Indian Journal of Psychiatry, 2002, 44 (2),95-96

EDITORIAL

THE MENTAL HEALTH LEGISLATION:AN ONGOING DEBATE

The practice of psychiatry anywhere in the world is influenced by four overlapping spheres of i). The moral, ethical, legal and professional duties of the psychiatrist to provide care to his patients ii).The right of self determination of patient to receive or reject care iii).The ethical codes and practice of professional organisation and iv).The decisions, direction of courts, regulatory authorities and legislature.

The incorporation of legal requirement into the clinical intervention assumes a higher importance for the mental health care services, by the virtue of the very nature of the psychiatric illnesses. At one end a mentally ill individual may pose danger to himself or others, and at the other end he may be so gravely disabled that he cannot take care of himself and his rights. In both the situations it is the duty of the state to see that both the patient and the society are prevented from inducing harm to each other.

While keeping the above in mind we may assume rightly that the influence of law would always remain in the practice of psychiatry howsoever modern its interventions become. At the same time we also know that the majority of psychiatric patients do not require any intervention from the law and can be managed comfortably in day to day practice without any clinical-legal conflict like in other specialities(Dutt,2001).

The mental health act (1987) which repealed the Indian lunacy act of 1912 and the lunacy act of J &K (1977), was passed by the legislature as an act of social welfare. The objectives of the act were to amend the law relating to the treatment of mentally ill persons, reflected the change in the attitude and the procedures involved in the care of mentally ill persons with the advances made in field of psychiatry.

The mental health act from time to time draws criticism from the mental health care providers due to its purely legal flavour and very little consideration for the clinical and medical aspect of the mental illness.The act at one end does not see any destination between the patients who seek the treatment voluntarily and those who are in need of involuntary treatment or hospitalisation.At the other end the act discriminates between the centres which provide the care to mentally ill. It discriminates between a Government mental hospital and private mental hospital, a private general hospital and a private psychiatric hospital and between psychiatrists and other specialists.

The mental health act was implemented in the states and union territories in April,1993. Because of the large number of complicated procedures, defects, and absurdities in the act and also in the rules made there under, the act neither could be understood by those who are concerned with it nor could be implemented properly in any state. With poor implementation, the deficiencies of the act, although evident, and discussed thoroughly by the Indian Psychiatric Society in several regional and a National seminar were not cared about much and the recommendations for improvement remained only recommendations (Trivedi,1999). It took a horrific incidence like Erawadi to awaken the judiciary. It was felt that the lack of implementation of the Mental Health Act(MHA) is the main reason for Erawadi and the strict implementation of faulty MHA is the answer. The recent directives issued by the Supreme court for implementing the MHA in its present form has raised several controversies

due to the lack of proper understanding of the act on the part of the Government and absence of the organised mental health authority in states. Problem is being faced by the mental health personnel in some states, for example in Chattisgarh where Government insisted that the practising psychiatrists running only OPD should obtain a licence, failing they faced the threat of closure. Such incidence not only highlight the lack of understanding of the MHA but also reveals the lacunas existing in the MHA in several areas.

The purpose of licensing for any form of activity is to ensure the availability of an optimum level of quality in service. Psychiatric treatment in India is offered by a whole spectrum of clinicians and institutions. These include general medical practitioners, non psychiatric specialists, qualified psychiatrists, General hospital psychiatric units both private and Government and Psychiatric hospitals & nursing homes also both private and Government. Under the MHA while a Private psychiatric hospital can be established or maintained only under a license, Government Hospitals are exempted. An ophthalmologist can establish his own surgical facility without a license and a psychiatrist requires a license to open his psychiatric housing home. The exemption granted to Government owned institutions allows the Government to establish and maintain sub standard facilities while non Government. institution would require to follow strictly the standard laid in the act. Even the most developed nations will find it difficult to provide the minimum facilities required under the state mental health rules. The quality control standard for all psychiatric facilities regardless of whether they are publicly or privately owned should be the same. The whole purpose of MHA should be primarily to protect the right of involuntary patient and to safeguard them from a wrongful commitment. Majority of the patients are voluntary and do not require hospitalisation. The license should not be made compulsory for those hospitals which do not admit patients or admit for brief periods during acute psychiatric illness. This is necessary as the mentally ill do not come for treatment readily due to stigma.

Licensing is only one of the issues which is focused today and is creating lot of turmoil among the mental health care providers. There are several other deficiencies in the MHA which need an urgent attention and rectification. The mental health act should ideally be based upon the National mental health programme and mental health policies. The same has been voiced by the IJP through its editorials from time to time (Sethi,1982 & Agarwal,1992). The basic function of any law is to frame rules and regulation which are least restricting and will enable the weak to enjoy all their civil rights without any hindrances. In a developing country like ours the mental health care programme is at low priority, the institutions are overcrowded, under staffed and inefficient. There is no psychiatric facility for a majority of population. A more penal and less therapeutic service would only increase the isolation of the psychiatry from other clinical specialities . No doubt , there should be provisions in the act to regulate the treatment facility of psychiatric patients but the provisions should not isolate and stigmatise them.

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