

International Instruments on Mental Health - A Brief Note

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“The acknowledgment of having suffered evil is the greatest step forward in mental health.”

Stefan Molyneux

Abstract

The term “Mental Disabilities” is a broad term that includes people with disabilities caused by a mental disorder (such as people with a diagnosis of mental illness or with intellectual or developmental disabilities). Since many people are subject to discrimination based upon the improper perception that they have a current or past mental disorder, a well-crafted mental disability rights law will also protect people who have no disability or mental illness. In recent years, there have been a number of important developments that greatly aid the application of convention-based rights. Without Mental Health there is no health. Individual as well as societal development based on one’s mental health which would be the prerequisite to achieve all endeavors in human life. There is a proximate relationship between Mental Health and the circumstances prevailing or facing in human life. Hence, day to day experiences have a great impact on mental health constantly. According to Medilexicon’s medical dictionary, Mental Health is defined as “Emotional, behavioral, and social maturity or normality; the absence of a mental or behavioral disorder; a state of psychological well-being in which one has achieved a satisfactory integration of one’s instinctual drives acceptable to both oneself and one’s social milieu; an appropriate balance of love, work, and leisure pursuits.

This article addresses on various international instruments on protection of mental disabilities and role of states in this context

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Introduction

“What are we having this liberty for? We are having this liberty in order to reform our social system, which is full of inequality, discrimination and other things, which conflict with our fundamental rights.” Mental health is an important facet in all cultures and societies and contributes to the overall wellbeing of individuals. Closely interwoven and deeply connected, social, mental, and physical parameters are vital for the health standards of human beings belonging to all ages and races. Health programmes cannot be considered complete without being used for an overall promotion of positive mental health and adopting into its core an adequate provision catered towards the treatment of those who are mentally ill. Recognized as a major contributor to the global burden of disease across the world, mental disorders also bear on them a persistent negative attitude. Individuals with mental illness witness social rejection and this has been the case in many social and religious cultures. Mental illnesses also bear the reputation of being poorly understood by the general public, which threatens the effectiveness of patient care and rehabilitation. While being an integral and essential component of health, mental health disorders are not exclusive to any special group – they are truly universal. To this end, the preamble of WHO states that “Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity”, suggesting that addressing health without addressing mental health is meaningless.

International instruments on mental disabilities rights:

The rights of persons with mental disabilities began to be regarded as human rights and regulation for them was established at the international level only about two decades ago. After this change, protection was given to persons with mental disabilities under the common principle that “all human beings are born free and equal in dignity and rights”, so that persons with mental disabilities “do not need any additional proof to show that they deserve certain rights.”

“The International Bill of Rights” is a prime instrument on human rights that impacts the disabled. It is mainly composed of three documents: “The United Nations (UN) Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), and the International Covenant on Civil and Political Rights (ICCPR,

1966).” While the United Nations Declaration is not legally binding, foundational standards for protections were laid out by these instruments. A charter of basic human rights was established that all the UN member nations must follow. The ICCPR, on the other hand, “establishes civil and political rights and protects individuals from a government’s actions that violate people’s liberty, privacy, freedom of expression and association”. Under the provisions mandated by ICCPR, mentally disabled persons, when committed to a psychiatric institution, are able to seek more humane treatment and confinement conditions. And finally, the ICESCR is an international human rights treaty which the UK began to follow in 1976. It sanctions the enjoyment of social, economic, and cultural rights for citizens and especially advocates for the provision of sufficient resources to the mental health sector to ensure the availability, accessibility, and quality of mental health care.

“The Convention on the Rights of People with Disabilities (CRPD)”, the key international human rights instrument on the rights of persons with disabilities, collated into its adoption this movement in the interpretation of the rights of the mentally disabled in 2006. While playing a vital role in protecting people with mental disabilities and establishing foundational standards for the protection, promotion, and monitoring of human rights, these international legal instruments also empower national governments to fashion mechanisms, processes, and systems that would make the lives of the mentally disabled better and provide them with rights that cannot be taken away indiscriminately and without due procedure.

Meanwhile, mental health rights being excluded from conventional human rights international law had also begun to be addressed in the past two decades of the 20th century. Activists and participating actors orchestrated large movements and huge efforts to bring awareness to the changing understanding of mental laws as not being part and parcel of human rights. As a result of these efforts, the understanding around how interrelated human rights law and mental laws really were began to increase in the following ways: “(1) mental health policy affects human rights; (2) human rights violations affect mental health; and (3) positive promotion of both mental health and human rights are mutually reinforcing.”

