

MENTAL HEALTH AND HUMAN RIGHTS: AN EMERGING TREND OF THE NEW MILLENIUM

SHIVAM AGGARWAL

School of law, Lovely Professional University, Phagwara, India 144411

Email: shivam10aggarwal@gmail.com

Abstract: Human Rights are certain inalienable rights which are available to all without any discrimination on the basis of religion, race, caste, sex etc. Each and every individual is having access to these rights simply owing to the fact that they are human beings. Even though there is a wave of acceptance for human rights all over the world but still it is a parody that people who are suffering from mental illness are looked down upon and human rights are distant dream for them. This research paper discusses the meaning of health, mental health and mental disorders. Statistics reflecting the grave situation all over the world and brutalities that people suffering from mental disorders have to face on day to day basis have also been discussed in detail. The research paper highlights the relationship between mental health and human rights and the way Convention on Rights of People with Disabilities 2006 tries to protect the interests of disabled people and also gives them certain rights and privileges. In addition to this the scenario related to mentally disabled people in India and provisions of Mental Health Act 2017 have also been dealt with.

Key Words: health, mental health, brutalities, rights, dignity.

1. INTRODUCTION:

WHAT IS HEALTH?

There is a common belief that one is healthy when he is not having any form of illness, pain or disease. But this is a very narrow definition of this term. The preamble of the Constitution of The World Health Organization has provided a very wide and comprehensive definition of this term. WHO has defined health as a situation of overall well-being of human covering all the facets of life such as physical, mental and social. Thus it can be said that only when all well-being of human in all these areas will be ensured we can say that human is healthy. This definition has further made it clear that only the absence of a disease cannot be the litmus test of declaring someone as a healthy individual.

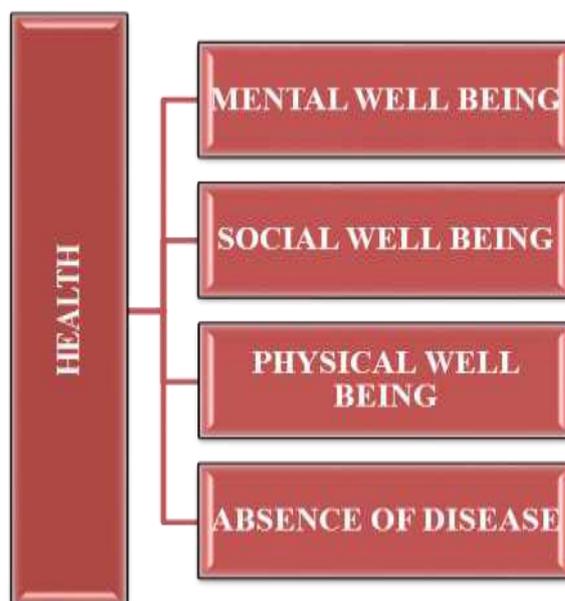


Figure 1. COMPONENTS OF DEFINITION OF HEALTH

WHAT IS MENTAL HEALTH?

From the aforementioned definition of health one thing is clear that well-being can be ensured only when someone is mentally healthy. Just like the physical and social aspects of health the mental aspect is also impacted by various socio-economic factors mentioned hereinafter. These include individual attributes like thoughts, emotions, behaviors, interactions with others, but also national policies, living standards, working conditions, and support from society. In addition to this if a person is exposed to adversities at a tender age then he or she is at a higher risk of

mental health problems. Certain vulnerable sections of society like poor and neglected groups, minority and indigenous populations are also at a higher risk of getting inflicted with mental disorders. In addition to these sexual minorities, prisoners and people exposed to the natural disasters and humanitarian crises are at a major risk of being exposed to mental health issues. And above all this any form of stress above the normal level termed as distress by the psychologists also has a detrimental effect on the mental health.

