Indian legal system and mental health

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ABSTRACT

Although there was a rich tradition of legal system in Ancient India, the present judicial system of the country derives largely from the British system and is based on English Common Law, a system of law based on recorded judicial precedents. Earlier legislations in respect of mental health were primarily concerned with custodial aspects of persons with mental illness and protection of the society. Indian laws are also concerned with determination of competency, diminished responsibility and/or welfare of the society. United Nations Convention for Rights of Persons with Disabilities (UNCRPD) was adopted in 2006, which marks a paradigm shift in respect of disabilities (including disability due to mental illness) from a social welfare concern to a human right issue. The new paradigm is based on presumption of legal capacity, equality and dignity. Following ratification of the convention 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 and Persons with Disability Act – 1995 are under process of revision and draft bills have been prepared. Human right activists groups are pressing for 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.

Key words: Indian legal system, mental health, mental health Act, persons with disability Act

INTRODUCTION

Indian Legal Systems refers to the system of law operative in India. In the ancient days, there was a distinct tradition of law, which had a historically independent school of legal theory and practice. Law as a matter of religious prescriptions and philosophical discourse has an illustrious history in India.[1] The Arthashastra dating from 400 BC and the Manusmriti from 100 AD were influential treatises in India, texts that were considered authoritative legal guidance.[2] Manu’s central philosophy was tolerance and pluralism and was cited across Southeast Asia.[3] During the Islamic rule, Sharia law came to India, but that was applicable mainly to the Muslim population. When India became part of the British Empire, there was a break in the tradition, and Hindu and Islamic laws were supplanted by the common law. As a result, the present judicial system of the country derives largely from the British system and has little correlation to the institutions of the pre-British era.[2]

Much of the contemporary Indian Laws are largely based on English Common Law, a system of law based on recorded judicial precedents and shows substantial European and American influence and many of the legislations introduced by the British are still operative. Therefore, the roots of most of the legislations in respect of persons with mental disorders (PMI) can be traced to the British periods.

There is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the law.[3] As Rappeport has noted, for the psychiatrists the court is “another house … with its different motives, goals and rules of conduct.”[4] While the psychiatrist is concerned primarily with the diagnosis of mental disorders and the welfare...
of the patient, the court is often mainly concerned with determination of competency, dangerousness, diminished responsibility and/or the welfare of society. Therefore, in India also, most of the earlier legislations in respect of PMI were concerned with these aspects. However, legislations drafted after eighties tend to give some stress on the rights of PMI also.

**The constitution of India**
The constitution of India provides under Article 21 that no person shall be deprived of his life or personal liberty except according to procedures established by law. It has been held that right to life and personal liberty under this article includes "facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings."[6]

According to the Representation of People Act, 1950 (sec 16), a person is disqualified for registration in an electoral roll if he is of unsound mind and stand so declared by a competent court. Therefore, the person so disqualified cannot hold public offices under the Constitution like President, Vice-President, Ministers or Member of Parliament and State Legislatures.

**Indian laws regulating treatment of persons with mental disorders**
Relationship between psychiatry and law most often comes into play at the time of treatment of PMI. Treatment of PMI often involves curtailment of personal liberty of psychiatric patients. Most of the countries in the World have laws regulating treatment of psychiatric patients. Though there are elaborate descriptions of various forms of mental disorders in various treatises in Ayurveda,[7] the care of mentally ill in the asylums in India is a British innovation.[8] After the takeover of the administration of India by the British crown in 1858, a large number of laws were enacted in quick succession for controlling the care and treatment of mentally ill persons in British India.[9] These laws were
- The Lunacy (Supreme Courts) Act, 1858
- The Lunacy (District Courts) Act, 1858
- The Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889)
- The Military Lunatic Acts, 1877.

These Acts gave guidelines for establishment of mental asylums and procedure to admit patients. The British scene existing in the middle of the 19th century served as the background of lunacy legislations in that period in India. The various Acts of 1858 naturally reflected the legalistic frame for the management of the mentally ill.[10] During the first decade of the 20th century, public awareness about the pitiable conditions of mental hospitals accentuated as a part of the growing political awareness and nationalistic views spearheaded by the Indian intelligentsia.[9] As a result, the Indian Lunacy Act, 1912 was enacted. The 1912 Act guided the destiny of Psychiatry in India.[10] Lunatic asylums (named mental hospitals in 1922) were now regulated and supervised by a central authority.

Procedure of admission and certification in this respect was clearly defined. The provision of voluntary admission was introduced. Still, the main stress was on preventing the society from dangerousness of mentally ills and taking care that no sane person is admitted in these asylums. Psychiatrists were appointed as full time officers in these hospitals. Provisions of judicial inquisitions for mentally ill persons were also given in the Act. After the Second World War, Universal Declaration of Human Rights was adopted by the UN General Assembly. Indian Psychiatric Society submitted a draft Mental Health Bill in 1950 to replace the outmoded ILA-1912. Mental Health Act (MHA-87) was finally enacted in 1987 after a long and protracted course. Main features of the Act are as follows.
- Definition of mental illness in a progressive way and introducing modern concept of their treatment with stress on care and treatment rather than on custody.
- Establishment of Central/State Mental Health Authority to regulate and supervise the psychiatric hospitals/nursing homes and to advise Central/State Governments on Mental Health matters.
- Admission in special circumstances in psychiatric hospital/nursing homes. Provisions of voluntary admission and admission on the reception orders were retained.
- Role of Police and Magistrate to deal with cases of wandering PMI and PMI cruelly treated.
- Protection of human rights of PMI.
- Guardianship and Management of properties of PMI.
- Provisions of penalties in case of breach of provisions of the Act.

