
AUTISM: A SOCIO-LEGAL STUDY ON MENTAL HEALTHCARE LAW IN INDIA

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ABSTRACT

The Autism Spectrum Disorder (ASD) is a complicated condition of the developing brain which has an impact on communication, social skill and behaviours. The autism condition in India crosses the boundary of medical diagnosis and becomes a matter of social justice, human rights and legal protection. A key point to note is that the history of mental healthcare law and policy shows a progressive movement away from a welfare orientated framework to a rights-based framework that builds on the concept of dignity, autonomy and of inclusion for persons with mental disability. A socio-legal analysis is conducted of autism in the context of the Indian mental health care laws including an examination of statutory protections, constitutional protection, judicial interpretations and policy frameworks. It emphasises the links between access to, and interest in, healthcare, education, guardianship, discrimination and social inclusion. Even with laws enacted to send forwards like the Mental Healthcare Act, 2017 and the Rights of Persons with Disabilities Act, 2016, there are still implementation issues that limit effective realization of the rights of persons with autism. The study recommends bolstering legal awareness, institutional facilities and inclusive policies by ensuring substantive equality and mental health justice in India.

Keywords: Autism Spectrum Disorder, Mental Healthcare Law, Disability Rights, Mental Health Policy, Socio-Legal Study, Inclusive Education, Human Rights, India.

Introduction

Now Autism Spectrum Disorder (ASD) is much more widely acknowledged as an important public health and social issue worldwide. Autism is not just a medical problem, but also a developmental condition that impacts cognition, communication, emotional regulation and social behaviour throughout life. Historically autism awareness has been low in India on several counts, including stigma and absence of the diagnostic service, inadequate legal recognition, and a lack of awareness.

The basic pillars of the protection of person with mental handicap are equality, dignity and personal liberty laid down in Article 14, 19 and 21 of the Indian Constitution. Significant changes in the legal language used in relation to autism have taken place since the new millennium through the development of international human rights instruments, such as the 2007 Ratification of the India Universal Convention on the Rights of Persons with Disabilities (UNCRPD).

The mental health laws of India have dramatically shifted from a system of care with custodial institutionalisation to a rights-based approach rooted in autonomy and living in the community. While autism is certainly a developmental disability, it is inherently linked with mental health law, as individuals' needs frequently include psychological assistance, psychological therapy, guardianship protection and legal protection against discrimination. As such, a socio-legal study is required to be able to grasp the relationship between law and social realities experienced by autistic people and their families.

Main Discussion

The interplay of medicine, society and law is a complex part of Autism Spectrum Disorder (ASD). Autism, from a socio-legal standpoint, is something more and not simply a clinical diagnosis, as a reflection of how the social institutions, structures and laws adapt to neurodiversity. Up until now, mental or developmental disabilities were treated in a charitable or welfare-oriented manner in Indian society, treating autism as a disability instead of a rightful citizenship. This feeling played a role in being excluded from school, work and public spaces. However, to date, international human rights standards have had an impact on the legal environment, which has shifted the focus from protection to empowerment. These elements of equality, dignity, participation and autonomy have become the cornerstone of modern Indian

mental healthcare law, and will inform the understanding of autism today.

India's legal protections for persons with autism are influenced by the Indian constitution and its structure. There is no specific word about autism or mental disability in the Constitution, but the provisions of Article 14, 15 and 21 clearly set out a normative framework for the protection of their rights. Article 14 states that everyone is equal before the law and that the State must provide equal opportunity and reasonable accommodation. Article 15 does not allow discrimination for reasons that courts have interpreted to encompass disability-based discrimination. The right to life and personal liberty is inscribed in paragraph 3 of Article 21 which has been extended to encompass the right to health, happiness, dignity and a meaningful life by judiciary decisions. Such constitutional values create a positive duty on the State to establish inclusive health systems, socially inclusive education policies and social welfare systems that will allow autistic persons to live independently within a community.

