and health care providers.
- For decisions affecting integrity or liberty, with a long-lasting impact, there should be automatic periodical review mechanisms.
- All decision-makers acting in official or surrogate capacity should be qualified to do so.
- All decisions should be made in keeping with the body of law in force in the jurisdiction involved and not on any other basis, or an arbitrary basis.

In 2005 WHO published a resource book which emphasised on a broad concept of human rights, encompassing not only just issues relating to the right to liberty but also social rights, which are commonly neglected among the mentally ill.[13]

In 2018 the WHO Director-General identified mental health and sought to ensure universal health coverage involving access to quality and affordable care for mental health conditions in 12 countries to 100 million more people. The initiative will advance policies, advocacy and human rights, and scale-up quality interventions and services for people with mental health conditions, including substance use and neurological disorders.

Convention on Rights of Persons with Disabilities

The convention on the Rights of Persons with Disabilities 2006 commits 'to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity' **(Article 1)**.[14] It also provides an expansive meaning of the term "persons with disabilities" as including those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[15] Article 12 of the CRPD states "that persons with disabilities have the right to recognition everywhere as persons before the law" and "enjoy legal capacity on an equal basis with others in all aspects of life." And requires ratifying states to "take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity".[16]

Universal Declaration of Human Rights

The adoption of UDHR[17] shows the universal concern on Human Rights issued by the global community. The International community codified and adopted 30 Articles that encompasses a broad range of civil, political,

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Universal Declaration of Human Rights (adopted 10 December 1948) United Nations General Assembly Resolution (UNGA Res) 217 A(III) (UDHR).

economic, social and cultural rights as a 'common standard of achievement for all peoples and all nations[18]. **Article 1** of the Declaration says, "All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in the spirit of brotherhood." **Articles 2-21** deals with the Civil and Political Rights. **Article 21-27** deals with Economic and Social Rights.

RIGHT TO ACCESS MENTAL HEALTHCARE SERVICE IN INDIA- A HUMAN RIGHT PERSPECTIVE

The idea of human rights is related to life, liberty and dignity of the individual. Rights are essential for every human being to lead a decent and dignified life. These basic rights are commonly known as human rights and are ensured and enshrined under the constitution as Fundamental Rights for all citizens irrespective of caste, creed, religion, colour, sex or nationality.[19]

India has made several efforts for the realization of human rights. For the better protection of human rights the Parliament has enacted the Protection of Human Rights Act 1993 which provides for the constitution of the National Human Rights Commission, State Human Rights Commission and Human Rights Court. Article 41 of Constitution of India provides that the State shall, *"within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want."*[20] Provisions of 11th and 12th Schedule also ensure Social welfare and Safeguarding measures for the weaker sections of the society including the handicapped and mentally retarded.[21]

Article 21 of the Constitution of India provides right to life and personal liberty which includes within its ambit the right to health and medical care. Right to health is not included as a Fundamental Right in India. However, the Judiciary has widely interpreted the right to health in *Bandua Mukti Morcha v/s UOI*[22]. The Supreme Court has held that the right to live with dignity U/A 21 includes the protection of health. The right to lead a healthy life so as to ensure all facilities of human being was upheld by the Supreme Court in *Mr.x v/s Hospital Y*[23]. The Supreme Court has also observed that the Government and other Authorities must focus on giving priority to health of its citizens which not only makes one's life meaningful , improves one's inefficiency but in turn gives optimum output.[24] In *State of Punjab v/s Mahindra Singh Chawla*[25] the court held that right to health is integral to the Constitutional mandate. In *Vincent v/s UOI* [26] the Supreme Court has emphasised that a healthy body is very fundamental for human activities.

In the case of *Rajive Raturi v. UOI and Ors.*[27]the Supreme Court has directed the States as well as Union Territories to file plans for accessibility in the built environment, transportation system, and information and communication services for the persons suffering from different disabilities.

