

*Review Article*

Mental Health Care Services in India: An Analysis of the Mental Health Care Bill 2013

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*Received: 12/02/2015**Revised: 13/03/2015**Accepted: 20/03/2015*

ABSTRACT

Health encompasses physical, mental, social and spiritual domains of an individual's life. Much of the emphasis is given on the physical domain of health neglecting the other three. Mental health though, has gained some prominence in the health care system, it is still inadequate to address issues like quality of services delivered availability of trained professionals, and infrastructure and the legal aspects are concerned. Mental Health Care Bill (MHCB), 2013 is an attempt to address some of the issues. However, the implementation of the guidelines is a major challenge in this regard. An effective management system to implement the provisions stated in the bill is the need of the hour. This article critically analyses the strengths and weaknesses of the proposed bill and also discusses possible changes if made in the bill before it is made an Act, can achieve its objective.

Key Words: Health, Mental Health Care Bill, Mental Health Care Services

INTRODUCTION

A discussion on health primarily takes into account the physical or bodily health. This is a common perception among the people in general as it is reinforced by the prevalent practice in the health care delivery system. This limits the scope for improving the mental and social aspects of health. As defined by World Health Organization (WHO) "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".^[1] Mental health is one of the important components of an individual's health. Body and mind are interrelated and interdependent. About 10 percent of our

disease-burden is caused by poor mental health.^[2] Hence, attending to only one side of the overall health may not provide adequate help to a patient to recover from illness. Another important point in the definition is the 'well-being' of the individual. We often see that people visit the physician after they fall ill. The awareness about preventive health care is the call of the hour that may ensure physical, mental and social well-being of the individual. Mental and social well-being has received less attention in comparison to physical well-being in the present day health care system. Two issues may be discussed in this context. First, the services available and second, the

awareness among the general public about the services related to mental health. Providing mental health services by the government at the grass root level is definitely a daunting task given the difficulties in finding enough qualified experts in the field. The second issue is concerned with public awareness regarding mental health. Visiting a mental health professional has an associated stigma with it that discourages people to take the benefit of preventive and curative mental health services. They think that they will be branded or labelled in the society as insane and they might be socially excluded. Preventive care in mental health could minimise the burden of mental illness to a large extent. Though we are in the 21st century, people still hold a stigmatised orientation towards people with mental illness. Mental health care service in India may be conceptualised as a two-way process. Both the Government and the general public are equal partners in this endeavour. The proposed mental health bill 2013 has many promises, keeping in view all the stakeholders of mental health. In the present article, various aspects of the mental health care bill 2013 have been analysed. The MHCB got passed in the upper house of the parliament and forwarded to the lower house; once this bill passed by the parliament, it will be known as Mental Health Care Act and replace the existing Mental Health Act (MHA) of 1987.

Mental Health Care Services in India

Mental Health Care Services encompasses a well-trained manpower, dedicated institutions and logistics to deliver the mental health services to the people with mental illness. Census 2011 shows only 7.2 lakh people have suffered from mental illness where National Commission on Macroeconomics and Health has reported that about 6.5% (65-70 millions) of the total

population of our country have mental health problems; ^[3] about 70-89% of people don't receive appropriate or adequate mental health care service. To subdue the problem of mental illness, 43 mental hospitals have been established by both Government and private sectors in our country. 25,000 beds are available in different mental health institutions, including private psychiatric nursing homes and general psychiatric hospitals. The minimum required health care personnel for this service includes: 11,500 psychiatrists, 17,250 clinical psychologists, 23,000 psychiatric social workers and 3000 psychiatric nurses. ^[4] But a total of 4000 psychiatrists, 500 clinical psychologists, 300 psychiatric social workers and 1,000 psychiatric nurses are presently available to provide mental health services. ^[5-7] The budget allocation for mental health services was 2.05% in the year 2005 of the total health budget but a sharp decline to 0.06 % of the total health budget was seen in 2011. ^[8,9] There are no systematic updates on training programmes to various stakeholders. In the last five years, officially most of the doctors and nurses of Primary Health Centre (PHC) have not received any kind of training on mental health. ^[9]

Mental Health Care Bill, 2013

The existing MHA (1987) is very old and not adequate to meet the current needs. May be this was an effective law at that time. However, with time this law became obsolete, leading to a number of shortcomings and criticisms. Hence, India needs to modify the old laws and come up with a tangible law in the mental health sector. The proposed on MHCB, 2013 came after ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which came into force in 2008. MHCB, 2013 aims “to provide access to mental health care and services for persons with mental illness and

to protect, promote and fulfill the rights of person with mental illness during the delivery of mental health care and services and for matters concerned therewith or incidental thereto”.^[10]