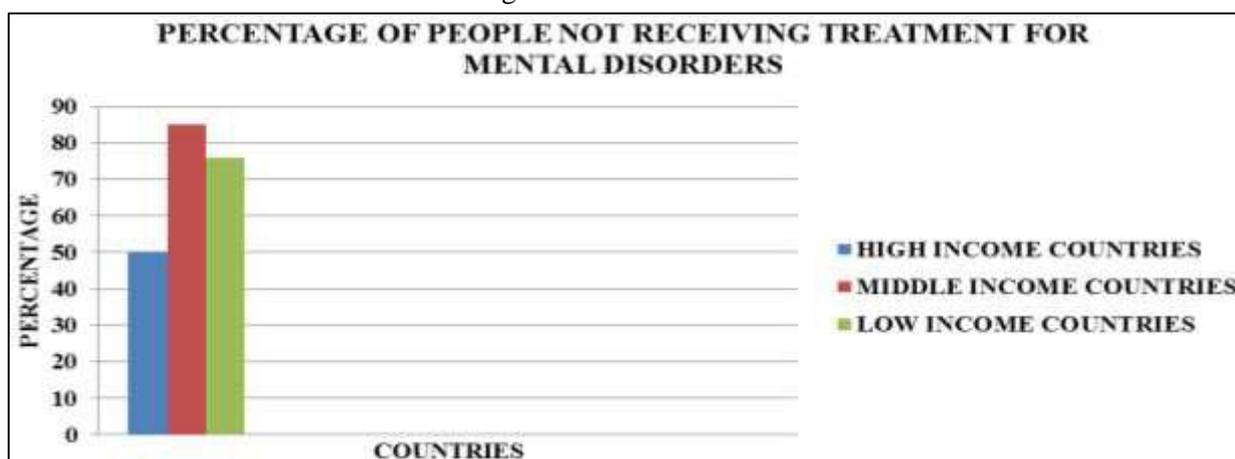
1.1. MENTAL DISORDERS:

World Health Organization in its Comprehensive Mental Health Action Plan 2013–2020 has defined the term mental disorders. As per the definition provided thereby mental disorders refers to a range of mental as well as behavioral disorders that come within the ambit of International Statistical Classification of Diseases and Related Health Problems. These disorders include depression, bipolar affective disorder, and schizophrenia, anxiety disorders like obsessive compulsive disorder, dementia, intellectual disabilities, and developmental disorders like autism. In India the most widely accepted definition has been given in Section 2(s) of Mental Health Care Act 2017. As per this definition, mental illness is a substantial disorder which may be related to the thinking, mood, perception, orientation or memory of a person. It further clarifies that it is an illness that impairs judgment and behavior of an individual along with his capacity to meet the day to day demands of life. This definition also removes a major misconception prevailing in the mind of society that mental illness is similar to mental retardation. This definition in very clear words states that mental illness by no means includes mental retardation as it is a condition in which there is an arrested development of mind of a person mainly due to sub normality of intelligence.

1.2. STATISTICS RELATED TO MENTAL HELATH:

The World Health Organization in its Comprehensive Mental Health Action Plan 2013-2020 has put forward many shocking stats with regards to the mental health, its extent and consequences:

- As per this report people suffering from mental health disorders have a higher rate of disability and mortality.
- People who are suffering from depression and schizophrenia are having around 60% greater chances of premature death.
- Mental disorders also lead to suicide which is a major cause of death amongst youth worldwide.
- Mental, Neurological and Substance Use Disorders amounted to 13% of the global burden of disease in 2004.
- Depression alone amounts to around 4.3% of the total global burden in terms of disease.
- The cumulative global impact of mental disorders will amount to US\$ 16.3 million between 2011 and 2030.
- In low income countries 76% of people with severe mental disorders receive no treatment as compared to 85% in middle income countries and 50% in high income countries^{Viii}



1.3. BRUTALITIES SUFFERED BY THOSE SUFFERING FROM MENTAL DISORDERS:

There are a number of socio-economic and cultural consequences of mental disorders:

- Mental disorders are enough to push an individuals or families into poverty.
- Homelessness is more common with people suffering from mental disorders.
- People suffering from mental disorders are also stigmatized by the society.
- They are also discriminated against.
- From the legal point of view their human rights along with economic, social and cultural rights are violated owing to the restrictions which are imposed by the society on their rights to work and education, reproductive rights and the right to live a dignified life.
- Some of them also fall prey to physical and sexual abuse.