In India, legislation relating to autism has changed drastically over the last 20 years. One significant achievement is the Rights of Persons with Disabilities Act, 2016, establishing ASDs as an enumerated disability classification. The Act is rooted in a rights-based principle, in line with international standards and contains several progressive sections, including: reservation for people with disability in education and employment by public services, accessibility obligations, guarantees of non-discrimination, promotion of inclusive education. Of great importance, the Act also highlights the concept of “reasonable accommodation,” which promotes changes in a person's environment and/or system to accommodate that unique individual's needs, rather than asking the autistic person to adapt to “normal” social functions.

This is a movement from the medical model of disability to the social model of disability where the social structure can cause disability more than anything else.

Alongside the disability law, the Mental Healthcare Act of 2017 radically transformed the landscape of mental health administration in India, which strengthened the rights of Patients, the importance of informed consent and community-based care. Although autism is considered a developmental disorder and not a mental disease, people with autism often need mental health and behavioural therapy and counselling services. The Act guarantees sure entry to low-price and high-quality mental health services without discrimination and bans inhuman or degrading occasions. It establishes the term 'advance directive' and 'nominated representative' as concepts, with the consequent recognition of legal agency of persons who may be mentally

suffering. The approach from a socio-legal perspective to mental healthcare, which takes a rights-based approach instead of a focus on institutional control, also benefits autistic people, who are often institutionalized against their will, or misunderstood at mainstream psychiatric facilities.

The National Trust Act, 1999 is also a critical piece of legislation with regard to guardianship and long-term care provisions for persons with autism and other developmental disabilities. Often, the families of autistic individuals face issues of long-term support, income and/or benefits, and legal representation when parents and/or caregivers are no longer able to help manage the day-to-day lives of their autistic loved ones. The provisions of the National Trust Act provide for the statutory system of guardianship, community lifestyles and welfare services designed to make sure that the protection is maintained. But in the current disability law jurisprudence, other substitute decision making approaches are being progressively interrogated for the absence of autonomy. Modern socio-legislative research supports the development of systems for supported decision making in which autistic individuals play an active role in decisions that impact their lives in line with the changing international norms in human rights law.

The issue of access to health-care is one of the greatest socio-legal problems. Although the laws have been progressing toward this goal, India continues to have a shortage of trained psychiatrists, clinical psychologists, occupational therapists, and special educators. Medical facilities are concentrated in Urban areas and left short till in Rural areas. Making an early diagnosis is essential for effective intervention, but primary health care providers lack awareness about autism and are not proactive in diagnosis. The financial difficulties also pose on restriction towards access, as the therapy and rehabilitation are often costly and not adequately included in insurance coverage. From this point, legal rights are essentially symbolic and real rights are not effectively realised because of structural inequalities. This socio-legal analysis indicates that ensuring inclusion is not just about the law; it's about efficiently allocating administrative resources, resources, and awareness raising programmes.

Education is another important aspect of the rights of autistic people. The goal of inclusive education policies is to absorb autistic children into mainstream schools whilst at the same time offering individual accommodations. According to the Indian law, inclusive education is to be provided, the teachers trained accordingly, infrastructure should be made available and

individualized education plan is to be developed. Yet, there are still very few schools that are well-equipped to support children with special needs. Specialized teaching and over capacity classrooms, and assessment systems based on the standard, rather than variation in levels of performance, disadvantage autistic students. A lack of social stigma also plays a factor in bullying, isolation, and dropping out of the school system. In a legal context, "inclusion" entails more than simply being physically present in the school, meaning being included in the school's activities and pedagogy as well as its institutional ethos.

Other socio legal issues relating to employment and economic participation remain. Despite having valuable skills in their CVs, adults with autism often end up in unemployment or underemployment positions. Economic independence is hampered by workplace discrimination, lack of reasonable accommodation and common misconceptions about productivity. Indian Disability laws enact reservations policy and non-discrimination in employment, however this is not consistently observed in the private sector. Both socio-legal experts believe policy incentives are needed to encourage employment, the general public to be more aware, and education to recognize the value of a neurodiverse culture instead of it being viewed as a barrier. Economic participation improves living standards and can move people out of dependency, a move in line with the values enshrined in the constitution in respect of equality and social justice.

