



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Mental Health as a Protected Legal right during Covid-19

Kulsum Haider^a Dr. Momin Noorjahan Shamim Ahmad^b

^aFaculty of Law, Jamia Millia Islamia, New Delhi, India ^bAssistant Professor, Faculty of Law, Jamia Millia Islamia, New Delhi, India

Received 08 August 2022; *Accepted* 26 August 2022; *Published* 02 September 2022

In proper understanding, health is a state of well-being that includes physical, mental, and social health and not merely the absence of any disease or infirmity. When we talk about legal rights, we tend to protect our health through national and international legislation being part of fundamental, human, and statutory rights. The ongoing pandemic due to COVID-19 (Corona Virus Disease- 2019) has posed several challenges in our country. It has affected people's physical and mental health with many issues and challenges that the researchers in the paper have discussed through doctrinal work. It is rightly said that good health cannot be without mental health. The strain of COVID-19 has disproportionately affected people with pre-existing mental illnesses and those who have developed later. It has affected the health of people around the world and had an uncontrolled impact on people's mental health. The research on the mental health aspect due to COVID-19 is lacking for several reasons. The researchers have highlighted those issues and the issues affecting the legal rights of people with mental illness during the COVID-19 pandemic, which can act as a resource for further study. The researcher has recommended making a resource study on mental health issues during the pandemic as there is a lack of study.

Keywords: *health, mental health, human rights, mental illness, covid-19.*

INTRODUCTION

“Good mental health is absolutely fundamental to overall health and well-being.”

– Dr. Tedros Adhanom Ghebreyesus¹

Since time immemorial, importance has been given to the health of people and the need for the physical and mental health of the individual. “There is no health without mental health” this maxim underlines that mental health is an integral and essential component of health.² The ‘health’ definition given in the preamble to World Health Organization (*hereinafter WHO*) includes physical, social, spiritual, and mental health and not merely the absence of disease or infirmity.³ COVID-19⁴ has disrupted a number of lives globally, and it has shown a devastating impact on a number of countries. With changing health issues, mental health is coming to the fore in health care delivery systems. Due to social stigma, this issue is hidden by society, leading to the person dealing with mental illness.⁵ Health is essential for an individual’s growth and development and a happy and healthy life worldwide. One of every individual’s fundamental rights is to enjoy the best possible health.⁶

In general, mental health refers to a condition of mental well-being in which people are able to cope successfully with life’s various challenges, realise their full potential, work productively and fruitfully, and contribute to their communities.⁷ Mental health differs from general health⁸ and other physical illnesses in that people with mental illnesses may be unable to make decisions

¹ Dr. Tedros Adhanom Ghebreyesus, ‘COVID-19 disrupting mental health services in most countries’ (*WHO*, 20 October 2021) <<https://www.who.int/news/item/05-10-2020-COVID-19-disrupting-mental-health-services-in-most-countries-who-survey>> accessed 06 August 2022

² ‘National Mental Health Survey of India 2015-2016’ (*NIMHANS*, 24 October 2021) <<http://indiannmhs.nimhans.ac.in/Docs/Summary.pdf>> accessed 06 August 2022

³ World Health Organisation 1948, preamble

⁴ ‘Corona Virus Disease 2019 (previously known as 2019 novel corona virus) officially named by World Health Organisation’ (*WHO*) <[https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(COVID-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(COVID-2019)-and-the-virus-that-causes-it)> accessed 06 August 2022

⁵ *Ibid*

⁶ World Health Organisation (n 3)

⁷ ‘Mental Health Strengthening our response’ (*WHO*, 17 June 2022) <<https://www.who.int/en/news-room/fact-sheets/detail/mental-health-strengthening-our-response>> accessed 30 October 2021

⁸ *Ibid*

on their own in certain conditions.⁹ The mental illness lasts for a prolonged period and has a lifelong impact that gradually results in a poor quality of life. Those who have mental illness rarely get access to appropriate medical counselling and treatment.¹⁰