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[18] UDHR Preamble.
[19] Harjinder Singh, *Human Rights- Concept and Perceptions,* 1 Law Review 1, Lexis Nexis (2014).
[20] Id. Note.8
[21] Id.
[22] AIR 1984 SC 802.
[23] AIR 1999 SC 495.
[24] Narendra Kumar, CONSTITUTIONAL LAW OF INDIA, 333(2015).
[25] (1997) 2 SCC 83.
[26] AIR 1987 SC 990: (1987) 2 SCC 165.
[27] http://www.indiaenvironmentportal.org.in/content/460737/order-of-the-supreme-court-of-india-regarding-rights-of-persons-suffering-from-disabilities-15012019/.

A significant ruling has been given by the Supreme Court in *Manjeet Singh*[28]*(July 11, 2018)* case that any disability sustained during the course of military service will be attributed toservice conditions unless the disability was such that the disease could not have been detected on medical examination before a person has been selected for defence service.

In the matter of *Gaurav Kumar Bansal Vs Union of India & Others (*03/01/2019) regarding condition of patients suffering from mental illness in mental asylums the Apex Court while raising serious concern to the matter clearly stated that "this is not only inhuman and violative of rights of such persons under Article 21 of the Constitution of India, as even a person suffering from mental disability is still a human being and his dignity cannot be violated. It is also against the spirit of Section 95 of the Mental Healthcare Act, 2017"[29]

India was one of the first countries in developing world to have adopted a Mental Health Program (MHP) in 1982, keeping in view the heavy burden of mental illness in the community, and the absolute inadequacy of mental health care infrastructure in the country to deal with it but, implementation failures led to its underperformance. However in the light of WHO's Action Plan 2013-2020, India framed its first mental health policy fully in line with the Human Rights Covenants.[30] To support the Programme agencies like World Bank and WHO have extended a helping hand to the Government of India to meet the expenditure on Staff, equipment, vehicle, medicines, stationery, training etc for a period of 5 years. In 2016, India carried out the National Mental Health Survey (NMHS-2016) in 12 states in which mental health system, services, resources, treatment gaps, health-care utilization patterns, disability status of mentally affected individuals, and impact on individual and their family in the surveyed population were systematically assessed.[31] The study reveals that nearly 150 million Indians were in need of active interventions which is posing a formidable challenge to our insufficient, inequitably distributed, and inefficient mental health system.[32]

While right to equality of law and equal protection of law irrespective of gender, religion, caste, race, sex or place of birth remains a challenge in India, the right of the persons with disabilities encounter additional prejudices, discrimination, neglect, violence and exclusion.[33] Mental health is an important societal issue, with significant negative consequences for individual and social welfare. The enactment of the Rights of Persons with Disabilities Act, 2017 and the Mental Healthcare Act, 2017 by the Indian Legislature has been a significant approach in addressing their vulnerabilities in the context of discrimination, social security, health care and sexual offences against them.[34]

Mental illness and Mental retardation are two broad aspects of Mental disability. Mental illnesses are medical conditions that disrupt a person's thinking, feeling, mood, ability to relate to others, and daily functioning resulting in a diminished capacity for coping with the ordinary demands of life. Serious mental

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[28] http:// www.m.economictimes.com/news/defence/supreme-court-ticks-off-defence-ministy-on-disability-pension-to-soldier/articlehow/47322750.cms.

[29] http://www.indiaenvironmentportal.org.in/content/460386/order-of-the-supreme-court-of-india-regarding-state-of-patients-in-mental-asylums-03012019/.

[30] Pretam B. Mahajan et al., *Analyzing Indian mental health systems: Reflecting, learning, and working towards a better future*, 5 JCRSM 4-12 , 19th Jun (2019), http://www.jcrsmed.org/article.asp?issn=2455-3069;year=2019;volume=5;issue=1;spage=4;epage=12;aulast=Mahajan.

[31] Ibid.

[32] ibid

[33] Swagata Raha and Shampa Sengupta, *Rights of Women with Disabilities under Indian Legislations*,14(2) Socio-Legal Review 190(2018).

