

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

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Mental Health Laws of India with Special Focus on Children with Mental Disorders

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ABSTRACT

This paper explains various mental disorders which are persistent in children and how the legislations have enacted Mental Health Care laws in order to protect them. Earlier legislations for mental health were mainly concerned with the custodial aspects of persons suffering from mental illness and protection of the society. The laws formulated by Indian legislations are also concerned with the determination of competency, diminished responsibility and welfare of the society. United Nations Convention for Rights of Persons with Disabilities (UNCRPD) was adopted in 2006, which sets a perfect example in respect of disabilities (including disability due to mental illness) from a social welfare concern to a human right issue. The new level of standard is based on the presumption of equality, dignity and legal capacity. Human right activists can't press more than they already are for enactment of provisions for legal capacity for persons with mental illness in absolute terms, whereas the psychiatrists are in favor of retaining provisions for involuntary hospitalization in special circumstances.

I. INTRODUCTION

Mental health refers to the psychological wellbeing of an individual. It is the state of an individual where s/he is functioning efficiently at a mental and emotional level. It has an effect on how an individual's mind functions, his behavior, feelings and acts. It also determines the action and reactions of an individual to various situations.

A good mental health is important for the proper functioning of an individual. Mental health issues can exist because of-

- 1) Genes/ heredity
- 2) Life experiences or trauma
- 3) Family history

These problems are referred to as 'mental illness' which can be defined as any behavior that

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causes dysfunction and distress to an individual, is deviated from the normal behavior and can cause danger to the individual and others.

Mental illnesses include disorders which affect our Mood, Behavior, Intellectual functioning, etc. These disorders can exist in any individual regardless of the age, gender, religion etc.

With the growing importance and awareness on this topic and after ratification of the United Nations Convention for Rights of Persons with Disabilities (UNCRPD) by India in 2008, it became obligatory to revise all the disability laws to bring them in harmony with the UNCRPD. Therefore, the Mental Health Act – 1987 was revised and introduces as Mental Health Act 2017 and Persons with Disability Act – 1995 has been amended as well.

II. CHILDHOOD DISORDERS

Childhood disorders are the mental illness found commonly in children between the age of 5-12. This is mainly because their development just starts before the age of 5 and no notable changes can be found. Intellectual deficiency is also a phenomenon that can be seen during childhood and can be a symptom of many childhood disorders. Intellectual deficiency as defined by American Association of Mental Disorder is referred as, “*significantly sub-average general intellectual functioning existing concurrently with deficits in developmental activity manifested during the developmental period.*” The differences in the behavior or physical features can occur due to pre- natal or post- natal problems.

Other such mental disorders that are not as common as the ones mention above but are often found in children are-Attention deficit hyperactivity disorder (ADHD), Autism, Dyslexia Separation anxiety disorder, Tourette syndrome, etc.

If there is illness there has to be some signs and symptoms that can help the child or the ones around the child to get a better diagnoses of his/her mental intellect. These may be-poor school performance, non-compliant behavior, behavior regressing to those of early age, etc. The disorders may also develop in a child from his birth and the main reasons for this are the problems faced by a mother pre or post pregnancy. These include- consumptions of drugs/alcohol/tobacco by mother, hydrocephales, genetics/ heredity, traumatic experiences, etc.

A. Attention Deficit Hyperactivity Disorder

X is a 7 year old boy who is unable to focus during classes and also finds it difficult to be able to concentrate on one thing for long. He is always running in the class and does not sit at one place and also often says whatever comes to his mind without thinking. He also does not obey

rules or follow the instructions given to him. He is an intelligent child but never completes what he starts.

X is likely to be having Attention deficit hyperactivity disorder or ADHD. It is an attention disorder in which the child is not able to concentrate or focus on one thing for a long period of time. Two main features of this include **Inattention** and **Hyperactivity- Impulsivity**. Children who are inattentive find it difficult to sustain their attention and mental effort. They find it difficult to follow orders and instructions and are usually disorganized and forgetful. Children who are hyperactive- impulsive are unable to control their immediate reaction and are also most often in constant motion. ADHD is more prevalent in boys than in girls.

- **Life Problems-**

A child with ADHD is likely to not get proper education. These children also have less social functioning. They cannot function properly and need special attention and care for a long period of time.

B. Autism/ Autism Spectrum Disorder

C is a 10 year old girl who is good with her studies and has been showing special interest in Maths. She has average grades and does not fail. She is also very organized. Although she has been showing difficulty in her social interaction with her peers and teachers. She usually fights with her friends. She also has repetitive speech patterns where she repeats what she says. She also flaps her arms repeatedly.

It is likely that C has been suffering from autism spectrum disorder. Autism is the most common disorder found in children. A child who is suffering from autism has difficulty in social interactions, responding to emotions, and are unable to share their own feelings. They also have repetitive speech-movement patterns. Most of these children show interest in one or more specific things and are also organized. Some of these children also have a strong desire to follow a specific routine.

