

Mental Health Care Bill, 2013 and United Nations Convention on the Rights of Persons with Disability: Do they go Hand in Hand?

Abstract

This article is an effort to examine how far the proposed Mental Health Care Bill (MHCB), 2013 addresses the issues raised under the United Nations Convention on the Rights of Persons with Disability (UNCRPD). This was performed by examining different documents and publications related to the proposed MHCB, 2013 and position statements and views expressed by different stakeholders. Although the proposed MHCB, 2013 is far advanced for its time, there are some gaps in its alignment with the UNCRPD. However, the proposed Rights of Persons with Disability Bill (RPWDB), 2014 addresses many of the issues pertaining to the UNCRPD. Thus, the essence of the UNCRPD is covered jointly by the MHCB, 2013 and the RPWDB, 2014.

Key Words: Legislations on mental health, Mental Health Care Bill, rehabilitation, United Nations Convention on the Rights of Persons with Disability

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Introduction

India is one of the few countries which has a law governing mental health. Only 59% of the countries have a legislation pertaining to mental health. In the South East Asia region, it is only 40%.^[1] Only 36% of people living in low income countries are covered under legislations pertaining to mental health. The outpatient facilities are 58 times higher in high income countries as compared to low income countries.^[1,2] As many countries do not have a legislation pertaining to mental health and persons suffering with mental health issues and disability are vulnerable and marginalized population, the United Nations organized the Convention on the Rights of Persons with Disability (UNCRPD) in December 2006.^[3] India ratified it in October 2007 and the convention came into force in May 2008. Hence, it became imperative for the government to amend Mental Health Act (MHA), 1987 to promote, protect, and ensure full and equal enjoyment of human rights, legal capacity, equality, and dignity of the mentally ill and to change thinking about disability from a social welfare concern to a human rights issue.

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The United Nations Convention on the Rights of Persons with Disability

Equality, dignity, inalienable rights are recognized as the foundation of freedom, justice, and peace in the world by the United Nations (UN). It also recognizes disability as an evolving concept and that disability is a result of the interaction between persons and barriers that hinders their full and effective participation. There is a need to promote and protect the human rights of persons with disabilities, but despite various instruments and undertakings, they continue to face violations of their rights and barriers in their participation as equal members of society. Women and children are more vulnerable for the violation of rights and discrimination. Family is a natural and an integral part of the environment in which a person with disability lives. Keeping these things in mind, and the need for international co-operation for upholding the rights of the people with disability, the UN convened to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.^[3]

The principles of the convention were:^[3]

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons

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How to cite this article: Chaturvedi SK, Basavarajappa C, Ahamed A. Mental Health Care Bill, 2013 and United Nations Convention on the rights of persons with disability: Do they go hand in hand?. *Indian J Soc Psychiatry* 2015;31:107-11.

Access this article online	
Quick Response Code: 	Website: www.indjso.org
	DOI: 10.4103/0971-9962.173291

- b. Nondiscrimination
- c. Full and effective participation and inclusion in society
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- e. Equality of opportunity
- f. Accessibility
- g. Equality between men and women
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The convention has 50 articles in which Articles 5–2 uphold the principles of the convention and the Optional Protocol has 18 articles.

It is noteworthy that the UNCRPD does not explicitly prohibit forced institutionalization for persons with mental illness but neither does explicitly permit it.^[4]

The positives and criticisms of Mental Health Care Bill (MHCB), 2013 will probably be addressed by other authors in this issue. Here, its relevance in relation to the UNCRPD is examined and discussed.

Aim

To examine if the proposed MHCB, 2013 addresses the issues raised under the UNCRPD.

Methodology

A secondary analysis of data from UNCRPD, MHCB, 2013, the Rights of Persons with Disability Bill (RPWDB), 2014, position statement of Indian Psychiatric Society, Parliamentary Standing Committee report were carried out and articles published in the Asian Journal of Psychiatry, Delhi Psychiatry Journal, Indian Journal of Medical Ethics, Indian Journal of Psychiatry, Indian Journal of Social Psychiatry and Journal of Psychosocial Rehabilitation and Mental Health which were published between 2011 and 2014 were considered. The articles published in these journals relevant to the present study aim were filtered.