Keeping in view the massive mental illness report in our country and existing infrastructure,¹¹ the social stigma attached to it, and the shortcoming of the Mental Health Care Act 1984,¹² it has become imperative for the government to address the issue. India recently enacted the Mental Health Care Act, 2017 (*hereinafter MHA, 2017*) with several mental health policies and action plans of the National Human Rights Commission and directives of the supreme court¹³ of India to expand the set-up for persons dealing with mental illness. Mental health, hitherto neglected, is now recognized as a critical requirement and is now engaging the attention of policy-makers, professionals, and communities in India and across the globe.¹⁴

Persons with mental illness are also associated with many problems like social problems, like poverty, unemployment, marital breakdown, and physical and sexual abuse, if their illness is not recognised or inappropriately managed can lead to more serious health problems¹⁵. The state brings initiatives to protect the person dealing with mental health problems as it impacts individuals, families, and society, but there has been little investment in mental health,¹⁶ particularly in community-based services.¹⁷

⁹ Vikram Patel & Aurther Klienman, 'Poverty and common mental disorders in developing countries' (2003) 81(8) Bull World Health Org 609-15 <<https://pubmed.ncbi.nlm.nih.gov/14576893/>> assessed 08 August 2022

¹⁰ Shridhar Sharma & LP Varma, 'History of mental hospitals in Indian sub-continent. Indian J Psychiatry' (1984) 26(4) Indian J Psychiatry 295-300

¹¹ *Ibid*

¹² Mental Health Care Act 1984

¹³ *Gaurav Kumar Bansal v The State of Uttar Pradesh* (2016) Writ Petition (Civil) No 412/2016

¹⁴ *Ibid*

¹⁵ High Focus Centre, 'Dangers of Untreated Mental illness, Pyramid Health Care Family Blog' (*High Focus Center*, 22 March 2018) <<https://highfocuscenters.pyramidhealthcarepa.com/dangers-untreated-mental-illness/#:~:text=Mental%20health%20issues%20do%20not,usually%20leads%20to%20better%20outcomes>> accessed 03 June 2022

¹⁶ *Ibid*

¹⁷ 'COVID-19 and the Need for Action on Mental Health' (*UN*, 10 April 2020)

<https://www.un.org/sites/un2.un.org/files/un_policy_brief-covid_and_mental_health_final.pdf%3E> accessed 03 June 2022

Around the world, governments spend only 2% of their health resources on mental health. International development support for mental health is expected to account for less than 1% of all health-related development assistance. This is despite the well-known comorbidity of physical and mental health disorders in diseases like HIV/AIDS, tuberculosis, and now COVID-2019.¹⁸ The emergence of the pandemic due to Covid-19 has largely affected people's financial, social, or physical health and, most importantly, mental health. High levels of stress are expected when disasters disrupt people's lives and communities. Adversity is a well-known risk factor for both short- and long-term mental health disorders in India. According to research, the harmful impact of infectious illness outbreaks on people's mental health has been shown in previous epidemics.¹⁹

MENTAL HEALTH AND COVID-2019

This integrated approach indicates a shift from the right to a standard of living adequate for health and well-being to an upgraded approach to protecting people's mental health, first enshrined in the Universal Declaration of Human Rights (UDHR).²⁰ 'Mental health care means the diagnosis, care, and rehabilitation of a person suffering from mental illness.²¹ Whereas 'Mental illness is a substantial order of thinking, mood, perception about things and people, incapability to recognize reality and meet the demands of life, get involved in drug or substance abuse.²²

India has remained between 1.2% to 1.6% of GDP between 2008-09 and 2019-20. India's expenditure is relatively low as compared to other countries such as China (3.2%), the USA (8.5%), and Germany (9.4%). The coronavirus pandemic broke out in December 2019, in Wuhan city of China, and further it is now impacting millions of people globally not physically, socially, and economically but mentally also. The outbreak of COVID-19 pandemic has affected the lives of many; people were afraid of dying due to infection, getting infected, and losing family

¹⁸ *Ibid*

¹⁹ *Ibid*

²⁰ Universal Declaration of Human Rights 1948

²¹ Mental Health Care Act 2017, s 2(o)

²² Mental Health Care Act 2017, s 2(s)

members. During the second wave of COVID-19 in 2021, we witnessed the worst scenario all over the country when we lost many people. Similarly, most people were risking their lives like caregivers, hospitals, police staff, and others. People have been socially isolated during the lockdown period or when infected with the virus, which has affected both physically, financially, and mentally.