The guardianship and legal capacity issues are one of the most intricate topics in mental healthcare legislation. Traditionally, individuals with developmental disabilities were deemed incompetent in making decisions and were handed over the total burden of making decisions to guardians. A new paradigm of human rights theory, however, has been emerging that questions this paternalist perspective of disability, and asserts that disability does not preclude legal personhood. Respect for autonomy, informed consent and supported decision making are increasingly mentioned in Indian mental healthcare laws. For autistic people, whose cognitive powers range from very low to very high, this means the difference between levels of functional ability and disability. This has a significant impact for individuals with autistic traits who fall on the spectrum of functional abilities and disabilities. A fine balance has to be achieved between protection and independence – requiring a nuanced approach to the legal side. Courts and policymakers increasingly are adopting systems that offer some autonomy but also some support structures necessary to them.

The effectiveness of legal protection remains an important feature of social attitudes. Stigma around mental disability is strongly entrenched in Indian society and often if a family knows that someone in the household has these difficulties they do not accept it and possibly choose to pass the information on to their younger relatives. Women and girls with autism may also be at risk of gender based violence, and less likely to have access to education and healthcare services. The socio-legal study thus underscores that the law on mental healthcare has to be used in conjunction with social reform, public education campaign and community sensitisation programme. But changing the law does not pass the buck in eradicating discrimination unless social attitudes shift toward acceptance and assimilation of neurodiversity.

The judiciary has played a significant role in furthering disability rights jurisprudence, interpreting constitutional guarantees very broadly. Courts have raised the importance of dignity, equality, and reasonable accommodation, and as such, there has been a strengthening of enforcement of the mental healthcare provisions and disability laws. Recognizing accessibility, non-discrimination and autonomy by judges demonstrates a popular understanding that mental health and disability rights are part of the human rights. Evolutionary interpretation is the responsibility of the Judiciary to serve as a link between the promises contained in the statutes and living experiences of autistic people.

The socio-legal analysis of autism in Indian mental health care law of the country shows that there has been significant shift from a welfare oriented policy to a rights based policy. But there are longstanding implementation challenges that call for action coordination among legislation and administration, healthcare professionals, educators, and civil society. The autism jag has questioned what it means to be normal, productive, and to belong. Indian law is increasingly recognizing the fact that diversity cannot be addressed by altering the person but rather it can be addressed within the context of changing the institutions and attitudes needed to make them more accommodating. In the years to come, the challenge before the mental healthcare law in India is to make sure that institutions are held more accountable, that there is more support at the community level, and that people with autism are not seen as 'welfare recipients' but as 'citizens' to be respected as both people and their needs.

Case Laws

1. K.S. Putt Swamy V. Union Of India (2017 10 SCC 1)

This decision, decided by the Supreme Court in *K.S. Putt swamy v. Union of India* (2017 10 SCC 1), has enabled the inclusion of the right to privacy in the framework of fundamental rights, which includes the protection of the right to dignity and personal autonomy of all persons with disability.

2. Jeeja Ghosh V Union of India 2016 7 SCC 761

In the case of *Jeeja Ghosh v Union of India* 2016 7 SCC 761, the Court has reiterated the rights to dignity and protection from discrimination to people with disabilities and added to the principles of equality and inclusion.

3. Rajive Raturi V. Union of India (2016) 10 SCC 1

This case highlighted the importance of providing facilities for the accessibility for persons with disabilities, according to the case *RAJIVE RATURI V. UNION OF INDIA* (2016) 10 SCC 1 of accessibility rights. The Supreme Court decided that accessibility is an integral part of the inalienable right to equality and dignity enshrined in Art 14 & 21 of the Constitution. It demanded that the government ensure accessibility of public facilities by taking necessary measures, in compliance with the accessibility conditions. Although this case was not directly about autism, it highlights how children with disabilities can and do exist in society regardless of their disability and how this can be supported, not only in terms of legality, but in the actual provision of access and supportive environments.

4. Vikash Kumar V. UPSC (2021) 5 SCC 370

The court held that the Court gave an expanded definition of equality; an additional one is that it recognized the importance of providing reasonable accommodations to people with disabilities in *VIKASH KUMAR V. UPSC* (2021) 5 SCC 370. All the above cases have established that the Courts have started adopting a rights-based approach with a people-centric perspective towards providing dignity, equality and protection to persons with disabilities of which those with ASD are a sub-group and such persons must be adequately supported and accommodated.

