



## Star LAW analysis

# Sensitise Lunacy Act

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**I**N most countries of South Asia mental illness is simply not taken seriously. Persons with mental illnesses are locked up, beaten and often arrested. In accordance with the spirit of human rights philosophy- the basic needs of all persons with mental illnesses should be met, and their basic rights are respected- promoted and established. It proceeds further to build inclusive communities, where persons with mental illnesses- throughout development- realize their own rights. Whatever there are mental health services are not affordable or available for many. People have to travel long distances in search of treatment, so with services out of their reach, most of them remain without medication or falls in hand of local healers. Community care facilities have yet to be developed.

### Persons with mental illness

Legally speaking, a 'Mentally Retarded' is that person who significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behaviour and manifested during the developmental period, which adversely affects a child's educational performance; where a 'Mentally ill' person is s/he who is suffering from mental illness or mental disorder, as defined in psychiatry and other mental health professions. This can involve cognitive, emotional, behavioural and interpersonal difficulties.

Nevertheless, the domination of clinical knowledge is evident in legal texts worldwide in particular when the issues of human difference e.g., disability or mental health and related issues are defined so far. The term Mental Retardation is essentially known as a form of disease in medical domain. The notion denotes a set of clinical parameters for 'intellectual ability' of a human category that varies from the majority 'normal' people. Now a day, the term is popularly known as intellectual disability in social science and development domain and disability rights movement to indicate a set of differences in intellectual capacity and characteristics, which leads this group of people and their family to a world of stigma, stereotyping, discrimination and social injustice.

### Mental illness and intellectual disability

While for mental illnesses, the dominant perception of the issue is of course biased to a bio-medical understanding of health, which barely goes beyond a human body. The explanation of mental illness and intellectual disability may appear to be identical to the general audience. And that exactly happened in our context as well. Intolerance of the so-called normal majority portion of the society towards any form of human otherness performs from behind the scene. The majority 'normal' has indiscriminately categorised these two diverse groups no matter what the medical science declares and the movement demands.

United Nations Convention on the Rights of Persons with Disabilities (CRPD) has already become effective as one of the international human rights law has overtly outlined its outreach by saying persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The human rights instrument acknowledged mental impairment, which is distinctly different from intellectual impairment, as one of the basis of social inequality, discrimination and injustice.

### Mental health services in Bangladesh

Not until 1957, there were any formal mental health services in Bangladesh. Only after the Mental Health Act of 1987, in India, central supervision of all mental hospitals became a reality. The Act of 1987 is constructed in focus when it comes to severe illnesses and disability. A report prepared for the National Human Rights Commission (NHRC) in 1999 after an empirical study of mental hospitals in the country made a condemnation of the state of mental health institu-



tions. In Pakistan, a systematic review of risk factors, prevalence, and treatment of anxiety and depressive disorders found that the overall mean prevalence of these disorders in the community was 34%.

The only mental hospital established in 1957 shifted to present premises in Pabna in 1958. In 1971, Bangabandhu Sheikh Mujib Medical University (BSMMU, formerly IPGMR) in Dhaka started department of Psychiatry while in 1974 first Department of Psychiatry established in Dhaka Medical College Hospital. In 1978, seven other Medical College started Psychiatry Departments. In almost all old medical colleges, psychiatry started as out patient department gradually opened inpatient department. Psychiatry was incorporated in national undergraduate medical curriculum developed in 1988. But its incorporation in teaching and examination takes another 5-7 years.

Mental Health comes under the Line Director "Non-communicable diseases and other public health interventions" within the National Health Directorate. However, there were no full-time director in post and the DG has to take responsibility most of the time. In terms of the practical plan and budget, mental health components are included in the operational plan for the "Health, Nutrition and Population Sector programme" but in effect, this only means the two mental institutions, National Institute for Mental Health (NIMH) and Pabna Mental Hospital.

These two institutions are able to access and buy their own drugs separately, but other psychiatric units (the district hospitals are supposed to have units and medical colleges that have psychiatry departments) have to rely on government mainstream health budgets. The two institutions have different directors. NIMH coordinates the WHO input for Mental Health. When it comes to reality- in terms of everyday services in and outside the Institute, on spot visits in all these places suggest that they have minimal abilities to provide efficient clinical services and especially for the psychiatry departments in regional Medical Colleges, struggling with minimum and/ or no budget and absence of proper support staff.

### Standards that we must strive to meet

Article 2 of the Universal Declaration of Human

Rights (UDHR) states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind..." Article 6 says, "Everyone has the right to recognition everywhere as a person before the law". Where Article 7 mentions, "All are equal before the law and are entitled without any discrimination to equal protection of the law..." Article 25 (1) clarifies; "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, housing and medical care and necessary social services... in circumstances beyond his control."