ASD is more common in boys than in girls.

- **Life problems**

Children with autism often face problems with social interaction and are likely to fail in jobs. They need to have a special education focusing on their areas of interests and developing it.

C. Dyslexia

S is a 11 year old girl who is good with social interaction and has a lot of friends. She is also

very good in painting and sketching but she has been scoring really low grades in her school. She has difficulty in reading and writing and cannot differentiate between similar looking alphabets. She also loses her focus easily and can get angry.

It is most likely that S has Dyslexia, a learning disorder in which the child is unable to read or write. In this a child is unable to differentiate between similar looking alphabets. They do not have a low IQ but have difficulty in learning.

Dyslexia is found to be more prevalent in boys than in girls.

- **Life Problems**

Children with dyslexia need to get special attention.

They can also get anxiety and frustration with their learning disability.

They can also develop many other disorders like depression later in life

D. Separation Anxiety Disorder

Y is a 8 year old boy has been showing anger issues in school. His grades are decreased and he has lost his friends. He does not obey rules and also does not follow any instructions. He cries easily and gets anxious. He has also started bed wetting more frequently. The symptoms were observed soon after he saw his parents getting a divorce .He is very close to his mother and gets anxious when he is in school away from her. He is also very fearful in attending new situation.

Y has been showing the symptoms of Separation Anxiety Disorder. It is a disorder in which a child feels extreme anxiety when s/he is separated from the individual they share close emotional attachment with. This can happen when the child is put under extreme stress found during a divorce of parents, death of a loved one, or any such traumatic experience. They started to face anger issues and can become more aggressive.They often regress to earlier ages. They cannot enter new situation or meet new people or even be left alone.

This disorder is more prevalent in girls than in boys.

- **Life Problems**

Children with SAD can develop depression and anxiety at later stages of life.

They also need special care and focus when in school.

Some children also regress to earlier ages.

E. Tourette Syndrome

H is a 6 year old girl who is extremely good with her academics. She scores really well and is in the top 3 students of the class. Despite of this we have been getting a lot of calls from school stating that she keeps making weird noises during class and disturbs the whole class. She also makes these noises at home. She has lost friends because of making such repeated noises.

H is most likely to be suffering from Tic disorder under Tourette Syndrome. In this condition the individuals neurological system is affected which hamper with the neurodevelopmental growth. The individual can be making repeated sounds.

Boys are more likely to get this disorder than girls.

- **Life Problems**

An individual with tic disorder can also develop many more mental disorders later in life.

It also decreases their opportunity to get jobs

Some individuals with tic disorder do not complete education because of embarrassment, lack of care and proper training, or bullying.

They also tend to face troubles in social relationships and surroundings.

Individual with this disorder also tend to develop anger and anxiety issues .

III. MENTAL HEALTHCARE LAWS INDIA

In ancient India, a traditional legal system was followed by the country which did not include mental health as a concept. The present judicial system is however more derived from the ideas of the Western and includes mental health and mental illness. Earlier mental health was primarily concerned with custodial aspects of persons with mental illness.

The United Nations Conventions for Rights of Persons with Disabilities was adopted in 2006 which shifted the concern towards disabilities from a social welfare to a human rights issue. Following this it was ensured that all the laws concerning disabilities were revised to fall in harmony with the convention

The following provisions under Mental Healthcare Act, 2017 are relevant for children and adolescents in India:

- I. Section 1(2)³ provides that minor means a person who is below the age of eighteen or has not attained the age of eighteen.
- II. Section 11 (4) provides that the legal guardian of a minor shall have the right to make

³Section 1(2)(t)

an advance directive in writing in respect of a minor and all the provisions relating to advance directive⁴, mutatsimuntandis⁵, shall apply to such minor till he attains age of majority.

III. Section 15 it provides that incase of minor, their legal guardians shall be the nominated representatives⁶unless the Board orders otherwise under subsection 2. Sub section 2 states that when an application is submitted to the Board by a mental health professional⁷or any other person acting in the best interest of the minor and on evidence presented beforethe Board, the board was of the opinion-

(a) that the legal guardian is not acting in the best interests of the minor

(b) the legal guardian is not fit to act as a nominated representative.

IV. Section 21(2) provides that children under the age of 3 years cannot be separated from their mother while getting treatment in a mental healthcare institution unless and until any risk arises to the baby from mother's ill health. Even if the baby has to be separated, the mother will have access to the baby but under surveillance. The decision to separate the baby has to be reviewed every 15 days, and the baby should be reunited with the mother at the earliest possible. If a baby has to be separated for less than 30 days, the concerned mental health authority must be informed.

