Human Rights of Mentally Ill Clients

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Abstract
Human rights are important for all strata, classes and races of the society. But it assumes special significance for mentally ill clients, who because of their vulnerability due to illness, often fail to prevent violation of their rights. Often the violation of rights occurs right from the admission in mental hospital, until discharge from the hospital. Frequently, the same violations of the rights of the mentally ills also occur in prisons, shelter homes and streets. Often the very efforts to protect the rights of mentally ill clients lead to violation of the rights. The group, which is marginalized, discriminated and stigmatized by the society, can only be helped by the society. The society can help the mentally ill clients by enacting laws favorable for them, by providing proper facilities for community based treatment, protecting their rights at mental hospitals and by rehabilitating them in society after discharge from the hospital.

KeyWords: Human right violations, Mental Illness, Stigma, Mental Hospitals, Restraint of Mentally Ill

Introduction:
The human rights of mentally ill clients are very important because, unlike other aggrieved groups, they are unaware of their rights most of the time, hence do not stand up and fight for them. People suffering from mental illness are among the most disadvantaged groups in society. Further, they suffer severe personal distress and they are stigmatized, discriminated against, marginalized and often left vulnerable. [1] The protection of rights becomes more pertinent in a mental hospital because the moment a client enters into the hospital, he cannot venture outside the hospital premise on his own volition, unless a doctor certifies that he is fit to do so. Once in the institute his moments, if not restricted are not as free as they are in the outside world and his daily activities are likely to be scheduled according to the hospital rules. Everyone has the basic human rights, including those who are mentally ill. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability,

widowhood, old age or other lack of livelihood in circumstances beyond his control. [2] People with mental illness commonly experience violations of rights, including their economic and social rights. One of the reason for ill treatment of the clients may be due to decreased or absent contribution in the economic field by mentally ill clients unlike the clients having medical illness. [3] The Mental Health Act (MHA), 1987, came into force in 1993. It repealed the much-criticized the Indian Lunacy Act, 1912. The aim of the act was to protect the human rights of mentally ill people, but many people involved in the field feel that the law has too many lacunae and needs urgent attention. The findings of the recent study concluded that the human rights of people with mental illness were not protected influencing their reintegration into the community.[4] World Health Organization (WHO) states that we are "facing a global human rights emergency in mental health" as many countries lack the basic legal framework to protect those with a disability.[5]

Human rights at Mental Hospitals:

As nations have flags as their symbols of patriotism, so humanity has unreformed mental hospitals as symbols of human right violations. When one undertakes a task to improvise facilities at the mental hospital, one should not lose sight of the fact that one is improvising the facilities of a prison like structure which, even if turned into gold would still retain its original character of a prison. The condition in mental hospitals is often grim in absence of cleanliness, hygiene, entertainment facilities, restricted freedom to move at will and poor staff to client ratio. Often the hospital lacks psychiatrists, good paramedic support, psychiatric social workers, clinical psychologists or occupational therapists on board to fulfill the requisite angles of the treatment being meted out. [6][7] The study conducted in the tertiary care institute in India concluded that the human rights of people with mental illness were not protected that influenced their reintegration into the community. [8]

Many a time, even when clients get cured his or her guardians don't turn up and such clients are forced to languish in mental hospitals, despite being fully fit to be discharged. Twenty percent of all clients in mental hospitals in Kolkata are fully fit to resume their normal life, but because of lack of rehabilitation facilities and post-care treatment, these people are condemned to languish in the hospitals that are no more than jails. [9] The other consequence of this development is overcrowding of the hospitals because of which deserving clients do not get proper treatment at the institute. [10] Many a time hospital staff witnesses a condition in which a cured client becomes aggressive because he or she cannot be sent home due to various reasons and the client may develop suicidal wishes or a wish to escape from the hospital.

