Judicial interventions and NHRC initiatives in mental health care

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Introduction

Mental illness represents a range of diverse conditions where serious infringement of human rights can occur from deprivation of a person's dignity and right to life, to complete denial of the right to lead a fulfilling life. If the rights of the mentally ill are to be assured and protected, several players from diverse areas of society need to play an active role. In this chapter, we examine the specific role of the judiciary in addressing some of the critical mental health care needs of the country and highlight the landmark role of the National Human Rights Commission (NHRC) in addressing and being a part of mental health change in the country.

Mental health as an integral part of health

The Right to Health is a fundamental right of every citizen in the country. Courts in India have repeatedly extended that there lies a positive duty on the part of the government to promote health in the society. Mental health is an integral and inseparable part of health. Hence the ancient Roman proverb, 'mens sana in corpore sano,' meaning, 'a **healthy mind in a healthy body**'. This philosophy was the bedrock of the Bhore Committee report of 1946 (1) and the basis of formulating the National Mental Health Programme, way back in 1982 (2).

Judicial involvement in mental health: three eventful decades

Unfortunately, mental health took a backseat and was largely ignored. The first well known involvement of the judiciary with mental health issues was with the jailing of the non-criminal mentally ill, leading to mental health reform. There have been numerous Supreme Court and State High Court decisions that have exposed illegal detention and institutionalisation of women, unlawful use of reception orders to detain a family member or

spouse and housing of the mentally ill. The book *Legal Order and Mental Disorder* by Amita Dhanda (3) provides a detailed description of many of these issues. In this chapter, we confine the discussion to issues related to mental health service delivery in the country.

The Mentally ill in prisons

In Bihar, a number of undertrials had been kept in jail for long periods without trial. The Supreme Court, in the Hussainara Khatoon vs State of Bihar (4) held that speedy trial was an essential and integral part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. Soon after, in a public interest litigation (PIL), that of Veena Sethi vs State of Bihar case in 1982 (5), the court was informed through a letter that some prisoners, who had been 'insane' at the time of trial but had subsequently been declared 'sane', had not been released due to inaction of the state authorities, and had remained in jail for 20 to 30 years. The court directed them to be released forthwith, considering the requirements of protection of right to life and liberty of the citizen against the lawlessness of the state.

"Unlocking the padlock"

The often cited Sheela Barse vs Union of India and Others (6), was filed in 1989. This case was with regard to the illegal and unconstitutional practice of locking up non-criminall mentally ill persons in jails of West Bengal. Following the PIL, there was a series of affidavits and counter affidavits. The court appointed a commission in 1992 to evaluate the situation. The commissioners Srinivasa Murthy and Amita Dhanda, in their report highlighted the problems in providing effective mental health services to the mentally ill in jails: lack of human resource, lack of supervision of care, absence of a mental health team, and absence of adequate range of treatment services. It suggested various remedial measures, including setting up managing bodies for all the mental hospitals in West Bengal, formulating schemes to improve conditions of care, establishment of state level rehabilitation centres and association with voluntary agencies. It recommended the moving out of the mentally ill in prisons to the nearest place of treatment and care.

In its judgement, the Supreme Court held that such a practice (of keeping the non-criminal mentally ill in prisons) contravened Articles 21 and 32 and ordered that such persons be examined by a mental health

professional/psychiatrist and on his advice sent to the nearest place of treatment and care (7). It directed the state government to take immediate action and issue instructions for implementation. The state government was also asked to take immediate steps for upgradation of mental hospitals, set up psychiatric services in all teaching and district hospitals and integrated mental health care with primary health care. The Calcutta High Court was requested to appoint a committee and submit a report with detailed recommendations.

It is worth mentioning that there are now a large number of NGOs working in the area of mental health in West Bengal. One such organisation, 'Paripurnatha' was founded to rehabilitate mentally ill women in Kolkata prisons (8).

Denouncing inhumane treatment of the mentally ill

In the Chandan Kumar vs State of West Bengal (9), the Supreme Court heard of the inhuman conditions in which mentally ill persons were held in mental hospital at the Mankundu Hospital in the Hooghli district. The Court denounced this practice and ordered the cessation of the practice of tying up the patients who were unruly or not physically controllable with iron chains and ordered medical treatment for these patients. Despite this directive, the tragedy of Erwady occurred.