Enactment of this bill will replace the Mental Health Act (MHA) 1987 and the new Act may be called the Mental Health Care Act (MHCA), 2013.^[10] Before discussing the MHCB, let's have a look at some of the shortcomings of the MHA 1987. Replacing the Indian Lunacy Act, 1912, MHA came into existence in 1987. However, it came into force only in the year 1993 i.e., after six years. This act has 10 chapters and 98 sections. Some studies have reported the drawbacks of MHA (1987) as having a lack of clear definition of mental illness, lack of focus on community based mental health services and also primary health care, no adherence to international guidelines, lack of provision of short stay homes or shelters home and emergency crisis intervention, no special focus for poor people, difficulty for private hospital or health care providers to get a licence and maintain it. Though there was a provision for one psychiatrist for every ten inpatient beds, the ground reality is far from it. Protections of human rights of mentally ill person were not comprehensively covered and the Act is silent on the role of the government. There is no strict provision for any action against human rights violations of person with mental illness.^[11,12]

Taken together, the whole Act seems like a formal arrangement without any action on the ground, which is quite evident in present day mental health service delivery system in India. Hence, there is a pressing need to bring a more comprehensive and humane law for mental health at par with the International standards. However, following international standards in its original form without considering India specific needs often makes it difficult to execute the

actions on the ground. Apart from a comprehensive and humane law, care should also be taken to formulate easily executable laws.

Let's discuss some of the prominent features of current MHCB, 2013. The new bill contains 16 Chapters and 136 Sections. The bill will be read as Mental Health Care Act (MHCA) and the provisions in the act will be effective within a period of three months after receiving the assent of the President. However, Sections 33, 45 and 73 that is related to the Establishment of a Central Mental Health Authority (CMHA), Establishment of State Mental Health Authorities (SMHA) and the Constitution of a Mental Health Review Commission (MHRC) respectively will work within a period of nine months after the Act is in force. These bodies will act as administrative bodies. Every year the central and state authorities shall disclose the progress report of mental health services before the Parliament and the state legislature respectively [Section 18 (12)].

SALIENT FEATURES OF THE BILL

Definition and Identification of Mental Illness

One of the major changes in the MHCB is the replacement of the term “mentally ill” with “person with mental illness”.^[13] While the previous term “mentally ill” suggests a relatively permanent trait of the individual, the later term “person with mental illness” suggests a more liberal approach to the term and identifies it as a condition or state of the person which is not necessarily permanent. Hence, the definition is a transition from a trait-based approach to a state based approach. In other words, it is a more dignified way of looking at a problem condition. Such an approach is a humble beginning that, at least protects a person with mental illness from the stigma

associated with visiting a mental health professional.

MHCB, 2013 defines 'mental illness' as "*a disorder of mood, thought, perception, orientation and memory which causes significant distress to a person or impairs a person's behaviour, judgment and ability to recognise reality or impairs the person's ability to meet the demands of daily life and includes mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation*".^[10] The MHCB is more comprehensive than earlier MHA and has widened in terms of the defining mental illness. However, like the MHA, the MHCB also excluded mental retardation as a form of mental illness. Though developmental disabilities form a separate category than mental illness, their exclusion in the definition of mental illness is not understood. People with developmental disabilities should also be treated at par with people with mental illness as they too suffer from the disorder of mood, thought, perception and memory; if we will not address these developmental disorder issues in early stage, there are high chances of aggravation and further deterioration which will affect the general life of the individuals. Murthy has criticized of this bill for showing a lacuna in right based mental health legislation for all.^[14]

Rights of Persons with Mental Illness

It is for the first time that India is going to formulate a law where the rights based approach for persons with mental illness has been guaranteed. This proposed bill focuses on affordable cost, good quality of service at each level of mental health service delivery without any discrimination of gender, religion, class, caste and sex, etc. It emphasises the plethora of rights for persons with mental illness from different aspects of life.

Decision on Treatment: This new bill endorses right to take decisions. Section 4 of

MHCB says, "Every person, including a person with mental illness shall be deemed to have the capacity to make decisions regarding his mental health care or treatment".^[10] This indicates that every person has the right to take their own decision regarding mental health care treatment and this decision can be communicated in any form like talking, using signs or any other means. Here, nothing is mentioned about the severity of the problem. Not all people with mental illness are able to make decisions on their own. Complexities may also arise when the patient is unaware of the consequences and leaves the course of treatment prematurely. The reason may be most of the times; mental problems are not that acute to pose a life risk for the patient immediately. Hence, the need to attend the problem urgently is not practised. However, if remains untreated for a long period, it may develop further complications. Again, some problematic situations may arise like, how an illiterate person or non-medical background person takes decision regarding the merits and demerits of the treatment, thus, leaving the decision to the treating doctors. Medical science has its own code of conduct; it can't go with or without the consent of the patients.^[5] Its okay to start the treatment after taking consent of the patient, but it shouldn't be stopped if he withdraws his consent in the middle of the treatment. This may lead to problems, both for treating doctors as well as patients. So here, the decision of the treating doctors regarding continuation or discontinuation of the treatment should be taken into consideration.