Additionally, there were a number of legally non-binding instruments that were implemented by the UN later in the 1970s, including the “UN

Declaration on the Rights of Mentally Retarded Persons (1971)” that served as a standard for excellent practices in the mental health area.”The United Nations announcement of 1981 as the International Year of Disabled Persons”, the “UN World Programme of Action Concerning Disabled Persons” in the 1980s, and the recognition of 1983 to 1992 as the “Decade of Disabled Persons” aided in the expansion of the international system for mental law standards. Two special rapporteurs were also appointed at this time by the UN to explore the needs of human rights of persons with mental disabilities.

In 2008, the “UN Convention on the Rights of Persons with Disabilities (CRPD)”, which sets out wide-ranging rights including, “civil and political rights, the right to live in the community, participation and inclusion, education, health, employment and social protection” also came into effect. This event commemorates a key breakthrough in the attempts to foster, safeguard and guarantee the maximum and equitable utilization of all human rights of persons with disabilities.

Mental health and human rights are inextricably linked in the sense that they can serve as balancing approaches to the betterment of human beings. To this end, in the context of mental health, international human rights instruments are important as they are the only resource of law that legitimize international inquiry of mental health policies and practices within a self-governing country. In addition, they provide fundamental safeguards that cannot be taken away by conventional political processes. Since only those who retain some realistic level of operation can take part in social and political life, some amount of mental health is crucial for human rights. On the other hand, “human rights are indispensable for mental health as they provide security from harm or restraint and the freedom to form and express beliefs that are essential to mental well-being.”A fundamental basis for mental health legislation is human rights, in accordance with the objectives of the United Nations Charter and international agreements. Key rights and principles in this charter 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 United Nations has defined human rights to mean generally as □“those rights, which are inherent in our nature and without which we cannot live as human beings.” Section 2 (d) of the Protection of Human Rights Act,

1993 has defined human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the international covenants and enforceable by the courts in India.” Mental health legislation is a formidable tool for classifying and strengthening these fundamental beliefs and tenets. Equally, being unable to access care is a violation of a person’s right to health, access to which can be included in legislation. Therefore, the human rights of persons with mental illnesses through thematic resolutions, declarations, and treaties have been consistently addressed by international and regional systems.

A person with mental illness is eligible to treatment with the same self-respect and civility as any other human being and does not become a non-person simply on the account of certain disabilities. Mentally ill persons must be treated on par with all human beings. International legislative documents such as, the “Universal Declaration of Human Rights, U.N. Declarations on the Rights of Disabled and Mentally Retarded Persons, or the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care”, have announced and/or adopted, as the case may be, by the General Assembly, that such persons shall be treated on par with all other persons. In 1948, the United Nations, through its “Declaration of Human Rights “asserted the basic notion that “a mentally ill person should at all times be treated with compassion and reverence for the fundamental dignity of the person. Every person with a mental illness should have the right to use all political, cultural, and civil rights.” The Declaration of the Rights of the disabled, was adopted by the United Nations in 1975, and this includes persons with mental illness.

Convention on the Rights of Persons with Disabilities (CRPD)

Together with its optional protocol, on December 13, 2006, the Convention on the Rights of Persons with Disabilities (CRPD) - the main international instrument to protect the rights of people with disabilities - was adopted by the UN General Assembly. This instrument was one of the nine UN central international human rights instruments. Previous instruments, documents, declarations, and other programs provided broad legal underpinnings and general exposure for persons with mental disabilities. However, CRPD was the primary all-inclusive instrument that went on to establish “international legal standards for the specific protection of the rights of people with disabilities as a defined vulnerable group.” Furthermore, the CRPD is an “international

legally binding treaty that gave hope to approximately 650 million people with disabilities around the world.”

Also called the European Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), was adopted in Rome in November 1950 and came into force in the year 1953. Becoming the first regional instrument, it gave effect to and made binding certain rights stated in the Universal Declaration of Human Rights. It also became the highest rated regional instrument that regulated the human rights of persons, including persons with mental disabilities, and affirmed “the enjoyment by all persons ... of human rights and fundamental freedoms.”

Serving as interpretive guidelines to international treaty obligations, the “Declaration of Madrid (1996), the Standard Rules for Equalization of Opportunities for Persons with Disabilities (1993)”, and other non-legally binding documents were adopted in the 1990s. Standards such as WHO’s “Mental Health Care Law: Ten basic principles and WHO Guidelines for the Promotion of Human Rights of Persons with Mental Disorders (1996)” were also implemented during this time.