The MHA, 2017²³ provides mental health care and services for persons with mental illness and their protection, further, it promotes and fulfills the rights of mentally ill persons during the delivery of mental health care and services. The Act protects people's right to a dignified existence by ensuring that they are not discriminated against or harassed. The Act also ensures that everyone has access to mental health treatments. The right is intended to ensure that services are readily available, reasonably priced, and of high quality. According to the law, mental health care must also be offered in every district across the country. Local issues, such as available mental health resources and a lack of understanding about mental illness in India, have not been taken into account in many years. People dealing with mental health problems often lack the ability to make sound decisions, and those dealing with psychological disorders do not have representatives to speak on their behalf.²⁴

The Act also recognises the right to live freely in the community, protection from cruel, inhuman, or degrading treatment, equality in the treatment of people with physical illnesses,²⁵ right to relevant treatment information, confidentiality and access to medical records, other rights and remedies, right to communication and personal contacts, right to legal aid, and recourse against deficiencies in the provision of care, treatment, and services.²⁶

²³ Mental Health Care Act 2017

²⁴ Raghuraj Ganeja, 'Mental Healthcare Bill: Despite the Positive Reforms, a Lot More Needs to be Done for the Mentally Ill' (*First Post*, 08 April 2017) <<http://www.firstpost.com/india/mental-healthcare-bill-despite-the-positive-reform-a-lot-more-needs-to-be-done-for-the-mentally-ill-3373156.html>> accessed 02 May 2022

²⁵ Mental Health Care Act 2017

²⁶ *Ibid*

Abuse

Not only in India, the levels of domestic violence can be seen, but an increase in economic hardship, stress, and decreased accessible services can also exacerbate women suffering from violence.²⁷ Globally, reports have been seen that during the pandemic women and children have experienced increased domestic violence and abuse.²⁸ UNICEF in its flagship report stated that the impact of COVID-19 can be seen on children and young people in many years to come.²⁹ In its rapid assessment, it was found that only 60% of the students can access online or digital classrooms.³⁰ During COVID-19 many people have lost their job so they seem to be depressed, and have anxiety issue that leads them to drug or substance abuse.³¹ Adversity in people is a well-established risk factor for short and long-term mental health problems.³²

Mental Health Services

Prior to the worldwide pandemic, there was already limited access to affordable mental health care. COVID-19 has further marginalised this access, as the outbreak has affected services all around the world. The Key factors affecting mental health services are:

- Infection of virus and risk of infection in long-stay facilities, including care homes and psychiatric institutions,
- barriers put by the government in meeting people face-to-face,
- mental health care staff being infected with COVID-19, and

²⁷ 'Violence, Injuries and Disability' (WHO) <<http://www.emro.who.int/violence-injuries-disabilities/violence-news/levels-of-domestic-violence-increase-as-covid-19-pandemic-escalates.html>> accessed 12 November 2021

²⁸ Kim Usher & Ors, 'Family violence and COVID-19: Increased vulnerability and reduced options for support' (2020) 29(4) Int J Ment Health Nurs <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7264607/>> accessed 07 May 2020

²⁹ *Ibid*

³⁰ 'Report Spotlights on the Mental Health Impact of COVID-19 in Children and Young People' (UNICEF, 05 October 2021) <<https://www.unicef.org/india/press-releases/unicef-report-spotlights-mental-health-impact-covid-19-children-and-young-people>> accessed 01 November 2021

³¹ Nirmita Panchal & Ors, 'The implications of COVID-19 for Mental health and Substance Use' (KFF, 10 February 2021) <<https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>> accessed 07 August 2022

³² *Ibid*

- the closure of mental health facilities to convert them into physical care facilities for people with COVID-19.

