
UNIT 3 LEGAL ASPECTS OF PSYCHIATRIC NURSING

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3.0 OBJECTIVES

After studying this unit, you should be able to:

- identify sources of mental health law;
- a' describe the admission and discharge procedures of mentally sick person in psychiatric hospital;
- explain the McNaughton's case and law;
- state the legal rights of voluntary and involuntary patients admitted in psychiatric hospital;
- recognize the importance of narcotic drugs and psychotropic substance act 1985;
- educate the patient's family about human rights of mentally sick person; and
- a describe the role of a nurse about legal proceedings related to management of psychiatric patients.

3.1 INTRODUCTION

The primitive society had no law for insane. The mentally sick person used to roam about wherever they like and they were mistreated by public. The society had no law to protect them from inhuman behaviour of the people. In 1912, Lunatic Act was passed in India. According to this law, a mentally sick person was referred to as a lunatic or unsound mind and put in a mental hospital or an **Asylum**. These hospitals were established and licensed by the government to provide custodial care to lunatics. According to the present mental health act 1987 the word lunatic is replaced by the term "Mentally III Person" and defines it as a person who is in need of treatment by reason of any mental disorder other than mental retardation

3.2 OVERVIEW OF MENTAL HEALTH ACT 1987

The Indian Lunatic Act of 1912 which was based on earlier English Lunatic Act of 1890 has been replaced by 1987 Mental Health Act with a focus to improve the quality of services and protect the rights of mentally ill people. Mental Health Act has been a very important milestone in the development of modern psychiatric services and care for mentally sick persons in our country. The Act is made patient friendly and safeguards the patient's rights. Although enacted on 22nd May, 1987, it is yet to be enforced in many states.

3.2.1 Admission of Mentally Ill Patient

Admission of psychiatric patient can be done on:

Voluntary Basis (Voluntary Admission)

Any adult person who considers himself to be mentally ill, can request the Medical Officer for admission in public or private psychiatric hospital. A child under the age of 16 may be admitted at the request of his parents or guardian. The patient is admitted for 24 hours, then a board consisting of Medical Officer, will decide whether such a voluntary patient needs further treatment or should be discharged. In that case the treatment is continued for a period of not exceeding 90 days at a time.

Involuntary Basis (Commitment: Reception Order with Petition)

Any mentally ill person who does not, or is unable to express his willingness for admission as a voluntary patient, may be admitted involuntarily in psychiatric hospital by his guardian. Once the patient is committed, he cannot leave the hospital against medical advice. The patient is permitted to leave only when psychiatrist decides that the patient is able to care for himself and not dangerous to self and others. The involuntarily admitted patient loses his civil rights.

Reception Order Without Petition

Almost all psychiatric hospitals have provision for emergency commitment for patients who are acutely ill. Wandering mentally ill person who is believed to be incapable of taking care of herself/himself or dangerous mentally ill person, ill treated or neglected mentally ill-person is often taken in custody by police and is produced before the magistrate. The magistrate after examining the person can have him examined by a medical officer in addition to making any other suitable enquiries. After the medical officer issues a medical certificate, the Magistrate may then

- Issue a reception order for admission in an asylum
- Or send him to a licensed psychiatric hospital
- Or summon a relative and order him to properly care for the mentally ill person
- Or order a temporary detention pending further enquiry

Reception Order of Criminal Lunatics

A criminal lunatic has to be admitted into mental hospital in the order of the presidency officer of a court. These criminals can be of three types.

- 1) Those who cannot stand the trial because of unsound mind, at the time of committing the crime.
- 2) Those who are acquitted, because of unsound mind at the time of committing crime:
- 3) Those who become lunatic while in prison.

Reception After Judicial Inquisition

If a person is found lunatic after judicial inquisition, the high court or the district court has the authority to issue a reception-in-order to admit the person into a mental hospital.

3.2.2 Discharge of Mentally Ill Patient

In case of voluntary admission, the patient can ask for discharge by submitting an application in writing to the Medical Superintendent of the hospital. The medical superintendent has to discharge him/her within 24 hours of receiving the application. If she elopes from hospital, she can be brought back only if she again voluntarily agrees to get admitted in the hospital. If patient refuses to return then she must either be discharged or involuntarily admitted by the guardian.

3.2.3 Leave of Absence

If patient wants to take leave, family needs assurance that they will look after the patient properly and bring back the patient after leave.

3.3 McNAUGHTON'S CASE AND LAW

In 1843, McNaughton shot and killed Sir Robert Peel's secretary Edward Drymmond. It was shown that McNaughton suffered from a number of delusions of persecution and that killing had been inspired by these delusions, and the judge directed the jury to find him not guilty. After lot of a debate in the House of Lords the famous McNaughton's Rules were formulated in England. India also followed the rules dealing with criminal responsibility. McNaughton's rules have been adopted by section 84 of Indian Penal Code of 1860 states that "Nothing is an offense which is done by a person who, at the time of doing it by reason of unsoundness of mind, was incapable of knowing the nature of the act or that what he is doing was either wrong or contrary to law."

