



MINDS NEWSLETTER

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Wellbeing begins in Our MINDS

Monthly Newsletter on Psychiatry for Doctors and Medical Students

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From the Desk of Editor

Psychiatry & Law

The relationship, involvement and interference of law and medicine in each other is no new especially in modern Medicine and law. Ideally both are benevolent and non-maleficent where medicine offers cure and alleviation from pain & suffering while law provide justice for victims and penalize the offenders. Deviations from ideal are a rule rather than exception. Wherever there are gains (whether monetary or non-monetary) and weaknesses, there occurs a potential of exploitation and when both occurs at a single entity, the possibilities are much higher. Mental illness is one such potential area where the capacity of the sufferer may be compromised so that it may affect his self-care or ability to safeguard their dignity and rights. It is not long ago since the so called madness or insanity is regarded as illness and viewed in Medical models and there comes the law behind this very idea. At the inception, the purpose of law is very much to safeguard the rights of people with mentally ill and treat them with Dignity. But during the evolution, like any other law, laws regulating handling of mentally ill has seen innumerable criticisms and loopholes as well. Now a doctor treating mentally ill and particularly the psychiatrists have no option but to be informed about laws of the land. In the background of the new law called The Mental Health Care Act 2017 has been passed which is the 3rd such law in Indian subcontinent over the past century and 2nd in independent India, every practicing doctor is required to know about this. This issue of minds is dedicated for one such intention.

With this issue, we heartily welcome the new editorial team consisting of Dr. Sunil Kumar Patil and Dr. Aman Kishore. We wish them all the best in taking minds to new heights and horizons. We, the outgoing editors Dr. Gopal Das and Dr. Suravi Patra would thank all the contributors for supporting us during our journey with MINDS newsletter.

Guest Column: Down The Memory Lane...

Value of Ethical practice

It was a decade and a half ago when I started working as lecturer in psychiatry in a general hospital. I came across a graduate patient with alcohol dependence syndrome whose family was fed up with his irresponsible behavior when he is inebriated. Twice he was admitted to ER in un-conscious state. He used to fight with family members regularly. They approached me for consultation regarding de-addiction. Patient's family somehow wanted to admit the patient by any means available and initiate the de-addiction programme giving not much regards to whether patient wants it or not. But the case of alcohol dependence syndrome and issue of de-addiction under involuntary basis somehow did not seem right to me and I insisted on talking to patient to get informed consent. As expected, patient out rightly rejected the proposal of treatment and threatened to put me under trouble if I proceeded against his wish. But I didn't give up admitting under voluntary basis despite the resentments by family about the method I adopted. Finally after 2 days, patient agreed to give it a trial and cooperated. Next few days I spent good time with him, cajoled, explained every step we did. We became friendly with each other. Probably he remains abstinent till date. Most importantly he still greets me with gratitude on every anniversary of his admission date and every New Year. This made me realize that ethical and legal aspects of practice are not conflicting but if done in right spirit, bears fruits for long time. "After all laws are meant to be followed!"

Dr. H. Chandrashekhar, Professor & Head, Dept. of Psychiatry, Bangalore Medical College & Research Institute, Bengaluru.

Mental Health Legislation in India: Birds eye view

Mental health law in the Indian has been evolving over the past few decades, in keeping with improved delivery of care, societal changes, and the demand for enhanced accountability from a population that is increasingly aware of its rights. There have been rapid socio- economic, cultural, and psychosocial changes in the traditional, rurally oriented, and family centered society. Despite the fact that family and friends are often intimately involved in patient care many people with mental illness are abandoned by their families and their outcome is both unknown and a matter of grave concern.

Why a Mental Health Legislation?

People with mental disorders are amongst the most vulnerable in society. Often persons with mental disorder would be treated against their will or will lack insight. Legislation is for social cohesion which allows group to work together for identifiable common aims. It is required to maintain order in society and it exist to protect individuals, affording them the opportunity for personal growth and development. The rule of law is used to balance competing interests between individuals or between individuals and society.

Background of MHCA 2017 & United Nations Convention on Rights of Persons with Disability (UNCRPD)

UNCRPD is an effective Convention which specifically focuses on protecting and promoting the rights of persons with disabilities. It was adopted in December 2006 and it was ratified by the Government of India in September 2007 and was approved by the Indian Parliament in May 2008. The new MHCA, 2017 is primarily based on UNCRPD.

Historical Development

- Lunatic Removal Act 1851, which ceased in 1891. This law was mainly enacted to regulate the transfer of British patients back to England.
- The Lunacy Act 1858
- The Indian Lunatic Asylum Act 1858 (with amendments passed in 1886 and 1889)
- The Military Lunatic Act 1877
- Indian Lunacy Act (ILA), 1912
- Mental Health Act (MHA), 1987

Some of the Criticisms/Concerns/Challenges by Psychiatrists about MHCA 2017

- Mental Illness Vs. Mental Retardation: the services/provisions to be provided is still overlapping and lacks clarity
- Treatment Vs. Health : it is good that a positive note focusing on health is expressed in the Care act, but, has it compromised on comprehensive treatment
- Capacity : Valuing the capacity of the patient substituted care is replaced by supportive care, when, how, and to what extent is a clinical issue rather than a judiciary judgment (Are we barking the wrong tree)
- Advanced Directives – Nominated Representative : How effective in a family based culture like India
- Healthcare establishment and duties: will be under constant scrutiny which the psychiatrist feel a hindrance to a fear free clinical services.
- Too much of Judiciary – Family? Marginalises Psychiatrist?
- After voluntary discharge what next? Level of symptom relief, recovery and acceptance by society, chances of relapse, rehabilitation? Reoffending? Prison?