- Most of them report being neglected and subjected to degrading treatment.
- They are also denied civil and political rights including the right to marry and found a family, personal liberty, the right to vote.
- They are excluded and marginalized from society which is a major impediment in the achievement of the national and international development goals.

1.4. MENTAL HEALTH AND HUMAN RIGHTS:

The above mentioned brutalities faced by the people suffering from mental disorders also violate their basic human rights which have been guaranteed under Universal Declaration of Human Rights 1948.

- Since people suffering from mental disorders are subjected to degrading treatment and are neglected it is a violation of Right to Life guaranteed under Article 3 of UDHR and Right against Degrading Treatment mentioned under Article 5.
- The violation of their civil rights is against the essence of Article 16 which provides everyone Right to Marry and Form a Family.
- Violation of their political right is against the essence of Article 21 which provides everyone Right to Take Part in the Government of His Country.
- Denying of equal employment opportunities is a violation of Article 23 as per which everyone has a Right to Work.
- It is already mentioned above that people suffering from mental disorders suffer from poverty and homelessness more than others thus it is a violation of their Right To Adequate Standard of Living enshrined under Article 25 of UDHR.
- By subjecting them to social stigma and denying them the equal education opportunities the society at large also violates their rights enshrined under Article 26 and 27.

Most importantly Article 1 and 2 of Universal Declaration of Human Rights makes it clear that all humans are having equal dignity as well as respect and human rights must be made available to all the individuals without any form of discrimination, but owing to mental health issues these rights are denied to certain section of society which is per se wrong and is a major challenge to regime of International Human Rights.

1.5. CONVENTION ON RIGHTS OF PEOPLE WITH DISABILITIES 2006:

It is one of the nine core human rights conventions and instruments that act as the foundation of regime of international human rights. The preamble of this convention has recognized that in case an individual is discriminated owing to the fact that he or she is disabled then it is a clear cut violation of his dignity and worth as a human being. It makes it clear that it is a high time that society must be made more diverse and people suffering from any form of disability which according to Article 1 also includes mental and intellectual disorders are given intensive care and support so that the barriers in their participation as the equal members of society wither away and an era in which their rights are also protected is enshrined. However, it makes it clear that this can be possible if there is international cooperation regarding the same. As per Article 2 of this convention discrimination on the basis of disability means distinction, exclusion or restriction which is imposed on the basis of disability. This discrimination must be one which impairs or nullifies the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis with others. Article 3 of this convention imposes certain obligations on the states in order to remove any discrimination on the basis of disability. These obligations include taking legislative, administrative and other measures in order to implement the rights of disabled people. Under this convention the state parties are also required to amend or existing laws and practices that promote disability based discrimination. As per this convention it is the obligation of the states to promote research and development of equipment and facilities that will meet the specific needs of a people with disabilities.

1.6. RIGHTS OF DISABLED PEOPLE:

This convention has recognized various rights of people with disabilities. These rights are mentioned hereinafter:

- **RIGHT TO LIFE AND ADEQUATE STANDARD OF LIVING:** This right is conferred under Article 10. As per this right all the states who are a party to this convention have to ensure that all the people including disabled have a right to life on equal basis. Article 27 makes it clear that it is the duty of states to provide adequate standard of living to disabled people too.
- **EQUAL RECOGNITION BEFORE THE LAW:** This right is conferred under Article 12 of the convention. As per this right all states must ensure equal recognition to all including disabled people before the law. States are also duty bound to protect legal capacity of the disabled people and also to protect their human rights.