In an ideal Utopian world, facilities like adequate and hygienic space, air-conditioning, heaters, privacy, means of entertainment, gainful employment, etc., should be available to inmates of custodial homes like mental hospitals, jails, juvenile homes, etc. The same facilities should be available to inmates of shelter homes, halfway homes, quarter way homes, beggar's home, daycare shelters and rehabilitation centers. However, the truth is the significant number of the population of the world lacks even basic needs like food and shelter. Due to recession and other factors, government over the world is pulling out their hands from social spending. New York a city of developed country famous for glitz, glamour and billionaires is having a dubious record of 60,000 people, who are homeless. [11] The governments' world over with poor resources is in dilemma to provide the home to poor people first or to mentally ill first. Such a situation necessitates judicious use of available resources as well as a sustained effort with government for allocation of required resources.

Violation of Human Rights at Mental Hospitals:

There are certain sets of problems, which one is more likely to witness in mental hospitals than in any other hospitals. The reasons are, the other hospitals are under the direct vigil of the public, which makes hospital staff and authorities alert to the clients' problems. The second is, in other hospitals, client themselves are alert for their rights, which makes staff and administration sensitive to clients' requirements, while in case of mentally ill clients they are completely at the mercy of the hospital staff.[12] Perhaps, the first violation of human rights occurs when a client is admitted in unreformed mental hospital. Human right is violated when a

cured mentally ill and well-fed client yearns for freedom in a mental hospital. The scene frequently repeated in the mental hospital is client cured, half cured or uncured, yearns for discharge from the hospital and his relatives or caretakers unwilling to take him back at home. The psychiatrist working in the institute becomes an unwilling judge in the battle of wills. The psychiatrist again becomes unwilling judge when he has to choose whether the interest of the client is paramount or interest of his relative. He becomes unwilling judge when he has to choose between the safety of his psychiatric practice and interest of a paranoid and potentially litigious client. Similarly, human right is violated when a wandering mentally ill yearns for shelter and food on the streets. Human right is violated, when a cured client cannot be sent back home because either his relatives are unwilling to take him back or he doesn't have a home where he can be sent back. Human right is violated, when the valid anger or aggression of a cured client who wants discharge from the hospital, is controlled with involuntary admission of drugs. Human right is violated, when a mental hospital is established without rehabilitation centers in its vicinity. Human right is violated, when past history of mental illness is invoked to; intimate the client, control him or coerce his normal behavior. Human right is violated, when admission in a mental hospital is used as a pretext to control the property of the client. Human right is violated when a client lives in constant fear that he would be admitted in the hospital for the vested interest of his relatives, e.g. for a purpose of divorce or to usurp his property. Human right is violated when a client is made to work against his will in a mental hospital for fear of being punished or for a petty reward like cigarette or tobacco. Human right is violated when the client doesn’t receive evidence based treatment. Human right is violated when clients are used for clinical trials without their consent. Human right is violated when the administrative authorities of mental hospital are not vested with adequate power and protection against the delinquent staff working at the institute. Human right is violated when the adequate and hygienic space, privacy, means of entertainment, gainful employment, etc., are not available to inmates of mental hospitals. Human right is violated when a client feels more comfortable in hospital than at home due to economic circumstances. Human right is violated when a prisoner develops mental illness in a prison. Human right is violated when a person is imprisoned, even when he breaks a law in a state of mental illness. Human rights are violated of both, a doctor and a client, when the former cannot give adequate time to the client due to work overload and the later cannot get proper attention for the same reason. Human rights are violated when mental health care is not geographically accessible according to WHO(World Health Organization) guidelines.[13] Human right is violated when an evolving science of psychiatry is used to label a person with revolutionary thoughts as lunatic to force him into conformity. Human right is violated; when a doctor short of time uses a nascent science of psychiatry, in haste, to label the client with psychiatric illness, the criteria of which changes from time to time.

Human Rights and Restraint of mentally ill:

Physical restraints of people with mental illness have a long and infamous history that starts with a period of ancient Greece, where mentally ills were chained, to the dark period of ‘Bedlam hospital’, wherein shackled clients were put on display for the price of a penny. [14] In Indonesia, there is a practice known aspasung, in which people with mental illness are chained, tied, confined in small rooms or sheds, or have their legs in wooden stocks. [15] The process of freeing the people from physical restraints was started by Philippe Pinel and Jean-Baptiste Pussin who are credited with releasing the mentally ill from the chains at the Bicêtre and the Salpêtrière hospitals in Paris at the end of the 18th century. [16] The same process of releasing clients from the restraint continues today with a goal of releasing clients not only from the physical restraints but also from the unnecessary chemical restraints.

