UNIT 1    RIGHTS RELATED TO THE MENTALLY ILL

Structure

1.0 Introduction
1.1 Objectives
1.2 Rights of the Persons with Mental Illness
1.3 Indian Perspective
1.4 Let Us Sum Up
1.5 Answers to Self Assessment Questions
1.6 Unit End Questions
1.7 References
1.8 Suggested Reading

1.0 INTRODUCTION

“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...”- UN Principles for the Protection of Persons with Mental Illness, General Assembly resolution 46/119 of 17 December 1991.

There are various misconceptions about mental illnesses. Further, people suffering from mental disorders are also discriminated. This can have dire effect on various aspects of lives of people suffering from mental disorders. Such misconceptions and discrimination have a negative impact on treatment and care received by persons with mental illness. The fact that mental disorders can affect a person’s ability to defend his or her own rights and interests, further aggravate the situation.

The term Human Rights in a broad sense means those claims which every individual has or should have upon the society, in which he/she lives. It was the plea of progressive incorporation of the norms of human rights and liberal jurisprudence in the respective legal system of nation states that created the necessity and urgency of initiating appropriate steps for the care and treatment of persons with mental illness.

In the present unit we are going to focus on the rights related to mentally ill.

1.1 OBJECTIVES

After reading this unit, you will be able to:

• Discuss the rights of person with mental illness.
• Describe the Indian perspective.
1.2 RIGHTS OF THE PERSONS WITH MENTAL ILLNESS

As citizens of India, the persons with mental illness are also entitled to all those human and fundamental rights which are guaranteed to each and every citizen by the constitution of India, to the extent that their disability does not prevent them from enjoying those rights or their enjoyment is expressly or impliedly barred by the constitution by any other statutory law. The Supreme Court has also laid down the maintenance and improvement of public health as one of the obligations that flows from the Article 21 of the constitution. This means that the persons with mental illness have fundamental/human rights to receive mental health care and right to humane living conditions in the mental hospitals.

The right to life in Article 21 of the Constitution means something more than just survival of human existence. The Article includes right to live with human dignity, right to health, right to potable water, right to pollution free environment and right to education etc., which have been held to be a part of right to life. With reference to persons with mental illness, the Article also includes right to live, right to work as far as possible in the community, right to privacy and right to lead a normal family life.

Let us now discuss some of the rights of the persons with mental illness.

1) Confidentiality: Persons with mental disorders have the right to confidentiality of information about themselves, and their illness and treatment. The information cannot not be disclosed to any third party without the consent of that person. Mental health professionals are bound by the professional code of conduct that generally includes rules for confidentiality. Confidentiality should be upheld by all professionals involved in the care of persons with mental disorders. It is their duty to prevent any breach of confidentiality. Thus it is also relevant that these professionals are aware about confidentiality and ways to maintain it.

Mental health legislation may also protect confidentiality by providing for sanctions and penalties for breaches of confidentiality, either by professionals or mental health facilities. Wherever possible, remedies other than legal prosecution, such as education of the person and appropriate administrative procedures should be used where there has been a disregard for patients’ confidentiality required. There are a few exceptional instances when confidentiality may be breached. Legislation may specify the circumstances when information on patients with mental health problems may be released to other parties without the prior consent of patient. Such exceptions include situations including life-threatening emergencies or likelihood of harm to others. The law may also wish to cover circumstances such as prevention of significant morbidity or suffering. However, the information disclosed should be limited only to that required for the purpose at hand. Also, when courts of law require the release of clinical information to judicial authorities (in criminal cases, for example), and if the information is pertinent to the particular case, mental health professionals are obliged to provide the information required.
There are other complicated issues concerning the need to maintain confidentiality and the need to share certain information with primary caregivers who are often family members. The right to ask for judicial review of, or appeal against, decisions to release information should be ensured by Legislation to the patients and their personal representatives.

2) **Good Living Conditions:** Persons suffering from mental disorders need to be provided with good conditions of living. They should be provided with adequate clothing, proper sanitation and hygiene, sufficient and good quality food and privacy. They should not be forced to work and should be protected against physical, mental and sexual abuse from other patients and staff. Such conditions violate internationally agreed norms for rights of persons with mental illness. In no circumstances, shall a patient be subject to forced labour. A patient can choose a type of work he or she wishes to perform, however this will be within the limits of the needs of the patient and the need of institutional administration. However, it has to be ensured that the labour of a patient in a mental health facility is not be exploited and they have a right to receive the remuneration which is same as that received by a non-patient under domestic law or custom.

