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HUMAN RIGHTS AS A PATHWAY IN MENTAL HEALTH SETTINGS

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Abstract

Mental health is an issue which touches the lives of many people worldwide. This often affects not only the person themselves but also their family and friends. The way in which society deals with mental health issues raises many human rights points for example in relation to service provision, treatment, assessment and civil detention, protection and empowerment. The simplest way of defining human rights is that they are about balancing the inalienable rights of all of us as human beings within the community regardless of differences in birth, social origin, gender, physical differences, faith and belief, ideology, nationality and so on. There can be no disagreement with the universally acclaimed truth that human dignity is the quintessence of human rights. This article shows lights on concept of human rights and to know how it is a pathway in mental health settings.

Keywords: Human Rights; Mental Health; Social Work.

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1. Introduction

The concept of natural law, guaranteeing natural rights despite varying human laws and customs, can be traced back to Ancient Greek philosophers. The world's first Buddhist state in India, known as the Maurya Empire, established the world's first welfare system, including free hospitals and education. Ashoka during his reign pursued an official policy of nonviolence (*ahimsa*) and the protection of human rights, as his chief concern was the happiness of his subjects. He also showed mercy to those imprisoned, allowing them outside one day each year, and offered common citizens free education at universities. He treated his subjects as equals regardless of their religion, politics or caste, and constructed free hospitals for both humans and animals. In the Maurya Empire, citizens of all religions and ethnic groups also had rights to freedom, tolerance, and equality. The Code of Hammurabi (1780 BC) shows rules, and

punishments if those rules are broken, on a variety of matters, including women's rights, men's rights, children's rights and slave rights.(Wikipedia, 2009). The conquest of the Americas in the 16th century by the Spanish resulted in vigorous debate about human rights in Spain. Two major revolutions occurred that century in the United States (1776) and in France (1789). *The Virginia Declaration of Rights (1776)* sets up a number of fundamental rights and freedoms. The later United States Declaration of Independence includes concepts of natural rights and famously states "that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness." Similarly, the *French Declaration of the Rights of Man and Citizen (1789)* defines a set of individual and collective rights of the people. These are, in the document, held to be universal - not only to French citizens but to *all men without exception*. Labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women's rights movement succeeded in gaining momentum (Wikipedia, 2009).

Defining Human Rights

The term Human Rights in a broad sense means “those claim which every individual has or should have upon the society in which he/she lives. According to Richard Wasserstorm it means, one that ought to be claimed as entitlements (i.e. human rights) those minimal things without which it is impossible to develop ones capabilities and to live life as human beings.

2. Human Right: A Theoretical Aspects

- **Natural Law:** One of the oldest Western philosophies on human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. The natural law was how a rational human being, seeking to survive and prosper, would act.\
- **Sociological Theories:** Other theories hold that human rights codify moral behavior which is a social product developed by a process of biological and social evolution. Human rights are also described as a sociological pattern of rule setting. These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (Pilgrim & Rogers 2005).
- **Social Contract:** The Swiss-French philosopher Jean-Jacques Rousseau suggested the existence of a hypothetical *social contract* where a group of free individuals agree for the sake of the common good to form institutions to govern themselves (Bennett, 1994). This echoed the earlier postulation by Thomas Hobbes that there is a contract between the government and the governed.
- **Reciprocity:** It states that one must do to others as one would be treated themselves; the principle being that reciprocal recognition and respect of rights ensures that one's own rights will be protected. John Locke developed the concept of *natural rights*, the notion that people are naturally free and equal. Lockean natural rights did not rely on citizenship or any law of the state, nor were they necessarily limited to one particular ethnic, cultural or religious group. (Bennett, 1994)
- **Three generations of human rights:** The division of human rights into three generations was initially proposed in by Vasak (1977). First-generation human rights deal essentially with liberty and participation in political life. They serve to protect the individual from excesses of the state and include freedom of speech, the right to a fair trial, freedom of religion, and voting rights. Second-generation human rights are related to equality and

began to be recognized by governments after World War I. They are fundamentally social, economic, and cultural in nature. They ensure different members of the citizenry equal conditions and treatment. Third-generation human rights are those rights that go beyond the mere civil and social, like health.

3. Human Right and Mental Health

The Right to Life is the most primordial of all rights as also the most preeminent. A person with mental illness is entitled to treatment with the same dignity and decency as any other human being. A mentally ill person does not become a non-person merely on account of certain disabilities. His human rights flow from the fundamental right to life as in Article 21 of the Constitution (Constitution of India, 1949) which includes:

- Right to living accommodation, food, potable water, education, health, medical treatment, decent livelihood, income, a clean and congenial existence
- Right to privacy, speedy trial (if involved in any criminal offence), information and means of communication.

Three particular types of situation give rise to human rights issues in mental health law, policy and practice (Davidson et al., 2003):

- 1) Where a person is not mentally competent to make a relevant decision;
- 2) Where a mentally competent person is unwilling to consent to proposed care and/or treatment;
- 3) Where a person with mental health problems presents a risk of harm to self and/or others.

