

**MENTAL HEALTHCARE BILL, 2016: AN ANALYSIS****Ms. Swati Sehgal<sup>1</sup>, Ph.D. & Ms. Deepti Saini<sup>2</sup>**<sup>1</sup>*Assistant Professor, Department of Elementary Education at IHE, Delhi University*<sup>2</sup>*M.Phil (Education), Assistant Professor, Department of Elementary Education at Institute of Home Economics, University of Delhi.***Abstract**

*This paper is an attempt to analyze certain crucial aspects of the recent Mental Healthcare Bill, 2016. An attempt has been made to delve upon crucial components of the bill by situating it in the historical context of legislations and implementation measures adopted in the country. The paper also seeks to deliberate upon the theoretical understanding of mental well being and illness as terminologies and its implications in the conceptualisation of the bill.*



*Scholarly Research Journal's* is licensed Based on a work at [www.srjis.com](http://www.srjis.com)

**Introduction**

This paper is an attempt to analyze certain crucial aspects of the Mental Healthcare Bill, recently passed in the Rajya Sabha (August, 2016) and yet to be presented in the Lok Sabha. The paper seeks to analyze the bill with the understanding that firstly mental well-being is closely associated to the contingencies of the context; secondly mental illness is a state of being that may last for a period of time and can be effectively addressed through medical attention and care that is not corrosive or violent; and thirdly it is not a cause or effect of cultural, caste, sex or religious associations, rather these engendered notions dilute the possibility of providing adequate care. Before delving into what the bill highlights the necessity is to examine a) what do we understand by the term mental health and mental well being and b) what is the historical context within which this bill was formulated. We will attempt to briefly delve into these concerns in the following sections.

**Understanding the term Mental Health**

The term 'mental health' per se, can be quite misleading. It is often confused with mental ill health rather than acknowledging its connotation of positive mental health. Mental health goes beyond the understanding of mere lack of mental disorders. In the latest definition by World Health Organization (WHO) the positive dimension of mental health is stressed. Mental health is closely related to the concept of well being and even forms one of the components for deciding upon a mentally healthy individual. Other components are perceived

self efficacy, autonomy, competence, intergenerational dependence and the ability of the individual to realise his intellectual and emotional potential. WHO (2003) defines mental health as a state of well being whereby individuals recognise their abilities, are able to cope with the normal stresses of life, work productively and fruitfully, and make a contribution to their communities. It is sad that the understanding of mental health is limited to only those who suffer from it or people who are their caregivers and family members. Mental health should be a concern for all. In most parts of the world, mental health and mental disorders are a neglected concern as compared to physical health.

A document by WHO, *Investing in Mental Health*(2003) also raises the concern that problems of mental health affect not only the individual but the society as a whole. Hence, it points to the importance of community mental health. Also while no section of the society can be immune to mental illness, few sections are more prone to it. These include the homeless, the unemployed, persons with low education, victims of violence, migrants and refugees, indigenous populations, children and adolescents, abused women and neglected elderly (WHO, 2003).

The Diagnostic and Statistical Manual, DSM-V, released in year 2013, mentions that although it is difficult to capture all aspects of mental disorder in a single definition, the following elements can be listed-

“A mental disorder is a syndrome characterized by clinically significant disturbance in an individual’s cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as death of a loved one, is not a mental disorder. Socially deviant behavior (e.g. political, religious or sexual) and conflicts that are primarily between the individual and the society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.” (APA, 2013, p.20)

The definition is sought with a number of confusions. In the first statement, the term ‘clinically significant’ is as loose as it can be. In the absence of any parameters, it is difficult to decide the level above which the disturbance be considered significant clinically. The DSM strategically adopts an atheoretical stance on the aetiology (origin) of mental disorders which will make defining disorders difficult.

Also, there lies confusion with the usage of the word 'mental disorder'. As mental in this context is taken as the 'mind' and disorder is taken as deviant behaviour or a disease, it implies that it is a disease of the mind that is being discussed in this definition. As Szasz (1974) points out, minds- unlike brains- are not biological, and so, in a literal sense, they cannot be affected by diseases.