In ideal conditions of a Utopian world, no mentally ill human being should be physically restrained or kept in isolation. Some would say the ideal thing would be the use of chemical restraints not physical restraints during hospitalization. But whether we restrain client's hands by mechanical restraints or client's brain cells by unnecessary chemical restraints (neuroleptics means grasping the neurons), it is the same thing. The latter thing may be aesthetically more pleasant, but is more damaging to the human soul and mind than the former thing. The unnecessary chemical restraints may not show outer scars on the body, but it definitely causes

neuronal scars, which manifest eventually as tardive dyskinesia and other adverse effects.

Desire for freedom: A Core of Human Rights:

The ‘desire for freedom’, is a linchpin of human rights, which forms core not only of the human beings but also of the animal beings. The ancient Indian civilization has advocated four goals for human life namely dharma (righteous conducts), artha (material and social needs), kama (sense pleasures) and moksha (freedom). The Supreme Court of India, while delivering one landmark verdict gave paramount importance to personal liberty and said that no one will ever barter his liberties for all the teas of China, all the pearls of the seas and all the stars of the sky.[17] The freedom also includes the freedom from a stigmatizing diagnosis. Often, the process of diagnosing the clients itself is a stigmatizing process, producing mental scars which are difficult to be hidden, even if one applies a makeup of ‘Destigmatizing Campaign’. A diagnosis of psychiatric illness hinges on a base of reality testing. However, according to Albert Einstein, reality is an illusion albeit a very persistent one. [18] So to diagnose the mental illness solely on a base of reality testing becomes a tad unscientific, unless it is done with humility that the diagnosis one putting is a temporary construct about the condition one know very little. Instead of diagnosing the clients with stigmatizing diagnosis like schizophrenia that denotes that unlike normal people, only the people suffering from mental illness are in two minds; one can use Japanese terminology like ‘Integration Disorder’, which may better reflect the true nature of an underlying disorder. [19][20]

It is not difficult to imagine the plight of wandering homeless mentally ill client, who has been admitted in mental hospital and cured subsequently. The client cannot be sent home as he or she is without a home. The condition becomes poignant when the client does not want to go in shelter home or rehabilitation home. Moreover, it is not legally or morally appropriate for hospital authorities to release the client on the road from a custodial care hospital. Similarly, it is not appropriate to see the cured client languishing and thus suffering in mental hospital. The paternalistic role of welfare state directs to take care of wandering mentally ill person and put him or her into some institution, but what if some person is happier wandering like a fakir or mendicant than being confined to a mental hospital or other custodial care institution. What if some person writes in his advance directive that should he develop mental illness in the future, he should be left alone as wandering ill and ill-fed rather than be confined to some custodial institution and be fed well. In such a situation should state take away the freedom it provided to the person on the bases of which he chose freedom or should it renege on its promise to provide freedom.

Human rights: More emphasis leads to more violation:

Everything in excesses is bad and it may be true with the advocacy of human rights as well. Ideally, there should be no overcrowding in mental hospitals, but if rules be followed strictly without adequate numbers of mental hospitals in the country, then it may lead to overcrowding of mentally ill clients on the streets and in prisons. [21][22] When the institutions that cater to the needs of mentally ill clients, are under excessive legal or public scrutiny, they become defensive in response to challenges thrown by the mental health field. They may order the unnecessary investigations for clients to avoid blame in case of any eventuality. This may not only increase the overall cost of treatment, but also cause mental harassment to clients and their relatives and the indirect violation of human rights.