Erwady and its consequences

On 6 August 2001, in Erwady in the Ramanathapuram district of Tamil Nadu, 26 mentally ill patients kept chained in a thatched shed in a dargah were charred to death in a fire. Following this shocking incident, the Supreme Court took suo moto notice of the incident in the form of a PIL (CWP No 334 of 2001). Notices were issued to the Union of India and to the state of Tamil Nadu. Subsequently, the court directed the Union of India to "conduct a survey on an all-India basis with a view to identify registered and unregistered '*asylums*' (italics added by authors) as also about the state of facilities available in such '*asylums*' for treating mentally challenged" (10).

Meanwhile, more PILs followed Erwadi. The Delhi-based NGO 'Saarthak' filed a PIL in October 2001 (11) calling for a ban on the practice of physical restraint and administering 'unmodified' or 'direct' ECT, i.e. ECT without anaesthesia. ACMI, an advocacy organisation for families caring for

family members with mental illness filed another PIL (12) before the court emphasising the importance of family members and their underrepresentation in decisions regarding the care of the mentally ill. This PIL highlighted the need for a short-term emergency plan for mental health care in view of the gross mental health manpower deficits, need for a psychiatrist to man district level services, short-term training in psychiatry for general practitioners, integrating the family and community model into institutional care, due representation to families in processes of revising mental health legislation, due weightage to families in decisions regarding treatment, safeguarding the rights of the mentally ill, addressing issues of guardianship, inclusion of mental illness under the PWD Act and RCI Act and formulation of guidelines for research involving the mentally ill.

The order of the Supreme Court in the Erwady case included a mental health needs assessment in all states. It ordered that licenses be issued to private homes looking after the mentally ill, mandated a district monitoring committee for periodic inspection of the facilities, directed that destitute recovered mentally ill be admitted in government or non-government facilities. It strictly advocated that all the recommendations of the NHRC and SHRC be 'implemented scrupulously'. It directed increased budget outlay for the DMHP in Tamil Nadu and that psychiatrics be posted in all the districts. Further, both the Central and State Governments were directed to undertake a comprehensive awareness campaign with a special rural focus to educate people as to provisions of law relating to mental health, rights of mentally challenged persons, the fact that chaining of mentally challenged persons is illegal and that mental patients should be sent to doctors and not to religious places such as temples or dargahs.

Among other things, the Supreme Court also ordered that each state government establish at least one mental health hospital. It is retrogressive to continue to think of newer, centralised facilities, when the country has a huge responsibility to develop its primary and secondary mental health care services. Further, bringing NGOs running rehabilitation centres under the MHA can increase bureaucratic hurdles and impede the smooth functioning of these organisations. This issue is discussed further in the chapter on rehabilitation.

In response to the court's directive to assess the situation of mental health services in the country, the Ministry carried out a survey of the government-run psychiatric hospitals, as well as other mental health services, or the lack of such services, which helped to provide inputs to formulating a re-

strategised national mental health programme in the 10th Five Year Plan (13). Further expansion of the DMHP occurred in the 11th plan.

Financial obligation of a welfare state

In a leading case, that of State of Gujarat and Another vs. Kanaiyalal Manilal and others (14), the Court referred to the provisions of cost maintenance to be borne by the Government in case of mentally ill person under Section 78 of the Mental Health Act. The Court opined that in a welfare state like India, it is not merely a matter of grace, but a *statutory obligation* of the State Government to bear the cost of mentally ill persons.

Specific Supreme Court interventions in government institutions

On the basis of two public interest litigations (B.R. Kapoor and Anr. vs. Union of India (UOI) and Others (15) and PUCL vs Union of India (16), both relating to functioning of the hospital for mental diseases, Shahdara, Delhi, the Supreme Court instructed the New Delhi administration to take immediate steps to set up a mental hospital-cum-medical college with sufficient autonomy to bring about quality changes in patient care. This led to the formation of the Institute of Human Behaviour and Allied Sciences, IHBAS.

The LGB Institute of Mental Health was taken over by the North-Eastern Council on 17th February, 1999, in pursuance of the order of the Gauhati High Court (17). This Institute was under the Government of Assam and was administered by a Board of Administrators, appointed by the High Court. The Institute was then registered as LGB Institute of Mental Health, Tezpur, on 11th March, 1999. It is presently an autonomous institution and designated as a regional institute.

Several of the High Courts of different states have, at various times, also expressed serious concern about the conditions in the mental hospitals in their states.

The other interventions of the Supreme Court which also involved the National Human Rights Commission are discussed later.

Legal aid and relevance to mental illness

Article 39A of the Constitution of India provides that State shall secure

that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society (18).

In 1987, the Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994.

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons, and includes mentally ill persons, those coming under section 2 of the Juvenile Justice Act 1986 or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act 1987 (18).