The terminology has evolved and in the latest draft of the Mental Health Bill (2016), the term mental illness is being used. Mental health and mental illnesses are determined by multiple and interacting social, psychological and biological factors. This relation is visible as risk of mental illness in developing and developed countries, such as India, is associated with indicators of poverty, low levels of education, poor housing and low income. Feelings of insecurity, hopelessness, rapid social change, risks of violence and physical ill health are also factors explaining vulnerability of people to mental illness (WHO, 2005, XIX). Neither mental nor physical health can exist alone. In fact mental, physical and social well being is interdependent and focus on one aspect will result in improvements in other domains as well.

The family plays an important role in the support, both physical and emotional, and treatment of persons suffering from mental illness. It is not only painful to see a loved one bearing the consequences of mental illness, but also the rejection that it has to cope with in the society. Mental illness is still a stigma for majority of people in any society and this determines the readiness of the person with the mental disorder to go and seek help. The family also has to face rejection from the relatives, friends, neighbors and community. In monetary terms, the amount of money spent on the treatment of mental illness is not covered under insurance or government provisions which pressurize the family to keep aside a specific amount of money on a regular basis for this treatment.

### **Context of the Mental Healthcare Bill, 2016**

Historically, a glance at the policy initiatives reveals that there have been National (launched in 1982) and District Level Mental Healthcare programme in action in the country, with massive outreach as an intended objective. But both are being crippled by the lack of budgetary allocations and create the need of a more concerted and well funded action (Khurana et al, 2016). The National Mental Health Survey Report (2016) also refers to the dire need for mental health being given a high priority in the development agenda. It is repeatedly emphasised across forums that the condition is apoplectic and a granular view of the situation is required to address the situation effectually.

The current bill in examination replaces the Mental Health Act, 1987. It is in accordance with United Nations Convention on the Rights of Persons with Disabilities, ratified by India in 2007, which requires signatory countries to change their laws to give effect to the rights of persons with mental illness. Agreeing to the conventions entails the State's efforts to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (Convention on the Rights of Persons with Disabilities, p.7). It enjoins upon the States to have an implementation and coordinating mechanism, with adequate monitoring.

### **Analysis**

The bill is seminal with regard to its recognition of mental illness 'es' as a pertinent concern, particularly with reference to the contemporary social milieu. The explanation of mental illness as given in the bill, differentiates it from retardation. It reads as a "*substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life*" (Mental Healthcare Bill, 2016, p 4). Thus at the very outset the definition of the term 'mental illness' brings to light the idea that there is not a narrow understanding of what the term mental illness denotes. Also it highlights that an attempt has been made to locate the reasons contributing to mental illness within the ambit of the social. It indicates that there is a recognition of the idea that mental well-being may be affected by the demands that the society places upon an individual and coping with the environment can be challenging and disorienting. One may ascertain from the explanation itself that due consideration is being accorded to the nature and variation in the reasons and manifestations of mental illnesses in various forms.

Further, a reference is also made to the concern that there is a clear dissociation of illness with cultural, religious and racial associations or is not driven by "*non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing*" (Mental Healthcare Bill, 2016, p.5). This is indicative of a progressive outlook where the effort is to dissociate the tabooed notions and practices of branding mental illness as an aberration which cannot be cured. The perspective exhibits a definitive standpoint to encourage a move away from rudimentary understandings of mental illness. There is a mild attempt to go against the oft-associated connotation of mental as derogatory, out of the normative limits of the social setup. Though the compartmentalized categories are still there but it is seminal because there

is acknowledgement that mental well being and illness can be looked at on a continuum and not as rigid binaries.

