Module 6 Assignment - Kaustubh

Human rights violations in case of Mrs A -

Mrs A is an example for many people with disabilities going through human rights violations around the world.

1. **Involuntary admission**- She was admitted against her will and no consent was taken. It was assumed that Mrs A will not have capacity to decide about this admission. Thought procedures was followed as per national law. This is a violation of her right of liberty and capacity. So there was no procedure for proper decision making.

2. **Involuntary treatment , medication and restraint** – Her rights are violated every time when injections were given , high sedatives and neuroleptics were used and then more so when she was physically restrained. After restraint ,care was not optimum and she had been neglected thereafter– e.g restraint was opened after 12 hrs and she was not monitored on continuous manner but every two hours. So all this neglect and abuse led to her demise. She was deprived of liberty , subjected to torture , inhumane and degrading treatment and there was medical negligence and discrimination at large.

Discussion in reference to UN standards of human rights and Spl. rapporteurs report -

Convention on rights of people with disability (CRPD) explicitly mentions all these human rights violations which happened in case of Mrs A. **Article 12 r**ecognizes equal right to enjoy legal capacity in all areas of life, such as whether to accept medical treatment. **Article 12 – clause 4** talks about capacity and its measurement , use , review and how if used in timely manner can reduce abuse and protect rights of persons with disabilities. So that as much as possible involuntary admissions can be avoided. **Article 14** talks about liberty and security of persons with disabilities and states that - “States Parties shall ensure that if persons with disabilities are deprive**d** of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.. Further to this **Article 15** of CRPD states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Also,A**rticle 3** of the Convention proclaims the principle of respect for the individual autonomy of persons with disabilities and the freedom to make their own choices. Further, In addition, A**rticle 25** recognizes that medical care of persons with disabilities must be based on their free and informed consent. At the beginning , **Article 2** defines discrimination which was relevant in Mrs A case and reasonable accommodation which had been not provided to Mrs A.

Similarly, **Interim report of the Special Rapporteur** talks extensively about torture and other cruel, inhuman or degrading treatment or punishment (2008). The Special Rapporteur notes that the acceptance of involuntary treatment and involuntary confinement runs counter to the provisions of the Convention on the Rights of Persons with Disabilities. He supports the way CRPD can protect , promote rights of persons with disabilities. He mentions definition of Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. The Special Rapporteur notes that there can be no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment.

Also **Convention against Torture** and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the **International Covenant on Civil and Political Rights** talks about same issues.

Part 2 – If Mrs A has been treated in India –

As of now India Mental Health Act of 1987 is in force. Accordingly , Mrs A can be admitted involuntarily after magistrate's order in government facility and on consent of family members in private facility.

After hospitalization she would have received all forms of sedatives, neuroleptics in heavy doses without her consent . She would have been treated in below dignity manner by mental health professionals. Her autonomy and liberty would have been restricted . She would have been restrained or even put under seclusion due to her violent behaviour. On top of that, she would not be monitored frequently – may be 2-3 times in a day she would be examines and given medications and food. So fate of Mrs would have been the same.

Now , we have some hope. The parliament is going to adapt new legislation which is in line with international human rights standards particularly CRPD. And also new national policy and programme

will be inforce in a year or two. So gradually scenario will change. But implementation of policy and programme will have to face many barriers. I feel following are important barriers -

1. awareness among users and families about human rights,
2. poor awareness , knowledge and negative attitude amongst mental health professionals and community at large (Stigma and discrimination)
3. lack of human resources and poor education
4. No community treatment programme
5. Poor access to mental health facilities

Part 3 - In relation to Mrs A case I will recommend -

a. Making the paradigm shift from proxy decision-making to supported or facilitated decision-making in patients with mental disability.
b. Avoiding blanket guardianship's for people with mental disability, these guardianship which frequently last several decades without reevaluation and revision, and moving towards issue-specific capacity and competence estimations with periodic reassessments and reevaluations. There has to be separate review board for this mechanism to implement.
c. Clarification of the categories: voluntary versus involuntary psychiatric admissions- these categories are presently blurred with the family signing “a person” into the hospital being referred to as “voluntary” admission- since individual/family boundaries are blurred in the in India even when the person admitted to the hospital is non-consenting
d. Access to information and education about the rights of people with disabilities to the population at large, to people with disabilities and their families, to health care providers who are massively unaware of the rights of people with disabilities to consent to treatment or to refuse it.
e. Awareness raising about human rights among community and mental health professionals.
f. The development of clear procedures for involuntary hospitalization that involve clear steps and responsibilities and multiple levels of revision and reassessment in order to ascertain the continuous presence or resolution of criteria required for involuntary hospitalization and procedures for discharge
g. The development of intensive community-based treatment modality including outpatient involuntary treatment when needed to decrease the need for involuntary hospitalization. In this regard may be setting up psychiatric intensive care units in general hospitals which will

have continuous monitoring facilities and sufficient human resources.

h. There has to be state based review boards monitoring case of torture , abuse and violence,inhuman and degrading treatment against people with mental disabilities.

i. There has to be monitoring body which can form guidelines for use if injections and restraints . Any form of treatment has to be after informed consent and family / decision maker should be informed about this .

j. Ensure that all cases of ill-treatment and death occurring in institutions are duly investigated and where necessary criminal convictions are pursued and to ensure remedies for victims or their families.

k. Ultimately in order to prevent human rights issues arising in this case, India should target to close down mental health institutions one by one in coming decades.