A survey was conducted by WHO in several countries from June to August 2020 to evaluate the use of substances, mental and neurological, and studied the method that all countries are adopting to overcome these issues during a pandemic. As per the report of many countries, there are critical vital mental health services provided to the people.³³ Over 60% of the Countries out of 130 countries reported disruptions in mental health services to vulnerable people that include adolescents and children 72%, 70% of older adults, and 61% of women requiring natal services. 75% are disrupted at the workplace and school.³⁴ 30% reported disruptions to access medications for mental, neurological, and substance use disorders. WHO has also issued guidelines on maintaining essential mental health services – during COVID-19 and further recommended that all countries allocate mental health resources as an integral component of their response and recovery plans to combat the pandemic situation. It also urged countries to check up on the changes and disruptions in services to be adequately addressed.³⁵

LEGAL PROTECTION OF MENTAL HEALTH AS A HEALTH RIGHT

The Constitution of India incorporates the right to the highest attainable physical and mental health under Article 21,³⁶ In *State of Punjab v Mohinder Singh Chawla*³⁷, it has been held by the Supreme Court that the “*right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities*”.³⁸ Similarly, the Supreme Court has upheld the state’s obligation to maintain health services.³⁹ Additionally, the court stated in the case of

³³ ‘COVID-19 disrupting mental health services in most countries’ (WHO, 05 October 2021) <<https://www.who.int/news/item/05-10-2020-covid-19-disrupting-mental-health-services-in-most-countries-who-survey>> accessed 20 November 2021

³⁴ *Ibid*

³⁵ ‘COVID-19 pandemic triggers 25% increase in prevalence of anxiety and depression worldwide’ (WHO, 2 March 2022) <<https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide>> accessed 08 August 2022

³⁶ Constitution of India 1950, art 21

³⁷ *State of Punjab v Mohinder Singh Chawla* (1997) 2 SCC 83

³⁸ *Ibid*

³⁹ *State of Punjab v Ram Lubhaya Bagga* (1998) 4 SCC 117

Bandhua Mukti Morcha v Union of India & Others that⁴⁰ the right to live with human dignity contained in Article 21 takes its living breath from the Directive Principles of State Policy.⁴¹

As a result, health protection must be included. Furthermore, the Supreme Court of India stated in the case of *Paschim Banga Khet Mazdoorsamity v State of West Bengal & Anr*⁴² that a government's failure to promptly give medical care to a person in need is a violation of that person's right to life protected by Article 21. Part VI of the Constitution of India⁴³ elaborates on the directive principles of state policies there is a mandate on the state to guarantee social and financial equity to the citizens and for the advancement of governmental assistance to the health of the people. As Article 47⁴⁴ states:

*"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*⁴⁵

The Indian Supreme court has brought through a catena of judgements⁴⁶, the mental health as the right to health under the ambit of fundamental rights and directive principles of the state policy.⁴⁷ In *Consumer Education and Research Center v Association of India*⁴⁸, it was determined that Article 21 has a much broader meaning that includes the right to a living wage, a higher standard of living, hygienic working conditions and recreational opportunities, as well as the ability to end worker sickness and physical incapacity. According to the court, having a right to health is also essential for a meaningful existence and the right to life. Additionally, it imposes on the state a similar obligation that is strengthened further as per Article 47.⁴⁹

⁴⁰ *Bandhua Mukti Morcha v Union of India & Others* (1997) 10 SCC 549

⁴¹ *Ibid*

⁴² *Paschim Banga Khet Mazdoorsamity v State of West Bengal & Anr* (1996) SCC (4) 37

⁴³ Constitution of India, part VI

⁴⁴ Constitution of India, art 47

⁴⁵ *Ibid*

⁴⁶ *Rakesh Chandra Narayan v State of Bihar* (1989) AIR 348

⁴⁷ *Ibid*

⁴⁸ *Consumer Education & Research Center v Association of India* (1995) AIR SC 922

⁴⁹ Constitution of India, art 47

Certain cardinal principles were laid down by the Supreme Court in *Rakesh Chandra Narayan v the State of Bihar*,⁵⁰ the right to food, water, personal hygiene, sanitation, and leisure is an extension of the right to life guaranteed by Article 21 of the Constitution⁵¹ for those with mental health conditions. In order to achieve the intended results, therapy, instruction, training, and research must be combined according to strict quality norms and standards in the field of mental health.⁵²

