
MENTAL HEALTH VIS-À-VIS ACCESS TO MENTAL HEALTHCARE IN INDIA DURING THE COVID-19 PANDEMIC

Faizanur Rahman, Assistant Professor & Mohammad Haroon, Research Scholar respectively at Faculty of Law,
Jamia Millia Islamia, New Delhi

1. Introduction

The entire world is facing the challenges of COVID-19 outbreak which has changed the socio-economic scenario of the world. Millions of painful deaths during this pandemic are speaking a lot about its severity. The lockdown imposed to prevent the spread of the novel Corona virus has been one of the primary concerns throughout COVID-19. Restrictions on daily functioning, separation from loved ones, approaching economic crises, influence on schooling and profession, and a lack of recreational activities, along with stringent cleanliness procedures, can all lead to mental health difficulties in those who are confined. The second wave of the COVID-19 infection has wreaked havoc on the country's healthcare infrastructure and way of life. The second wave is having a psychological effect on those who have not been infected, with many feeling overwhelmed and helpless in the face of the problem. People are living in fear of missing of their beloved. This state of fear has affected more the mental health of the people which is an important aspect of overall health. It enables an individual to strike a balance between life activities, efforts, and responsibilities in order to achieve psychological resilience.¹ To reduce distress, disability, and premature mortality associated with mental illness, as well as to improve recovery from mental illness and ensuring access to mental health care the country requires an adequate mental health care system as well as law and policy. The *Mental Healthcare Act, 2017* is the pre-pandemic law which deals with the mental health and the access to mental health care in India. This paper deals with the issues related to mental health arise as the consequences of COVID-19 outbreak and the access to mental healthcare in the country.

¹ Abhishek Mishra and Abhiruchi Galhotra, "Mental Healthcare Act 2017: Need to Wait and Watch", 8(2) *Int. J. Appl. Basic Med. Res.* 67-70 (2018).

2. Mental Health Disorder

During this COVID-19 pandemic, the basic rights like the right to life, liberty and equality are at risk. People are dealing with a variety of health challenges, including mental disorders and other psychological concerns that have arisen as a result of the pandemic. Mental health refers to a condition of well-being in which an individual recognises his or her own potential, can manage with regular life challenges, can work efficiently, and can contribute to his community. The *World Health Organisation* defines mental health as just the absence of mental disorders or disabilities. It is about not only avoiding active conditions but also looking after ongoing wellness and happiness. The term ‘mental illness’ refers to a significant disorder of thinking, mood, perception, orientation, or thought that severely impairs judgement, behaviour, capacity to recognise reality, or ability to meet the usual requirements of life, as well as mental conditions associated with the degradation of alcohol and drugs, but it does not refer to a mental barrier, which is a condition of arrested or inadequate development.²

Generally, everyone has some risks of developing a mental health disorder, no matter their age, sex, income, ethnicity and position. Preserving and restoring mental health is crucial on an individual basis, as well as throughout different communities and societies the world over. The current pandemic situation has worsened the mental health conditions around the world. Mental disorder remains a big threat to an individual as well as society as there is no physical test or scan that reliably indicates whether a person has developed a mental disorder or disability. There are different types of mental health condition which can lead to a disability, include: dementia, depression, bipolar disorder, obsessive compulsive disorder (OCD), schizophrenia and self-harm etc.

2.1 Mental Health Disorder in India

The *World Health Organisation* has estimated that in India about 7.5 per cent people suffer from some mental disorder and predicted that about 20 per cent of Indian will suffer from mental illnesses by the end of 2020. Fifty-six million Indians suffer from depression and another thirty-eight million from anxiety disorders.³ In addition, India accounts for 36.6 percent

² The Mental Health Care Act, 2017, sec. 2.

³ Anisha Bhatia, “The Burden of Mental Disorders in India” *NDTV* October 9 2020. Available at: <https://swachhindia.ndtv.com/world-mental-health-day-2020-in-numbers-the-burden-of-mental-disorders-in-india51627/#:~:text=WHO%20also%20estimates%20that%20about,Indians%20suffer%20from%20anxiety%20disorders>. (last visited on June 1, 2021).

of world suicides, and suicide has surpassed maternal mortality as the greatest cause of death among women and adolescent girls aged 15 to 19. According to the *National Mental Health Survey 2015-16*, which was conducted by the National Institute of Mental Health & Neurosciences (NIMHANS), Bengaluru, under the auspices of the Union Ministry of Health and Family Welfare, 9.8 million teenagers aged 13 to 17 years suffer from depression and other mental health disorders and require active care. In contrast, according to a research published in the *Lancet*, suicide fatalities were the leading cause of death in women aged 15-29 years in 26 of the 31 states, and in women aged 15-39 years in 24 of the 31 states.

