INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions ofthe authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsever for any consequences for any action taken by anyone on the basis of information in theJournal.

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur.Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time &Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

IJLRA in Association with Sheth N.K.T.T College of Commerce and Sheth J.T.T College of Arts

ISSN: 2582-6433

ANALYSIS OF THE LEGAL FRAMEWORK FOR THE MENTAL HEALTHCARE IN INDIA

International Conference on VIKASIT BHARAT:INDIA@2047 CHALLENGES AND OPPORTUNITIES AHEAD

AUTHORED BY - MRS. SONALI SHARMA
Assistant Professor
TMV's Lokmanya Tilak Law College, Kharghar

CO-AUTHOR - MRS. SANTOSH SHARMA
(HOD) & Assoc. Professor
Dr. K.N. Modi University

ABSTRACT

Human is the most precious creation of God. Vulnerability in any form creates the disability; however the mental disability is most crucial form of vulnerability. In this form of susceptibility the person is not only incapable to counter the act but also deficient to realize the act, done to him. Weakness in health refers to an increased risk of illness or poor health outcomes due to various factors. These weakened groups refer to individuals who are socially, psychologically, or materially more prone to social exclusion due to factors such as health status, sexual orientation, religion, culture, ethnicity, gender, and physical or mental disabilities. In India the rights of this vulnerability are always guaranteed through various legislation which was implemented at different intervals. The Paradigm shift would be traced from Indian Lunacy Act of 1912, Mental Health Care Act 1987 and the ultimate piece of legislation Mental Health Care Act, 2017 which was output of the ratification of United Nations Convention on the Rights of persons with Disabilities (UNCRPD) in Oct 2007. Through this paper Researchers wish to analyze and comprehend in detail the legal frameworks on the subject. The source of the data will be secondary for the present research which will be collected through books, commentaries on statutory provision and International Convention, Constitutional law and Journal.

KEYWORDS:- *Disability, Human Rights, Legal Framework, Mental Illness, Vulnerability.*

ISSN: 2582-6433

INTRODUCTION:-

Vulnerability is a complex and evolving phenomenon shaped by the interplay between individual characteristics and broader social, economic, and environmental factors. It is not merely a reflection of personal attributes but is deeply rooted in systemic inequalities that expose individuals to heightened risks. Socioeconomic disadvantages, poor living conditions, and other socially determined risk factors significantly contribute to the challenges faced by vulnerable populations. These factors not only increase exposure to hardships but also limit coping mechanisms, making it difficult for affected individuals to recover from adverse circumstances.

One critical area where vulnerability manifests is mental health. Historically, mental health has been a neglected aspect of India's healthcare system. The stigma surrounding mental illnesses has perpetuated discrimination, limiting access to appropriate care and support services. Many individuals suffering from psychological distress face social exclusion, lack of awareness, and inadequate healthcare infrastructure, further exacerbating their challenges. Addressing mental health concerns requires a comprehensive approach that includes policy reforms, community awareness, and the integration of mental health services into the broader healthcare system.

By acknowledging vulnerability as a result of systemic processes rather than individual shortcomings, society can work towards creating inclusive structures that reduce risks and improve resilience. Strengthening social support systems, improving healthcare accessibility, and addressing economic disparities are essential steps in mitigating vulnerability and ensuring well-being for all. The WHO (2018) estimates that the mental health problem is gear upon 2,443 per 100,000 populations and the suicide rate per 100,000 populations is 21.1 in India.[1] The aggravated and alarming situation leads to bring about the imperative policies and legislations in India.

Law framers in India have always been concerned and aware about the inequalities faced by this section of disability and tried to overcome it through various legislative implementation at different intervals.

[1] (James Butcher, 2022)

ISSN: 2582-6433

PARADIGM SHIFT OF LEGISLATION:-

The **Indian Lunacy Act, 1912** was introduced to regulate the care and custody of individuals with mental illnesses in India. In India, the concept of institutional care for individuals with mental illnesses was introduced during British rule, leading to the establishment of asylums, now referred to as mental hospitals. Before the colonial era, mental health care was deeply rooted in traditional Indian practices. Historical texts in **Ayurveda** provide detailed classifications of mental disorders and their treatments, indicating a **holistic approach** to mental well-being. Rather than being neglected or mistreated, individuals with mental illnesses were often cared for within their communities, with treatments focusing on **herbal remedies, dietary regulations, meditation, and spiritual healing.** This indigenous approach emphasized balance between the mind, body, and environment, reflecting a more **compassionate and integrative** perspective on mental health. (A Journey from Indian Lunacy Act 1912 to Indian Mental Health Act 1987 &)[2]

The Rooted in colonial-era laws, also included the **Lunacy Acts of 1858**, it focused on custodial care rather than treatment. The Act mandated that individuals could only be admitted to a mental hospital through a **judicial reception order**, making the process similar to imprisonment rather than medical intervention. Additionally, once admitted, patients were often detained indefinitely due to the widespread belief that mental illness was permanent. The Act lacked rehabilitation measures, ignored advances in psychiatry, and failed to recognize **temporary or curable mental conditions**, leading to growing criticism over the years.