Right of Treatment and Rehabilitation

Apart from the Constitutional framework, there are other legislative provisions safeguarding mental health as part and parcel of health rights providing the right of treatment and rehabilitation of persons suffering from mental health problems. The MHA, 2017⁵³ outlines the procedure and process for admission, treatment, and subsequent discharge of mentally ill persons.⁵⁴ Furthermore, a mentally ill person has the right to make an advance directive toward him/her for the treatment of the requisite illness.⁵⁵

The Chapter X of the MHA 2017,⁵⁶ has been given for the establishment of mental health establishment at central and state levels in every state. In which all medical practitioners including psychologists, psychiatric social workers, and mental health nurses to be registered in a such mental health institute. And these authorities will supervise, maintain, and develop all such establishments, provide norms of services and advise the government in matters relating to mental health.

⁵⁰ *Rakesh Chandra Narayan v State of Bihar* (1996) AIR SC 3261

⁵¹ Constitution of India, art 21

⁵² Rishab Gandhi & Advocates, 'Mental Health: Legal Evolution of Institutionalised Mental Health Care in India' (RGAA, 09 October 2020) <<https://www.rgaa.co.in/mental-health-legal-evolution-of-institutionalised-mental-healthcare-in-india/>> accessed 08 August 2022

⁵³ Mental Health Care Act 2017

⁵⁴ Abhishek Mishra & Abhiruchi Galhotra, 'Mental Healthcare Act 2017: Need to Wait and Watch' (2018) 8 (2) Int J Appl Basic Med Res 67–70 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/#ref33>> accessed 08 August 2022

⁵⁵ Ibid

⁵⁶ Mental Health Care Act 2017, chapter X

Rights of persons with mental illness

The Central government has made rules, The Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018⁵⁷ in consonance with the Mental Health Act, 2017, Chapter II⁵⁸ of these rules provides for the rights of persons with mental illness. Every individual will have the right to access mental healthcare services. Such services should be convenient, of good quality, affordable, and easily accessible. It further seeks to protect such persons from inhuman treatment, gain access to free legal services and medical records, and have the right to complain in the event of deficiencies in provisions. Certain rights are as follows:

1. Right of halfway homes, sheltered accommodation, and supported accommodation
2. Right to Hospital and community-based rehabilitation establishment and services
3. Right of Reimbursement of the intermediary cost of treatment from the government
4. Right to access basic medical records about his diagnosis, investigation, assessment, and treatment within fifteen days of application for the same.
5. Custodial institutions: Any institutions run by the government or by any trust or entity or person are advised under the Act to look over the person suffering from mental health and no person can leave their institution without their consent. And they shall provide a sign board for the information of such individual or person with mental illness. And inform their nominated representative that they are entitled to free legal aid under relevant laws or by the order of the court.

CHALLENGES AND ISSUES EMERGED IN PEOPLE DURING COVID-19

As of 20 April 2022, over 6.2 million reported deaths had been attributed to COVID-19 since the start of the pandemic.⁵⁹ Since COVID-19 had a negative impact on not only India but also on people worldwide, there has been an increase in mental health issues like anxiety, depression, insomnia, and post-traumatic stress. Because these issues have the potential to have a significant

⁵⁷ Mental Healthcare (Rights of Persons with Mental Illness) Rules 2018

⁵⁸ Mental Health Act 2017, Chapter II

⁵⁹ 'World Health Statistics 2022: Monitoring health for SDGs, Sustainable Development Goals' (WHO, 19 May 2022) <<https://www.who.int/publications/i/item/9789240051157>> accessed 08 August 2022

impact on the health system, they require urgent and immediate attention. Depending on the particular population group,⁶⁰ there may be various and distinct mental health challenges in society. There are several risk factors like biological, social, economic, and disease-specific characteristics of COVID-19, and psychological that attribute to the development of mental health problems during the COVID-19 pandemic.⁶¹ Suicides have been reported from various parts of the world concerning the COVID-19 pandemic.⁶²