Though having many positive features, the MHA-1987 has been the target of criticism right since its inception. It is alleged to be concerned mainly with the legal procedure of licensing, regulating admissions and guardianship matters of PMI. Human right issues and mental health care delivery are not properly addressed in this Act.[11] Because of a large number of very complicated procedures, defects and absurdities in the Act and also in the Rules made under the Act, it can never be implemented properly.[12] Human right activists have questioned the constitutional validity of the MHA, 1987 because it involves curtailment of personal liberty without the provision of proper review by any judicial body.[13] MHA-87 is currently under process of amendment to make it United Nations Convention for Rights of Persons With Disabilities (UNCRPD) compliant.

**Persons with disability (equal opportunities, protection of rights, full participation) Act, 1995 (PDA-95)**
PDA-95 was enacted in 1995 to remove discriminations in the sharing of developmental benefits vis-à-vis non-disabled
persons and to prevent abuse and exploitations of persons with disability (PWD). It provided for barrier-free environment and spelled out responsibilities for the government to plan strategies for comprehensive development programmes, to special provision for integration of PWD into the social mainstream. Under PDA-95, mental retardation and mental illness are categorized as conditions of disabilities. Thus, the PMI are entitled to benefits available to PWD as provided under the Act. There is a provision of 3% reservation in government jobs, but it is not available to the PMI. This Act is also currently under revision in light of the UNCRPD-2006.

National trust Act-1999
This Act was enacted in the year 1999 for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities to enable and empower them to live as independently and as close to the community to which they belong and to facilitate the realization of equal opportunities and protection of rights. The Act provides for many welfare measures. This Act is also under revision to make it UNCRPD-2006 compliant and make it more comprehensive. Management of properties of PMI is supposed to be covered under the amended Act.

United Nations convention for rights of persons with disabilities-2006 and Indian laws
UNCRPD was adopted in December, 2006. It was ratified by the Parliament of India in May, 2008. Countries that have signed and ratified the UNCRPD are required to bring their laws and policies in harmony with it. Therefore, all the disabilities laws in India are currently under process of revision. The convention marks a paradigm shift in respect of disabilities from a social welfare concern to a human right issue. The new paradigm is based on presumption of legal capacity, equality and dignity. According to article 2 of the convention, PWD will enjoy legal capacity on an equal basis for all aspects of life. Article 3 calls the state to take appropriate measures to provide access to support by PWD to exercise the legal capacity. Article 4 calls for safeguards to prevent abuses of the system of support required by PWD. There is no explicit prohibition of forced interventions in the UNCRPD, but neither does the Convention permit compulsory mental health care.[13,14]

The process of amendment in MHA-87 was set in motion and a draft Mental Health Care Bill – 2011 (MHCB) has been prepared. MHCB provides for replacement of licensing of mental health establishments to registration and establishment of Mental Health Review Commission with its state panels. Admission processes have been drastically changed. The most salient feature of MHCB is that it enshrines duties on the government to establish and provide mental health services to all citizens and take appropriate measures in this respect. There are elaborate provisions in respect of human rights of the PMI and it has a separate chapter for the purpose.

PDA-95 is also under revision and a draft “The Rights of Persons with Disabilities Bill, 2011 (RPWD Bill) has been submitted to the Ministry of Social Justice and Empowerment (MSJE). Sec 18 of the proposed bill states that PWD will enjoy legal capacity on equal basis with others in all aspects of life and any law, rule, bye-law, custom or practice prescribing disqualification on ground of disability will become unenforceable. PWD have the right to access support necessary to exercise the legal capacity, but they are free to alter, modify or dismantle any support system. Concept of plenary guardianship has been abolished and replaced with limited guardianship. PMI has been provided 1% quota out of the proposed 7% reservation for PWD in government jobs.

Provisions of MHC Bill and RPWD Bill are in conflict of each other. The drafting team of the RPWD was dominated by human right activists. A section of human right activist are in favor of complete legal capacity to all PMI and want a complete ban on involuntary institutionalization and even dismantling of all psychiatric hospitals. They feel that in the MHCB, there is no assumption of universal capacity, and no plan to provide support to people in making informed choices regarding their own affairs.[15] They have even called for outright repeal of MHA-87 and matter to be covered by a revised and comprehensive RPWD Bill under the purview of MSJE.

Indian contract laws
According to Indian Contract Act, 1872, any person of sound mind can make a contract. Section 12 of the Act stipulates that a person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. It means a PMI who is currently free of the psychotic symptoms can make a contract, whereas a person who is currently intoxicated or delirious cannot make a contract.

