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The Criminal Justice System and Mental Health

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The WHO recognises Mental illness as a growing worldwide health problem, estimating 450 million to be suffering from the same. Violence among the mentally compromised is the convergence point for the medical and the legal system. The prevalence of mental disorders in general Indian population is found to be 8-12%. Various literatures throw light on the relationship between individuals with mental illness and their contact with the criminal justice, including the increased visibility of individuals with mental illness in the community, and; mental illness as a risk factor for criminalization. The Mental Health Act of 1987 has been condemned to be the "mental hospitals act" in response to which, the Mental Health Care Bill of 2013 has been proposed. The future mental health legal framework of India has been based largely on the Western laws. However, the serious flaws in the referred legislations have been overlooked and a culture sensitive paradigm has not been looked upon. The present legislative framework of India provides essential provisions for the mentally ill involved in any criminal activity however the future legal prospects poses significant challenges in the treatment of the mental illnesses, which may lead to intense social burden. Various substantiated cases of individuals with mental illness involved in crime in the Western world question the unfiltered copy of mental health laws that lack cultural relevance to the Indian context.

Keywords: Mental illness, legislations, criminalization, Indian context

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Introduction

The WHO recognises Mental illness as a growing worldwide health problem, estimating 450 million to be suffering from the same. WHO also predicts that by the year 2020 mental and behavioural disorders will account for almost 15% of the global burden of disease [1]. While most individuals are able to cope with their mental illness or compromised mental health in the community, some may be unable to cope and require more extensive treatment in tertiary care facilities, while some others do come into conflict with the judicial system.

Violence among the mentally compromised is the convergence point for the medical and the legal system. Though in India, mental illness is not a new concern for the criminal justice system, there has been a growing advocacy with regard to the issue of mental illness in general and about the prevalence of individuals with mental illness and their conflict with the criminal justice system. The legal system in the Indian context dates back to the Arthashastra from 400 AD and Manusmriti from 100 BC [2]. However, much of the contemporary laws are largely derived from the English Common Law, influenced by the European and the American legislations. Many of the legislations that were introduced by the British are still operative [2]. Thus, most of the legal framework relating to the Persons with Mental Illness has its roots in the British Legal System [3].

The hallmark legislation in India pertaining to Persons with Mental Illness is the Indian Lunacy Act of 1912 that paved the destiny of Psychiatry in India. After the adoption of the Universal Declaration of Human Rights by the UN General Assembly, the Mental Health Act of 1987 was adopted. Mental illness was then incorporated in the Persons with Disability Act of 1995 focussing on the provision of equal opportunities, full participation and protection of rights. In the year 2013, the Mental Health Care bill was drafted to address the shortcomings of the Mental Health Act.

Irrespective of the present legal framework that focuses on provision of specific rights to persons with Mental Illness, there seems to be a dearth in the law that addresses the needs of the mental ill in conflict with law. The present article examines the systems interacting with the mentally ill and the relationship between mentally ill and the criminal justice system.

The Scenario

Custodial care of the mentally ill has been known since the times immemorial. The deinstitutionalization phase changed the scenario of the treatment of the mentally ill. In India, the Mental Health Act created the paradigm shift in the view of the Mentally Ill. The terms lunacy was replaced with mentally ill, asylums to psychiatric hospitals and the criminal lunatic to the mentally ill prisoner. However, the deinstitutionalization phase failed to create a community base for the mentally ill in the country. As a consequence of this lack of community care many persons with mental illness landed up in prisons due to petty crimes [4].

The prevalence of mental disorders in general Indian population is found to be 8-12% [5]. The prevalence of severe mental illness in jails and prisons is estimated to be three to five times higher than that in the community [6]. A meta analytic review of 62 studies by Fazel and Danesh, from 12 countries, in 2002, included 22790 prisoners psychiatric disorders in prison populations that revealed 3.7% of men to have psychotic illnesses, 10% with major depression, and 65% a personality disorder. 4.0% of women having a psychotic illness, 12% major depression, and 42% a personality disorder [7].

The 2012 Prison Statistics of India reports that 1.2% of the total inmate population have a diagnosed mental illness, that is 4470 out of 3,38,125 [8]. The figures may not be absolute owing to poor randomized study data and poor mental health facilities at the prison level.