3.4 NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCE ACT 1985 (NDPSA)

Drug dependence in India is dealt in law under Narcotic drugs and psychotropic substance Act. The act, was enacted on 16th September, 1985. It replaces the earlier Opium Acts and Dangerous Drugs Act. The Act includes Narcotic drugs like opium, poppy, heroin, cannabis, cocaine, coco and all related synthetic 'drugs' and psychotropic substances e.g. major and minor tranquilizers, barbiturates, etc. In this Act if a person produces, possesses, sells, transports, imports or uses any narcotic drugs or psychotropic substances, he or she shall be punishable with rigorous imprisonment for not less than 10 years with a fine of not less than 1 lakh rupees. For repeated offence, the punishment is rigorous imprisonment for not less than 15 years and a fine of not less than 1.5 lakhs.

3.5 LEGAL RIGHTS OF PSYCHIATRIC PATIENTS

When a patient is admitted in psychiatric hospital he may be deprived of the freedom to leave the hospital, and also to maintain certain legal rights. The rights are sometimes defined by state law and nursing personnel should know the law in the state in which they practice. The important legal rights are as follows.

- Unless the person is declared incompetent, he maintains the right to vote, to manage his financial affairs and to execute legal documents.
- Right not to be denied the basic necessities of life in the name of treatment
- Right to treatment doctrine and not guilty by reasons of insanity and committed crimes.
- Voluntary patient has a right to refuse treatment. e.g. ECT and psychosurgery.
- An involuntary patient can't sign the bill and transfer his property by making will.
- Right to receive mail and contact with relatives, friends by using telephone.
- Right to have visitors for reasonable time.
- Right to have human and physical environment, & sufficient qualified staff personnel to look after them.
- Right not to be subjected to unnecessary mechanical restraints.
- Right to confidentiality of records.

3.6 ROLE OF A NURSE IN LEGAL PSYCHIATRY

- 1) **Standard Care:** The nurse must function at laid down standards and keep up with the standard of care by knowing the policies & procedures of an institution.
- 2) **Legal Duty:** If nurse observes an action which may harm to the patient, she would intervene immediately and protect the patient from injury.
- 3) **Confidentiality and privilege:** Confidentiality relates to the responsibility of the nurse to keep all information, records and correspondence, confidential and to allow access to those who take care of the patient. Privileges relate to the relationship of a particular nurse to a client and provide protection of the informations obtained from him as a result of their relationship.
- 4) **Informed Consent:** Consent is a competent client's voluntary agreement to treatment after being given information about the treatment. Nurse should explain each procedure to the patient and relatives before doing it. She must allow the patient and relative to express their views and answer to any question which need to be clarified.
- 5) **Malpractice:** The term malpractice is often used inter-changeably with negligence to define the acts of a professional person that are called into questions because of the lack of due care.
- 6) **Intentional Torts:** Intentional torts are when others interfere in an individual's privacy, mobility, property or personal interests. (Refer Bimla Kapoor, *Text Book of Psychiatric Nursing*, Vol. II, 2003)

- Battery — The intentional touching of another without the consent of client.
 - Assault — An intentional act which places fear in another that an immediate battery (violent beating) is about to be committed on him/her.
 - False Imprisonment — An intentional act which prevents an individual from moving about wherever he wants to be.
 - Defamation — Publication of a false statement about an individual made either verbally or in some other form to the third person. This damages his reputation.
 - Violation of privacy — Revealing personal information about an individual which may belittle him or interfere with his personal private life
- 7) The nurse must know policy and routines of the institution and procedures of admission, discharge and leave of absence for mentally sick persons.
- 8) She should know and maintain the legal rights of a psychiatric patient.
- 9) Right of After-care: If a patient is discharged with no after-care planning, the professional health care giver could be held responsible. All patients regardless of the setting of care should have adequate after-care planning by a professional staff that will ensure rehabilitation of the patient in the community:

There are varieties of legal issues related to psychiatric nursing practice. The professional person needs to educate herself about legal aspect of psychiatric nursing in order to protect self and the mentally sick person.

Check Your Progress

1) Match the entries in column A with those in column B.

Column A

i) McNaughton's Rule

ii) Battery

iii) Involuntary patient

iv) A voluntary patient

v) Assault

Column B

a) Fear in a person that an immediate battery is about to be committed on this.

b) The mentally sick person who loses civil rights.

c) The mentally sick person who can refuse ECT.

d) The law that deals with criminal responsibility of a mentally ill person

e) Intentional touching of another without consent of the client.

2) Put a tick against T (true) or F (false) for the following statements given below.

i) The drug dependence in India is dealt in law under Narcotic and Psychotropic Substance Act 1985. (T/F)

ii) Nurse should disclose the information about mentally ill person to all.

- iii) Nurse should not be found liable for negligence if mentally sick person gets hurt by himself. (T/F)
- iv) The involuntarily admitted patient can leave hospital in any time (T/F)
- v) Any prisoner becoming mentally sick is to be admitted in Mental hospital by court order. (T/F)

3.7 LET US SUM UP

This unit deals with the legal aspects of psychiatry. The admission and discharge of mentally ill patients are discussed as per Mental Health Act 1987. McNaughton's Law, NDPSA 1985, is also discussed along with legal rights of psychiatric patients.

3.8 ANSWERS TO CHECK YOUR PROGRESS

- 1) i) d
- ii) e
- iii) b
- iv) c
- v) a
- 2) i) T
- ii) F
- iii) F
- iv) F
- v) T

3.9 FURTHER READING

Kapoor, Bimla, *Text Book of Psychiatric Nursing*, Vol. II, Kumar Publishing House, Pitampura, Delhi.