Despite the string of amendments (134 as recommended in the Rajya Sabha), the bill is expansive in its formulation and extends the scope of envisioning healthcare, particularly with respect to mental illnesses in a more humane way. It is a welcome step in establishing inclusiveness and acknowledging the grim situation of mental healthcare facilities currently available in the country. In a country where there is massive stigmatization of mental illness, to the brink that it amounts to ostracisation, this bill is a crucial step towards creating a dialogue against social apathy for mental illnesses. It is but obvious that this would not tantamount to acceptance but the perspective of seeing the bill as a proactive step cannot be disregarded.

As quoted by the health minister, J.P Nadda the bill seeks to adopt a “community based approach”(as quoted in Firstpost, 9.08.2016), where there is scope for voice and will of the mentally ill in the delivery modes of healthcare. The progressiveness in intent is visible in the form that there is a shift in perception of the needs of a patient. The bill states clearly - *“Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment”* (Mental Healthcare Bill, 2016, p 5). This is clarified with a further explanation, referring to the reasonable understanding regarding the decision made.

The third chapter of the bill refers to a further enabling provision in this regard, named as Advanced Directive (Mental Healthcare Bill, 2016, Chapter III), which can be described as the right of patient to specify how he/she requires/does not require to be cared for. This has associated conditions which refer to the individual well being, legal considerations, and medical contingencies. The clause clearly states that an individual can appoint a Nominated Representative (Mental Healthcare Bill, 2016, Chapter IV) who, as the terminology suggest, would be entitled to take decisions with respect to the well being of the patient. There are procedural requirements which clearly delineates what or how this representative can act in the welfare and interest of the individual by providing decision making powers to the stated individual. However not giving a freehand the bill clearly specifies the responsibility of the representative to the medical practitioner and the Board (i.e the Mental health establishments or authorities). This aspect of the bill raises several pertinent concerns. Firstly the attempt has been made to take into account that is required a network of support, secondly mental illness is recognised as a condition where it is acknowledged (in intention) that there needs to

be caregiver/familial support and the problem is not merely to be dealt with by institutionalisation. The centrality of the patient cannot be overlooked and is visibly evident in various sections of the bill.

The bill specifies whom does one allow and how does one seek to be treated in conditions of mental disorders. This speaks a lot for aspects such as volition and self will. Further it also gives a lot of importance to the necessity of an associative bond between the patient and the caregiver in case a person suffers from any such conditions. This principle has an underlying idea that mental well being cannot be restored through isolation and being subject to inhibiting environments. The definition of the term mentally ill tries to address the often ignored territory between the boundaries created - that is the retarded and the normal. Why it is relevant is because of the limited recognition or underreporting of cases due to stigma associated with seeking help and the inability to fathom that assistance is required. Many a times the attempt at recovery is quite belated in nature when in fact timely interventions could have acted favourably.

The Bill provides for the establishment of a State Mental Health Authority and a Central Mental Health Authority(Mental Healthcare Bill, 2016, Chapter VII& VIII) along with a Mental Health Review Commission(Mental Healthcare Bill, 2016, Chapter XI) to regulate the sector and register institutions. The bill also extantly refers to the infrastructural requirements in terms

Another significant to note provision in the bill is that there it decriminalises suicide stating that it *“any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.”*(Mental Healthcare Bill, 2016, p. 46) Though it finds mention in the category of chapter titled as miscellaneous, nevertheless it is important as it give valence to the fact that suicide as a condition is not an isolated phenomena. It is being recognised as a social act where the individual having no recourse makes a wilful dangerous submission. When it is seen purely from the perspective of law, as in a criminal offence, the individual who attempts is seen as a aberrant or a deviant. But here it is a gesture garnered at recognising that the act must not be seen in isolation and the consequence if not dying must not be determined by a singular law. What is expected or required is if this aspect of the bill is further dealt with in a more nuanced manner because it is becoming increasingly evident that adjustment and adaptation to the demands of life situations has emerged as one of the main causes of suicides (as everyday reported in the newspapers).

