Chapter 12
Legal Aspects of Chronic Mental Illness

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ABSTRACT

People with a chronic mental illness or disability have been identified as a group suffering multiple disadvantages. Law interacts with mental disorder to protect society from the dangerous consequences of mental disorder. The legal interaction with mental disorder includes both civil and criminal issues. A paradigm shift has given a new perspective to the care of mental disorders and has led to the review of mental health legislations worldwide in general, India in particular. This chapter will discuss the interaction of law and psychiatry, rights of persons with mental disorder and the gap in implementation of these laws.

INTRODUCTION

The mental health is a part of the general health and has a serious concern in the society. A person who suffers mental illness suffers not only for himself but also would bring about suffering for the people who are not only to the family but to the society at large. However, a person who suffers from such a mental illness cannot be neglected. They cannot be denied with the basic needs to level in a respectable manner. The doctrine of parens patriae allows the state to intervene and to act as a surrogate parent for those who are unable to care for themselves or who may harm themselves. The Mental Health enactments are promulgated with dual objects such as:

DOI: 10.4018/978-1-5225-0519-8.ch012
1. To have a concern for the rights and protection of people with mental disorder.
2. To have a concern for rights and protection of community to which the person with mental disorder belongs.

Mental illness has been recognized as one of the disabilities under Section 2 (i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PWD) Act, 1995. “Mental illness” has been defined under Section 2(q) of the said Act as any mental disorder other than mental retardation. As a socio-welfare measure, to ameliorate the condition of people suffering from mental disability the appropriate local government may frame such schemes to provide unemployment allowance, insurance and rehabilitative homes.

DISABILITY

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) marks a “paradigm shift” in attitudes and approaches to persons with disabilities by treating them as “subjects” with rights, who are capable of claiming those rights. The concept of disability differs from society to society because of the attitude towards disability are deeply rooted in socio-cultural values. The term disability has been defined in many ways such as handicap, incapacitated, impaired, abnormal and inform and so on. The World Health Organisation (WHO) has defined it ‘to mean any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being’. The PWD Act (1995) socio-welfare legislation, for the first time recognised the mental illness as a disability. A person suffering not less than forty percent of any disability as certified by a medical authority would be a person with disability. A person having mental illness not less than forty percent would be a person with disability. Such a person having mental disability would be entitled to have a rehabilitation to reach and maintain the optimal intellectual, psychiatric or social functional level. Such a person shall not be discriminated and in fact should be provided with concession and encouragement in the areas of education, employment, transportation and access to public places, sports and cultural activities, medical and financial benefits and property (Gautam, Jain, Batra, Sharma & Munshi, 2009).

People with a chronic illness or disability are particularly vulnerable to experiencing legal problems and have difficulty resolving these problems. People with a chronic illness or disability have increased vulnerability to experiencing a wide range of legal problems, including civil, criminal and family law problems (Coumarelos, Wei, & Zhou, 2006; Currie, 2007; Pleasence, Balmer & Buck, 2006; Pleasence, Buck, Balmer, O’Grady, Genn & Smith, 2004b). Furthermore, these surveys indicate that such people have lower resolution rates for their legal problems (Coumarelos et al., 2006; Curry, 2007).

In Oregon (United States), Dale (2000) found high levels of legal need among people with a mental disability, particularly for problems related to public benefits and family law. Dale also found high levels of legal need among with a physical disability, particularly concerning discrimination, wills and estates, consumer and health care matters. In Washington State, the Task Force on Civil Equal Justice Funding (2003) reported that people with physical disabilities had relatively high rates of consumer, health, estates and trusts issues, while people with mental disabilities had relatively high rates of legal issues related to housing, municipal services and public services.
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