[34] Ibid.

illnesses include major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder (OCD), panic disorder, post -traumatic stress disorder (PTSD), and borderline personality disorder whereas mental retardation is an impairment of intellectual functioning. It is a developmental disability. Some common developmental disabilities in addition to mental retardation are epilepsy, autism, cerebral palsy, learning disabilities, and Tourette syndrome.[35]

The Right of Persons with Disabilities Act 2017 addresses the discriminations and violence encountered by the persons with disabilities and recognises their civil and political rights as well as their economic, social and cultural rights. Whereas, the Mental Healthcare Act, 2017 reflects a rights based approach towards persons with mental illness and provides "mental healthcare services for persons with mental illness" and seeks to "protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services."[36] **Section 2(s)** of Right of Persons with Disabilities Act 2017, defines *"person with disabilities"* as "a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.[37] **Section 2(o)** of Mental Healthcare Act, 2017 defines *"Mental Healthcare"* as "analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness."[38] **Section 2(s)** defines *"mental illness"* 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, specially characterised by sub normality of intelligence."[39] However, the MHCA, 2017 neither defines the term "Mental Retardness" nor provides any rights to the mentally retarded persons in India.

Access to health care is pivotal for the exercise of all other rights in mental health care treatment. According to the Report of the National Commission on Macroeconomics and Health, 2016, almost 650-700 lakhs people in India are in need of care for various kinds of mental disorder, around 70-80% of whom do not receive adequate care and protection.[40]

Section 18(1)[41] provides that every person has the right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government. *Clause(2)* further guarantees that the mental health services can be availed at affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is

[35] http://lucasdd.info/wp/wp-content/uploads/2015/12/Mental-Retardation-and-Mental-Illness_201405161349276399.pdf.
[36] Ibid.
[37] The Rights of Persons with Disabilities Act, 2016,https://indiacode.nic.in/bitstream/123456789/2155/3/A2016-49.pdf.
[38] The Mental Helathcare Act, 2017 http://prsindia.org/uploads/media/Mental%20Health/Mental%20Healthcare%20Act,%202017.pdf.
[39] Ibid.
[40] Kirandeep Kaur, *Implications of Mental Health Act 2017on the Right of Women with Mental Illness in India*, 19JIWS 3, (4th May,2018), http://vc.bridgew.edu/cgi/viewcontent.cgi?article=2038&context=jiws.
[41] Id. Note.41

acceptable to persons with mental illness and their families and care-givers.[42] *Clause(4)* provides the ranges of mental healthcare services provided in the mental healthcare institutions which includes the following[43]:

(a) provision of acute mental healthcare services such as outpatient and inpatient services;

(b) provision of half-way homes, sheltered accommodation, supported accommodation as may be prescribed;

(c) provision for mental health services to support family of person with mental illness or home based rehabilitation;

(d) hospital and community based rehabilitation establishments and services as may be prescribed

(e) provision for child mental health services and old age mental health services.

Section 20 of the Act further lays down the right of persons with mental illness to be protected from cruel, inhuman and degrading treatment in mental healthcare establishments which fairly justifies the Right to Life and Personal Liberty as provided under Article 21 of the Indian Constitution. This right includes the right:[44]

i. to live in safe and hygienic environment;
ii. to have adequate sanitary conditions;
iii. to have reasonable facilities for leisure, recreation, education and religious practices;
iv. to privacy;
v. for proper clothing so as to protect such person from exposure of his body to maintain his dignity;
vi. to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;
vii. to have adequate provision for preparing for living in the community;
viii. to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;
ix. to not be subject to compulsory tonsuring (shaving of head hair);
x. to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and
xi. to be protected from all forms of physical, verbal, emotional and sexual abuse.