3) **Surroundings:** Patients admitted to mental health facilities have the right to be protected from cruel, inhuman and degrading treatment as set out in Article 7 of the International Convention on Civil and Political Rights. The provision of a safe and hygienic environment is a health concern, and critical to a person’s overall well-being. While receiving treatment for mental disorders, individual should not be subjected to unsafe/unsanitary conditions. Facilities for leisure, education, religious practice and vocational rehabilitation should also be provided.

Legislation (or accompanying regulations) should set out minimum conditions to be maintained in mental health facilities to ensure an adequately safe, therapeutic and hygienic living environment. Legislation can also include provisions for a “visiting board” to visit the facilities in order to ensure that these rights and conditions are being respected and upheld. It is important that the law stipulates the actions the visiting board can take, if conditions are not met; because if they are not given legal powers, such boards can merely become a co-opted part of an abusive system.

4) **Privacy:** Privacy is a broad concept limiting how far society can intrude into a person’s affairs. It is related to information privacy, communications and territorial privacy. Bodily privacy is also included in it. These rights are frequently violated with regard to people with mental disorders, particularly in psychiatric facilities. Legislation may make it mandatory for the physical privacy of patients to be respected, and for mental health facilities to be structured to make this possible. However, this may be difficult in low-income countries with limited resource. In such cases, the pre-established principle of parity with other health care can be followed. Deinstitutionalization may in itself become a means towards many people obtaining greater privacy through discharge from crowded and impersonal hospital conditions. However, it is important to note that in particular circumstances such as those involving a suicidal patient, a person cannot be searched or continually observed for
his or her own protection. In such circumstances the internationally accepted right can be considered in order to understand the limitation on privacy.

5) **Communication**: Patients, especially those admitted involuntarily, have the right to communication with the outside world. In many institutions, intimate meetings with family, including one's spouse and friends, are restricted. Communication is often monitored, and letters opened and sometimes censored. Legislation can ban such practices in mental health facilities. However, these communications can be restricted if it is felt that the failure to restrict communication can lead to harm to patient's health or future prospects, or if communication interferes with the rights and freedom of others. Legislation can set out the exceptional circumstances, as well as stipulating the rights of people to appeal these restrictions.

6) **Labour**: Legislation can ban the use of forced labour in mental health facilities. This includes situations where patients are forced to work against their wishes (for example, due to staff shortages within the facility) or are not suitably remunerated for work performed by them, and or they are made to carry out the personal work of the institution's staff. Forced labour should not be confused with occupational therapy. Also it should not be equated to certain situations which are necessarily part of a rehabilitation programme. For example, making their own beds or cooking food for people in their facility and so on. However, there are certain grey areas, and any legislation should strive to provide as much clarity on these issues as possible.

7) **Competence**: Competency is most of the time retained by persons with mental disorders. They are considered as having an ability to make informed consent and take decisions related to their lives. However, such an ability might be impaired in those with severe mental disorders. In these circumstances, there must be suitable provisions that allow managing the affairs of people with mental disorders in their best interests.

Two concepts that are central to decisions about whether or not a person can make a choice concerning various issues are “competence” and “capacity”. These concepts affect treatment decisions in civil and criminal cases, and the exercise of civil rights by persons with mental disorders. A person is considered to be capable of making decisions unless it is proven otherwise. The presence of a major mental disorder does not imply incapacity for decision-making functions. Hence, the presence of a mental disorder is not the overall determining factor of capacity, and certainly not of competence.

Determination of *incapacity* may be made by a health professional, but a judicial body would determine *incompetence*. Capacity is the test for competence, and people should be judged as lacking competence only if they are actually incapable of making specific kinds of decisions at a specific time.

Mental health legislation (or other relevant legislation) can lay down the procedure for determining a person’s competence. For example:

   a) As competence is a legal concept, a judicial body would determine this.
   
   b) Ideally, a legal counsel should routinely be made available to a person whose competence is in question. Where a person is unable to afford a
c) It should be ensured by Legislation that there is no conflict of interest for the counsel. Further, the counsel who is representing the concerned person should not also be representing other interested parties, such as the clinical services involved in the care of the concerned person and/or the family members of the concerned person.

d) Legislation may have provisions to appeal to a higher court against the decision by the concerned person, the counsel, family members or clinical team.

e) Legislation should contain a provision for automatic review, at specified periodic intervals, of the finding of lack of competence.

8) **Voluntary admission and voluntary treatment:** Free and informed consent should form the basis of the treatment and rehabilitation of most people with mental disorders. Before involuntary procedures are implemented, patients are assumed to possess capacity and necessary efforts should be made so that the person accepts voluntary admission or treatment.