Under the Act the Reception and Admission of Lunatics of a person could not be admitted to an asylum without a reception order, except in specific circumstances. The reception order was granted upon a petition supported by two medical certificates confirming the person's mental illness. Special provisions were made for criminal lunatic**s**, found to be of unsound mind while undergoing legal proceedings. The Police and Magistrates had the authority to detain wandering or dangerous lunatics and present them before a Magistrate. If a lunatic was found to be neglected or mistreated, the Magistrate could intervene and order their transfer to an asylum. In cases where a lunatic's safety was at risk, temporary custody arrangements could be made. Treatment and Discharge of Lunatics was not indefinite, the provisions meant for periodic review and release of patient. If a patient recovered, they could be discharged based

[2] A journey from Indian Lunacy Act 1912 to Indian Mental Act 1987

ISSN: 2582-6433

on medical evaluation. The Criminal Lunatics if found mentally ill during criminal trials, they were detained in asylums instead of prisons. The **Indian Lunacy Act** was introduced with the stated objective of providing **care, custody, and management** of individuals classified as "lunatics" under its legal framework. However, despite dealing with mental illness, the Act primarily adopted a **legal approach rather than a medical one.** Instead of emphasizing treatment and rehabilitation, the law focused on legal procedures for confinement.[3]

Under this Act, admission to a mental hospital required a **reception order** issued by a **Judicial Authority, Magistrate, or Police Commissioner**. This process closely resembled that of imprisonment, raising concerns about whether mental illness was being treated as a legal offense rather than a medical condition. Furthermore, one of the fundamental flaws of the Act was the **indefinite detention of patients**, reinforcing the widespread misconception that mental illness was **a permanent and irreversible** condition. The prevailing notion, **"once insane, always insane,"** contributed to prolonged institutionalization rather than efforts to support recovery and reintegration into society.

The Mental Health Care Act, 1987 eventually replaced the Indian Lunacy Act, 1912. This new legislation emphasized treatment, rehabilitation, and the rights of individuals with mental illness. It further strengthened these protections, ensuring access to mental health care and recognizing the rights and dignity of persons with mental illness. The Act emphasized the Central and State Mental Health Authorities to supervise psychiatric institutions, advise governments, and ensure ethical and legal compliance and oversee Mental Health Services and facilities provided under the Act. Regulation of Psychiatric Facilities mandated regular inspections to maintain standards of care and infrastructure.

Under the act the Application for a Reception Order can be submitted the medical officer in charge of a psychiatric hospital or nursing home or by the husband, wife, or any other relative of the individual experiencing mental illness. The admission and treatment procedures allowed voluntary admission and also included admission of patients under medical recommendations or judicial orders in cases of risk to self or others. The discharge of Voluntary Patients under the Act was facilitated through the medical officer in charge of a psychiatric hospital or nursing home upon receiving a request

[3] Indian Lunacy Act 1912

ISSN: 2582-6433

from the patient themselves or in case of a minor patient guardian was authorized do the process. If a minor voluntary patient admitted to a psychiatric hospital or nursing home reaches adulthood, the medical officer was mandated to inform the new legal status. Despite these provisions, if the medical officer believes that immediate discharge is not in the best interest of the patient, a Board of two medical officers must be convened within 72 hours. This Board will assess whether the patient requires continued treatment. If the Board determines that further care is necessary, the patient may remain in treatment for up to 90 days at a time before reassessment.

The Act contributed towards the Protection of Human Rights for mentally ill and guaranteed Respect and Dignity in Treatment: It assured that every person undergoing treatment for a mental illness must be treated with dignity and respect. Under no circumstances should they be subjected to physical or mental abuse, cruelty, or any form of mistreatment. The legislation laid down ethical standards in Medical Research which prohibited to use individuals received for mental health treatment for research purposes except in cases:-

- *The research offers a direct benefit to their diagnosis or treatment,*
- The individual, if a voluntary patient, has provided written consent.
- If the individual is unable to provide valid consent due to being a minor or lacking decision-making capacity, their guardian or a legally authorized representative must give written consent on their behalf.