There are various systems that are in interaction with persons with mental illness in conflict with law which are:

Police: The Mental Health Act of 1987 grants the authority for the police to handle issues involving individuals suspected of having a mental illness under their specified jurisdiction. The course of action taken depends largely on act of the context. The detained individual is produced before the magistrate within 24 hours.

Magistrate: The Magistrate has the power to examine the person to assess the capacity of the individual to understand, ask for examination and make necessary inquiries. The magistrate also has the power to recommend the care for

The person under a governmental or a non-governmental organization.

Fitness to stand trial: If convicted, the magistrate can issue a disposition for either detention in hospital or conditional discharge. An absolute discharge is however never issued.

Consideration of mental illness at sentencing: Even when the individual accused of crime is found fit to stand trial and is found criminally responsible for the incident, the magistrates may consider the mental health condition of the individual during sentencing. For both adults and minors, conditions can be attached to a non-custodial sanction, such as probation, intensive support and supervision orders. These can also include mental health treatment program. In India, such a program is planned at a government set up that often may lack a comprehensive treatment program.

Increased Convergence of Mental Illness and Law

Various literatures throw light on the relationship between individuals with mental illness and their contact with the criminal justice, including the increased visibility of individuals with mental illness in the community, and; mental illness as a risk factor for criminalization. A school of thought is of the view that "insufficient and under-funded local mental health services" in the wake of the deinstitutionalization phase has contributed to the crowding of persons with mental illness in the community, and thus to their increasing interaction with the legal system [9,10]. Another viewpoint argues that persons with mental illness are susceptible to detention and arrest for offences such as trespassing, disorderly conduct etc and are more likely to be remanded in custody for these minor offences.

Stigma and discrimination pose significant difficulties for persons with mental illness to avail adequate treatment services [11]. Homelessness among the mentally ill also is found to be contributing factors leading to the interaction between the persons with mental illness and criminal justice system. The Legislation in India regards to suicide as a criminal which leads to attention of police even in cases of attempted suicide among the mentally ill. Necessary involuntary admissions are not adequately supported by law enforcing agencies and thus may eventually lead to legal intrusion.

Research also suggests that persons with mental illness are at a higher risk of committing crime and violence than the general population [12,13]. The various factors that contribute to the clash of mental health and criminal justice system include [12,13]:

- Substance abuse as a comorbid condition
- Socio-demographic factors
- Active symptoms
- Poor community awareness.

The Legal Conduct: The legislation in India recognizes the defence of mental illness against a charge of crime. If such a defence is proven, the charge is not acquitted and the accused is release on a special verdict; that the accused is not guilty by reason of mental illness and that he/she is to be admitted and treated at a psychiatric hospital [14]. A special provision is provided in the Code of Criminal Procedure to deal with a matter concerning a person who is of unsound mind. The provisions regarding any unlawful act by a mentally ill individual to be considered not as an offence has been based upon the famous dictum Rule of Mc'Naughten, which has been greatly criticized in the legal spheres to have been non-judiciously used [15,16]. The Juvenile Justice Act, 2006 specifies that a minor who is mentally ill involved in crime to be under the care of special home [17].

The Future Legal Framework of India

The Mental Health Act of 1987 has been condemned to be the "mental hospitals act" in response to which, the Mental Health Care Bill of 2013 has been proposed.

The hallmark features of the bill are the advanced directives and the much stressed upon role of "patient power". The newer legislative framework may hinder the much needed involuntary admissions that might increase the interface between psychiatry and law, thereby creating a greater burden on the present legal system in a developing country like India.

The future mental health legal framework of India has been based largely on the Western laws.

However, the serious flaws in the referred legislations have been overlooked and a culture sensitive paradigm has not been looked upon. Few landmark cases that could throw up on light on such matters may elucidate better understanding.

The California State Mental Health Law requires the consent of the patient for treatment. In notorious case of Richard Trenton Chase popularly know was the Vampire Killer of Sacramento, the outcome was largely linked to the decisions of the treating team. Chase with a diagnosis of Paranoid Schizophrenia had poor treatment compliance and was in and out of institutions. With a history of substance abuse and holding several handguns, he was convicted for six murders. Though the defence pleaded not guilty by reason of insanity, he was deemed legally sane at the time of committing the crimes and was found guilty on all six murder counts in 1979. During a clinical interview, he admitted of walking on the streets checking to see if doors were unlocked. He stated that, "if the door was locked that meant you weren't welcome." Chase was treated in the prison only after conviction. He hoarded the medication given to him and committed suicide consuming them. The biggest argument about the case was in favour of retaining him in institutions and treatment before many lives was lost [18,19].