Nominated Representative (NR): Chapter IV of MHCB has the provision to appoint an NR (not a minor) by every mentally ill person. The NR works as a legal guardian and has the right to take all decisions in respect of the patient during the whole treatment process. There are possibilities of

deficiency autonomy of the patient if this NR doesn't work according to the patient's interests. [13] Even the NR may not have ideas concerning the treatment procedures. So, the treatment process should be on the basis of reciprocal understanding of NR and the treating doctors.

Mental Health Care and Services: Chapter V of the bill clearly focuses on different rights for people with mental illness and ensures these rights can't be hindered at any circumstances. This bill not only focuses on the quality mental health services, but also other supportive provisions, i.e. half-way homes, sheltered and supported accommodation, and home based rehabilitation, etc. [Section 18(4)]. [10] But here MHCB has not clearly mentioned anything the quantity or ratio of the above mentioned provisions. Government ensures that minimum mental health services available in each district. If it is not there, the expenses borne by the mentally ill person to access mental health treatment from other sources will be reimbursed through the district by the appropriate Government till the services are available in the district. The mental health services maintain the same quality like other health services. Many a times the patient and diseases information is kept confidential to protect the patient from any kind of possible biases and discrimination against him/her in the society. However, the bill ensures that, the patients have the right to get complete information regarding treatment records with the right to confidentiality in respect of his mental health and care, treatment and physical health care. In between, if any person with mental illness or his/her nominated representative find any lacunae, s/he shall have the right to complain against these issues to the concerned authority. Free mental health services are also available for the poor people (with or without Below Poverty Line card holder), destitute and

homeless [Section 18(7)]. [10] However, there would be practical difficulties in the implementation of the provisions. In the absence of national database of poor people, execution of the facilities may not be effectively followed.

Societal and Living Status: In Section 19 and 20 there are provisions for giving ambient for community living and providing safeguard from any form of cruel, inhuman and degrading treatment. Every person with mental illness has the right to live a life with dignity in the society without any social stigma and avail facilities like hygienic environment, leisure, privacy, education etc. This Section clearly mentions that any person with mental illness doesn't have to undergo compulsory tonsuring and wear uniforms (provided by the institution), which demonstrates that this bill touches every aspect to provide a dignified life to every person with mental illness. However, the bill is silent regarding the increasing exploitation of the people with mental illness in "non-mental health institution". [15]

Electro-convulsive Therapy (ECT) & Psychosurgery: Section 104 of MHCB strictly prohibits the treatment of electro-convulsive therapy without the use of muscle relaxants and anaesthesia for the adults. For the minor, if this treatment is required for saving his/her life, then with the prior permission of the guardian and concerned board, such treatment is applied otherwise such therapy is verboten for minors. Psychosurgery treatment can be performed only after taking the consent of the patient and approval from the concerned board (Section 105). This will restrain the practice and use of ECT and psychosurgery, which were often considered to be unnecessary.

The bill is primarily a rights-based bill. Certainly, a person who is mentally ill needs to be cared and protected by the family, society and the community in which

s/he is living. However, some issues require our critical analysis and judgment. For example, who will ensure all the rights of those who are staying with their family members or with the community? Those people who have no family members or any caretaker and he/she is not eligible to take his/her own decision; who will take them to the hospital? The bill is silent on such issues. Such processes push people to become marginalized. Again they are in a disadvantageous position. In such a situation, a toll free number may be of a great help wherein, everyone from the community can contact the authorities for the treatment of the person with mental illness.

Provision of Quality Mental Health Services

Advance Directives: In Section 5, MHC address a new concept for the first time, i.e. “Advanced Directives”, in which every person with mental illness (not a minor) has the right to make an advance directive with details in writing on a plain paper with the person’s thumb impression or Signature on it. In case of minors, the legal guardians and in case of a mentally ill person who is not able to ask for this directive on his or her own, the NR may ask for this service. This registration process is free of cost. To minimise the error and rapid service, every board shall maintain an online register providing the detailed information available with the concerned mental health professionals. It is the duty of the commission to review regularly and periodically for recommending these advance directives and verify whether the existing procedure protects the rights of persons with mental illness.

Admission, Treatment, Discharge: If a person (not a minor) thinks that s/he is suffering from mental illness and has the capacity to take mental health care and

treatment decision (or a minimal support in making decisions) s/he can go for the treatment independently. All the treatments must be done with his/her informed consent, which promotes independent admission as far as possible in all mental health establishments. Only on a request of such independent patient, the medical officer or psychiatrist in charge of such mental health establishment immediately discharges these patients.