However India ratified United Nations Convention on the Rights of persons with Disabilities (UNCRPD) in Oct 2007, and confirming to inculcate its provisions into the current legislation on Disability framework. [4]

In resultant to above, Mental Health Care Act, 2017 was introduced which lead to progressive and rights-based approach. The earlier legislation provided for custodial care of person with mental illness however did not speak about the treatment of mental disabled person. But the new introduction of legislation focused mainly on treatment of mentally disabled without ignoring the Inherent Human Rights of the mentally disabled person. It recognized mental health is a universal human right that must be safeguarded for every individual, regardless of their background or location. Every person deserves access to the highest possible standard of mental well-being, ensuring dignity, equality, and inclusion.

[4] United Nation Convention on Rights of Persons with Disabilities

ISSN: 2582-6433

Unique Highlights under the legislation are:-

1. *Decriminalization of Suicide Attempts*

   Section 115 of the Mental Healthcare Act, 2017 eliminates criminal penalties for attempting suicide, recognizing that such actions are often driven by severe mental distress. This shift significantly impacts forensic psychiatry by advocating for treatment instead of legal punishment for individuals experiencing extreme psychological distress. However the In India, Section 309 of the Indian Penal Code (IPC) previously classified attempted suicide as a criminal offense, possibly intended as a deterrent. However, medical research indicates that most suicide attempts occur due to severe psychological distress. Judicial Challenges and Constitutional Debates

   - State v. Sanjay Kumar Bhatia (1985) – The Delhi High Court strongly criticized Section 309, describing it as "unworthy of human society."
   - Maruti Shripati Dubal v. State of Maharashtra (1986) – The Bombay High Court ruled that Section 309 was unconstitutional, citing violations of Articles 14 and 21 of the Indian Constitution (1950), which guarantee equality before law and the right to life, respectively.
   - P. Rathinam v. Union of India (1994) – A two-judge bench of the Supreme Court struck down Section 309, declaring it unconstitutional.
   - Gian Kaur v. State of Punjab (1996) – A five-judge bench of the Supreme Court overturned the Rathinam decision, holding that the right to life does not include the right to die, thereby upholding the validity of Section 309 IPC.

Law Commission Reports and Further Developments

- In 2008, the Law Commission of India reiterated its stance on decriminalizing suicide attempts in its 210th report, titled *"Humanization and Decriminalization of Attempt to Suicide."*
- The Supreme Court, in Common Cause v. Union of India (2018), recommended that Parliament reconsider the decriminalization of attempted suicide. The Court deemed Section 309 IPC outdated and issued guidelines for passive euthanasia, emphasizing a more compassionate approach toward individuals attempting suicide.[5]

[5] (https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/attempt-to-commit-suicide)

ISSN: 2582-6433

2. *Right to Mental Health Care for All*

   The Act ensures that every individual, including those in **custody or prison**, has the right to receive mental health care. Law enforcement agencies and correctional institutions are now responsible for facilitating psychiatric treatment for detainees, emphasizing the importance of mental well-being in legal and forensic settings.

3. *Establishment of Mental Health Review Boards (MHRBs)*

   MHRBs act **as independent regulatory bodies** overseeing mental health institutions. Their role is crucial in forensic psychiatry as they help prevent coercion, ensure fair treatment, and safeguard the rights of individuals receiving psychiatric care, including those undergoing legal proceedings.

4. *Advance Directives and Nominated Representatives*

   The Act grants individuals the right to draft **Advance Directives**, allowing them to outline their preferred mental health treatments in case they become incapacitated. Additionally, they can appoint **a Nominated Representative (NR)** to make decisions on their behalf. These provisions have significant implications in forensic psychiatry, particularly in cases where patients' mental competence is questioned in legal disputes. *Prohibition of Inhumane Treatment under Sec 20 of the Act is inclined towards the Conventional rights provided for the disabled. To uphold the dignity of individuals with mental health conditions, the Act strictly prohibits any form of degrading treatment. This provision extends to prison environments, ensuring that forensic psychiatric patients and incarcerated individuals receive humane and ethical care within correctional facilities.*

The rights granted under this part can be summarized as

1. Right to Live with Dignity

   Every individual diagnosed with a mental illness has the fundamental right to live with dignity and be treated with respect in all aspects of life.

