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Mental Health

Addressing the Under Addressed

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ABSTRACT

The declaration of COVID-19 as a pandemic by World Health organisation also highlighted the urgency to look into the parallel pandemic that are likely to be catalysed by the stir of coronavirus. This article is a systematic attempt to understand the issues around mental health and psychological well-being. In this sequence the recent Mental Healthcare Act of 2017 would be analysed and the loophole that surrounds it would be closely examine in order to suggest the way forward. Global approach towards mental health is also be taken into account so that a lesson can be drawn from the best practices across the globe.

Keywords: Mental Healthcare Act, 2017, Psychiatric well-being, Suicide, Social Stigmatisation, Right to Representation, Post-Treatment Reintegration.

I. INTRODUCTION

“Aman, woke up with a panic attack, covered in sweat even though air conditioner was at full blast. Without any further delay he picked up his mobile phone, checked all the messages and scroll through the mails. It had been rather regular state of affairs for him lately, post-Corona catalysed lockdown. He works at a digital marketing company. Due to the lockdown the entire supply chain stood disrupted, the company in which he works is running dry on business. Rumour has it that due to financial non-viability and economic slump the company might be looking forward to laying off its employees in the name of Human Resource Management Strategy. Being sole bread earner of his family any possibility of being left jobless amid these crises wherein most of his savings have already depleted due to salary cuts by his employer has led to many sleepless nights for him.”

This is just one story of a person combating COVID-19 induced mental stress. Coronavirus being a pandemic, none the less makes anxiety a parallel pandemic that is creeping into our minds. Psychiatrist are of the opinion that COVID-19 induced anxiety is of universal in

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character and the person suffering from it can be divided into three broad categories:

- Those who are either falling or have fallen into the pit of poverty and unemployment due to COVID-19
- Second category is of the people who are the victim of psychosocial issues like domestic violence etc.
- Though relatively thin sliced category but big enough to be categorised is of those who are either themselves or any of their family member is diagnosed with COVID-19 or those who are working on frontlines like health workers etc.

A senior consultant psychiatrist Dr. Achal Bhagat cautions that if either of the above-mentioned category of people is/ are suffering from any prior illness then the condition is likely to worsen.²

No one can deny the fact that COVID-19 crisis is unprecedented in human history but mental health issues had always been a part and parcel of our society.³ Modern civilisation is rapidly eradicating the slur of the slums and the ravages of disease, but at the same time it has given rise to stress reactions of a psychological nature for which no physical cause can be found - a veritable pandemic of neurotic and psychosomatic disorder.⁴ Some might say that a mechanical approach towards life has direct relation with once mental wellbeing but those who are against this argument very conveniently refute this stance by citing farmer suicides. This paper is a systematic attempt in identifying the mental health related issues associated with the pandemic and thereby examining the existing structure pertaining to mental health and the associated legislations there in along with the judicial precedents and finally drawing a conclusion by suggesting the way forward.

II. ISSUES OF MENTAL HEALTH IN INDIA

Public Health sector

As per the statistics published by the National Mental Health Survey of 2015-16 approximately 150 million people in India are in need of immediate psychiatric attention but due to limited public health infrastructure most of them are undiagnosed.

Lack of resources

A study conducted by an independent think tank highlights the need of immediate investment

² Dr. Achal Bhagat, Covid-19 will aggravate mental health issues, Hindustan Times, (June 12, 2020, 10:00PM), <https://www.hindustantimes.com/analysis/covid-19-will-aggravate-mental-health-issues-analysis/story-RtnJ6JhiHKkNRb67n7oR6L.html>.

³ *Id* at 2.

⁴ B. Crowhurst Archer, Mental Health, 19 A Journal of Social and Political Theory 43-46 (1962).

in improving the quality as well as quantity of resources available for mental health in India. This is basically attributed to the low proportion of Mental Health workers per capita population. There exists only 0.3% of psychiatrist, 0.07% of psychologist who are currently active in the field of Mental Healthcare.

Loss to economy

The perception about Mental Healthcare in developing jurisdiction as compared to that of developed jurisdictions is of stark contrast. This is so because in developing economy the burden of disease be it physical or mental is seen as a lost to overall economy in the form of lost-man days.⁵

Demographic Dividend

In a country like India where majority of its population is youth the burden of Mental Health illness is inevitable this is so as the majority of the population suffering from active or passive form of mental illness young adults. Due to this immediate attention is needed to address mental healthcare infrastructure issue if the demographic dividend is to be prevented from converting into demographic disaster.