According to the *Global Burden of Disease Study 1990-2017*, one in every seven Indians was affected by mental disorders of varied severity in 2017, and the proportional contribution of mental disorders to India's total disease burden has nearly doubled since 1990. As per the *World Health Organization Report 2011*, India spends 0.06 percent of its health budget on mental health care, which is much less than what Bangladesh pays i.e., 0.44 percent. Most affluent countries spend more than 4% of their budgets on mental health research, infrastructure, frameworks, and workforce.⁴

3. Healthcare Rights in Time of COVID-19

Because health is defined as a condition of complete physical, mental, and social well-being rather than simply the absence of illness or infirmity, everyone has a fundamental right to maintain his or her physical, mental, and social well-being. The National Health Policy, 2002 has clearly recognized mental health as apart of general health and importance of human rights of mentally ill. The *Constitution of India* recognises health as fundamental right for all. Victims of violations of any of the fundamental rights have the ability to petition the Supreme Court through an appropriate proceeding for the enforcement of their constitutionally guaranteed fundamental rights. As a result, citizens have the right to constitutional remedies to defend their rights against anyone, even the government.⁵

In *M.C. Mehta v. Union of India*⁶, the right to a healthy environment was recognised as a fundamental right in the first instance, and the right to health and healthcare was derived from that. The right to health is intrinsically tied to the right to life. According to Article 21, the right

⁴The World Health Organization, *Spending on Health: A Global Overview* (2012). Available at: <http://www.who.int/mediacentre/factsheets/fs319/en/> (last visited on June 2, 2021).

⁵ The Constitution of India, 1950, art. 32.

⁶ AIR 1987 SC 1086.

to health and medical facilities is a collateral right of the right to life. It does not grant the patient any specific rights, but the patient's rights are derived from the applicable articles of the Constitution. Citizens' fundamental rights, as well as their human rights, include the right to health and healthcare.

The Supreme Court emphasised in its historic decision in *Parmanand Katara v. Union of India*⁷ that the right to life encompasses the right to emergency healthcare as well. The Court ruled that medical professionals are obligated to provide treatment in emergency situations and cannot refuse to treat the patient. The Supreme Court emphasised that article 21 of the Constitution imposes an obligation on the state to defend people's lives, and that every doctor, whether in government service or not, has a professional obligation to extend his services to safeguard people's health and lives. The Court declared in *Paschim Bangla Khet Majdoor Samiti v. State of West Bengal*⁸ that a government hospital's failure to give prompt care to a person in need resulted in a breach of his right to life granted under Article 21 of the Constitution. As a result, the Supreme Court emphasised the right to emergency healthcare and treatment.

During the pandemic, the majority of patients were denied access to even basic healthcare. OPDs at public and private hospitals remained closed due to infection concerns, and doctors were unable to treat patients. Although the Supreme Court of India stated in *Balram Prasad v. Kunal Saha*⁹ that hospitals, nursing homes, and clinics are required to treat all patients to the best of their abilities. In the midst of the COVID-19 epidemic, the public's basic rights, such as the right to health and healthcare, are under attack. During the COVID-19 pandemic, mentally ill people had to deal with India's ailing mental healthcare system. The matter drew the attention of the Court, which took the required steps in the public interest. The Supreme Court has stated that the COVID-19 lockdown does not trump personal liberty and the fundamental right to life. The right to health is inextricably linked to the right to life protected by the article 21 of the Constitution. Taking note of the gravity of the COVID-19 situation, the Delhi High Court has directed the Centre and the Government of the NCT to increase the number of beds for COVID-19 patients, as well as to try to increase the number of ventilators, so that all patients in need can exercise their right to healthcare.¹⁰

⁷ (1989) 4 SCC 286.

⁸ (1996) 4 SCC 37.

⁹ (2014) 1 SCC 384.