- **ACCESS TO JUSTICE:** Article 13 of the convention confers this right. As per this article it is the duty of states parties to ensure on equal basis an effective access to justice to disabled people. In order to help to ensure access to justice to such people states must provide appropriate training to those who are working in the field of administration of justice.
- **LIBERTY AND SECURITY OF PERSON:** Article 14 confers this right. So as to ensure the liberty and security of people states have to ensure that everyone enjoys the right to liberty and security of person and is not arbitrarily deprived of his liberty. States are also duty bound to provide disabled people reasonable accommodation.
- **FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:** Article 15 confers this freedom. As per this no individual should be subjected to medical or scientific experimentation without his or her consent. States are thus required to take legislative, administrative, judicial or other measures to ensure that persons with disabilities are not subjected to torture or cruelty just like any other individual.
- **FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE:** As per Article 16 state parties are required to take all necessary measures to protect persons with disabilities within and outside the vicinity of their houses. States shall also provide all forms of gender- and age-sensitive assistance to people with disabilities and their families as well as caregivers. States are also required to ensure monitoring of people with disabilities and also to promote their physical and cognitive recovery.
- **LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY STATES:** According to Article 19 states have to recognize the right of all persons with disabilities to live in the community, with choices equal to others. As per this people with disabilities should have the opportunity to choose their place of residence and an access to residential and other community support services.
- **RESPECT FOR HOME AND THE FAMILY:** Article 23 confers this right. As per this states are required to eliminate discrimination against disabled people in matters relating to marriage, family, parenthood and relationships. This involves the right of every person of marriageable age to marry and to decide freely the number and spacing of their children. States Parties are also required to ensure that a child is not separated from his or her parents against their will. States are also required to provide care to people with disabilities in case their family is not able to do so.
- **EDUCATION AND WORK:** As per Article 24 even the people with disabilities have a right to education at all levels and lifelong learning directed at fuller development of human potential and self-worth as well as strengthening of respect for human rights. Article 27 makes it necessary to provide work opportunities to disabled on equal basis.
- **HEALTH:** As per Article 25 states have to ensure that even disabled people have the right to the enjoyment of the highest attainable standard of health without any form of discrimination. States are also required to provide them quality and affordable health care in both rural and urban areas. Moreover even the health professionals are required to be aware of human rights and dignity of persons with disabilities Article 26 makes it obligatory for the states to adequate habilitation and rehabilitation facilities.

Therefore it will not be wrong to say that this convention has taken care of all forms of rights of the disabled people keeping in mind all the areas where the disabled people are discriminated against by the society. At present there are 163 signatories of this convention. India ratified this convention on October 1, 2007.

1.7. CHALLENGES TO PROTECTION OF HUMAN RIGHTS OF DISABLED PEOPLE:

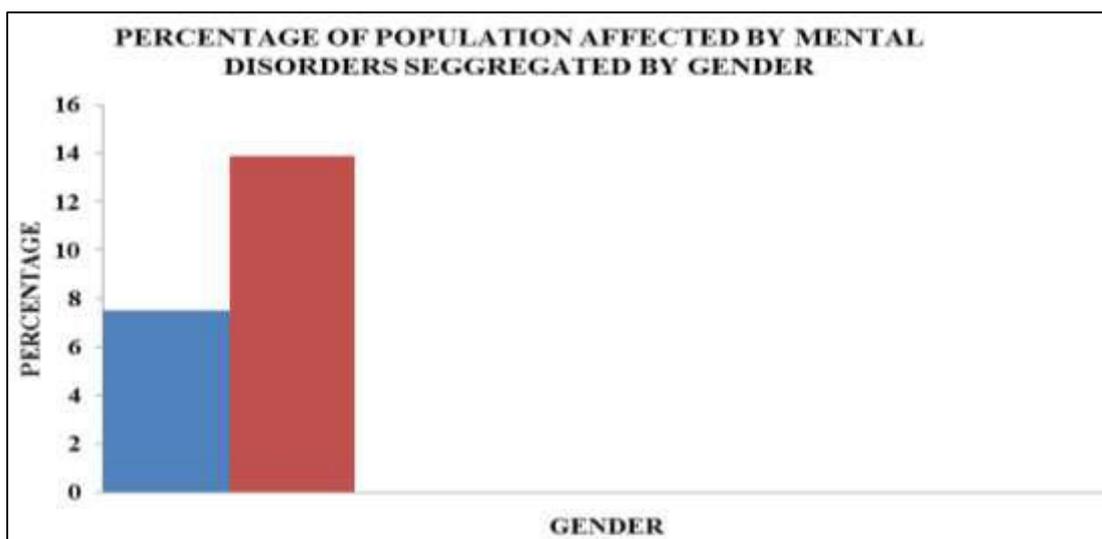
Howbeit, it is worth mentioning that ushering in an era in which the human right of disabled is an uphill task as there is a number of impediments in this way such as:

- **BURDEN:** According to the WHO, mental health is the biggest challenges facing every country is facing. The prevalence of mental health disorders is very high in every region. Only in Europe, about 100 million people suffer from anxiety and depression and about 4 million from schizophrenia. Thus any step that has to be taken must be taken keeping in mind their mammoth momentum.
- **STIGMA AND DISCRIMINATION:** There is a widespread stigma that has been attached to mental health problems and this in turn has jeopardized the implementation of mental health policies. Stigma also leads to exclusion and affects people's self-esteem along with disrupting their relationships and ability to socialize. Result of all this is violation of human rights.
- **PROMOTION OF MENTAL HEALTH:** It is necessary that mental health promotion targets the whole population. When effective plans will be made and implemented, then it will enhance mental well-being of all. It is also necessary to give mental health issues proper advocacy and to provide financial help to patients of mental health issues.

- **PREVENTION OF HARMFUL STRESS AND SUICIDE:** It is necessary to reduce the exposure to harmful stress as it leads to an increase in anxiety and depression along with alcohol and other substance use disorders. In extreme situation it can also lead to violence and suicidal tendencies. The social causes of mental health problems can be induced or reinforced either by the home, educational facilities or the workplaces.
- **LARGE NUMBER OF MARGINALIZED AND VULNERABLE GROUPS:** There are a number of marginalized groups such as refugees, migrant populations, unemployed, prisoners, sexual minorities etc. In some situations even the basic rights of these people are not protected and thus in those regions recognizing their human rights related to mental health is a far cry.
- **POOR MENTAL HEALTH INFRASTRUCTURE:** There are no proper hospitals and infrastructure to deal with those who are suffering from mental health issues. Ratio of psychiatrists and population is quite low. Production of psychotropic drugs is also not sufficient keeping in mind the rising cases. Moreover owing to high cost of treatment many people are forced to lead a horrendous life where there is no hope for a better future.

1.8. INDIA AND MENTAL HEALTH:

The recent survey conducted by the National Institute of Mental Health and Sciences and World Health Organization has proved that mental health has become a grave problem of India. The study conducted by NIMHANS has revealed that 10 per cent of the population is having common mental disorders and 1.9 per cent of the population is suffering from severe mental disorders. Schizophrenia, bipolar affective disorder (BPAD), depression, anxiety disorders, psychoses, phobia, suicide, mood disorders, neurotic or stress related disorders, PTSD, sleep disorders, alcohol dependence and substance misuse etc. have become common problems in India. The prevalence of mental problems has become a disturbing scenario thanks to the fast-paced lifestyles and a breakdown of support systems. In a recent report World Health Organization has recommended expert intervention as it is estimated that mental health statistics in the country may affect about 20 percent of the population by 2020. It has been attributed that prevalence of mental illness is higher among males 13.9 per cent as compared to females 7.5 per cent.