The right to consent to treatment implies also the right to refuse treatment. If a patient is judged as having the capacity to give consent, then refusal of such consent must also be respected.

If admission is needed, one should aim to promote and facilitate voluntary admission to a mental health facility, after obtaining informed consent and treatment.

Voluntary admission brings with it the right to voluntary discharge from mental health care facilities. The patients not admitted involuntarily have the right to leave the facility at any time, unless the criteria for involuntary admission are met. Legislation should permit authorities to prevent self-discharge by voluntary patients only if all the conditions that warrant involuntary admission are met. All the procedural safeguards of involuntary admission should apply.

A problem which sometimes arises is when patients who lack the capacity to consent are “voluntarily” admitted to a hospital simply because they do not protest against the admission.

9) **Involuntary admissions:** In voluntary, or compulsory admission to mental health facilities and involuntary treatment are controversial topics in the field of mental health as they impinge on personal liberty and the right to choose, and carry the risk of abuse for political, social and other reasons. On the other hand, involuntary admission and treatment can prevent harm to self and others, and assist some people in attaining their right to health, which, they are unable to manage voluntarily due to their mental disorder.

However, it is important to stress that involuntary admission and treatment is required only for a minority of patients who suffer from mental disorders. In many instances where patients are admitted and treated involuntarily, if humane treatment and a proper opportunity for voluntary care were provided, involuntary admission and treatment could be reduced further.
Mental health legislation may combine involuntary admission and involuntary medical treatment into one procedure or it may treat them as separately. Under the “combined” approach, once patients are admitted involuntarily, they may be treated involuntarily without having to undertake a separate procedure for sanctioning treatment. Even with involuntary users subject to a combined process, it is good practice for the practitioner to always try and get cooperation and approval for treatment from the patient.

Under a fully “separate” approach, the admission and treatment procedures are independent of each other. First, the person is assessed for involuntary admission, then, if an involuntarily admitted patient requires involuntary treatment, the treatment needs have to be assessed and a separate procedure for sanctioning such treatment is necessary. Many individuals and organisations, especially user groups, object to combining involuntary admission and involuntary treatment and argue that a person’s consent or refusal to admission and to treatment, are separate issues. Persons may require involuntary admission but not involuntary treatment or, may just require involuntary treatment without having to be placed outside their homes or communities. Moreover, it is argued that capacity is issue-specific. A person who is judged to be lacking capacity to make decisions regarding admission to a mental health facility, may still retain the ability (capacity) to make decisions regarding treatment. It is argued that involuntary treatment violates the principles of the fundamental human rights.

10) Emergency situations: A situation may be labeled as an emergency, when it can be demonstrated that the time required to follow substantive procedures would cause considerable delay, resulting in harm to the concerned person or others.

In an emergency, involuntary admission and treatment should be permitted on the assessment and advice of a qualified medical or other appropriate practitioner. The emergency treatment must be time-limited, usually no longer than 72 hours. Also the procedures for involuntary admission and treatment, if required, should be initiated at the earliest and completed within the time period.

11) Special treatments: A major medical or surgical procedure may be carried out on a person with mental illness only where it is permitted by domestic law. It must be ensured that it would best serve the health needs of the patient.

The patient should give informed consent, except the situations, where the patient is unable to give informed consent.

If the patient is unable to give consent, the procedure should be authorized only after independent review.

12) Restraints and Seclusion: Any involuntary seclusion or physical seclusion should be avoided, unless it is required to prevent any harm to the patient or others. Also if completely necessary the restraint and seclusion should be carried out in accordance with the procedures of the mental health facility that are officially approved. Further such restraint and seclusion should not be prolonged beyond the period which is strictly necessary for this purpose. The instances of such restraints and seclusions should be recorded in the
patient’s medical record based on their reasons and nature. If a patient who is restrained or secluded should be kept in proper and humane conditions and under care and supervision of qualified staff members. Prompt notice of any physical restraint or involuntary seclusion of the patient should be given to the personal representative, if any and if relevant.

13) **Clinical Research**: The patients should not be subjected to clinical research without their informed consent. They should also not be subjected to any torture, cruelty or degrading treatment during clinical research. Suitable research ethics need to be followed when clinical research is carried out.

### Self Assessment Questions 1

1) What does Article 21 include?

2) List the key issues in dealing with human rights of the persons with mental illness.

3) What is confidentiality?