The National Human Rights Commission

The National Human Rights Commission was constituted on October 12, 1993, by virtue of the Protection of Human Rights Act 1993.

The NHRC is mandated under Section 12 of the Protection of Human Rights Act, 1993 to visit Government run mental health institutions to 'study the living conditions of inmates and make recommendations thereon.' Besides discharging this specific responsibility, the Commission has been, right from its inception, giving special attention to the human rights of mentally ill persons because of their vulnerability and need for special protection. The Commission's role is complementary to that of the judiciary. The Supreme Court has referred a number of important matters to the Commission for monitoring while the Commission has also taken specific cases of violation of human rights to the court.

Monitoring of the hospitals at Ranchi, Gwalior and Agra

The management of the mental hospitals at Ranchi, Gwalior and Agra

had come under the scrutiny of the Supreme Court through writ petitions No 339/86, 901/93, 448/94 and 80/94. Vide its order of 8 September 1994, the apex court, had, after considering the report submitted by the Union Health Secretary, ordered a number of measures for improving the overall functioning of these institutions by raising the standard of infrastructural facilities, professional services, administration and management, care and treatment of the patients and welfare of the staff. The court had directed that these institutions must be run as autonomous bodies, managed by a Management Committee, headed by the Divisional Commissioner. The NHRC was requested to monitor these hospitals (19).

The sorry state of affairs at the Ranchi Manasik Arogyashala was highlighted in the Rakesh Chandra Narayan vs the State of Bihar and others (Writ Petition No 339 of 1986) (20). This resulted in a number of positive directions from the apex court and brought about a few qualitative changes and improvements in the management of the RMA, including the change of name to RINPAS and an autonomous status for the institute, a directive to the NHRC to monitor, supervise and co-ordinate the functioning of the institute from November 1997.

Upon being entrusted this work, the Commission examined the scope and objectives of the remit of the Supreme Court, as also the manner in which the Commission should set about fulfilling the responsibilities assigned to it. It constituted a Central Advisory Group (CAG) for the purpose of advising the Commission on the nature of the duties and responsibilities envisaged by the order of the Supreme Court and the various steps to be taken to achieve these objectives.

Specific NHRC initiatives in mental health

The NHRC undertook several initiatives since 1997 which are summarised in the accompanying box. This has involved regular monitoring of hospitals under the Supreme Court Directive, dialogue with central and state health secretaries and administrators concerned with the hospitals, visits to these hospitals and monitoring in detail the implementation of the recommendations, dialogue with secretaries of ministries involved with rehabilitation, extending the mandate of supervision to other hospitals in the country (hospitals at Agartala, Indore, Tezpur and Amritsar).

The NHRC quality assurance in mental health report

The Supreme Court had ruled that maintenance and improvement of public health is one of the obligations that flow from Article 21 of the Constitution. Threat to this precious right warrants appropriate remedial measures. This prompted NHRC to take up the issue of quality assurance of mental health care in the country. Justice Malimath, member of NHRC undertook this project and assigned the National Institute of Mental Health and Neuro Sciences (NIMHANS) Bangalore, to execute the work. The project report (21) is discussed in detail in chapter 5. Shri L.K. Advani, then Union Home Minister, formally released the report on 11 June 1999 and it was disseminated to all mental hospitals and state health secretaries for follow-up action.

Interventions of the NHRC in assuring quality assurance in mental hospitals in India

A summary

November 1997: NHRC entrusted with the supervision of the three major mental hospitals in Ranchi, Agra and Gwalior by the Supreme Court of India

Central Advisory Group of the NHRC constituted, headed by the Chairperson

1997-1999: The NHRC commissioned NIMHANS to carry out the project on Quality Assurance on Mental Health in India. The report was disseminated by NHRC to all the mental hospitals and the state health secretaries for follow-up action

July 1999 – A Sub-committee of CAG was constituted including NHRC member as Chairman, Secretary General NHRC, Secretaries of Ministry of Social Justice and Empowerment, Department of Women and Child Welfare, Department of Human Resource Development as members to advise on steps to rehabilitate persons with mental illness.

May 2001: NHRC meeting with Directors and Chairpersons of the Management Committees of the hospitals, Health Secretary, Government of India and the 3 state Health Secretaries to review progress.

2000-2005: NHRC visits to mental hospitals at Ranchi, Agra and Gwalior.

NHRC also undertook monitoring visits to hospitals at Agartala (2004), Indore (2004), Amritsar (2005), Tezpur (2005). The Commission also visited hospitals in other states.

2006-2008: NHRC rapporteurs visited many of the mental hospitals in the country.

