

Assignment – Module 7 – Kaustubh Joag

Human rights violations are common to mental health field. So there are important international human rights instruments which guides countries / states to identify these violations and take actions against these violations which will promote and protect human rights of mental health users.

Mental health facilities are known to be places where serious human rights violations do happen. Therefore monitoring of these facilities by local authorities and international organizations is very much necessary. In this regard , The MI Principles state that “Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment and care of patients comply with these Principles” (Principle 14(2)).

This view has been agreed upon by other international human rights instruments like OPCAT and CRPD . ‘In order to prevent the occurrence of all forms of exploitation, violence and abuse, State Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities’ (Article 16.3 – CRPD). In 2004 , UN Special Rapporteur affirms this view mentioning that there is need for independent mechanisms for monitoring and oversight for mental health

Mental Health Inspectorate (MHI) formed by national legislation and international non governmental organization working in human rights area have same goal of promoting and protecting human rights of mental health users. But their style of working and impact on outcome of their investigations differ due to their strengths and weaknesses. So unless they work in cooperation we will not get maximum results in this area. In this regard, I will like to discuss Mental health inspectorate (MHI) situation first followed by International non governmental organization (INGO) working in human rights field.

1 Mental health Inspectorate that has been set up in national legislation

Human rights of people with mental disability may be monitored by international and regional oversight bodies and international as well as local non-governmental organizations. Nonetheless local independent oversight, set up through legislation, is indispensable.

The Mental Health Inspectorate created by law puts a legal obligation on a given country or state to execute the assigned tasks and to report or take appropriate actions on the basis of the findings. They are able to monitor specific and ongoing problems throughout a country. So they can cover all mental health facilities in state / country . The existence of Mental Health Inspectorate set up through legislation tends to keep the health hospital staff on their feet as they feel being “watched” by law. Hence they may act in such a way to be “seen” always active on duty. The existence of Mental Health Inspectorate is likely to impact on care and the way service users are treated. Awareness by service providers that action can be taken if abuses are found, in all likelihood results in fewer abuses occurring. To have this “watchdog” impact, it is recommended that MHI should make surprise visits to facility to know the reality. Mental health inspectorates can and may also make use of the national legal system and facilitate or take legal action against a staff member at an establishment when that staff has abused a service user. So actual changes can come into force in timely manner. The findings and recommendations of inspectorates can and may be given to the supreme legislative authority such as parliament which in turn if act efficient manner brings about the desired change. Some inspectorates have powers to act directly on services and may, for example, refuse accreditation to a facility, apply sanctions or even close down a hospital if abuses are found. The inspectorate may decide to litigate against the particular establishment if they find that the whole facilities are in violation of human rights due to poor living condition, lack of treatment and rehabilitation. Also MHI can suggest changes which are locally and culturally accepted , also because they have direct impact and appointed by law mental health facility will act accordingly in timely manner. Being local and culturally similar, full coverage of facilities , mental health inspectorate has real advantage than INGO and if they have regular inspection and work efficiently and make necessary restrictions / punishments.

But if we see other side of this then we can realize that main disadvantage of MHI is there dependency on legal system or in other case on minister or parliament. So their report may lack 'power' to have any impact on ground. Secondly, monitoring team at national level may lack experts in the field of human rights and can lack knowledge of international human rights. Also in some situations, the inspectorates themselves have no enforcement powers to take the required action. The Legislature is

unlikely to regard mental health and the rights of people with mental disabilities as a top priority in countries with so many conflicting priorities to the extent that they would expect mental health inspectorates to report to them directly. In circumstances where mental health inspectorates report to the legislature there is no guarantee that the legislature will do anything to address the findings and if reports are not out for public viewing then there is possibility of some changes in the report later. Also if selection process of monitoring team is not correct then team members can be favorable to some facilities which will conflict with real objectives. So in a sense efficient and independent inspectorate has to be backed by equally effective legislature and efficient system to have real impact.

Here is an example from New South Wales (Australia) - a system of “penalty units” is used. This prevents having to regularly change every piece of legislation where a specific penalty is prescribed in order, for example to keep up with inflation or other economic fluctuations. For instance a maximum of 50 penalty units could be given for disclosure of information or refusing to obey or comply with an order, direction or decision of the Review Tribunal, a magistrate or the Psychosurgery Review Board, while a maximum penalty of 10 units is given to a person who operates a residential facility without a license. (3)

International non-governmental organization specializing in mental health and human rights

The main advantage of INGO is their independence. Also they have expertise and human resources for this job. Their standards are internationally or regionally determined and agreed upon. Also INGOs may have good financial support. They work according to international human rights standards. Generally, the recommendations made by them are appropriate and can be progressively realized. So in practice if MHI work in consultation with INGO and use their expertise then best action can be taken and rights of users can be protected.

Also monitoring by International non-governmental organisations tends to probe deeply into violations of rights without fear of losing position or favor. The recommendations which they make are truly in favor of protecting human rights of service users. Staff and service users may also feel freer to interact and discuss human rights violations with INGOs due to their independence than with law appointed MHI. International non-governmental organisations help countries to live up to their human rights obligations through provision of recommendations and dialogue. It is a powerful ‘one off’ strategy to instigate national level change in a country. Most INGOs greatest impact is likely to result from advocacy (local and international) and public pressure either in addition to or instead of engagement

with government.

At the same time there are major limitations of their utility at national or local level. Sometime at governmental level INGOs are seen as a threat so they do not get permission to make visits to facility. Or sometimes if INGO can not create international pressure , then their recommendations are not taken seriously and not acted upon. If there is lack mutual trust between INGO and government then it is of no use. Also INGOs can not cover all mental health facilities particularly in countries like India. They often focus on 'big picture' and local and culturally relevant issue take a backseat. So their reports can not be taken seriously by society also. Also their monitoring is “one off” and they can not monitor some facility on ongoing basis. In a sense they have limited scope of operation at national / local level.

Ex - The Mental Disability Advocacy Centre, an international organisation that promotes and protects human rights of people with mental health problems and intellectual disabilities conducted an investigation into the use of “Cage beds” in four Eastern European countries. Over the last few years, MDAC has made a number of recommendations to countries (such as the Czech Republic, Hungary, Slovakia and Slovenia) including:-

- Prohibition of the use of cage beds through legislative and administrative measures
- Provision of independent inspectorates to monitor human rights in institutions
- Mandatory human rights training in institutions
- Implementation of CPT guidelines on “means of restraint”.(3)

In conclusion there is need of monitoring at mental health facilities. Unless we have national monitoring mechanisms it is very difficult to protect rights of service users. But if national monitoring mechanisms work in collaboration with International non governmental organizations working in human rights field then we can have best outcome possible.

References / Reading Material -

- 1 United Nations (1991) *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (Resolution 46/119)* New York: United Nations General Assembly
- 2 United Nations High Commissioner for Human Rights. (2007) Convention on the Rights of persons with Disabilities <http://www.ohchr.org/english/law/disabilitiesconvention.htm>
- 3 Module 7 – Regulatory and Review Mechanisms – Course work notes
- 4 WHO (2005) *WHO Resource Book on Mental Health, Human Rights and Legislation*. Geneva, World Health Organization