Highlights of MHCA 2017

- ✓ Primarily it is patients right based ensuring autonomy
- ✓ Right to access to mental healthcare, and a range of services for persons with mental illness including shelter homes, supported accommodation, community based rehabilitation
- ✓ Right to community living, the right to live with dignity, protection against cruel, degrading and inhuman treatment
- ✓ Right to equality and non-discrimination
- ✓ Right to information, confidentiality and access to medical records
- ✓ Right to personal communication, legal aid and the right to make complaints about deficiencies in provision of services in addition to other similar legal remedies
- ✓ Right to make an advance directive, empowering him/her to decide how he/she should and should not be cared and treated for a mental illness in the future
- ✓ Nominated Representative
- ✓ Informed consent
- ✓ Decriminalizing suicide
- ✓ Duties of Government : The burden of planning, designing, implementing programs for promotion of mental health and prevention of mental illness, creating awareness about mental illnesses, reducing stigma, sensitizing govt. officials including police officers, implementing public health programs to reduce suicides and other such programs

Conclusion

The current MHCA 2017 has first time that any law has guaranteed rights to equality, non-discrimination and the positive rights for provision of basic services to persons with mental illness. It is Right based complying with UNCRPD. The act is to bring about protection and empowerment of persons with mental illness. Legislations for Person with Mental Disorder are meant for them and not for the Mental Health Professionals or the human right activist groups. It is based on slogan by the service user “Nothing about Us without Us”. The success when compared to that of MHA 1987 will be known only with times to come.....

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Professor of Psychiatry and Director, Dharwad Institute of Mental Health & Neuroscience (DIMHANS), Dharwad

Crime and Mental Illness – Judicial Perspective

A crime is a voluntary act which is an outcome of intent to cause an evil consequence. There may be no crime of any nature without an evil mind. The concurrence of act and guilty mind constitutes a crime. This theory has its basis in the Latin maxim ‘actus non facit reum nisi mens sit rea’, which means the act does not make one guilty unless he has a guilty intention.

Section 84 of the Indian Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. This provision is based on Mc Naughten rule enacted in England.

Section 84 IPC states: **“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law”**

Section 84 IPC – Interpretation

‘At the time of doing it’

The accused should be laboring from defect of reason due to disease of mind at the material time the offence took place. Plea of insanity at the time of trial will not benefit the accused. The example of which is the judgement given in Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat. In the aforementioned case, the accused was charged and convicted under section 302 IPC for the murder of his wife. The plea of insanity was rejected by trial court and Supreme Court as there were no signs of insanity immediately after the incident. Court also laid down criteria which has to consider the state of mind of accused at the time of committing crime and motive behind the act, previous history of mental illnesses and events immediately after the incident. **‘Unsoundness of mind’**

No definition for unsoundness of mind is provided in penal code. The term includes temporary or permanent, natural or supervening mental

illness which could be from disease or present from birth. However the extent of which, should be such that he should not know the nature of the act, or what he is doing is wrong or contrary to law. This means that law recognizes only those conditions as insanity which impairs the cognitive faculties of the mind. Partial delusion, irresistible impulse or compulsive behavior of psychopath, can offer a ground for medical insanity but will not constitute legal ground for acquittal. Law insists on regarding insanity as a disease of intellect, whereas it is usually a disease of the affective or emotional spheres of the mind. Hence, it can be said that medical proof of insanity is not legal proof for acquittal.

‘Nature of the act’

If accused did not know the nature of the act he was committing then he is not responsible for it. Similarly, if he knew the nature of the act but did not know whether it was wrong or contrary to the law he is not liable. On the other hand, if the person did not know the nature of the act but knew that it is wrong and contrary to law he is held responsible.

As in **Ashiruddin Ahmed Vs The King** , when an accused sacrificed his son in a mosque on being commanded in dream to do so, it was held that though he knew the nature of the act but did not know that it was wrong so was given benefit. On the other hand, in **Paras Ram Vs State of Punjab**, where a father and relatives sacrificed his four-year old son to please the deity, they were held liable as the court said that such barbaric actions don't prove insanity.

Burden of proof

The principle that the court follows is ‘every person is sane unless contrary is proved’. Hence, the onus of proving insanity is on the person who is pleading it as a defense. To prove that mental derangement led to crime there must be absence of motive and secrecy and there should be no prearrangement or accomplice.