April 2008: NHRC, in collaboration with NLSIU and NIMHANS, Bangalore, organised a national conference on mental health and human rights.

May 2008: NHRC conducted a review meeting of state health secretaries, state mental health authorities, health secretaries and their representatives. Many directors/medical superintendents of mental hospitals attended this meeting.

In a review meeting in 2001 (22), NHRC met with the Directors and Chairpersons of the three hospitals at Ranchi, Agra and Gwalior, along with the concerned health secretaries. Discussion revealed the following improvements in the working of these institutions and in their management and administration:

- The admission and discharge of patients were streamlined.
- The number of involuntary admissions had registered a steep decline.
- Diagnostic and therapeutic facilities had been upgraded and their impact was visible in the rate and recovery of patients.
- All three institutions were engaged in expanding mental health services at the community level.
- Some of their doctors were making significant contributions to research and training.

However, NHRC noted that a great deal remained to be done in the field of occupational therapy. Also, for want of required infrastructure, all the institutions had not started regular training courses, though re-orientation programmes had been conducted and students from medical colleges were being trained for short duration. The Commission noted that efforts were underway to start professional and para-professional training activities in Ranchi and Agra in the field of psychiatry, clinical psychology, psychiatric social work and psychiatric nursing. The Commission also noted

the slow evolution of the autonomous nature of these institutions, particularly at Agra and Gwalior, although this issue had been agreed in principle and formalised by the issue of several notifications. It was also particularly concerned about the rehabilitation of cured patients who were destitutes and had been abandoned by the families. Specific changes in each hospital visited are discussed under each hospital.

As per the memorandum of action taken on the annual report of the Commission for 2001-02, it was noted that the government had sent the views of the Commission to the States/ Union Territories. While few states reported follow-up action, regrettably, there had been no enthusiastic response from other states 'despite persuading them from time to time'.

Because of the poor response, the Commission was in the process of launching its own monitoring programme through the State Human Rights Commissions (SHRCs) and its special rapporteurs. It was then found that the Ministry of Health and Family Welfare had already constituted three appraisal teams under their scheme of upgradation/modernisation of mental health institutes within the country.

The NHRC CAG also spelt out an action plan to undertake counseling and rehabilitation of cured patients at these hospitals with the assistance from Action Aid. This included sensitisation workshops for the staff of the hospital, rebuilding daily living, social and community skills of patients and providing a healing, lively and recreational environment in the hospital.

The specific reports of the NHRC rapporteurs visits to the different hospitals are discussed in detail and referenced in Chapter 6.

NHRC Interventions against instances of abuse

Just as the Supreme Court took serious exception to the inhuman practice of chaining patients, so did NHRC, well before the Erwady tragedy. On a petition received in August 1998, alleging that persons with mental illness were being kept in chains, and confined to a space where it was difficult for them to move about, in the Sultan Alayudeen Dargah at Goripalayam near Madurai, the Commission had sought a report from the District Collector of the area (23). The Collector had confirmed that about 92 mentally ill persons were staying in the Dargah, having been brought by their relatives who had faith in the curative powers of the Dargah. The Collector, however, denied any mistreatment of the patients. The Commission had the case investigated in February 1999 by the then

Director General (Investigation) of the Commission. According to the DG (I)'s report, about 500 patients/devotees were staying inside the campus of the Dargah. Three-fourths of them were Hindus and the others were Muslims. About 100 patients were found to be chain. The patients were kept in thatched sheds and in verandahs. The report highlighted that similar places/Dargahs also existed in other areas of Tamil Nadu where mentally ill persons were chained and kept in the hope of a faith cure.

On considering the above reports, the Commission directed the State Government to get the entire matter examined by a body of experts. The report of the group of experts, however, stated that the complaint was exaggerated and added that there was no evidence of torture or compulsion by the Dargah authorities. The inmates had expressed faith that their mental illness would be cured in the Dargah even though some of them had been kept in chains.

The Commission then decided that it was essential to have the matter examined in greater detail by a Committee headed by Dr K.S.Mani of Bangalore. The Committee recommended that:

- Patients cannot and should not be treated as cattle. Responsibility for admission and discharge must be in the hands of a qualified psychiatrist and cannot be left to the Dargah.
- There should be strict supervision of drug intake by the patients.
- Institutionalisation should be only for brief periods and facilities should be ensured for rehabilitation programmes, with emphasis on adequate social inputs from family members.
- Family members should not be allowed to leave patients in the Dargah and walk away, instead there should be health education of the family and explanation about the nature of illness.
- The living conditions in the Dargahs need vast improvement, without which they should not be allowed to continue.
- There should be facilities for early diagnosis and regular treatment of mental illnesses in these areas of the State.