¹⁰ The Economic Times, New Delhi. Increase beds, ventilators for COVID-19 patients HC to Centre, Delhi Government [updated 2020 June 1; cited 2020 June 26] Available from:

Recently, a Supreme Court bench directed the Centre to select private hospitals that can treat COVID-19 patients for free or at a very cheap cost. The Supreme Court has also taken *suo moto* cognizance of media allegations of inappropriate care of COVID-19 patients and inhumane disposal of the victims' dead remains across the country.

4. COVID-19 and Impact on Mental Health

The COVID-19 pandemic is a disaster that will have long lasting impacts on human life as well as health. The pandemic is a one-of-a-kind occurrence that has changed people's lives forever. The lockdown imposed to control the spread of corona virus remain the primary concerns throughout the pandemic. Lockdown imposed various restrictions on daily functioning, separation from loved ones, approaching economic crises, influence on schooling and profession, and a lack of recreational activities, along with stringent cleanliness procedures, can all lead to mental health difficulties in those who are confined. The second wave of the COVID-19 has wreaked havoc on way of life and on the country's healthcare infrastructure. The second wave is having a psychological effect on those who have not been infected, with many feeling overwhelmed and helpless in the face of the problem.

Dr. Shetty who has worked in riot and disaster hit areas, talks about the possible impact of coronavirus on mental health while drawing similarities with that of a disaster. He says, in the past, fears outdid earthquake and riots. Even when an earthquake or cyclone is over and everything is settled, some people will get paranoid at the sound of anything resembling to that of an earthquake.¹¹ Similarly, in coronavirus, there will be long term impacts. Currently, we are in the altruistic phase where everybody is helping everybody. Once the altruistic phase is over, there will be fear of disillusion. At that point in time, in the long term, panic attacks will increase, nightmares will increase, and fear of illness will rise. Further sharing instances of how the epidemic has already started affecting people with existing mental illness, he stated that “A patient of bipolar told me he believes that he is responsible for the entire corona epidemic. I had to speak to him and adjust his dose. In the morning, I met an engineering boy who has not stepped out of his house for four days and wants to attempt suicide. He had no mental illness”.

<https://economictimes.indiatimes.com/news/politics-and-nation/increase-beds-ventilators-for-COVID-19-patients-hc-to-centre-delhi-government/articleshow/76356889.cms> (last visited on June 2, 2021).

¹¹ Suhani Singh, The age of fear: How Covid has impacted our mental health, available at: <https://www.indiatoday.in/magazine/cover-story/story/20210607-theage-of-fear-1807667-2021-05-28> (last visited on June 2, 2021).

The psychiatrists stated that those who suffer from psychosis will see an increase in anxiety and panic attacks and once the disease is controlled, there will be cases of acute stress reaction, post-traumatic symptoms and some might even suffer from anhedonia (an inability to experience emotions, be it joy or sorrow). COVID-19 pandemic will indeed have long-lasting impacts on the economy of the world and other things but it is going to have gruesome psychological scars as well. People who have no history of mental illness and whose family members suffered from COVID-19 are now facing difficulty in sleeping and are now getting thoughts continuously.¹²

If COVID-19 can impact people mentally fit then one can imagine how adversely it can affect individuals with underlying mental illness including anxiety, depression, and others. At this juncture, where stepping out of the house can risk you contracting the infectious disease, and the only way to stay safe is by staying locked up in the house. On the current behaviour pattern and people's reaction to the crisis, Dr Shelja Sen, (Child and Adolescent Psychologist and Family Therapist) stated that there is a tendency right now for everybody to try to keep in the loop all the time through WhatsApp updates, by watching the news and there has been a certain weird kind of FOMO (fear of missing out) that is coming.¹³ They want to catch up on every possible news piece and that is creating a kind of catastrophic situation which is not going to help anybody. It is very important that people understand that if you want to stay updated, check it once a day but do not let this fear hijack your life.