Sections 22 to 28 of the Act enumerate certain important positive rights of patients with mental illness in mental healthcare which are as follows:[45]

a. **Right to information (Section 22)**: Right of the person with mental illness and his/her nominated representative to information regarding admission to a mental healthcare institution and to his/her treatment therein.
b. **Right to confidentiality (Sections 23 and 24)**: Right of the person with mental illness to confidentiality with respect to his/her mental health, mental healthcare, treatment, and physical healthcare. No photograph or any other information relating to a person with mental illness who is undergoing treatment

[42] Section 18(2) of The Mental Healthcare Act, 2017.
[43] Section 18(4) of The Mental Healthcare Act, 2017.
[44] Id.
[45] Ibid.

at a mental health establishment shall be released to the media without the consent of the person with mental illness. It is to be noted that the right to confidentiality of person with mental illness extends to all information stored in electronic or digital format in real or virtual space.

c. **Right to access medical records (Section 25):** Right of the person with mental illness to access to his/her basic medical records.

d. **Right to personal contacts and communication (Section 26)**: Right of the person with mental illness admitted to a mental health establishment to refuse or receive visitors and to refuse and make telephone and mobile calls at reasonable times and to send and receive emails, etc.

e. **Right to legal aid (Section 27)**: Right of the person with mental illness to receive free legal services to exercise the rights guaranteed under the Act.

f. **Right to make complaints regarding deficiencies of services at the mental healthcare institution (Section 28):** Right of the person with mental illness and his/her nominated representative to complain regarding deficiencies in provision of treatment, care and services in a mental health establishment. The complaint can be made before the medical officer or mental health professional in charge of the establishment and if not satisfied with the response; the concerned Board and if not satisfied with the response; the State Authority.

Sec 3 of Rights of Persons with Disabilities Act 2017 further guarantees right of equality, live with dignity and personal liberty without any discrimination to all the person with disabilities in India. [46]

MENTAL HELATHCARE SCENARIO IN ASSAM

With a population of approximately 312 lakhs[47] mental health problems have been increasingly recognized as major public health problems in the country, as well as in the state of Assam. Emerging problems like substance abuse and dependence in adolescents, homeless mentally ill persons, depression, suicide etc. need attention on a larger scale.[48] In light of this The National Mental Health Survey was coordinated by NIMHANS, Bengaluru across 12 selected states of India in 2015-16. Lokopriya Gopinath Bordoloi Regional Institute of Mental Health (LGBRIMH), Tezpur, was nominated to undertake the survey in three districts of Assam namely- Dibrugarh, Barpeta and Cachar. The NMHS-Assam Report reveals that the prevalence of any **substance use disorder** was **27.35%.** The prevalence of **Schizophrenia and other psychotic disorders** were **1.53%** and **0.50%** respectively The prevalence of **neurotic** and **stress related disorder** was found to be **0.79%. Depressive disorders** contributed the maximum with **2.94%** prevalence for lifetime and 1.45% for current experience. According to the National Crime Record Bureau 2014, Assam recorded a **suicide rate** of **11.1%** per 1,00,000 population which is higher than the national average of 10.6%. prevalence of common mental disorders (CMDs), such as depression, anxiety and substance use disorders, was higher across all age groups, place of residence and gender. Nearly seven per cent (6.5%) of the population was observed to have a life time experience of these disorders. Approximately 1,30,000 persons, that is, around **0.6%** of the population, are currently affected by **severe mental disorders**. It was found that **0.61%** of the respondents

[46] The Rights of Persons with Disabilities Act, 2016,https://indiacode.nic.in/bitstream/123456789/2155/3/A2016-49.pdf.
[47] Census 2011.
[48] Ibid.

screened positive for **Intellectual Disability**. The prevalemce of **Epilepsy** which is a major public health problem and needs estimation was found to be **0.27%.**[49]

The survey report found that 5.85 % i.e approx. 12,00,000 of people of Assam (those above 18 years) are in need of active interventions for one or more mental health issues. The present mental health system in the state is poorly organized, fragmented and uncoordinated to address these problems. There is an urgent need for a strong public health approach and a well-functioning mental health system within the larger health system. Mental health service must be integrated and coordinated with the primary health care with effective monitoring.[50]

Facilities to provide mental health care services were found to be inadequate. There were only 1.71 beds approximately per 1,00,000 population for mental health care. Of these 534 (approx.) beds, 336 beds were available in LGBRIMH (erstwhile mental hospital) and the rest were distributed mostly among the medical colleges and district hospitals of the state. There were no designated beds for persons with mental illness in most of the district hospitals. The State also suffered a disadvantage due to lack of a well defined action plan which clearly spells out activities for implementation, programs, monitoring agencies, budgetary allocation, timelines etc.