The state of mental hospitals in India has been a source of concern for centuries. Several government enquiries both in the nineteenth century (the Bengal Enquiry of 1818, An Investigation into the State of Native Lunatics in Bengal in 1840) and those in the twentieth century, the Bhowe Committee Report (Govt. of India, 1946), reflect concerns that are relevant even in current times. They reported deplorable living conditions, overcrowding, understaffing and a general indifference to the needs of the mentally ill. Moore Taylor summarized the state of the mental hospital at the time of independence thus: 'The majority of the mental hospitals in India are out of date and designed for detention and safe custody without regard for curative treatment' (Channabasavanna & Murthy 2004).

4. Protecting the Rights of the Mentally Ill

Availability, accessibility, acceptability and quality are the core obligations and elements of the right to health. A mentally ill person is in need of special care and attention both at home and in the hospital for the simple reason that he/she is unable to fend for himself/herself. The responsibility for special care and attention also lies with the care givers and includes the following (Channabasavanna & Murthy 2004):

At home: Treating the mentally ill person with dignity, decency, kindness and compassion, not suppressing the information that someone at home has been affected by mental illness. Family members should recognize that taking the ill person to a mental health facility for evaluation and admission on time is of utmost importance and if necessary they should not be shy of treatment from mental health professional. Once under such treatment regular follow-up should be

maintained as per the advice. It is of great significance that family members should infuse hope, faith and confidence in the mind of the recovering person all the time that he/she can be effectively treated, cured and can resume a normal life like in any other illness. If the patient requires in-patient management then furnishing accurate postal address of the admitted individual to the hospital authorities at the time of admission is expected. They should not suppress any information about relationship with the individual and about the nature of ailment. The guardians should interact with the patient at the hospital at frequent intervals as necessary and finally should ensure that after the person has been effectively treated and fit for discharge, is taken home, treated kindly and given the best care and attention, ensuring compliance with the medicines prescribed.

In the tertiary care out-patient setting: No individual should be handcuffed or tied with ropes while being brought to the hospital or as an inpatient and thus facilities for sedating disturbed individuals in the outpatient (OPD) setting should be mandatory. Mentally ill person or their caregivers should be treated with utmost civility, courtesy and consideration. No person seeking help for mental distress or illness should be refused examination at the OPD on any ground what so ever, similarly, no patient should be refused admission as an inpatient if the same is considered absolutely necessary by the physician examining him/her.

In the Inpatient setting: Once a decision is taken that a patient requires inpatient care, certain other rights accrue to the admitted person such as:

- 1) Right to wholesome, sumptuous and nutritive food according to certain prescribed scales, potable water, environmental sanitation including clean toilets, personal hygiene and also accessibility to books, journals, periodicals and newspapers in their language and other recreational facilities like television in the room, dance, drama, music, other cultural activities, games and sports.
- 2) Right of access to information for the relatives includes ensuring arrangements for the relatives to visit their admitted relatives regularly, or make regular telephone calls. Strict confidentiality of in-patient records must be maintained.

5. Law and Mental Health

The fundamental aim of mental health legislation is to protect, promote and improve the lives and mental well-being of citizens. In the undeniable context that every society needs laws to achieve its objectives, mental health legislation is no different from any other legislation. People with mental disorders are particularly vulnerable to abuse and violation of rights. Legislation that protects vulnerable citizens (including people with mental disorders) reflects a society that respects and cares for its people. Much of the mental health legislation initially drafted was aimed at safeguarding members of the public from “dangerous” patients and isolating them from the public, rather than promoting the rights of persons with mental disorders as people and citizens. As noted, a fundamental basis for mental health legislation is human rights (Dhanda et al., 2000). Key rights and principles include equality and non-discrimination, the right to privacy and individual autonomy, freedom from inhuman and degrading treatment, the principle of the least restrictive environment, and the rights to information and participation. The law for mental health covers the issues in following realms (Dhanda et al., 2004).

- Capacity and civil status
- Rights and immunities
- Care and Treatment

6. Conclusion

Mutual respect for every human being regardless of their birth, social origin, gender, physical differences, faith and belief, ideology and any associated illness forms the real essence of human right. It is an evolving concept and certain services and rights that are taken for granted in some countries might be the objectives other countries strive for. In both low- and high-income countries, stigmatization of people with mental disorders has persisted throughout history, manifested by stereotyping, fear, embarrassment, anger and rejection or avoidance. Violations of basic human rights and freedoms and denial of civil, political, economic, social and cultural rights to those suffering from mental disorders are a common occurrence around the world, both within institutions and in the community. However, efforts can be made in to improve mental health services and promote and protect human rights and this may need policies and even legislations. Mental health legislation is necessary for protecting the rights of persons with mental disorders in institutional settings and even in the community.

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