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ESSENTIAL REQUIREMENTS OF MENTAL
HEALTH LEGISLATION

by

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It is now universally recognized that mental illness is, like physical illness, eminently treatable by scientific methods of medicine incorporated in the discipline of Psychiatry and what is more, it can be treated outside mental hospitals through community-based services. Open door policy in running mental hospitals is an accomplished fact today and the concept of therapeutic community has restored to the psychiatric patient, his self-respect, dignity as an individual, respect for his feelings and opinions and renewed our faith in his rehabilitability. To give the necessary fillip to the 'Third Psychiatric Revolution' as Community Psychiatry has come to be called (Bellak 1964), it is necessary to ensure that legislation concerning various aspects of the mentally ill is humane and in tune with the progressive trends in current psychiatric thinking and practice. Any amount of our solemn declarations that mental illness is no different from physical illness, will not carry conviction, as long as we choose to have unduly restrictive and dehumanizing laws governing admission of the mentally ill to mental hospitals and their discharge therefrom.

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We piously declare that attempted suicide is a 'cry for help' and talk of Suicide Prevention Centres but, at the same time have laws which make attempted suicide a punishable offence! This wide gulf between psychiatric thinking and status of legislation concerning the mentally ill in many countries is one of the major factors responsible for the stigma associated with mental illness and mental hospitals, the delay in securing treatment, unwarranted fear of the mentally ill, and lack of enthusiasm on the part of the community for more active commitment and participation in community-based mental health services. As stated in the Fourth Report of the WHO Expert Committee on Mental Health (1955), "...most existing legislation is misdirected in its aim. It is concerned too much with placing checks on the mental patient and his physician, and too little with the public's responsibility for providing services for the mentally ill. It does little to foster a positive approach to mental health."

Really satisfactory legislation concerning the mentally ill must satisfy the following requirements :

1. It must be humane and respect the dignity of the individual.
2. It must reflect the currently accepted principles in psychiatric thinking and practice.
3. It must ensure that the mentally ill are not neglected, ill-treated, sexually abused, and unnecessarily deprived of their liberty, rights and privileges.
4. It must provide for management of the affairs and property of the 'incompetent' mentally ill.

5. It must ensure that the mentally ill person is not denied the benefit of psychiatric treatment just because his guardian is unwilling or disinterested or incapable of arranging for such treatment.

6. It must ensure that the mentally ill person does not do harm to himself and/or others.

7. The use of stigmatizing terms like 'Lunacy', 'Insanity', 'Idiocy', 'Asylum', etc., should be totally avoided. The term "Mental Illness" for purposes of legislation should be used in a comprehensive sense and should include "mental subnormality" and "sociopathic personality disturbance."

8. It must ensure that an essentially healthy person is not forced to subject himself to psychiatric treatment by unscrupulous others.

9. It must make provision for treatment of the mentally ill, through a wide range of service-facilities, like mental hospitals, private nursing homes, out-patient services, psychiatric departments in general hospitals, day-hospitals, home-care programmes, etc.

10. It must help in making psychiatric treatment readily acceptable to the public by :

(a) avoiding stigmatizing and degrading legal requirements for admission to and discharge from mental hospitals.

(b) ensuring that the mental hospitals are operated by qualified psychiatrists, and satisfy the minimally required criteria in the matter of accommodation, living conditions, equipment, staff and are run on the lines of a "therapeutic community", and

(c) providing for care and treatment of the mentally ill with dangerous, violent or criminal propensities under conditions of special security in institutions separate from ordinary mental hospitals or in separate wings of jails.

11. Admission to a mental hospital or other psychiatric facility for treatment of mental illness on a voluntary or informal basis, should, in no way, be different from admission to a general hospital for treatment of physical illness. This applies, as well, to discharge of voluntary patients from mental hospitals and other psychiatric facilities.

12. The legislation must provide for admission and treatment of the mentally ill who are unwilling to undergo treatment on a voluntary basis, and whose treatment is considered necessary in the interests of their health and/or are likely to harm themselves and/or others in society. Procedures for these "formal" admissions must be less cumbersome and unstigmatizing. It should be possible to admit such patients in mental hospitals on the basis of :

- (a) an application by the nearest relative or in his absence by a friend to the Superintendent of a mental hospital supported by,
- (b) two independent medical certificates by psychiatrists or medical practitioners testifying that the person concerned is suffering from "mental illness" and that he should be admitted in the interest of his health or because he is likely to do harm to himself or/and others, such opinion being arrived at on the basis of facts supplied by others and the doctors' own examination which should have been carried out 7 days before presentation of application.

On the basis of this medically supported application, the Superintendent of the mental hospital or facility shall have powers to detain the patient in the facility for not more than one month.

The period of detention of an involuntary patient may be extended upon the completion of a certificate of renewal in the prescribed form by the

Superintendent of the hospital after personal examination of the patient and if he is satisfied that the patient needs continued hospitalization and he is not suitable to be transferred to the 'informal' status.

A certificate of renewal is sufficient authority to detain the patient in the hospital as follows :

First Certificate - not more than two additional months.

Second Certificate - not more than three additional months.

Third Certificate - not more than six additional months.

Each subsequent Certificate - not more than six additional months.

An involuntary patient may, at any time during the detention, be transferred to voluntary status if the Superintendent of the mental hospital feels that the mental status of the patient will warrant this transfer.

13. The legislation must provide for easy admission of an involuntary patient to a mental hospital on grounds of emergency on the basis of a single medical certificate testifying that the patient is suffering from mental illness of such a degree that emergency involuntary admission is called for. This emergency admission will be legally valid only for 4 days from the date of admission within which time the patient must be transferred to voluntary or involuntary category or discharged. To change the status of the patient from 'emergency' to 'Involuntary' category an extra medical certificate should alone be adequate.