Another common phenomenon is paranoia and fear, which is further enhanced by the constant telephonic reminders and flash of news on the contamination of novel coronavirus, which is acting as a source for paranoid ideas.⁶³ Patients with substance use disorder are likely to experience withdrawal symptoms due to lockdown and inaccessibility to substances.⁶⁴ The mental health of the special population was at high risk like pregnant women, people suffering from prior illness or mental illness history, senior citizens, children, people with medical comorbidities,⁶⁵ and marginalised communities. The effects of COVID-19 on mental health have been acknowledged by the WHO Member States, who are now taking action. According to the WHO's most recent nationwide study on the continuity of essential health services, 90% of nations are working to provide mental health and psychosocial assistance to COVID-19 patients and caregivers respectively.⁶⁶

Impact of COVID-19 and Health Risk Factors arising globally as highlighted by WHO included in Sustainable Development Goals (SDGs) are⁶⁷:

⁶⁰ *Ibid*

⁶¹ PK Dalal & Ors, 'Emerging mental health issues during the COVID-19 pandemic: An Indian perspective' (2020) 62 *Indian J Psychiatry* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7659779/#:~:text=At%20the%20same%20time%2C%20several,with%20coronavirus%20or%20contact%20with>> accessed 08 August 2022

⁶² Mohammad A Mamun & Mark D Griffiths, 'First COVID-19 suicide case in Bangladesh due to fear of COVID-19 and xenophobia: Possible suicide prevention strategies' (2020) 51 *Asian J Psychiatry* <<https://pubmed.ncbi.nlm.nih.gov/32278889/>> accessed 08 August 2022

⁶³ Anjana Rao Kavour, 'COVID-19 in People with Mental Illness: Challenges and Vulnerabilities' (2020) 51 *Asian J Psychiat* <<https://pubmed.ncbi.nlm.nih.gov/32298968/>> accessed 08 August 2022

⁶⁴ PK Dalal (n 61)

⁶⁵ *Ibid*

⁶⁶ COVID-19 pandemic (n 35)

⁶⁷ *Ibid*

- Child Malnutrition
- Obesity in youth
- Anaemia among women
- Harmful Use of Alcohol
- Use of tobacco
- High Rise in blood pressure
- Violence against women

RIGHT TO MENTAL HEALTH DURING COVID-19

The National Human Rights Commission has provided the list of rights available to the one who needs care and support at the most priority, here are some as follows⁶⁸:

1. Right to minimum affordable mental health services and easy access to mental health care run by the government and another institute
2. Availability of psychiatry care and psychotropic medications with telepsychiatry and tele-psychotherapy
3. Availability of mental health care services without any discrimination
4. Adequate arrangement of trained human resources
5. Priority in vaccination
6. Adequate funds to be given by the government
7. Awareness about prevention from COVID-19, preventive healthcare measures
8. Mental health care policies for a homeless person suffering from mental illness
9. Mental health support for vulnerable groups like the elderly, pregnant women, migrant workers, victims of abuse, and children

⁶⁸ 'Human Rights Advisory on Right to Mental Health in view of the second wave of COVID-19 Pandemic' (NHRC, 8 October 2020) <<https://nhrc.nic.in/sites/default/files/ADVISORY%20MENTAL%20HEALTH.pdf>> accessed 08 August 2022

10. Childcare institutions, child welfare homes, and rehabilitation centres must have adequate facilities to cater mental health support to persons suffering from mental illness.⁶⁹

MENTAL HEALTH AS A HUMAN RIGHT

Human Rights are those rights that are not granted by any state or law; it is inherent right as we exist as a human being regardless of nationality, race, sex, religion, language, or any other status of like nature. The first legal document to set out universal human rights the UDHR provides principles of human rights to conventions, treaties, and other legal instruments. Article 3 provides “Everyone has the right to life, liberty, and Security of person.”⁷⁰ Further, Article 25⁷¹ provides everyone has the right to the highest standard of living adequate for the health and well-being of himself and his family,⁷² including shelter, food, clothing, medical service, and social support in the event of unemployment, sickness, disability, old age, and right to security in such event.⁷³

The right to health is a fundamental basic human right regardless of age, gender, socioeconomic or ethnic background. With the general population, people with mental illness and those with psychosocial disorder disproportionately experience a high rate of poor physical health and their life expectancy has been reduced by a 20-year drop for men and 15 years for women. Mental health Stigma is also a significant determinant of quality care and access to the full range of services they require.⁷⁴ The Human Rights Council in resolution 36/13, emphasized that persons with psychosocial disabilities, persons with mental illness, and mental health users, face widespread discrimination, social stigma, violence, prejudice, social exclusion, drug or psychotropic substance abuse, segregation, unlawful or arbitrary institutionalization, over-