Special Measure for Minors: This bill always gives special attention to the minors. At the time of admission in mental health institutions, minors will be accommodated separately from the adult cabin. For a minor, the legal guardians shall be their nominated representative. If it is found that their legal guardian is not acting in the best interest of the minor or not fit for being a nominated representative; the board may appoint another suitable NR. In case no suitable NR is available, the Director of the Department of the Social Welfare (DSW) of the State works as NR. The bill also talks briefly about the duties of NR.

Another eye catching initiative for the minor girls, if the NR is a male; it is the duty of that representative to appoint a female attendant and this attendant shall have to stay with that minor girl under all circumstances during the treatment period in the mental health establishment [Section 96 (6)]. The aforesaid provision is acceptable to some extent. But, then a serious question arises, that is, what if the NR belongs to a poor family and how is he going to meet the expenditure of that female attendant? If the NR is poor and unable to appoint a female attendant, then he has to stop the treatment of his child, which is also accepted by this law in section 96 (8) with shifting the risk on the NR. For a girl child, rather than shifting the onus on the NR, the Director of DSW should take appropriate decisions as mentioned in Section 15 (2).

Role of the Government

Other Key Initiatives of this Bill

Decriminalization of Suicides: WHO estimates that, in India about 1, 70,000 deaths occur every year due to suicide and maximum cases belong to 15-29 age groups [18] and suicide has become the second leading cause of death among young Indians. [19] It is a shame that in attempt to suicide and suicidal deaths our country occupies a position among the highest ranks in the world ranking. [2] But MHCB may seek to decriminalize suicide. [20] As per The Indian Penal Code (IPC) Section 309, any attempt to commit suicide is a criminal offence. However, if a person attempts to commit suicide when s/he is mentally ill, shall not be treated as a criminal offence. So, Section 309 of IPC will be recast in the country for the first time in the history of criminal law. [20]

As per the bill, the Government would formulate different plans and programmes for the promotion and prevention of mental illness with special attention to reduce suicide and attempted to suicide in the country (Chapter VI). Apart from this, creating awareness, increasing human resources in the mental health delivery system and providing minimum training for all medical officers have also been mentioned.

Granting Divorce: It is another initiative of the bill, which brings modification in the existing law of granting a divorce. It is not sufficient to grant divorce in the proof of the person's current or past admission or treatment in the mental health establishment. During the judicial proceedings, when proof of mental illness is raised and challenged by the other party; the matter will be referred to the concerned mental health board for the scrutiny of the current mental condition of the person.

Eligibility for personal insurance: Section 21 of MHCB States that, "every person with mental illness shall be treated as equal to person with physical illness in the provision of all health care". [10] All the health services meant for persons with physical illness shall be deserved by the person with mental illness. So it is instructed to all insurance companies, who are coming under the Insurance Regulatory Development Authority (IRDA) Act, 1999 to make provisions for medical insurance on the same basis as is available for the treatment of physical illness. So, very soon mental illness will come under health insurance cover in India.

Another hidden issue which has not been focused is stigma associated with the person with mental illness. Stigma as well as discrimination is not only an issue in our country, but it is a global concern. [16] It is a public mark which spoils the identity of a person. [17] So the role of Government should be more specified regarding this issue in this bill. As previously discussed, the budget amount meant for the mental health is very less. The MHCB is expected to mention the mobilization of government resources and to reserve some percentage in health budgets to meet the needs of a large number of persons with mental illness. [15]

CONCLUSION

The MHCB, 2013 comes out to be a praiseworthy effort for addressing the long standing problems encountered by patients and practitioners alike in the sector of mental health care and restoring the long lost dignity of the mentally ill. [5] This bill can bring a radical change in the field of mental health care and service in our country. Even though some sections of this bill are being criticized but still this bill seems more humane and appropriate in the current situation. This bill protects the legal rights and empowers the person with mental

illness. Health ministry officials said, India needs such forward looking bill, which ensures the rights of persons with mental illness. [20] As described earlier, all the sections of this bill (except section 33, section 45 & section 73) shall come into force within a period of three months. Therefore, it is awaited to be seen whether the bill is properly implemented within the stipulated period of time. This bill is very ambitious, but practically it is very difficult to implement at the ground level. There are only five SMHAs which are working effectively in the country after two decades of the implementation of MHA 1987. [11] Similarly District Mental Health Programme (DMHP) which has covered only 123 districts out of 630 districts in India at the end of eleventh Five year plan. [21] In essence, earlier approaches showed callousness towards mental health in our health system. However, with the provisions made in the new bill are promising and may prove to be a citizen friendly bill in the direction of a developed India. We expect an effective legislation would be in place sooner with ensured accountability of the implementation system for MHCB, 2013.

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How to cite this article: Subudhi C, Biswal R. Mental health care services in India: an analysis of the mental health care bill 2013. *Int J Health Sci Res*. 2015; 5(5):424-432.