Post Treatment Gap

Due to the limited availability of Medical Health persons and improper infrastructure in place proper rehabilitation post treatment is a big issue. As its not possible to individually monitor the post treatment response on the individual due to resource confines.⁶

Lack of Awareness

Due to limited literacy rate in our country one of the most pertinent hurdles in tackling the menace of Mental Health related issues is the lack of awareness. As a result of which rather than considering mental health as a psychiatric disorder people often intend to consider it as a punishment of God.

Social Stigma

This is one issue which is found common in both developing as well as developed jurisdictions. This issue in itself can be attributed to you are combination of above-mentioned issues like lack of awareness and improper infrastructure. Social stigma attached with mental illness often prevents timely diagnosis thereby increasing the severity of the situation which in turn can be

⁵ Graham Thornicroft and Geraldine Strathdee, Mental Health, 303 British Medical Journal 410-412 (1991).

⁶ Prasanna Kumar Neredumilli, V Padma, S Radharani, Mental health care act 2017: Review and upcoming issues, 19 Andhra Pradesh Journal of Psychological Medicine 9-14 (2018).

life threatening in many cases as the person who is mentally ill might resort to extreme steps like suicide.

III. STEPS TAKEN BY THE GOVERNMENT

National Mental Health Care Act 2017 is very welcomed step in this direction. For the very first-time post-independence it was in 1982 that the Government of India launched National Mental Health programme to improve the status of mental healthcare infrastructure in the country. To further strengthen the operation of this program the government enacted Mental Health Act in 1987 which was further supplemented by District Mental Health programme of 1996 whose primary objective was to provide reachable Mental Health Care at the primary Health Care institutions in the district itself.⁷

The idea of mental healthcare and urgent need of serious steps in this direction by National governments had been comprehensively discussed and debated in the international agencies during the multilateral meetings. The World Health Organisation declared 2013-2020 as the term for Comprehensive Mental Action Plan and it was subsequently adopted by World Health Assembly in its 66th meeting. To further highlight the importance of Mental Health and psychiatric well-being these issues were given due importance in Sustainable Development Goals and they find their place in sustainable development goal number 3.4 and 3.5 which focuses on *reducing mental illness within the population*. In this direction to make the realisation of the said objectives more realistic the World Health Organisation came up with the first of its kind *Mental Health Atlas* in 2017.

Constitutionality

In a number of cases the Supreme Court of India have declared mental healthcare as a Fundamental Right under Article 21 that is Right to Life.⁸

Legislative Framework

India is a signatory to the United Nations Convention on Rights of Person with Disability in pursuance of the said convention the Parliament of India passed the Mental Healthcare bill in 2017. The Mental Healthcare Act of 2017 (came into force in 2018) supersedes Mental Health Act, 1987.⁹

Now let us look into the provision of the Mental Healthcare Act of 2017

⁷ Jaydip Sarkar, A New Mental Health Act for India: An Ethics based Approach, 46 Indian Journal of Psychiatry 104-114 (2004).

⁸ Narayan CL, Shikha D, Indian legal system and mental health, 55 *Indian J Psychiatry* 177-181 (2013).

⁹ *Id* at 8.

What is mental illness?

The Act defines mental illness as a *substantial* disorder which *grossly* impairs judgement or ability to meet the *ordinary* demands of life.

What are the rights available to the person possessing mental illness?

- Free treatment: If the person ailing from mental illness is either homeless or below poverty line.
- Right to confidentiality: in respect of treatment and healthcare.
- Advance directive: the person suffering from mental illness shall have the right to make advance directive regarding how he or she is to be treated and who shall be the nominated representative. Such a directive shall be duly certified by a registered medical practitioner or the mental health board.
- Decriminalization of suicide: The Act provides for a presumption of mental illness if a person commits an attempt to suicide and it further safeguards any prosecution of the person under Section 309 of the Indian Penal Code.
- No electro convulsive therapy for minors.
- No chains: The person suffering from mental health illness should not be chained in any manner whatsoever.

Establishment of dedicated authorities

The act also provides for the establishment of certain dedicated bodies and authorities.

- Mental Health Review Board: It is established with the objective of protecting the rights of person suffering from mental illness and to manage the advance directives.
- Mental Health Authority: The Act provides for establishment of a Central Mental Health Authority at the Federal level while State Mental Health Authority at the state level and all the mental health care institute are to be registered with the Mental Health Authority.

Status of implementation

Around 6-7% of total population of India is suffering from some kind of Mental Illness.

Only 19 States have implemented the Mental Healthcare Act.