Study data included one article each from the Asian Journal of Psychiatry, Delhi Psychiatry Journal, Indian Journal of Medical Ethics, Indian Journal of Psychiatry and Journal of Psychosocial Rehabilitation and Mental Health.

Observations and Discussion

The observations can be divided into those issues which are in keeping with the UNCRPD charter, and those which are not fully addressed.

Issues that are in Accordance with the United Nations Convention on the Rights of Persons with Disability

Rights of persons with mental illness were discussed briefly in Section 81 of MHA, 1987. It only discussed about undignifying and cruel treatment, consent in research

and intercepting/detaining/destroying communications sent by/to the mentally ill. Respect for human rights and ethics, utilization of resources and humane laws are much needed and MHCB, 2013 attempts to address these issues.^[2]

A realistic, implementable and ethical law which upholds the importance of ethical issues in public health policy makes it a meaningful law. The MHCB, 2013 upholds shared decision making over the “best interests” principle. This helps in protecting the autonomy of the individual and is in accordance with the principle of respect for persons.^[5]

The UNCRPD in its preamble recognizes the importance of the family in contributing towards the full and equal enjoyment of the rights of persons with disabilities and the families are entitled to protection by society and the state.^[3] MHCB, 2013 through its changes from MHA, 1987 helps in reduction of care givers’ stress by decriminalizing attempted suicide and right to access to mental health care facilities.^[6]

Article 5 of the UNCRPD, that is, equality and nondiscrimination states that prohibition of all discrimination on the basis of disability should be undertaken by the states and the states should guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.^[3] Section 21 - Right to equality and nondiscrimination of MHCB, 2013 although talks on providing equality to persons disabled due to mental illness as compared with other physical disability, discrimination, and legal protection as compared to general public is dealt with in Section 3 - Equality and nondiscrimination of RPWDB, 2014.^[7] It also talks about protection rights of women and children which are stated in Article 6 and 7 of the UNCRPD. Section 96 - Admission of minor of MHCB, 2013 confers some protection to children that a Nominated Representative is responsible for the treatment of the child, the Mental Health Review Board should be intimated about the admission within 3 days and all community based alternatives to admission should have been shown to have failed or are demonstrably unsuitable for the needs of the minor. The child should be admitted in a separate ward. Minor female children should be accompanied with a female attendant all the time.^[8]

Article 8 - Awareness-raising, emphasizes on raising awareness in the society about the rights and dignity of persons with disabilities and the capabilities and contributions of persons with disabilities. It also aims to combat stereotypes, prejudices, and harmful practices relating to persons with disabilities by initiating and maintaining effective public awareness campaigns, nurturing receptiveness to the rights of persons with disabilities and fostering an attitude of respect for the rights of persons with disabilities in the education system, encouraging the media to portray persons with disabilities in a manner which will uphold the foundations laid by this convention.^[3] Sections 29 and 30 of MHCB, 2013 deal with

creating awareness and guide the appropriate government to plan, design, and implement programs for the promotion of mental health, prevention of mental illness, and suicide in the country and to reduce stigma associated with mental illness.^[8] Section 38 - Awareness campaigns of RPWDB, 2014 also deals with the same.^[7]

Article 9 - Accessibility, urges the appropriate states to take appropriate measures to ensure accessibility to the physical environment, transportation, information, and communications by which persons with disabilities can live independently and participate fully in all aspects of life both in urban and in rural areas.^[3] Section 18 - Right to access mental health care of MHCB, 2013 envisions accessible, affordable, good quality mental health services for all by the provision of acute mental health care services such as outpatient and inpatient services, half-way homes, sheltered accommodation, supported accommodation, home based rehabilitation, hospital, and community based rehabilitation establishments. It is geared to help persons with mental illness live in the community. The reason behind it is community based establishments are less restrictive than long stay mental hospitals.^[8] It would be more consistent with the UNCRPD if it was geared toward community reintegration which means *“to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life”* instead of just living in the community. Since MHCB, 2013 mandates all the places where persons with mental illness reside except their home to be registered and follow the tedious procedure of informing all the admissions to the Mental Health Authority, many General Hospital Psychiatry Units, Nursing homes, Primary/Community Health Centers etc., would be put at difficulties and delays in caring for persons with mental illness and the purpose of the law may thus be inadequately served.^[9] This might dissociate psychiatry from general health care system. The guidelines laid down in the UNCRPD are taken care by Sections 39–45 Accessibility of RPWDB, 2014.^[7]