According to the United Nations (UN) principles for the protection of Persons with Mental Illness, 1991; "All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person... There shall be no discrimination on the grounds of mental illness..." Under the principles in Article 1; all persons have the right to the best available mental health care, which shall be part of the health and social care system- also every persons with mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights.

Although these conventions cannot be incorporated into our domestic law, *per se*, they do provide standards that we must strive to meet. The recent ordinance has brought us one step closer to such compliance. But many problems still remain, so it has become ever more important that the law be subjected to periodic review by a team of experts who measure its performance with reference to the above-mentioned standards, and suggest the necessary reforms.

### Bridging the gaps in the law

Constitutions of Pakistan, India and Bangladesh categorically mentioned that all citizens are equal before law and are entitled to equal protection- and there shall be no discrimination against any citizen on any ground. On February 2001, the Pakistan Mental Health Ordinance came and the Lunacy Act of 1912 consequently stood repealed. The Ordinance used the term "mental health" as a part of its title and defines the converse-mental disorder as "mental

illness, including mental impairment, severe personality disorder, severe mental impairment, and any other disorder or disabling of mind..." (Section 2(1) and (m) of the Pakistan Mental Health Ordinance 2001).

In India, the Mental Health Act of 1987 repealed the Lunacy Act. Under this new legislation, the central supervision of all mental hospitals became a reality. This is a fundamental change in the management of mental hospitals. These hospitals were thus removed from the grip of the Inspector General of Prisons. The next most important change was the recognition of the role of specialists in the treatment of mental patients. Psychiatrists were appointed as full time officers in mental hospitals. However, the mood and climate that faces the mentally ill is that of the eternally doomed. There is little hope for patients in a custodial environment that breeds isolation and exclusion. They are deprived of any skills for daily living and social interaction. There is no counseling to prepare patients for adjustment problems, relapses, re-admission or abandonment.

Terminology deeply reflects the mood of those who use it. The adoption, by Pakistani society and law, of more scientifically appropriate, precise, and humane terms indicates that a more empathetic attitude has replaced an earlier attitude of summary dismissal and a lack of understanding towards individuals who are mentally disordered. This is, indeed, a positive development. An important development brought about by the new law is the establishment of the Federal Mental Health Authority, comprising seven "eminent psychiatrists of at least 10 years standing" (section 3(3) (v)) has been given the responsibility of overseeing the state of mental health provision in the country, setting up national standards of care and treatment, and performing a host of other tasks.

Together, the introduction of these measures shows the attention that has been devoted towards streamlining the provision of medical help for individuals who are mentally disordered and towards bridging the gaps in the law. The other side may be that such detailed legislation might open the floodgates to those who wish to sue psychiatric professionals, though it is likely that such litigation will be rare. There is a lack of professional expertise regarding cases of personal injury caused by medical negligence. Another factor that makes litigation rare is the strong traditional belief in predestination- the belief that ill fate or death is fixed, and thus someone's negligence cannot affect it largely.

### Constitution of Bangladesh

In the Bangladesh Constitution, namely Article 27, 28 and 29, it has been categorically mentioned that all citizens are equal before law and are entitled to equal protection. Constitution's core spirit is that there shall be no discrimination against any citizen on any grounds. In Articles 15, 17, 19 and 20 it mentions provisions for fulfillment of basic necessities of life including health services and equality. There is a National Health Policy with no reference of any kind about Mental Health and/ or services for the persons with mental illnesses. National Health Policy of Bangladesh reiterates state's responsibility and obligations under the Constitution (Article 15a, 18-1). Nowhere in the policy were special actions mentioned ensuring rights of the persons with mental illnesses. In its 15 aims the issue was not been addressed. Neither any single point was mentioned in the fundamental policies and/ or action plans. There is still hope as the Government is drafting a Mental Health Policy.

We must remember that persons with mental illnesses have distinct and unique requirements. Any legislation drafted for them should provide first the option of institutional care, subject to the need and informed consent of a mentally ill person. It is really critical to study the element of consent involved in supervisory care and medication for which an independent legislation is required which could address the complexities. Secondly, address the vulnerability of the mentally ill persons who are constantly exposed to abuse and exploitation/ violence.