On 3rd January 2001, the Commission considered and accepted the report of the Committee and directed the Government of Tamil Nadu to implement the recommendations forthwith and send its compliance report at the

earliest. The NHRC was awaiting the Tamil Nadu Government's compliance.

The Erwadi incident occurred in August of the same year, in the very same State.

NHRC interventions for mentally ill undertrials

The landmark interventions by NHRC in this connection is in the case of 72 year old CS, who had been detained for nearly 20 years as an undertrial, as his physical and mental condition did not permit him to defend himself at trial (24). His relatives had abandoned him. The NHRC moved a Criminal Writ Petition (Cr. W.P. No. 1278/04) to cancel the criminal proceedings against him and suggested a set of guidelines to deal with undertrials in similar situations. The Delhi High Court by its order dated 4th March 2005 quashed the proceedings and asked the local government to evolve an appropriate scheme based on the suggested guidelines. The court in its order also incorporated the recommendations made by NHRC regarding dealing with the cases of those who are mentally ill and in jail. Some of the suggestions were:

1. Psychological or psychiatric counseling should be provided to prisoners for early detection and to prevent mental illness.
2. Central and District jails should have facilities for preliminary treatment of mental disorder. All jails should be formally affiliated to a mental hospital.
3. Services of a qualified psychiatrist in every central and district prison who should be assisted by a psychologist and a psychiatric social worker.
4. Not a single mentally ill individual who is not accused of committing a crime should be kept in or sent to prison. Such an individual should be taken for observation to the nearest psychiatric centre or Primary Health Centre.
5. If an undertrial or a convict undergoing sentence becomes mentally ill while in prison, the State must provide adequate medical support.
6. When a convict has been admitted to a hospital for psychiatric care, upon completion of the period of his prison sentence, his status in all records of the prison and hospital should be recorded

as that of a free person and he should continue to receive treatment as a free person.

7. Mentally ill undertrials should be sent to the nearest prison having the services of a psychiatrist and attached to a hospital, they should be hospitalised as necessary. Each such undertrial should be attended to by a psychiatrist who will send a periodic report to the Judge/Magistrate through the Superintendent of the prison regarding the condition of the individual and his fitness to stand trial.

8. All those in jail with mental illness and under observation of a psychiatrist should be kept in one barrack.

9. If a mentally ill person, after standing trial following recovery from the mental illness is declared guilty of the crime, he should undergo his term in the prison. Such prisoners, after recovery, should not be kept in the prison hospital but should remain in the association barracks with the normal inmates.

10. The State has a responsibility for the mental and physical health of those it imprisons.

11. To prevent people from becoming mentally ill after entering jail, each jail and detention centre should ensure that it provides

    i) a conducive environment with physical and mental activities for prisoners that reduce stress and depression;

    ii) a humane staff that is not unduly harsh;

    iii) effective grievance redressal mechanisms;

    iv) encouragement to receive visitors and maintain correspondence;

    v) overseeing bodies should have members from civil society to ensure the absence of corruption and abuse of power in jails.

Similar intervention was also carried out in Tezpur (25). The Commission has issued notices to the IG (Prisons) and Chief Secretary, Assam asking them to submit reports of five undertrial prisoners presently lodged at the LGB Regional Institute of Mental Health, Tezpur, Assam, who had been kept in the hospital for anywhere between 32 and 54 years.

The NHRC observed that similar practice of mentally ill being in prisons was prevalent in many other states, in gross violation of the provisions of the Mental Health Act 1987. The Chairperson of NHRC requested the Chief Ministers of all States in February 2000 to instruct the respective Chief Secretaries to immediately end this practice (26).

Thus, in the last one and a half decades of its existence, NHRC has been involved in several diverse issues related to the care of the mentally ill. But as one of the rapporteurs has remarked, NHRC can only 'play the role of a promoter, facilitator and catalytic agent, as also a watchdog. It cannot, however, substitute the primary role or mandate of State Governments to ensure mental health as a matter of human right to every individual'.

Conclusion

There have been several Supreme Court interventions largely in response to PILs focusing on the problems of the mentally ill in prisons and focusing on the care in psychiatric hospitals. The NHRC has been playing a pivotal role in improving the standards of mental health care in both institutional and community settings. There is a great need presently for legal literacy about mental health issues to be more widespread even among the judiciary. Responsive central and state administrations, a committed judiciary, human rights advocates and watchdogs and an informed public which demands mental health care need to work together to further enhance mental health reform.

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