⁶⁹ *Ibid*

⁷⁰ Universal Declaration of Human Rights 1948, art 13

⁷¹ Universal Declaration of Human Rights 1948, art 3

⁷² *Ibid*

⁷³ Universal Declaration of Human Rights 1948, art 25(1)

⁷⁴ ‘Mental Health is a human right’ (OHCHR, 24 May 2018)

<<https://www.ohchr.org/en/stories/2018/05/mental-health-human-right>> accessed 19 April 2021

medicalization and treatment practices that fail to respect their autonomy, will, and preferences.⁷⁵

INTERNATIONAL LEGAL FRAMEWORK

There are major international standards that protect mental health within the framework of human rights. There are two International Covenants on Human Rights, International Convention on Economic, Social and Cultural Rights (*ICESCR*) recognise the adequate standard of living⁷⁶ and the highest standard of physical and mental health⁷⁷. International Covenant on Civil and Political Right (*ICCPR*) protects the right to life⁷⁸, these two covenants inherently protects the right to the mental health of the individual.

UN Principles for the protection of Persons with Mental Illness and improvement of Mental Health care (*also known as MI Principles*) established human rights standards of practice in the mental health field and standards for the treatment and living conditions within mental health facilities. The MI Principles generally apply to a person with a mental disorder and a person kept at mental health facility whether that person has a mental disorder or not. It also recognises that all people suffering from mental health problems shall have the right to work and live life with dignity.

Standard Rules on Equalization of Opportunities for Persons with Disabilities (Standard Rules 1993)⁷⁹ reaffirms the World Programme Action goals of rehabilitation, prevention, and equalisation of opportunities, with three main areas of focus: preconditions for equal participation, targets for equal participation, and implementation measures. Because they establish citizen participation by people with disabilities as an internationally recognised human right, these Rules constitute a novel international instrument. Governments are obligated to offer opportunities for persons with disabilities and organisations made up of people with

⁷⁵ *Ibid*

⁷⁶ International Convention on Economic, Social and Cultural Rights 1996, art 11

⁷⁷ International Convention on Economic, Social and Cultural Rights 1996, art 12

⁷⁸ International Covenant on Civil and Political Right 1996, art 6

⁷⁹ Standard Rules on Equalization of Opportunities for Persons with Disabilities 1993

disabilities to participate in the writing of new legislation on issues that affect them to implement this right.⁸⁰

CONCLUSION

Before the existence of COVID-19, people were suffering from mental health issues, but there was less legislation available and the discussion became a social taboo. Now during the pandemic, mental health issues were highlighted throughout the world. Wherein many symptoms were highlighted in young adults like anger, substance abuse, isolation or being a loner, antisocial behaviour, delusions, confused thinking, mood swings, hallucinations, suicide thoughts, excessive anxiety, unexplained physical ailments, change in sleep patterns, changes in appetite or diet, impulsive behaviour and obsessive thoughts. With these symptoms, they are unable to freely work, unable to live life with full dignity.

The persons' fundamental rights must be protected by the state by giving them necessities of life and good mental health. People have basic legal rights or fundamental rights in the pandemic situation, but they also have several fundamental duties as well to protect the constitutional values and abide by them. Adequate medical infrastructure is required at district and sub-district levels and the duty lies on the state and the central government to allocate a budget for mental health facilities. In *Jerryl Banait v Union of India*, case it was held by the Supreme Court that the "pandemic which is engulfing the entire country is a national calamity. In the wake of a catastrophe, such nature of all citizens of the country has to act responsibly to extend a helping hand to the government and medical staff to perform their duties to contain and combat COVID-19. So, without hampering anybody's rights, people should maintain peace and live in a healthy and happy environment.

There are some suggestive measures through which mental health can be improved, like self-awareness about rights, taking care of physical and mental health, staying positive, stopping

⁸⁰ *Ibid*

rumours, believing in themselves, talking about the mental illness with family or friends, and taking psychiatry help, consulting with the doctor.