### Legislations governing persons with mental illness

The Lunatic Asylums Act of 1858 was the first law solely governing persons with mental illness. This later was repealed, by the Lunacy Act, 1912, still prevailing in Bangladesh. It is really a pity that still, legally (and may be also socially); we are recognizing persons with mental illnesses as a lunatic and/ or crazy/ insane disrespecting their position as a human being. In 1851 the "Lunatics Removal Act" was passed. This Act has the dubious distinction of being the first mental health legislation in British India. In pursuance of this Act and the rules framed there under, the flow of patients gradually dwindled, till it came to an end in 1891. We must not forget that archaic laws such as the Prisons Act, which relates with the Lunacy Act in application to determine the procedure for dealing with mentally ill convicts.

It could easily be noticed that this law in no place ensure the rights of a mentally ill person rather considering him/her a burden of the society and taking care of mainly his properties and assets. Unlike other areas of healthcare, our procedures and systems in the area of mental health continue to be governed by antiquated procedures and rules. The enactment of the Lunacy Act, 1912 had a far-reaching consequence and impact on the whole system of mental health services and administration.

### A fresh start - legally challenge rights abuses

It would be more effective if a fresh beginning could be triggered from the education system at all level- tagging that to medical colleges for updated and expert understanding- and build a team effort with efficient practitioners, psychiatrists, nurses and families of individuals with mental illnesses. Information on how to behave with persons with mental illnesses, how to improve family care, knowledge on medicines and treatment regimes and what treatment can be done in the community mental health and understanding of how to interact and work with them should be disseminated at all level.

Service inadequacy in the public sector is a fact so as less/ no intervention of the non-governmental initiatives. In both these areas proper support and well-designed programmes should be taken. Nevertheless, these all should start with a country-wide awareness raising campaign. Community-based Organisations (CBOs) should be responsible as much of the direct work as possible. Get them to identify a volunteer from within them to focus on bringing in persons with mental illnesses and to be trained by NGOs. They need to get skilled of mental health, identification and how to work with persons with mental illnesses, counseling etc.

NGOs should take the responsibility to build the capacity of the CBOs to do this. They will have to be skilled up in community mental health development and given extra resources to do the research and policy work. They should mobilize and support groups to legally challenge rights abuses. Also, produce materials for training and advocacy. Initiatives should be taken for awareness rising with policy makers and service providers, including the police.

Until communities are aware that they should not think persons with mental illnesses as a burden and treat them badly no policy or act would be enough. Government need to draft a policy and to get people treatment. Systems of medical institutions need to be improved so that there are more trained people and more places to get help. Association of psychiatrists should take the lead role and get along the NGOs to lobby with the GoB to first repeal the existing Lunacy Act and enacting a separate Mental Health Act- if not the policy then this act could be the guiding mechanism towards establishing rights of the persons with mental illnesses of Bangladesh- reiterating enforcement of right to be treated right.

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## LAW campaign

# Need for more attention to mental health services in primary healthcare

**T**HE 2009 World Mental Health Day global awareness campaign focuses on "Mental Health in Primary Care: Enhancing Treatment and Promoting Mental Health." This year's theme addressed the continuing need to "make mental health issues a global priority", and stressed the all too-often neglected fact that mental health is an integral element of every individual's overall health and well-being. Mental illnesses do not choose their victims; they occur in all cultures and at all stages of the life span. Mental illnesses have a major impact on the physical health of people living with them. The campaign theme is intended to draw worldwide attention to the growing body of information and knowledge focusing on the

integration of mental health in primary healthcare, and to provide this information to grassroots patient/consumer, family member/caregiver, and advocacy and educational mental health associations around the world. This is a significant trend in shifting mental health diagnosis, treatment and care from the traditional separate but unequal mental health services delivery system into mainstream healthcare.

The engagement of the "end users" of mental health services, their families who often carry much of the responsibility for helping people living with mental illnesses to manage in the community, and the advocates who attempt to influence mental health policies, is critical during this time of change, reform, and

limited resources. One of the primary advocacy concerns that must be addressed is the danger that adequate and effective diagnosis, treatment and recovery of people living with mental illnesses will not receive a parity level priority within the general and primary healthcare system. It is the job of the global mental health advocacy movement to assure that this is not an unintended result of healthcare reform.

Advocates, families, professionals and policymakers across the global mental health sector must remember that this current movement to improve the way in which mental health services are delivered is not the first such reform effort. Lessons learned from the past tell us that achieving parity in how mental health



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services are addressed in countries around the world is not an easy struggle. The effective integration of mental health into primary care at a level of priority appropriate to the documented burden of care of mental illnesses will be a major undertaking in a time of global economic and social difficulty. Certainly, it is well past time for the world to listen and to act to improve mental health services and ready access to services by those experiencing serious mental health problems and disorders such as schizophrenia, anxiety disorders, bipolar disorder, and depression! That is the central message of World Mental Health Day 2009!

Source: World Federation for Mental Health (WFMH).