Excessive scrutiny may avert an incident of a major human right violation, but the resultant sum-total of minor human rights violation that would ensue because of such scrutiny would far exceed the total number of gross human right violations. Ideally the mentally ill clients should be investigated thoroughly (including CT Scans and MRI Scans) before he receives the diagnosis of mental illness. However, this would amount to a colossal waste of already meager resources. The 18th century English philosopher formulated what came to be known as 'felicific calculus': a means by which to gauge how to ensure the greatest amount of happiness for the greatest number. Therefore, according to this principle, there is little harm in skipping certain procedures, if

resources are scarce and the benefits that would accrue from such money saving steps would far outweigh the possible harms. However, such omission should be legally protected as it is done in New Zealand. [23]

The excessive scrutiny may lead mental health professional to defensive practice. The defensive practice can be defined as "ordering of treatments, tests and procedures for the purpose of protecting the doctor from criticism rather than diagnosing or treating the client". [24] Defensive medicine takes place when doctors prescribe unnecessary tests, procedures or specialist visits (positive defensive medicine), or avoid high risk clients or procedures (negative defensive medicine). [25] These types of practice occur whenever a practitioner gives a higher priority to self-protection from blame than to the best interests of the client. A large number of legal initiatives taken by clients have induced many doctors to adopt a defensive "strategy" to avoid jeopardizing their careers. Controversies in mental health, and occasional tragedies, are often the subject of close media attention and reporting which may be inflammatory. [23] A mail survey of physicians in Pennsylvania concluded that nearly all (93%) reported practicing defensive medicine. [26] The study conducted in England concluded that almost three quarters of the psychiatrists who responded had practiced defensively within the last month of the survey.[27] Therefore, "No blame" and "learning culture", is essential for the delivery of quality health care services.[28]

The same trend of defensive practice also seeps in the management of custodial setup. Ideally, one should give more freedom to clients by building the setup of mental hospital in such a way that it doesn't appear like a prison or a jail. However, from such setup if client escapes, then it leads to a kind of inquiry. The other option to employ more staff who can keep watch over clients in such setups often violates the privacy of the client and escalates the cost of maintenance of the hospital. Therefore, because of this fear, hospital staff restricts the movement of the client and thus violates human rights.

In many mental hospitals in India, the death of the inmate is investigated by police and death audit committee. Similarly, in western countries, critical incidents, such as suicides, homicides, and deaths while detained under the Mental Health Act are investigated by both trust and coroner's inquest. The investigations may be followed by negligence claims from the relatives. These investigations may provide the source of incentives to act defensively. When the professionals feel that their each and every action they take or action they avoid are under scrutiny and are liable to be dissected by a group of people, they may choose a field in which a risk of litigation is less. The net result would be a shortfall of professionals in such institutes or if the professionals are available there are chances that they are not the best in their field. No wonder Bombay high court recently opined that the conditions of mental hospitals were deplorable and no psychologists or psychiatrists were available at any of the hospitals and none of the hospital had a rehabilitation program. [29] Still, surveillance and the inquiry of untoward incidents are necessary, but it should be in such a way that it doesn't cause violation of human rights, intentionally or unintentionally, it intends to protect.

Role of Mental Hospital in Protection of Human Rights:

Until the better option of mental hospitals is found, mental hospitals still have some role to play in the treatment of mentally ill clients. Clients in some state mental hospitals were poorly treated, mistreated, or maltreated in the past does not mandate that a new public mental hospital system would do so. Opponents of reinvigorating the public mental hospital system argue for community programs. Community programs are important, but serve a different purpose in the continuum of care for the severely mentally ill. [30]

If we don't provide a safe institutional environment for aggressive and violent clients, more psychiatric hospitals will close leading to those clients being secluded and restraint in the non-therapeutic environments of prisons and jails. [31] Therefore, this approach of treating the client solely in community, leads to undesirable consequences like: utter neglect of the client by his relatives; frequent contact with criminal justice system and more people in beggar homes, shelters, streets and jails instead of mental hospitals.[32] Another benefit of a

psychiatric institution is that it can provide centralized, coordinated care for an individual with severe mental illness, when the available psychiatric services in the community are fragmented and are poorly coordinated. [33]

individual, regardless of whether or not they have been assigned a psychiatric diagnosis, is expected to undergo some experience that limits the harm they can generate. [34] If we consider parents' insistence on sending a reluctant child to school as human right violation, then the whole world would soon revert to a stone age where there would be no human rights whatsoever. When the normal people exhibit the violent behavior, they should be counseled and may be needed to be sent to the jail; same way violent behavior in mentally ill client needs to be controlled first by psychotherapy and antipsychotic drugs and lastly by temporarily confining him or her to a mental hospital.[35]