There is an attempt to weave in a rights based approach in the bill. Several aspects try and develop focus on the legal endowments that a patient can exercise/claim. This is an essentially enabling stance but it is again limited to the parameters of how easily/conveniently this access can be generated. It is dependent on the parameters of how responsive the authorities are. The complexity here is heightened by the fact that the recipient cannot be a vociferous claimant and is completely reliant on the systemic matrices. The bill forwards a proactive stance and detracts as the implementation is a momentous task. "The financial memorandum of the Bill does not estimate the expenditure required to meet the obligations under the Bill nor does it provide details of the sharing of expenses between the central and state governments. Without the allocation of adequate funds, the implementation of the Bill could be affected." (Indian Express, August 10, 2016) Apart from the economic contingencies, generating awareness regarding the measures and initiating a change in outlook requires a lot to be done in this regard. The article quoted above also brings to fore another concern, that is, the underreporting and the lack of verifiable statistics regarding the number of cases of mental illness.

### **Conclusion**

Though there is a towering attempt to redress issues and concerns which plague the domain of mental healthcare in India, but the lack is visible in areas such as that of infrastructural support. An article in the Indian Express, date 26 August, 2016, makes a significant point. It states that the bill overlooks "social determinants of mental health (poverty, gender, literacy, employment and social exclusion)". This is a salient concern because the unavailability of resources, deliberate negligence and unawareness of rights are some of the limiting factors that account in general for the pathetic state of the system of healthcare in general. Numerous reports and indices and world rankings .... indicate the need and necessity for active engagement. Implementing measures for welfare and generating opportunities of dialogue are some of the thrust areas. There are ground level systemic concerns that require a more nuanced approach. The reference has been made here to the viability of suggested measures. The bill is still in its nascent stage as there is not only a long run in its formulation as a law (notwithstanding that there might be possible revisions) but also there is immense scope in the implementation process. The bill should be seen as a work in progress. The way it is implemented will determine its success in reducing the burden of mental illness and in supporting the human rights of people with mental illness.

## References

- APA. 2013. *Diagnostic and statistical manual of mental disorders* (5<sup>th</sup> ed). Washington. Convention on the Rights of Persons with Disabilities [http://www.ohchr.org/Documents/Publications/AdvocacyTool\\_en.pdf](http://www.ohchr.org/Documents/Publications/AdvocacyTool_en.pdf)
- Herman, H., Saxena, S. & Moodie, R. Geneva (ed.). 2005. *Promoting mental health: Concepts, emerging evidence, practice*. Switzerland: WHO.
- Investing in Mental Health*. 2003. Department of Mental Health and Substance Dependence, Noncommunicable Diseases and Mental Health, World Health Organization, Geneva. Switzerland: WHO.
- Khurana, S & Sharma, S. 2016. National mental health program of india: a review of history and current scenario. *International Journal of community medicine and mental health*. 3(10).pp. 2696-2704. DOI: <http://dx.doi.org/10.18203/2394-6040.ijcmph20163191>
- National Mental Health Survey of India 2015-16: Summary NIMHANS [http://www.nimhans.ac.in/sites/default/files/u197/National%20Mental%20Health%20Survey%20-2015-16%20Summary\\_0.pdf](http://www.nimhans.ac.in/sites/default/files/u197/National%20Mental%20Health%20Survey%20-2015-16%20Summary_0.pdf)
- Szasz, T. (1974). *The myth of mental illness: Foundations of a theory of personal conduct* (Rev. Ed. ). New York: Harper & Row. Retrieved from <https://www.saybrook.edu/newexistentialists/posts/05-11-12/>
- <http://www.prsindia.org/uploads/media/Mental%20Health/Mental%20health%20care%20as%20passed%20by%20RS.pdf> as accessed on 4.1.2017.
- <http://www.firstpost.com/politics/mental-health-care-bill-decriminalising-suicide-passed-in-rajya-sabha-2943898.html> as accessed on 14.1.2017.
- <http://indianexpress.com/article/opinion/columns/mental-health-care-bill-india-rajya-sabha-halfway-to-dignity-2992865/> as accessed on 14.1.2017.
- <http://indianexpress.com/article/explained/new-mental-health-bill-provisions-rajya-sabha-2964545/> as accessed on 14.1.2017.