There exists a huge void between the required number of psychiatrist and psychotherapy as compared to the available numbers. Around 13500 psychiatrists are required while only 3827

are available and the requirement of clinical psychologist is at a numerical value of 20250 while only 898 are available.

IV. CRITICAL ANALYSIS

H L Dattu, the chairperson of national human right Commission on 7th of August 2019 in a press release during the National Level Review meeting on Mental Health stated that though the efforts are being made to address the issue of Mental Health but at the same time there exist a huge gap between the requirement and the availability of facilities in the Healthcare sector.¹⁰

- **Definition**

The Act does not include mental retardation which is the condition of other incomplete development of mind or sub-normal level of intelligence.

- **Stigma and Social Exclusion isn't properly addressed**

Since the Act of silent about post-treatment reintegration it raises serious doubts about success rate of this enactment. Furthermore, mental illness is always equated with insanity and this stereotype can only be broken by exhibiting people who has or are currently facing mental health issues in a positive light.

- **Silent on Mental Health Awareness**

The corner stone behind success of any legislation is the outreach. All modern Jurist lay emphasis on the need to create awareness about the enactment in mind of people that it seeks to govern. In a country like India due to limited legal literacy people aren't aware about any legislative development due to which success rate of a law is very low. In this context a partnership between all the stakeholders ranging from NGO's to Individuals is inevitable as well as highly desired.

- **Public Health is a State subject**

This in turn many often than not leads to policy deadlock between Centre and State.

¹¹The Act fails to address this issue.

¹⁰ Press Release, "Despite efforts huge gap remains between the requirements and availability of facilities in the mental healthcare sector", NHRC (June 12, 2020, 12:00 AM), <https://nhrc.nic.in/media/press-release/despite-efforts-huge-gap-remains-between-requirements-and-availability>.

¹¹ Stuti Shah and Shashank Atreya, COVID-19 outbreak refocuses need to shift public health from State to Concurrent List; move won't harm decentralisation but enhance Centre, state coordination, First Post (June 13, 2020, 5:00 PM), <https://www.firstpost.com/health/covid-19-outbreak-refocuses-need-to-shift-public-health-from-state-to-concurrent-list-move-wont-harm-decentralisation-but-enhance-centre-state-coordination-8483911.html>.

V. DECRIMINALISATION OF SUICIDE

Section 309 of the Indian Penal Code criminalised suicide and made it a penal offence. In a plethora of cases Supreme Court had issued directives to decriminalise Section 309 of the IPC. Law Commission of India in its several reports like the 42nd and 210th Law Commission report which was titled as *Humanization in Decriminalization of Attempt to Suicide*, laid emphasis on decriminalisation of the same. Finally, it was after the enactment of the Mental Healthcare Act of 2017 which under its Section 115 finally decriminalize suicide.¹²

It was a very welcome step as it helps in breaking the change of social stigma attached with suicide and a social right activist would agree that it also helped in changing the perception of people towards mental wellbeing and psychiatric disorders.

VI. SUGGESTIONS AND WAY FORWARD

Increasing Resources Availability

The first step towards the realisation of any healthcare objective is to increase the resources that are being allocated to them by government as this helps in bridging the gap between what is and what ought to be.

Increasing Awareness and Community Partnership

Number of studies have reflected the trend that early diagnosis of a disease is the key to effective treatment. Increasing awareness about mental health would not only help in breaking the social stigma associated with the disease but also help in the timely diagnosis and treatment. In this regard a healthy collaboration between governmental and non-governmental organisations can be of great help. For instance, a non-governmental organisation by the name, *The Live Love Laugh Foundation* is actively engaged in reducing the stigma and spreading awareness and changing the perception of people regarding mental health.¹³

Empathetic Service Delivery

It is very important that the people who are engaged in Mental Health Care services should be sensitized and a feeling of compassion should be developed in them.

Digital Initiatives

A dedicated digital portal for mental health awareness and preliminary diagnosis should be put

¹² V Sneha, Shivappa Madhusudhan, N Rudra Prashanth, Hongally Chandrashekar, Decriminalization of suicide as per Section 115 of Mental Health Care Act 2017, 60 Indian J Psychiatry 147-148 (2018).

¹³ Dr. Vaidehi Taman, Mumbai actor's depression suicides is bothersome, Afternoon Voice (June 15, 2020, 1:00 PM), <https://www.afternoonvoice.com/mumbai-actors-depression-suicides-is-bothersome.html>.

in place. This will not only help in creating awareness but also help in proper counselling of the people who are generally conscious about identity disclosure and privacy related issues.