Therefore, violent and uncontrollable behaviors need to be controlled by temporary hospitalization. However, while admitting the client in the mental hospital, one should be aware that it is a temporary measure to treat the client, until he is transferred to halfway home, quarter way home, and shelter home or rehabilitated in society. It is always desirable that all long-term admissions of more than six months should be evaluated by a team comprising, a member of the judiciary, an expert of the social science department and a psychiatrist, with an aim of transferring the clients from inside the hospital. The other important issue is human rights of mentally ill prisoners. The recent study in India showed that 33% of the convicted prisoners were suffering from psychiatric illness. [36] If after giving sufficient treatment a mentally ill prisoner doesn't improve, he may be sent to another institution for treatment and if three or more institutions after giving sufficient treatment, certify that client is not likely to improve then the client may be given a bail to prevent further deterioration of his condition and to minimize overcrowding of the jails and hospitals. The reason for sending a mentally ill prisoner in three or more institutes is to make sure that prisoner gets sufficient treatment by different psychiatrist that would prevent him from subverting the system by faking symptoms of mental illness. Alternatively, if after giving sufficient treatment, if mentally ill prisoner doesn't improve and at the same time if he is not fit to be discharged from the hospital, then he may be converted into a non criminal inmate, which would increase his freedom at the institute and consequently increases the chances of recovery. The treatment in a mental hospital would become useless, if mentally ill prisoner is going to develop symptoms of institutionalization instead of being cured of his illness.

Steps to Protect Human Rights:

The first step to protect the human rights of the mentally ill client is not to admit him in the institution unless absolutely necessary; instead he should be provided with community based treatment and rehabilitation services. If at all, admission is necessary, he should be ideally admitted in an open ward with relatives for a short duration of time. Admission with relatives would prevent anxiety in a client who is admitted in an unfamiliar place. He should be provided an evidence based treatment during admission. In addition, as soon as he is manageable he should be handed over to his relatives. However, in absence of relatives he should be rehabilitated in halfway homes or a quarter way homes. To admit the client in unreformed institute and then protecting his human rights are like inflicting a wound on a person and then treating it. So the judicious use of available resources would be helpful in protecting the right of mentally ill clients.

While dealing with agitated client, the first thing should be employed is verbal de-escalation with or without oral medication. Verbal de-escalation techniques, undertaken with genuine commitment have the potential to decrease agitation and reduce the potential for associated violence, more often than previously thought possible. [37]

As far as possible, physical restraints, seclusion and chemical restraints should be used as a last resort while following the guidelines of the institution the client is admitted. While admitting the client, one should be

aware that it is a stop-gate arrangement, until the client is rehabilitated in society or in some rehabilitation home, which permits more freedom to the client.

Conclusion:

We have progressed a great deal in protection of human rights of mentally ill; from the past when they were physically restrained brazenly to a recent period, when even the chemical restraints are used cautiously. We have to walk on tightrope to protect human rights because, many a time our very effort to protect human rights by increasing vigilance leads to violation of human rights. Still, more needs to be done in the field that would require multiple strategies that start from judicious use of antipsychotics to increase in awareness in clients and their caregivers. The changes in the nomenclature of disease that stigmatizes the clients may also help in this direction. The Human Right Commissions, civil society organizations, and health professionals and health service provision agencies all have important roles to play in the protection of human rights. [38] Psychiatrists can promote human rights through scrutinizing the admissions in mental hospitals, providing evidence-based medicine, ensuring a short stay of clients in a mental hospital, and actively participating in the rehabilitation of clients in society.

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