5. Mental Healthcare Legislation

Mental health is an essential component of human wellness that needs extensive treatment. The government has undertaken various attempts to protect the rights of those suffering from mental illnesses, consequently increasing patients' access to treatment. The Mental Health Act, 1987 has been replaced by the *Mental Health Care Act (MHCA)*, 2017. According to the Act, everyone has the right to get mental healthcare treatments. Such services should be of high quality, convenient, reasonably priced, and easily accessible. It also strives to safeguard such people from inhuman treatment, to provide them with free legal assistance and access to their medical records, and to give them the right to complain if their treatment falls short. It also requires that mental health services be built and made available in every district of the country. The Act

¹² Astha Ahuja, "Look After Your Mental Health During Coronavirus," *NDTV*, Oct. 9 2020 Available at: <https://swachhindia.ndtv.com/look-after-your-mental-health-during-coronavirus-experts-predict-rise-in-cases-of-anxiety-and-panic-44036/>

¹³ *Ibid.*

gives the government the authority to establish a Central Mental Health Authority at the national level and a State Mental Health Authority in each state. All mental health practitioners, including clinical psychologists, mental health nurses, and psychiatric social workers, as well as all mental health institutes, will be required to register with this body. These authorities will act to:

- (a) Register, supervise, and maintain a register of all mental health establishments;
- (b) Develop quality and service provision norms for such establishments;
- (c) Maintain a register of mental health professionals;
- (d) Train law enforcement officials and mental health professionals on the provisions of the Act;
- (e) Receive complaints about deficiencies in provision of services; and
- (f) Advise the government on matters relating to mental health.¹⁴

There is a need to create measures to improve the resources and capabilities of mental health professionals/workers, as well as to make measures for suitable financial support/budget. The previous law (*Mental Health Act* of 1987) did not define mental disease specifically. It defined a ‘mentally sick person’ as ‘anyone who requires treatment for any mental disease other than mental retardation.’ Except in Chapter III, no mention of substance use disorder (SUD) was made. However, the *Mental Health Care Act* of 2017, has included SUD in the definition of mental disease itself.

Section 89 of the *MHCA*, 2017, contains a disadvantage in that it allows a person with mental illness to be admitted and treated without his agreement, but at the request of a nominated representative. The Act ignores the fact that the family is the primary carers. Even clinicians are reliant on their families. As a result, the patient, the practitioner, and the healthcare administrators all require proper family support. The Act also disregards the fact that the government has a mental health programme. The Act should have required all states to create

¹⁴ Abhishek Mishra & Abhiruchi Galhotra, “Mental health Care Act, 2017: Need to Wait and Watch” *Int J Appl Basic Med Res.* 2018 Apr-Jun; 8(2): 67–70 Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/#ref30> (last visited on June 2, 2021).

a national mental health programme, and the state mental health authority should have been held accountable for it.

There are several approaches that can be used to remedy the flaws. One method is to remove the concept of addiction therapy from the scope of the *MHCA, 2017* by removing the reference to SUD from the definition of mental disease. Many nations, like the United Kingdom, Australia (in many of its states), and New Zealand, have left SUD out of their mental health acts and passed separate legislation for addiction and its treatment since people who abuse substances act differently and require distinct treatment.¹⁵

During the COVID-19 pandemic, when the incidents of mental illnesses were noticed frequently, the existing mental health care infrastructure proved inadequate. People who were mentally ill were coped with India's plagued mental healthcare system.

6. Conclusion

The paper concludes that in the time of COVID-19 the state of mental health in India remains worst and the existing legislation equipped to address crisis of mental health disorders must be reformed. The impacts of the COVID-19 pandemic are long last, which have changed the socio-economic figure of the country. The outbreak impacted the people physically as well as mentally. Amid the pandemic, the incidents of mental illnesses were noticed frequently and the existing healthcare infrastructure proved insufficient. Mentally ill persons coped with India's plagued mental healthcare system. This lack of integrated mental healthcare and overreliance on tertiary state-level hospitals led to a crisis for these hospitals and their users in the months after the COVID-19 lockdown was imposed. The situation served as a wake-up call that India's mental healthcare system requires strengthening and additional support from the central or state governments. In the national interest, therefore, policy reforms and proper implementation of the existing legal framework as well as well-structured mental healthcare system are required. Ideally, every district should have a mental health care speciality and the community outreach programme must be initiated to serve people mentally affected during the COVID-19 pandemic.

¹⁵ Sahil Sood, India: Mental Healthcare Act: A Legislation for the People, available at: <https://www.mondaq.com/india/healthcare/972410/mental-healthcare-act-a-legislation-for-the-people> (last visited on June 2, 2021).