14. The Medical Superintendent of the mental hospital should have powers to discharge a patient from the hospital when he considers detention no longer necessary, with such medical advice for further treatment and rehabilitation as may be indicated, except in case of patients admitted under orders of the

Court. In these latter cases also, the Medical Superintendent will initiate action for the patients discharge from the hospital through the referring Courts, when it is no longer necessary for the patient to stay in the hospital.

15. The legislation must provide for a Mental Health Review Board comprising a Magistrate (as the Chairman), a Psychiatrist or a Medical Practitioner (where Psychiatrists are in short supply), a Lawyer and an informed layman, for purposes of hearing appeals from involuntary patients or their guardians or representatives, against the patients' forced admission to a mental hospital or their prolonged detention. Provision must also be made for appeal to a High Court Judge, against the decision of the Review Board, in case the latter's decision is adverse to the patient. Every involuntary patient and his guardian must be informed in writing of this right of appeal at the time of admission in non-technical language.

The Mental Health Review Board might also be entrusted with the task of reviewing the cases of mentally ill criminal patients as a routine at periodic intervals, say every 3 months, to ensure that they are not condemned to a stay in the mental hospital for periods longer than necessary.

16. While, in most cases, Courts of law need not enter into the picture with regard to admission and discharge of mental patients, there are certain instances where the Court's intervention is necessary and unavoidable as for example in :

- (a) arranging for psychiatric examination of persons charged with penal offences, which are the consequences of mental illness or where the person is unable to stand trial on grounds of mental illness,

- (b) arranging for admission and treatment of criminal mental patients and prisoners who develop mental illness while serving a sentence,
- (c) arranging for admission and psychiatric treatment of the mentally ill who are causing disturbance to peace or who are dangerous to be at large and for whose safe custody and psychiatric treatment no relative or friend is forthcoming,
- (d) arranging for psychiatric examination of persons whose mental competence to manage their own affairs and property is under question and for their treatment, if necessary,
- (e) arranging for transfer of guardianship of the mentally ill patient in case of death of a guardian.

17. Provision must be made for psychiatric testimony to be brought in, when a mentally ill person is charged with criminal responsibility or involved in civil litigation. Attempted suicide should not be considered a punishable offence but as an indication of a crisis situation, the person needing emotional support and psychiatric treatment.

18. The legislation must make it a rule that psychiatric treatment can be dispensed only through licensed mental hospitals and other facilities, and specify the authority to be charged with the responsibility of licensing facilities, carrying out periodic inspection of the facilities, laying down minimum standards for the various facilities in terms of staff, equipment, accommodation, living conditions, atmosphere, etc.

19. Provision must be made for custody and care of involuntary patients for the period they might have to wait before being able to secure admission in a mental hospital. This is an important and necessary clause with special

reference to developing countries where the facilities are grossly inadequate relative to the community's needs.

20. Provision must be made for realization of the maintenance charges of the patient during his detention, from the legal guardian of the patient or from alternate sources, in case the guardian is unable to defray the expenses.

If progressive and human legislation with regard to the mentally ill and their care is to really achieve its purpose, efforts must be directed at the same time to :

- (1) convert custodial-type mental hospitals into well-staffed, well equipped, dynamic therapeutic communities,
- (2) establishing community-based therapeutic facilities for treatment and rehabilitation of the mentally ill,
- (3) training adequate numbers of professional personnel in the field of mental health,
- (4) mobilizing the active participation of general practitioners and members of other help-giving professions in community mental health services, and
- (5) educating the community in matters of mental illness and mental health.

This will be made easier if the body charged with the responsibility of framing legislation with regard to the mentally ill and their care, is the same as the body charged with the responsibility for organizing mental health services for the country. It has been suggested elsewhere (Ehaskaran 1973) that there should be a Commissioner for mental health at the Centre who will be responsible for planning and organizing mental health services at the national level. Framing legislation with regard to the mentally ill and

reviewing it from time to time will form part of his duties. He will be aided in this task by a specially constituted Committee comprising Psychiatrists, Judges, Lawyers, Officials from the Ministries of Law, Education, Social Welfare, Home Affairs, Labour and Health, Legislators, Social Workers and community leaders. One of the primary tasks of the Commissioner for mental health will be organizing orientation courses in Psychiatry with particular reference to laws concerning the mentally ill to the medical practitioners and law-enforcing officers who are intimately concerned with implementing the legislation with regard to the mentally ill. If these people do not correctly understand and interpret the spirit behind these laws the purpose of framing the laws will be defeated, however humane and psychiatrically progressive the laws may look on paper.

The Mental Health Commissioner must also have close liaison with the Ministry of Law, so that he may be in a position to influence general legislation which touches upon the rights and privileges and needs of the mentally handicapped, as for example legislation to facilitate vocational rehabilitation of the mentally handicapped or legislation to ensure education of the mentally subnormal through special Schools, etc.

SUMMARY

Laws relating to the mentally ill and their care should be humane and reflect the current psychiatric thinking and practice. The areas to be covered are indicated. The framing of the laws including their review from time to time should be entrusted to the authority charged with the responsibility for planning and organizing mental health services for the country.

Improvement of the status and functioning of mental hospitals and organization of a net-work of community-based services with adequate trained staff to operate them, organizing orientation courses to the medical practitioners and law-enforcing officers, and educating the community in matters of mental health and disease are all necessary for satisfactory implementation of the laws.

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