Article 12 - Equal recognition before the law and Article 13 - Access to justice, are covered briefly in Section 27 - Right to legal aid of MHCB, 2013 which allows the person with disability to seek free legal aid to exercise any of his/her rights.^[8] Section 11 - Access to justice of RPWDB, 2014 helps persons with disabilities to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability, even to those living outside family and requiring high support for exercising legal rights.^[7]

Article 14 - Liberty and security of the person urges the states to ensure that persons with disability are not deprived of their liberty unlawfully or arbitrarily.^[3] Section 26 - Right to personal contacts and communication of MHCB, 2013 allows the person with mental illness

admitted to a mental health establishment to refuse or receive visitors/phone calls/mails.^[8]

Article 15 - Freedom from torture, cruel, inhuman, degrading treatment or punishment is dealt well in both Section 20 - Right to protection from cruel, inhuman, and degrading treatment of MHCB, 2013^[8] and Section 5 - Protection from cruelty and inhuman treatment of RPWDB, 2014.^[7]

Article 16 - Freedom from exploitation, violence and abuse both within and outside the home, is partially dealt in Section 28 - Right to make complaints about deficiencies in provision of services of MHCB, 2013 but is adequately covered under Section 6 - Protection from abuse, violence and exploitation of RPWDB, 2014 where any person can complain to the Executive Magistrate through Police about the abuse, violence, and exploitation.^[7] Section 106 - Restraints and seclusion of MHCB, 2013 confers protection against unlawful seclusion of the persons with mental illness.^[8]

Article 19 - Living independently and being included in the community is upheld in Section 19 - Right to community living of MHCB, 2013^[8] and Section 4 - Community life of RPWDB, 2014.^[7]

Article 21 - Freedom of expression and opinion, and access to information urges the states to take measures to develop appropriate technologies which can be accessible to persons with disability.^[3] It is dealt under sections concerning accessibility in RPWDB, 2014^[7] whereas MHCB, 2013 talks only about Right to information and Right to access medical records under Sections 22 and 25.^[8]

Article 22 - Respect for privacy is upheld under Sections 23 - Right to confidentiality and 24 - Restriction on release of information in respect of mental illness of MHCB, 2013.^[8]

Article 31 - Statistics and data collection is dealt under Section 108 - Research.^[8]

The entire MHCB, 2013 and RPWDB, 2014 is geared toward fulfilling Article 10 - Right to life and Article 17 - Protecting the integrity of the person and hence there are no separate sections to deal with them.

Table 1 enlists the articles of the UNCRPD and relevant sections of MHCB, 2013.

Issues in the United Nations Convention on the Rights of Persons with Disability that are not Adequately Covered under Mental Health Care Bill, 2013

Article 6 - Women with disabilities recognizes that women and girls are a vulnerable population and should be protected from multiple discriminations.^[3] But, both MHCB, 2013 and RPWDB, 2014 remain silent about the rights of women and their protection.