4) When is a situation labeled as emergency?
1.3 INDIAN PERSPECTIVE

India is a signatory to the Alma Ata Declaration that states that “health, which is a state of complete physical, mental, and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right”. India signed the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in 2001, which includes people with mental impairment. India also has a Mental Health Act and the Persons with Disability (PWD) Act, which provide details with regard to treatment, protection against human rights abuses, and equal opportunities for persons with mental illnesses.

In 1982, the National Mental Health Programme (NMHP) was started in India. The main objective of NMHP is ensuring availability and accessibility of minimum mental health-care facilities for all, especially for the most vulnerable sections of the population. This was to be achieved by integrating mental health care into primary health-care services. During 1986-1995 a community based mental-health-care model at the district level was piloted and field tested in Bellary district of Karnataka by the National Institute of Mental Health and Neuro-Sciences (NIMHANS), India’s premier mental health institute. This model was later adapted as the District Mental Health Programme (DMHP) and implemented in 27 districts across 22 states and union territories in 1996.

Chapter 8 of the Mental Health Act 1987 states that:

1) No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty.

2) No mentally ill person under treatment shall be used for purposes of research, unless –

   i) such research is of direct benefit to him for purposes of diagnosis or treatment, or

   ii) Such person, being a voluntary patient, has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent, by reason of minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing, for such research.

   iii) Subject to any rules made in this behalf under Sec.94 for the purpose of preventing vexatious or defamatory communications or communications prejudicial to the treatment of mentally ill persons, no letters or other communications sent by or to a mentally ill person under treatment shall be intercepted, detained or destroyed.

The mental health Act 1987 will be discussed in detail in the next unit. Further, the mental health services in India will be covered in detail in Unit 1 of Block 2 of this course.
Rights Related to the Mentally Ill

1.4 LET US SUM UP

Thus, in the present unit we discussed about right to health as per Indian constitution. We also focused on the key issues in dealing with human rights of the persons with mental illness like confidentiality, good Living Conditions, surroundings, privacy, communication, labour, competence, voluntary admission and voluntary treatment, involuntary admissions, emergency situations, special treatments, restraints and seclusion. It is important that these key issues are kept in mind in order to provide suitable treatment to persons with mental illness. We also discussed about mental health in Indian perspective.

The next unit of this block will deal with Positive Mental Health.

1.5 ANSWERES TO SELF ASSESSMENT QUESTIONS

Self Assessment Questions 1

1) The Article 21 includes right to live with human dignity, right to health, right to potable water, right to pollution free environment and right to education etc., which have been held to be a part of right to life. With reference to persons with mental illness, the Article also includes right to live, right to work as far as possible in the community, right to privacy and right to lead a normal family life.

2) The key issues in dealing with human rights of the persons with mental illness are:
   1) Confidentiality
   2) Good Living Conditions
   3) Surroundings
   4) Privacy

Self Assessment Questions 2

1) What is the main objective of NMHP?

2) What does Chapter 8 of the Mental Health Act 1987 state?
Rights and Laws Related to Mental Illness

5) Communication
6) Labour
7) Competence
8) Voluntary admission and voluntary treatment
9) Involuntary admissions
10) Emergency situations
11) Special treatments
12) Restraints and Seclusion
13) Clinical Research:

3) Persons with mental disorders have the right of confidentiality of information about themselves, and their illness and treatment. Confidentially ensures that the information cannot not be disclosed to any third party without the consent of that person.

4) A situation may be labeled as an emergency, when it can be demonstrated that the time required to follow substantive procedures would cause considerable delay, resulting in harm to the concerned person or others.

Self Assessment Questions 2

1) The main objective of NMHP is ensuring availability and accessibility of minimum mental health-care facilities for all, especially for the most vulnerable sections of the population.

2) The Chapter 8 of the Mental Health Act 1987 states that:

1) No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty.

2) No mentally ill person under treatment shall be used for purposes of research, unless –
   i) Such research is of direct benefit to him for purposes of diagnosis or treatment, or
   ii) Such person, being a voluntary patient, has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent, by reason of minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing, for such research.
   iii) Subject to any rules made in this behalf under Sec.94 for the purpose of preventing vexatious or defamatory communications or communications prejudicial to the treatment of mentally ill persons, no letters or other communications sent by or to a mentally ill person under treatment shall be intercepted, detained or destroyed.

1.6 UNIT END QUESTIONS

1) What are the rights guaranteed by the Indian constitution to its individuals?

2) What are the different key issues in dealing with the human rights of the mentally ill?

3) What are the provisions under Mental Health Act 1987 for protection of the human rights of the mentally ill?
4) What is Mental Health Care Bill and what are the differences from the Mental Health Act 1987?

1.7 REFERENCES


1.8 SUGGESTED READING