Marriage and divorce
Under Hindu Marriage Act, 1955, conditions in respect of mental disorders, which must be fulfilled before the marriage is solemnized under the Act, are as follows.

1. Neither party is incapable of giving a valid consent as a consequence of unsoundness of mind.
2. Even if capable of giving consent, must not suffer from mental disorders of such a kind or to such an extent as to be unfit for marriage and the procreation of children.
3. Must not suffer from recurrent attacks of insanity.

The expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic
disorder or any other disorder or disability of mind and includes schizophrenia. The expression “psychopathic disorder” means a persistent disorder or disability of the mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.

Marriages in contravention to the provision in respect of mental disorders come under voidable category. Voidable marriages (sec 12) are those which may be annulled by a decree of nullity on the given grounds but may continue to be legal till the time it is annulled by a competent court.

According to the section 13 of the Act, divorce or judicial separation can be obtained if the person has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

The expression “incurably” of unsound mind cannot be so widely interpreted as to cover feeble minded persons or persons of dull intellect who understand the nature and consequences of the act and are therefore able to control them and their affairs, and their reaction in the normal way (A.I.R. 1969 Guj-48 and 78 CLT [1994] 561). When there was sufficient evidence for the court to conclude that the slight mental disorder of the wife was not of such a kind and to such an extent that the husband could not reasonably be expected to live with her, divorce could not be granted (A.I.R., 1982 CAL 138). Each case of schizophrenia has to be considered on its own merits.[16]

Under Special Marriage Act, 1954, the grounds for marriage, divorce and judicial separation are practically the same as those in the Hindu Marriage Act, 1955. The Special Marriage Act, 1954 is meant for any person in India and Indian nationals abroad, irrespective of the faith that the individual may profess. A marriage solemnized in any other form can be registered under this Act.

Under the prevalent Muslim Law, marriage is a type of contract. Therefore, a Muslim who is of sound mind and has attained puberty is qualified to marry. However, if the guardian of a person of unsound mind considers such a marriage to be in his interest and in the interest of society and is willing to take up all the monetary obligations of the marriage, then such a marriage can be performed. Talaq (divorce) under Muslim Law has to be for a reasonable cause and must be preceded by attempts for reconciliation by two arbiters. According to Muslim Marriage Act, 1939, a woman married under Muslim Law is entitled to obtain a decree of divorce if her husband has been insane for a period of 2 years.

Under Christian Law, marriage is voidable, if either party was a lunatic or idiot. Christians can obtain divorce under Indian Divorce Act. 1869 (as amended in 2001) on grounds of unsoundness of mind provided: (i) it must be incurable (ii) it must be present for at least 2 years immediately preceding the petition. Divorce is not admissible on ground of mental illness under the Parsi Marriage and Divorce Act, 1936. However, divorce can be obtained if the defendant at the time of marriage was of unsound mind, provided the plaintiff was ignorant of the fact and the defendant has been of unsound mind for a period of 2 years upwards and immediately preceding the application.

TESTAMENTARY CAPACITY

Testamentary capacity is the legal status of being capable of executing a Will, a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. Indian Succession Act, 1925 (sec 59), stipulates among other things:

• Any person of sound mind can make a Will.
• Persons, who are ordinarily insane, may make a Will during an interval while they are of sound mind.
• No person can make a Will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, so that he does not know what he is doing.

Testamentary capacity requires a person’s full sense and mental sanity to have confirmed and signed the Will after understanding what his assets comprised and what he is doing by making a Will. He understands in full mental capacity to whom he is naming the assets to and how are they related to him and what repercussions it may have later.[17]

CRIMINAL LIABILITY

Indian Penal Code, 1860 states that “Nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” McNaghten Rules define the criminal responsibility of mentally ill in our courts and it has been incorporated in the sec 84.[18] It has been held by the Supreme Court that the law presumes every person of age of discretion to be sane and defense on ground of insanity needs to be proved. If defense is established on ground of insanity, such persons are committed to the Psychiatric Hospitals as per sec 471 (i) of the Cr.P.C., 1973. There have been instances of lesser sentence on account of mental illness. Where the feeling of life unbearable on account of domestic quarrels, a woman (accused) jumped into a well with her children, it was held that the only sentence that could be passed was the lesser sentence of imprisonment for life (AIR 1953 MB 61).
Sec 89, IPC provides protection for any action done in good faith for the benefit of a person of unsound mind by or by consent of the guardian or other person having lawful charge of that person. Sec 305, Indian Penal Code (IPC) provides for punishment of death or imprisonment of life for abetment of suicide by an insane person.

CONCLUSION

Important legal provisions in respect of the PMI in the Indian legal system have been discussed. As most of the laws were either framed during the colonial period or their origin can be traced to the period, British influence is clearly visible. Laws in respect of the PMI are presently on crossroad as most of them are under revision to bring them harmony with the UNCRPD-2006. Human right activists are pressing for legal capacity to PMI in absolute terms, whereas psychiatrists are in favor of retaining provision for involuntary hospitalization in special circumstances. It must be emphasized that the ultimate aim of any legal provision should be the welfare of the PMI and the society at large.

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