Social Reintegration

One of the most important issues that are largely under address in the existing legislative framework around the issue of Mental Health is post treatment social reintegration of the individuals. Many studies have reflected upon the trend of social boycott of the people who have a mental illness history, this is likely to worsen the situation. Hence it is needed that post-treatment social integration should be considered as the part of the overall treatment plan.

Centre-State Corporation

Since health is a state list subject in India as a result to this many a times due to either paucity of resources is due to the lack of coordination between centre and state mental health programs more or less remains paper tiger. This blockage can be removed by ensuring a proper and co-operation between the concerned ministries both at the centre as well as state level.

Financial Aid

The legislative framework should also incorporate provisions regarding financial aid to the direct dependents of a mentally ill person who is currently undergoing treatment as this would not only relieve the extra economic burden on the family of the patient but also would act as a incentive to come forward and get proper clinical treatment.

VII. CONCLUSION

Ensuring mental health is not only about having a proper legislation in place but it's also more importantly having a trained line of Mental Health workforce and also about community action which implies that right from the stage of diagnosis to the stage of post treatment reintegration into the society each and every stakeholder has a part to play. As no legislation as full proof and no judicial precedent can be used as a straitjacket formula and due to this each case is to be judged on the basis of its own merits but what remains more or less common is the approach that is to be adopted. Coronavirus has simultaneously triggered many parallel pandemics which are further being catalysed by economic slowdown. This in turn is exponentially increasing the number of suicides in the country which has highlighted the need of immediately addressing the limitation of existing framework to ensure mental health to all.¹⁴ In the sequence it is very important to address the issues of stereotyping and stigmatising mental health and a robust

¹⁴ William Wan, The coronavirus pandemic is pushing America into a mental health crisis, Washington Post (June 10, 2020, 1:00 PM), <https://www.washingtonpost.com/health/2020/05/04/mental-health-coronavirus/>.

mechanism is to be put in place to ensure that all aspects of Mental Health are properly addressed and a proper counselling is operational to cater to those who need support.

VIII. REFERENCES

1. Dr. Achal Bhagat, Covid-19 will aggravate mental health issues, Hindustan Times, (June 12, 2020, 10:00PM), <https://www.hindustantimes.com/analysis/covid-19-will-aggravate-mental-health-issues-analysis/story-RtnJ6JhiHKkNRb67n7oR6L.html>.
2. Dr. Vaidehi Taman, Mumbai actor's depression suicides is bothersome, Afternoon Voice (June 15, 2020, 1:00 PM), <https://www.afternoonvoice.com/mumbai-actors-depression-suicides-is-bothersome.html>.
3. Stuti Shah and Shashank Atreya, COVID-19 outbreak refocuses need to shift public health from State to Concurrent List; move won't harm decentralisation but enhance Centre, state coordination, First Post (June 13, 2020, 5:00 PM), <https://www.firstpost.com/health/covid-19-outbreak-refocuses-need-to-shift-public-health-from-state-to-concurrent-list-move-wont-harm-decentralisation-but-enhance-centre-state-coordination-8483911.html>.
4. V Sneha, Shivappa Madhusudhan, N Rudra Prashanth, Hongally Chandrashekar, Decriminalization of suicide as per Section 115 of Mental Health Care Act 2017, 60 *Indian J Psychiatry* 147-148 (2018).
5. William Wan, The coronavirus pandemic is pushing America into a mental health crisis, *Washington Post* (June 10, 2020, 1:00 PM), <https://www.washingtonpost.com/health/2020/05/04/mental-health-coronavirus/>.
6. Press Release, "Despite efforts huge gap remains between the requirements and availability of facilities in the mental healthcare sector", NHRC (June 12, 2020, 12:00 AM), <https://nhrc.nic.in/media/press-release/despite-efforts-huge-gap-remains-between-requirements-and-availability>.
7. Jaydip Sarkar, A New Mental Health Act for India: An Ethics based Approach, 46 *Indian Journal of Psychiatry* 104-114 (2004).
8. Narayan CL, Shikha D, Indian legal system and mental health, 55 *Indian J Psychiatry* 177-181 (2013).
9. Graham Thornicroft and Geraldine Strathdee, Mental Health, 303 *British Medical Journal* 410-412 (1991).
10. Prasanna Kumar Neredumilli, V Padma, S Radharani, Mental health care act 2017: Review and upcoming issues, 19 *Andhra Pradesh Journal of Psychological Medicine* 9-14 (2018).
11. B. Crowhurst Archer, Mental Health, 19 *A Journal of Social and Political Theory* 43-46 (1962).