5. Suchita Srivastava V. Chandigarh Administration (2009) 9 SCC 1.

The issue was reproductive rights of a mentally challenged woman. Supreme Court decided

that the right to fold reproductive choice falls under Article 21, fundamental right to liberty of persons and is a part of personal liberty. The Court stressed that a

mentally ill individual has the right to the control of his body and dignity. In the case of an autistic child, this decision is very relevant because it serves as an affirmation that "people with developmental disabilities are as important as people without them and have the same rights to respect, decision-making, and personal autonomy.

6. Disabled Rights Group v. Union of India

Poor implementation of the disability laws was highlighted in the case. Within the stress of strict enforcement of rights the Court said that the citizen's right to property" should be adhered to. The Supreme Court pointed that enactment of laws will not do the trick unless it is followed at the ground level. It highlighted the obligation of the State to make the rights under the disability laws a reality. The Court ordered the necessary measures to ensure effective enforcement of such laws and monitoring.

7. Anamika Pandey v. Union of India

The roster taken up in the case was the educational rights of the child. The Court endorse inclusive education of disabled students. The Court acknowledged that right to education as a fundamental right and it is required to be inclusive for all, including persons with disability. It emphasized the need for the authorities to ensure educational areas, including all supportive arrangements and practices, have reasonable accommodation provision, suitable infrastructure and do not discriminate. Judgement emphasised that giving education is not enough, it needs to also provide an enabling environment for effective learning.

8. Gaurav Kumar Bansal v. Union of India

The problem was with the disability pension and benefits. The Court made appropriate orders regarding financial aid and provision of welfare. The Court ordered that the system be streamlined and disability pension and support were to be extended in a timely manner.

9. National Federation of the Blind v. Union Public Service Commission (2013) 10 SCC 772

The question in is *National Federation of the Blind v. Union Public Service Commission*

whether national uniformity is necessary. In *National Federation of the Blind v. Union Public Service Commission*, the issue is of whether there is a need for uniformity across the nation. There was a failure to provide equal opportunity for blind candidates. The Court guaranteed equal opportunity for exams and services. The Supreme Court found this denial of opportunity as being in violation of the ideals of 'equal rights' as enshrined in Article 14 of the Constitution. It underscored the need for the Government to ensure compliance of reservation policies and necessary facilities for persons with disabilities to participate in the process. What was taken away from this judgment was the push for substantive equality and the State's responsibility to make things possible for everyone.

10. Union of India v. National Federation of the Blind (2013) 10 SCC 772

It was an issue related to job reservation for disabled persons in the case of Union of India v. National Federation of the Blind (2013) 10 SCC 772. The Court affirmed the right of reservation in Government jobs.

Suggestions

1. Strengthening Early Diagnosis Systems – compulsory screening at Primary Healthcare Level.
2. Capacity Building of Professionals especially teachers, lawyers, judges and healthcare providers on autism rights.
3. Expansion of insurance requirements for therapy, rehabilitation and long-term mental healthcare providers.
4. Alternative of institutional dependence with a community based rehabilitation model.
5. Legal Awareness Campaigns for awareness & sensitization on various legal rights and welfare schemes for families.
6. Systems in place to monitor implementation of disability laws.
7. Autism supported decision making respected is promoted.
8. Inclusion of Mental Health and Disability policies for comprehensive care.

Conclusion

Autism implies specific socio-legal implications as well as medical difficulties regarding participation in society, equality and dignity. The rights of those with autism have come a long way in the Indian mental healthcare process from being guaranteed in the constitution to being individual rights enshrined in progressive legislation or judicially enacted through suitable rulings. However, there is still a significant difference between the law and practice. Inclusive education takes action at the level of society, public awareness, enhanced institutional accountability and legal reforms, but only if they all work together. Conventionally a rightsbased approach to mental healthcare must shift from a protection towards empowerment so that autistic people are able to live an independent, meaningful, dignified life within society.

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