It is worth noting that only 30 million Indians are having access to the mental health facilities. Treatment gap in India is greater than 70 percent owing to the insufficient funding of mental, neurological, and substance use disorders. According to certain reports, in spite of the large burden of mental illness in 2011 only 0.06 percent of 4.16% of GDP on health in the country was allocated at a national level for outpatient psychiatric care. Number of mental health beds in India is only 2.15 beds per 100,000. Therefore despite of the fact that three out of four persons in India suffer mental disorders, there is a huge gap in treatment. Above all there is a scarcity of well-trained clinical mental health counselors. People in India are stigmatized simply owing to the fact that they are mentally ill. They are discriminated against and are laughed upon. There problems are not taken into consideration and people refuse to understand their perspective. They are called with derogatory names. Even when we are living in 21st century mental illness is connected with spirituality. Instead of taking mentally ill to psychiatrist they are taken to religious gurus. There is a lot of shame associated with mental illness as a result of which people they do not come out and accept that they are having a problem.

1.9. MENTAL HEALTH CARE ACT 2017:

The Mental Health Care Act 2017 was passed with various objectives in mind such as for providing mental healthcare and services to people with mental illness in order to protect, promote and fulfil the rights of persons during

delivery of mental healthcare services. It consists of 126 Sections. As per Section 23 a person suffering from mental illness is having a right of confidentiality no information about his mental illness can be released until it is in the public interest or welfare of society to release such information. Under Section 29 and 30, the central government is having a duty to promote mental health and create awareness regarding the same. Under Section 33 a Central Mental Health Authority has to be established in order to meet the objectives that have been specifically mentioned under this act. As per Article 107 whosoever carries on a mental health establishment without registration will be liable to pay a fine five thousand rupees which may extend to fifty thousand rupees. Similarly in case a mental health professional will be liable to pay a fine of 25000 rupees in case he is working in a health care center not registered under this act.

2. CONCLUSION:

Thus it can be concluded that due to the growing awareness about the mental disorders a new era has dawned upon. In this era attempts are being made globally to provide equal rights and opportunities to even the mentally ill people who were earlier pushed to the periphery of the society. Today the discrimination faced by them has been realized by various stakeholders of the society and the attempts are being made to protect their human rights and human dignity. But this is just a beginning, new laws have to be framed, new policies have to be introduced, awareness has to be created and above all patterns of thinking have to be changed if we actually want to create a world in which everyone lives together with dignity and harmony.

REFERENCES:

1. What Is The WHO Definition Of Health, World Health Organization (April 12, 2020 11:06 AM) <https://www.who.int/about/who-we-are/frequently-asked-questions>
2. Comprehensive Mental Health Action Plan 2013–2020, World Health Organization(April 12, 2020 11:49 AM) https://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_R8-en.pdf?ua=1..
3. Comprehensive Mental Health Action Plan 2013–2020 , World Health Organization(April 12, 2020 1:10 PM) https://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_R8-en.pdf?ua=1.
4. Convention On Rights of People With Disabilities 2006, United Nations Organisation (April 12, 2020 5:15 PM) https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf.
5. Convention On Rights of People With Disabilities 2006, United Nations Treaty Collection (April 12, 2020 7:17 P.M).https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en.
6. Mental Health: Facing The Challenges, Building Solutions, World Health Organization Regional Office For Europe (April 12, 2020 8:45 PM) http://www.euro.who.int/__data/assets/pdf_file/0008/96452/E87301.pdf.
7. NIMHANS, 2016 - National Mental Health Survey of India, 2015-16: Prevalence, Pattern and Outcomes, National Institute Of Mental Health And Neuro Sciences, Bengaluru (April 13, 2020 11:11 AM) <http://nimhans.ac.in/national-mental-health-survey>.
8. Mental Health Care Act 2017, PRS India (April 13, 2020 12:34 PM) <https://www.prsindia.org/uploads/media/Mental%20Health/Mental%20Healthcare%20Act,%202017.pdf>.