The case of Kelsey Patterson, who was executed in 2004, has been one of the most powerful examples that focuses on the consequences of failure of mental health system to adequate care and in doing so, putting the public at risk. Patterson struggled with paranoid schizophrenia for more than two decades. His severe pervasive delusions and elaborate persecutory ideas led him to commit several irrational and motiveless assaults. Yet instead of investing resources on a long-term treatment plan, the state of Texas largely left Patterson to his own devices as per the State Advanced Directives pertaining to Mental Health Laws. The jury found him competent to stand trial, in spite of the clear evidence that he did not possess a rational or factual understanding of the proceedings against him and was unable to consult with his attorneys, as he believed they were plotting against him. Patterson was constantly taken out of the courtroom during his trial owing to his disruptive behaviour and outbursts about the devices implanted in his body. The jury rejected his insanity defence, found him guilty of capital murder, and sentenced him to death [20].

The Mental Health Care concept to the criminal offenders with mental illness varies across countries in Europe. In countries like England, Germany, Italy, Ireland, etc places the mentally ill criminal in General Psychiatric set-ups, where

As in countries like Austria, Denmark, Spain, etc there are Specialised Forensic facilities. However, in the same countries treatment id also provided at Prisons [21].

In many countries, there continues to be a conflict of opinions and mechanisms concerning the appropriateness of treatment and/or punishment for mentally ill individuals who are involved in crimes. The matters of public safety is often at risk and it is often found to be difficult to socially accept the possibility that a mentally ill individual who commits a crime can be hospitalized and eventually discharged, sometimes after a relatively short duration. In most countries the options of incarceration and hospitalization are available. In some, incarceration occurs before hospitalization. In others, hospitalization is first, followed by the prison term [22].

While there is a great dearth of Indian literature in the context of de-institutionalization and the anti-psychiatry movement, there is Western literature that points out at the negative impact of the same. Raphael and Stoll suggest a 4-7% raise in incarceration rates in U.S between 1980 to 2000 that is attributable to deinstitutionalization [23]. Lamb reports increased rates of homelessness post the deinstitutionalization period which has contributed to the increased criminalization of the mentally ill [24]. Lamb and Weinberger are of the view that persons with severe mental illnesses who are not receiving adequate treatment, structure, social control, and, when necessary, 24-hour care in the mental health system are at greatest risk of criminalization [25].

The deinstitutionalization period was followed by the anti-psychiatry movement that had great influence in the western communities, further increasing the issues of criminalization[26]. Did we lose the way from de-institutionalization to de-medicalization? An obvious yet a difficult question to answer. Empowerment of the patient community is an realistic concept, however Recovery as an important phenomena should also be focused upon. Thus the conception of a Mental Health Care Bill in a country like India that grants great autonomy to the persons with mental illness despite the lack of evidences in support for the same with cultural sensitivity is questionable. The cards on stake include public interest, professional authority and cost benefit ratio of the poorly funded Government Programs.

Conclusion

Mental Health is a growing worldwide concern and the WHO estimates 15% of the world population to be suffering from mental and behavioural disorders by 2020. Though most individuals seek treatment services at a tertiary care level, some come in conflict with the law of the land. The de-institutionalization period is found to play a very important contributory role in blurring the boundaries of mental health practice and law. The prevalence of mental disorders in the general Indian population is 8-12% [5] and the prevalence rate of mental illness among the prison inmates accounts for 1.2% of the total prison population [8].

The police and the magistrate are the major systems of interactions of the persons with mental illness in conflict with law. Various viewpoints propose plausible explanations with regard to the convergence of mental health and the law. The present legislative framework of India provides essential provisions for the mentally ill involved in any criminal activity however the future legal prospects poses significant challenges in the treatment of the mental illnesses, which may lead to intense social burden.

Various substantiated cases of individuals with mental illness involved in crime in the Western world question the unfiltered copy of mental health laws that lack cultural relevance to the Indian context.

Reference

1. WHO International Consortium in Psychiatric Epidemiology. Cross-national comparisons of the prevalences and correlates of mental disorders. Bulletin of World Health Organnization.2000, 78 (4), 413-426.