Table 1: Comparison of UNCRPD and MHCB 2013

Articles of UNCRPD ^[3]	Sections of MHCB, 2013 ^[8]
Article 5 - Equality and nondiscrimination	Section 21 - Right to equality and nondiscrimination
Article 7 - Children with disabilities	Section 96 - Admission of minor
Article 8 - Awareness-raising	Section 29 - Promotion of mental health and preventive programs
Article 9 - Accessibility	Section 30 - Creating awareness about mental health and illness and reducing stigma associated with mental illness
Article 12 - Equal recognition before the law	Section 18 - Right to access mental health care
Article 13 - Access to justice	Section 27 - Right to legal aid
Article 14 - Liberty and security of the person	Section 27 - Right to legal aid
Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment	Section 26 - Right to personal contacts and communication
Article 16 - Freedom from exploitation, violence and abuse	Section 20 - Right to protection from cruel, inhuman and degrading treatment
Article 19 - Living independently and being included in the community	Section 28 - Right to make complaints about deficiencies in provision of services
Article 21 - Freedom of expression and opinion, and access to information	Section 106 - Restraints and seclusion
Article 22 - Respect for privacy	Section 19 - Right to community living
	Section 22 - Right to information
	Section 25 - Right to access medical records
	Section 23 - Right to confidentiality
	Section 24 - Restriction on release of information in respect of mental illness

UNCRPD: United Nations Convention on the Rights of Persons with Disability, MHCB: Mental Health Care Bill

Article 11 - Situations of risk and humanitarian emergencies such as situations of armed conflict and the occurrence of natural disasters is not covered under MHCB, 2013, but is covered under Section 7 - Protection and safety of RPWDB, 2014.^[7]

Article 18 - Liberty of movement and nationality and Article 32 - International cooperation are not relevant under these laws and are hence not covered.

Article 23 - Respect for home and the family, Article 24 - Education, Article 25 - Health, Article 26 - Habilitation and rehabilitation, Article 27 - Work and employment, Article 28 - Adequate standard of living and social protection, Article 29 - Participation in political and public life, Article 30 - Participation in cultural life, recreation, leisure, and sport are not covered under MHCB, 2014 but are covered well under RPWDB, 2014.^[7]

Article 20 - Personal mobility is not relevant to MHCB, 2013 and hence it is covered under Section 42 - Consumer goods of RPWDB, 2014.^[7]

Care givers, due to excessive legal involvement in the care and admission procedure of their wards, may hesitate to seek psychiatric treatment.^[6]

Rehabilitation is an integral part of management of persons with mental illness and disability. It is different from that of physical disability. There is need for continued clinical care. The treatment in physical disability aims at reducing the symptoms and preventing the disability. But, when disability sets in, the rehabilitation starts and is usually not under the

purview of the medical doctor. In disabilities that arise due to mental illnesses ‘rehabilitation’ itself is a part of “treatment” which helps in alleviating the symptoms and often the medical doctor is involved in the process.^[10] UNCRPD and RPWDB, 2014 lay broad guidelines for disability and rehabilitation as they encompass physical disability also. Disability due to mental illness forms a small part of it. Hence, MHCB, 2013 being the law under Ministry of Health and Family Welfare and will govern the aspects of mental health should have stressed upon the needs of rehabilitation of the persons with mental illness. The term “community based rehabilitation establishments and services” needs a definition.^[11] Areas of health, education and employment are concentrated upon and either the Government or Nongovernmental Organizations are given the responsibilities of rehabilitating persons with mental illness under RPWDB, 2014 which comes under Ministry of Social Justice and Empowerment. Adequate liaison between these two ministries would be absolutely necessary to uphold the rights of persons with mental illness and disability. Thus, there is a need for harmonization between the MHCB, 2013 and RPWDB, 2014 to fully address the issues in the purview of UNCRPD. The principal author (SKC) appeared before the Rajya Sabha Parliamentary Committee, along with the Director NIMHANS and the Chief of Mental Health Division, World Health Organization. The concerns of the honorable Members of Parliament need appreciation, and their suggestions to pay more attention toward rehabilitation and providing due rights for the persons with mental illness needs to be acknowledged.

Conclusion

Both MHCB, 2013 and RPWD Bill, 2014 together address the principles and guidelines laid down by UNCRPD. Both these proposed legal documents need to be harmonized. The laws are quite futuristic and aim at the development of persons with disability. However, women with disability and rehabilitation should have been given due importance in both the laws. We can hope for a better future, if these laws are followed to their essence.

Source of support

Nil.

Financial support and sponsorship

National Institute of Mental Health and Neurosciences, Bengaluru has had an important role towards the development of Mental Health Care Bill, 2013 at various stages, and the first author was involved in this process.

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