V. Inpatient treatment for minors requires the recommendation of two mental health professionals or one mental health professional and one medical professional. Consent only of the NR is needed. The minor has no role in this decision Separate, developmentally appropriate facilities are to be set up for inpatient treatment of minors. Minors are to be admitted along with the nominated representative. Only a female

⁴ (1) Every person, who is not a minor, shall have a right to make an advance directive in writing, specifying any or all of the following, namely:— (a) the way the person wishes to be cared for and treated for a mental illness; (b) the way the person wishes not to be cared for and treated for a mental illness; (c) the individual or individuals, in order of precedence, he wants to appoint as his nominated representative as provided under section 14. (2) An advance directive under sub-section (1) may be made by a person irrespective of his past mental illness or treatment for the same. (3) An advance directive made under sub-section (1), shall be invoked only when such person ceases to have capacity to make mental healthcare or treatment decisions and shall remain effective until such person regains capacity to make mental healthcare or treatment decisions. (4) Any decision made by a person while he has the capacity to make mental healthcare and treatment decisions shall over-ride any previously written advance directive by such person. (5) Any advance directive made contrary to any law for the time being in force shall be ab initio void.

⁵Used when comparing two or more cases or situations) making necessary alterations while not affecting the main point at issue.

⁶ See Section 14 of The Mental Healthcare Act,2017

⁷Section 1(2) (r) "mental health professional" means— (i) a psychiatrist; or (ii) a professional registered with the concerned State Authority under section 55 of the act; or (iii) a professional having a post-graduate degree (Ayurveda) in Mano VigyanAvumManasRoga or a post-graduate degree (Homoeopathy) in Psychiatry or a post-graduate degree (Unani) in Moalijat (Nafasiyatt) or a post-graduate degree (Siddha) in SirappuMaruthuvam;

attendant must accompany minor girls. The minor who is being admitted by the Mental Health Establishment, has to have a mental illness of a severity requiring admission to a mental health establishment; admission must be in the best interests of the minor, with regard to his health, well-being or safety, taking into account the wishes of the minor if ascertainable and the reasons for reaching this decision; or the mental healthcare needs of the minor cannot be fulfilled unless he is admitted; and all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor. A minor whose finally admitted shall be accommodated separately from adults, in an environment and place that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments. Treatment and discharge requires consent of the nominated representative and admissions of minor extending 30 days is to be reviewed by the Board. If a minor turns 18 during the course of admission, all provisions under the MHCA 2017 for voluntary inpatients are applicable thereafter.⁸

- VI. Section 88⁹ provides that if a minor has been admitted in a mental health establishment and attains the age of 18 during his stay at the mental health establishment, then he will be labeled as an independent patient by the medical health charge of the mental health establishment.
- VII. Admission and treatment of persons with mental illness, with high support needs, in a mental health establishment, up to thirty days (supported admission).¹⁰

Section 95 provides that electroconvulsive therapy will not be performed on minors, but if in the opinion of a psychiatrist in charge of a minor's treatment is of the opinion that electroconvulsive therapy is needed, then it shall be done with the consent of the guardian and prior permission of the Board.

VIII. OTHER INDIAN LEGISLATIVE ACTS AND POLICIES:

a) The Juvenile Justice Act, 2015

This act came into force to consolidate and amend the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, development and protection. The provisions of Constitution

⁸ See Section 87 of the Act

⁹ Sub section 2 of Section 88 of the Act

¹⁰ See Section 89 sub section (9) and (10) of the Act

of India confers powers and imposes duties under clause (3)

Of Article 15, clauses (e) and (f) of Article 39, Article 45 and 47, on the State to ensure that all the needs of children are met and their basic human rights are fully protected.

According to section 15 of this Act states that in case of a heinous offence alleged to have been committed by a child, who had completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.¹¹

b) Right of Persons with Disabilities Act, 2016

This act came into force to give effect to the United Nations Convention on the Rights of Persons with Disabilities. In the area of mental disabilities, RPWD is a major advancement over Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995 in encompassing a broad range of mental health conditions, including neurological developmental disorders, in its ambit. Thereby, mental retardation, autism spectrum disorders, specific learning disabilities, and mental illnesses are all eligible for disability evaluation and certification.

c) National Health Policy, 2014

India adopted the National Mental Health Policy (NMHP) in 2014; this policy is meant to guide all actions to scale up the mental health programs and provisions in the country.

The new health policy calls for recognition of mental disorders and a more accessible and holistic treatment of mental illnesses also pushes for decriminalization of Section 309 of Indian Penal Code that is attempt to suicide. This policy gives a fresh outlook at the health services being offered for mental illnesses, lays down the guidelines for mental health care, and recommends removing provision of attempt to suicide from the law in force.

¹¹ Section 15(1) of Juvenile and Justice(Care and Protection of Children), 2015