2. Glenn HP. Legal Traditions of the World: Oxford University Press; 2000. p. 255-76.

3. Choudary LN, Deep S- Indian Legal System and Mental Health, Indian Journal of Psychiatry, 2013, 55 (6), 177-81.

4. E. Fuller Torrey, and Mary Zdanowicz, News article titled "Why deinstitutionalization turned deadly" The Wall Street Journal, August 4, 1998 available online at http://www.psychlaws.org/generalresources/Article2.htm accessed on 10 Feb. 2009.

5. Gazzaniga, M.S., & Heatherton, T.F Psychological Science. (New York: W.W. Norton & Company, Inc. 2006)

6. Lamb HR, Weinberger LE: Persons with severe mental illness in jails and prisons: a review. Psychiatr Serv 1998: 49; 483–92.

7. Fazel S, Danesh J. Serious mental disorder in 23000 prisoners: a systematic review of 62 surveys. Lancet. 2002:16;359:545-550.

8. National Crime Records Bureau, Ministry of Home Affairs, Government of India. Available at URL: http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf

9. Menzies, R. J. "Psychiatrist in blue: Police apprehension of mental disorder and dangerousness." Criminology, 1987. 25(3) 429-453.

10. Canadian Mental Health Association, Citizens for Mental Health. 2004. Available at URL: http://www.cmha.ca/citizens/justice.pdf (accessed April 14, 2008).

11. Link, B.G. and A. Stueve. "Evidence bearing on mental illness as a possible cause of violent behaviour." Epidemiologic Reviews. 1995, 17(1) 172-181.

12. Modestin, J, "Criminal and violent behavior in schizophrenic patients: An overview." Psychiatry and Clinical Neurosciences. 1998, 52 (6) 547-554.

13. Paterson, B., P. Claughan and S. McComish. "New evidence or changing population? Reviewing the evidence of a link between mental illness and violence." International Journal of Mental Health Nursing. 2004, 13 (1) 39-52.

14. Raveesh BN, Anil KMN, Narendra KMS- Law and Psychiatry in India, An Overview, Journal of Forensic Science & Criminology, 2013, 1 (2), 1-6.

15. Indian Penal Code (1860) Bare Act, Eastern Book Company, Lucknow.

16. Sethi BB (1984) Need for growth of forensic psychiatry. Indian J Psychiatry, 26: 1-2.

17. Juvenile Justice (Care and Protection of Children) Act (2000) Bare Act, Eastern Book Company, Lucknow.

18. Jessica Turner- Psychological Analysis and History of Richard Trenton Chase, Criminal Psychopathology, Regis University. Available at URL: https://www.academia.edu/4302178/The_Psychopathology_of_Richard_Trenton_Chasse

19. Richard Trenton Chase: National Museum of Crime & Punishment, Washington, DC 20004, (202) 393-1099, 2014. Available at URL: http://www.crimemuseum.org/crime-library/richard-trenton-chase.

20. Another Texas injustice: The case of Kelsey Patterson, mentally ill man facing execution. Amnesty International, March 2004. Available at URL:http://web.amnesty.org/library/Index/ENGAMR510472004.

21. Hans Joachim Salize & Harald Dreßing- Placement and Treatment of Mentally Ill Offenders – Legislation and Practice in EU Member States, Central Institute of Mental Health J5 D-68159 Mannheim, Germany Final Report – February 15, 2005.

22. Melamed.Y, Mentally Ill Persons Who Commit Crimes: Punishment or Treatment?, Journal of American Academy of Psychiatry and Law, March 2013, 38:1:100-103.

23. Rapheal.S and Stoll.M.A- Deinstitutionalization of the mentally ill to growth in the U.S incarceration rate, The Journal of Legal Studies, January 2013, Vol. 42, No. 1.

24. Lamb.H.R- Deinstitutionalization and the Homeless Mentally Ill, 1984, Psychiatric Services, 35 (9), Available at URL: http://ps.psychiatryonline.org/article.aspx?articleID=70020

25. Lamb.H.R and Weinberg- Some perspectives on criminalization, J Am Acad Psychiatry Law. 2013;41(2):287-93.

26. Nimesh G. Desai- Antipsychiatry: Meeting the challenge, Indian J Psychiatry. 2005 Oct-Dec; 47(4): 185–187.