Role of the World Health Organization (WHO)

In order to assist the awareness and execution of the United Nations Principles, the WHO printed guidelines to the human rights of persons with mental disorders. A checklist to enable the swift evaluation of human rights conditions at both local and regional levels is included in these guidelines. Mental Health Care Law: Ten Basic Principles is another document that helps in the implementation of the United Nations Principle. It is based on a proportional assessment of national mental health laws and “describes ten basic principles for mental health legislation, irrespective of the cultural or legal context.”

“These ten basic principles are:

1. Promotion of mental health and prevention of mental disorders,
2. Access to basic mental health care,
3. Mental health assessment in accordance with internationally accepted principles,
4. Provision of the least restrictive type of mental health care,

5. Self-determination,
6. Right to be assisted in the exercise of self-determination,
7. Availability of review procedures,
8. Automatic periodic review mechanism,
9. Qualified decision-makers, and
10. Respect for the rule of law.”

While collaborating with international organizations to publicize international human rights standards, the World Health Organization also works to bring awareness and advocacy for the rights of people with mental disabilities. The WHO supports governments in the goal of promoting and strengthening mental health of its citizens. Along with evaluating evidence for promoting mental health, the WHO is also working with governments to distribute this information and to effectively integrate strategies into policies and plans. The World Health Assembly, in 2013, approved a Comprehensive Mental Health Action Plan for the period of 2013 – 2020. This Plan is a commitment by all of WHO’s Member States to take specific actions to contribute to the attainment of a set of global targets and to improve mental health. The overall goal of the Action Plan was to avert mental disorders, improve recovery, stimulate mental well-being, deliver care, promote human rights and reduce the mortality, morbidity and disability for persons with mental disorders. It focuses on four key objectives: “to strengthen effective leadership and governance for mental health; provide comprehensive, integrated and responsive mental health and social care services in community-based settings; implement strategies for promotion and prevention in mental health; and strengthen information systems, evidence and research for mental health.” Particular emphasis is given in the Action Plan to the central place of community-based care, the strengthening and empowering of civil society, and the protection and promotion of human rights. In order to achieve its objectives, the Action Plan proposes and requires clear actions for the WHO, its international partners and governments. The WHO will work with Ministries of health who will assume a leadership role, and also with national and international partners, including civil society, to implement the plan.

Each government will need to adapt the Action Plan to its specific national circumstances, as there is no blanket action that fits all countries. Implementation of the Action Plan will enable persons with mental disorders to: "find it easier to access mental health and social care services; be offered treatment by appropriately skilled health workers in general health care settings; participate in the reorganization, delivery and evaluation of services so that care and treatment becomes more responsive to their needs; gain greater access to government disability benefits, housing and livelihood programmes; and better participate in work and community life and civic affairs." The Mental Health Gap Action Programme of WHO and its evidence-based instruments can enable some of these processes.

Conclusion

The social rejection of people with mental illnesses and a persistent negative attitude towards mental health has prevailed throughout history in many social and religious cultures. Mental illness is poorly understood by the general public among all health problems. Such negative attitudes and poor knowledge towards mental illness threaten the effectiveness of patient care and rehabilitation. Mental disorders are truly universal and not the exclusive preserve of any special group. Mental health has been hidden behind a curtain of discrimination and stigma for far too long; it is time now to bring it out into the open. The magnitude of suffering and burden in terms of costs associated with disabilities for societies, families, and individuals are staggering. The world has become increasingly aware of this enormous burden and the potential for mental health gains, in the last two decades. According to the World Health Organization, "it is estimated that approximately 500 million individuals globally are affected by mental illness, alcoholism and drug addiction." However, it is estimated that of the adult population, approximately 20% have a mental health problem, at any given time. Frameworks created by international and regional legal instruments form the basis for fighting the breach of human rights of persons with mental disabilities while establishing a groundwork to support the rights of persons with mental disabilities. The general public is normally not very aware of human rights abuses and breaches in the area of mental health, although there have been improvements in general awareness around this issue. Public awareness generally only becomes concentrated on this issue when there is a succession of isolated incidents reported in the media. It is apparent that

examining the history of these regional and international instruments plays a vital role in persuading governments to bring together populations on the importance of equal rights for those with mental disabilities while instituting powerful legal structures to support the cause.

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