   Protection from Inhumane Treatment-Persons receiving mental healthcare are entitled to protection against cruel, degrading, or inhuman treatment while under the care of a mental health facility. They are granted specific rights, including:

   Safe and Hygienic Living Conditions provides the right to reside in an environment that ensures safety, cleanliness, and proper sanitation.

ISSN: 2582-6433

Access to Leisure, Recreation, and Education guarantees the right to engage in recreational and educational activities, as well as the freedom to practice religion.

Dignified Clothing and Protection from Exposure signifies the right to wear appropriate clothing that ensures personal dignity and prevents any form of embarrassment.

Freedom from Forced Labor prohibits individual with a mental illness should be compelled to work in a mental health facility. If they choose to work, they must receive fair compensation for their labor.

Preparation for Community Reintegration facilitates adequate support to assist individuals in transitioning back into society and leading an independent life.

Access to Wholesome Food and Personal Hygiene assures fundamental human rights in form of proper nutrition, sanitation, and access to hygiene products must be ensured, particularly addressing the specific needs of women, including access to menstrual hygiene products.

Freedom from Forced Tonsuring (Head Shaving) provides right to dignity and prohibit the Individuals compelled head shave as a condition of their stay in a mental health facility and Choice of Personal Clothing imparts the patients right to wear their own clothes rather than being forced to wear institutional uniforms.

The Legislation under Section 21 guarantees Individuals with mental health conditions are entitled to the same level of healthcare as those with physical illnesses, ensuring fairness and non-discrimination in medical services.

Non-Discrimination in Healthcare Services-No individual with a mental illness shall face discrimination in accessing healthcare based on factors such as gender, sex, sexual orientation, religion, caste, social or political beliefs, class, or disability.

Equal Access to Emergency and Ambulance Services -Emergency mental healthcare services must be provided with the same quality and availability as emergency care for physical illnesses.

Individuals suffering from mental illness have the right to use ambulance services on the same terms and standards as those provided for physical health emergencies.

ISSN: 2582-6433

Parity in Living Conditions within Healthcare Facilities-Patients in mental health establishments must be provided with living conditions that match those available to individuals receiving treatment for physical illnesses.

Equal Access to All Health Services-All medical services offered to individuals with physical illnesses must be equally available to those with mental health conditions, ensuring fair and comprehensive healthcare access.

Rights of Mothers Receiving Treatment -A woman undergoing mental healthcare treatment or rehabilitation has the right to stay with her child if the child is under three years of age. Separation should only occur in exceptional circumstances where it is deemed necessary for the well-being of the child or mother.[6]

CONCLUSION

Indian Lunacy Act, 1912, played a significant role in shaping India's approach to mental health. Although its provisions were restrictive and often **stigmatizing**, it laid the foundation for future mental health policies. The shift from a **custodial to a rights-based approach** in mental healthcare has since been emphasized through newer legislation, promoting **inclusivity, dignity, and patient-centric care.**

One of the key criticisms of the **Mental Health Act, 1987**, was its failure to address the **practical challenges** faced by psychiatrists in providing patient care. In India, families play a **crucial role in caregiving**, taking on responsibilities that, in many developed countries, are typically managed by **social services**. Despite the strong presence of family support, the process of **seeking and accessing treatment** under the Act was highly **complex, bureaucratic, and burdensome**.

Rather than facilitating easy access to mental healthcare, the law made the process **more restrictive and punitive**. This not only created obstacles for patients but also made it difficult for mental health professionals to provide timely and effective treatment. Additionally, the Act contributed to **social stigma** by reinforcing a **custodial approach**, which further isolated both individuals with mental illnesses and the professionals working to support them. Instead of **prioritizing rehabilitation and community-based care**, the legal framework placed undue

[6] Mental Health Care Act 2017

ISSN: 2582-6433

emphasis on institutionalization, making mental healthcare **less accessible and more stigmatizing**.

The Mental Health Care Act, 2017 represents a significant step towards integrating mental health care with human rights in India. Its impact on forensic psychiatry is profound, influencing legal proceedings, prison mental health services, and policies surrounding criminal responsibility. The legislation empowers the patients and adheres to international norms.

References and Bibliography

1. Mental Healthcare Act, 2017
2. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006.
3. Indian Constitution, Article 21 – Right to Life.
4. World Health Organization (WHO) – Mental Health Policies and Rights.
5. Reports by the National Human Rights Commission (NHRC) on Mental Health in India.
6. Indian Lunacy Act 1912
7. Mental Health Care Act 1987