Dr.Smitha Rani, Assistant Professor, Department of Forensic Medicine & Toxicology, JSS Medical College, Jagadguru Sri Shivarathreeswara University, Mysuru

REFRAME -Let Awareness Reframe Assumptions: Myths & Facts about ‘Narcoanalysis’

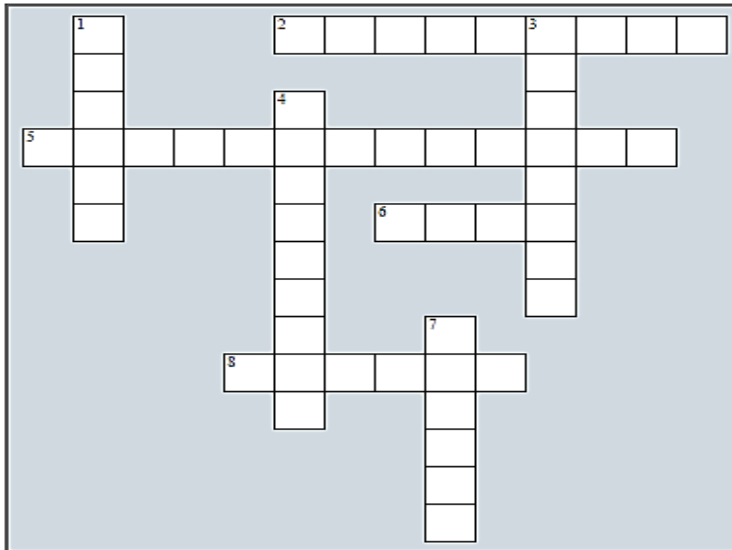
- ☒ *Narcoanalysis is a type of hypnotism.*
- ✓ Narcoanalysis is a diagnostic and psychotherapeutic procedure where the subject is taken to a twilight state by drugs mainly barbiturates in which mental elements with strong associated affects come to the surface, where they can be exploited by the therapist.
- ☒ *The revelations under Narcoanalysis are always true and taken as valid evidences in a trial.*
- ✓ Though it is generally difficult to consciously utter a lie during Narcoanalysis, but the explanations given under the procedure may be subject to distortion and are not taken as the conclusive evidence in Indian law and judgments are not usually influenced by this.
- ☒ *Narcoanalysis can be used only on accused for investigative procedures.*
- ✓ Though it is a more widely known fact especially by special media emphasis, this procedure can also be used perhaps more effectively as a psychotherapeutic procedure to understand and reveal subconscious elements which cannot be explored in routine techniques
- ☒ *In criminal investigations, it can be used without informed consent of subject.*
- ✓ Though informed consent is a must for the procedure under any circumstances but under rare and special circumstances like interests of state, a magistrate may direct the test to be conducted.
- ☒ *Any licensed medical practitioner can perform the procedure.*
- ✓ Only a team consisting of qualified and registered Psychiatrist desirable Forensic Psychiatrist, Anesthetist and clinical/forensic psychologist who have special experiences in the field would perform the test.

MINDS QUIZ

1. All the following are related to legal responsibility of an insane person except
 a) Mc Naughten's rule b) Durham's rule c) Curren's rule d) Rule of nine
2. An alcohol addict produced to magistrate after an assault on his neighbor. He had irrelevant talk, disorientation and tremulousness when examined by a medical practitioner after arrest. His breath and blood samples tested negative for alcohol but Gamma GT is found to be elevated. His attorney pleaded for not guilty under which section of IPC
 a) Section 83 b) Section 84 c) Section 85 d) Section 86
3. A person is considered unfit to stand a trial if
 a) He cannot understand the difference between guilty and not guilty b) cannot understand the nature of charge
 c) Not treated for the mental illness he is suffering from d) cannot follow the proceedings and understand the evidence presented
4. All of these are considered as of unsound mind under criminal law except
 a) Severe psychotic disorder b) Severe and profound mental retardation
 c) Alcohol withdrawal delirium d) Voluntary or self-induced drunkenness or inebriation
5. which one is not a basic element of a valid medical consent
 a) Knowledge b) competence c) persuasion d) voluntariness

Note: You can now request for any explanations to MINDS QUIZ answers by just an email to editormind@gmail.com

Can You Cross the Crosswords!!!



Across

2. The use of inanimate objects for sexual arousal is called
5. This test is colloquially called as 'truth serum test'
6. Legal document by which a person, expresses their wishes as to how their property is to be distributed at death, or managed thereafter.
8. The product rule made in USA in 1954 on criminal responsibility of mentally ill is named after this person

Down

1. The perpetrator of a crime will bring something into the crime scene and leave with something from it - name this principle.
3. The term Narcoanalysis was coined by
4. Well known competence assessment tool for criminal adjudication
7. This syndrome of approximate answers, amnesia and pseudohallucinations is also called as prison psychosis



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8. Durham
DOWN
1. Locard
3. Horseley
4. MacArthur
7. Ganser

ACROSS

2. Fetishism
5. Narcoanalysis
6. Will

CROSSWORDS

1. d
2. b
3. c
4. d
5. c

MINDS QUIZ

ANSWERS

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