Issues and Challenges on Right to access Mental Healthcare in India.

The Mental Healthcare Act, 2017 aims to provide progressive rights to persons with mental illness and bring the legal framework in India in consonance with the provisions of United Nations Convention on Rights of Persons with Disabilities (UNCRPD).[51] However there are certain issues that needs to be addressed as it poses a hindrance in accessing the right mental healthcare services.

1. **Poverty :** Most strongly associated factors with mental disorders are deprivation and poverty. It was also found that the median monthly expense for care and treatment of any mental morbidity was ₹ 1000, which is a significant amount in light of the poverty estimates (31.98%) for the state.[52] It is poverty which poses a hindrance for them to even avail the benefits provided by the Government for mental healthcare.
2. **Access to healthcare:** Access to health care is pivotal for the exercise of all other rights in mental health care treatment. Impediments to access to health care range from multifarious factors like family, society, financial status, location, etc. There are 43 mental health care institutions in India[53] to cater the needs of 70 million population in need of mental healthcare, of which, 3 institutions are run by the Centre and 40 institutes are run by the State Government. About half of the Indian population is neither aware about mental health issues nor has access to a mental health facility within a 20 km

[49] Ibid.
[50] Ibid.
[51] Kirandeep Kaur, *Implications of Mental Health Act 2017on the Right of Women with Mental Illness in India*, 19JIWS 3, (4th May,2018), http://vc.bridgew.edu/cgi/viewcontent.cgi?article=2038&context=jiws.
[52] Ibid.
[53] Press Information Bureau Government of India Ministry of Health and Family Welfare, Mental Health Institutions in the Country, (9th Dec 2014), https://pib.gov.in/newsite/PrintRelease.aspx?relid=112890.

radius.[54] The World Health Organization reveals that India has an extremely low psychiatric bed allocation to mental health i.e. (1490 beds/100,000 population) compared to the rest of the world.[55]

3. **Underfunding by the Government:** The recent National Mental Health Survey 2016 revealed an overall treatment gap of 83% for any mental health problem[56].This may be due poor awareness, stigma, socio-cultural beliefs and values along with poor allocation of funding in the mental health sector by the Government which has further aggravated the satiation. The Government of India has allocated expenditure of 1.4% of the GDP for health which is tagged as one of the lowest in the global scale with mental health receiving 1%–2% only.[57] This resulted in a lack of complete and comprehensive care ranging from acute treatment to long-term rehabilitation throughout the country.
4. **Lack of mental healthcare services:** Although Section 18(4) of the MHCA, 2017 provides a list of the mental healthcare services yet this Act fails to cater the need in the area of Primary care psychiatry in primary health care; Women's mental health; Children and adolescents mental health; Disaster mental health for special groups such as refugees and survivors of disasters; Suicide helpline for persons attempting suicide and farmer suicide; Hospital-based rehabilitation for institutionalized patients; Preventive and promotive mental health; Geriatric mental health; Forensic and legal mental health and Deaddiction care.
5. **Lack of qualified Mental Healthcare Professionals:** Inadequate distribution of human resources is a major hurdle in the successful implementation of National Mental Health Programme (NMHP) by Central or State Government. Lack of qualified mental health care professionals like Psychiatrist, Clinical Psychologist, Psychiatric social workers and Psychiatric nurses is a challenge that mental healthcare programs face everywhere in the world, but in India and other low and middle-income countries, the lack of human resources is severe and likely to get worse unless there are effective interventions. The NMH survey states the number of medical officers at the district level trained to deliver mental health services (per 100,000 people) is very low ranging from 0.1 to 10.[58]
6. **Lack of Awareness**: Lack of awareness about mental health care, and the general tendency to ignore mental aberrations as mere temperamental issues also bar persons suffering from mental illness from getting access to mental health care. The prevalence of myths and misconceptions associated with mental disorder further magnifies the stereotyping , fear, embarrassment, anger, rejection and avoidance. The adherence to traditional healing methods for mental illness, also leads to many persons with mental illness never getting access to mental health care.[59]

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[54] Sushmi Dey, *Access to mental healthcare is tough for 50% of people: Stud y*, (10th Oct 2019), https://timesofindia.indiatimes.com/india/access-to-mental-healthcare-is-tough-for-50-of-people-study/articleshow/71512849.cms.

[55] Mahesh R. Gowda et al., *Founding and managing a mental health establishment under the Mental Healthcare Act 2017*, 61 IJP 735-743 (2019), http://www.indianjpsychiatry.org/article.asp?issn=0019-5545;year=2019;volume=61;issue=10;spage=735;epage=743;aulast=Gowda.

[56] Ibid.

[57] Ibid.

[58] Mirza et al., *Mental Health Policy in India: Seven Sets of Questions and Some Answers*, MPRA 11-12,(3rd Jan 2019), https://mpra.ub.uni-muenchen.de/91046/1/MPRA_paper_91046.pdf.

[59] Ibid.

7. **Non-availability of drugs:** Mental health problems requires continuous and adequate supply of all the essential drugs. Non-availability of drugs at an affordable price is a major concern for the entire healthcare system and neither the RPD Act 2016 nor the MHC Act 2017 ensures availability and accessibility of essential pharmaceutical drugs by the Government for the disabled persons. This could trigger an increase in out-of-pocket expenditure, leading to either poverty or discontinuation of care and defeating the very purpose of making services accessible at community level.[60]
8. **Health Management Information System :** With regard to the Health Management Information System (HMIS), only 33% of surveyed states had mental health included in their HMIS. Without robust HMIS, it would be difficult to plan and provide services.[61]

CONCLUSION AND SUGGESTIONS

Delivery of mental health care services requires the efficient and effective collaboration of various activities and programs, from different departments and organizations. A sincere and sound policy, understanding and accommodating gate keepers of the society and a space to live with dignity will go a long way in dealing with the problems of living with mental illness. This calls for a multifaceted intervention that involves the family, community, government and voluntary organizations that aims at the rehabilitation and reintegration of individuals with mental health problems. Approach to mental health problems requires a paradigm shift from a drug dispensing cross sectional care in clinics or long term hospitalization to coordinated community care that imparts skills for self-care, networking and providing support to families, formation of self help groups and integration in a non-discriminative and non-stigmatizing manner. There must be a written State dedicated mental health policy, defining the, values, vision, mission, principles, objectives and mechanisms for improving mental health care.

In the light of the present study the following suggestions are put forward:

1. The District Mental Health Programme must be reconstructed and must be implemented in all the districts of Assam for better assessment. The state should ensure that there is regular flow of funds and strict monitoring of program.
2. The Government should upgrade the existing mental healthcare facilities and strengthen the district hospital services. This would help in identification and handling of routine mental health problems and appropriate referrals.
3. There must be State specific Mental Health Policy and Action Plan for better service delivery and coordination between agencies for addressing the existing treatment gap.
4. The role played by private health care facilities and their engagement in delivery of mental health care needs to be explored. Efforts should be made to document and train the personnel in private health sector and engage them in mental health care services.
5. For integration of mental health services into the primary health system, the drugs should be made available at all levels of health care throughout the year.

[60] Id. Note.26.
[61] Id.

6. Higher prevalence of mental disorders in rural than in urban areas call for thrust of mental health services in rural areas.
7. There must be State specific Mental Health Policy and Action Plan for better service delivery and coordination between agencies.
8. A separate budget head, with substantial amount for mental health, needs to be included in the overall health budget.
9. Vigilance programmes must be initiated to spread awareness about the legal provisions of Mental Health Act and Rights of Persons with Disabilities Act specially in the target areas.
10. Establishment of Mental Health Courts/ Tribunals so that the mentally disabled persons can seek remedy for violation of their rights.