

*Discuss and describe some of the advantages and disadvantages of having a Mental Health Inspectorate that has been set up in national legislation compared with an investigation into human rights abuses in mental health facilities conducted by an international non-governmental organization specializing in mental health and human rights.*

Mental health laws and legislations without the measures to protect and promote rights of service users through monitoring mechanisms are incomplete in their very nature. These mechanisms may vary across countries depending on the laws and resources; there are certain indicators that can aid in building a good monitoring body: such as having the legal powers, being independent of the State, having a fair representation of members of mental health professionals and more importantly, having a clear understanding of human rights. This will be elaborated upon later.

While international monitoring mechanisms can be of assistance to maintain the quality of mental health services and to protect rights of persons with mental illness; the need for national policies on monitoring cannot be more emphasized upon. Mental health care needs are often ignored in the larger socio-political context of a country, thus, the absence of monitoring bodies provided by the State legislation can be harmful. It is also important to have monitoring and complaint mechanisms within the country that are recognized by international documents.

However, it is true that some countries lack these national bodies for monitoring mental health facilities, even when they have ratified to international conventions that require for the same. These monitoring bodies may not have enough power to make decisions and only be limited to inspections and making reports that do not guarantee a change on the ground. One of the reasons for a lack of change might be influenced by the lack of engagement with the health systems and not working towards a collaborative effort to change the situation.

In case of India, with the absence of Committee on the Rights for Persons with Disabilities and lack of quality control mechanisms leaves much of the burden on national and *international non-governmental organizations* (NGOs) to investigate human rights violation in the country. On the other hand, *Mental Health Inspectorates* are not a formalized system in the country but the legal backing and mandates provides enough power to investigate human rights violations.

To elaborate, Mental Health Inspectorates are visiting bodies or commissions, depending on their power given by the law to investigate all mental health facilities and services where mental health is provided. They may also be responsible for monitoring and ensuring that the relevant legal provisions are being respected and implemented and that government policy and legislation meets international human rights standards. Legally sanctioned inspectorates have the advantage of non-interfered work. However, the power of the inspectorates to make changes varies across countries.

Broadly, international organizations and mental health inspectorates can be looked at from the issues of independence, monitoring the country, members in the committee, human rights understanding and the different in power. These are further elaborated:

- Independence

*Mental Health Inspectorates:* Mental health inspectorates are supposed to be independent of government in terms of the inspections they conduct, but at the same time they have the

authority to fundamentally impact on government services and policy. They have the power to make visits that are undertaken at short notice or are unannounced.

Since these are mandated by the law, it can help the facilities run better; even being 'watched' can aid in more quality functioning. Their regular visits' reports can be given to the higher authorities; some have the power to go to the legislative bodies and can influence accreditation.

*International Organizations:* To their benefit, non-governmental organizations are mostly independent of the State and can assess the situation in a non-biased manner. With both, national and international organizations, they have the ability to understand the context-specific issues which go beyond the medical and address social, cultural, political and economic situation of the country. With the funding not being linked to the State, there is a certain degree of autonomy to report the situation as it exists and to make interventions that are suitable to the context.

The CRPD mandates that the mental health facilities need to be monitored by an independent authority which can work well in the case of NGOs. Examples of the strength in the collective alliances, even online, have been successful in negotiating for rights of persons with mental illness. Denial of legal capacity to service users inhibits formation of collective, self-help groups that could have aided in advocating for users' human rights. The knowledge resource of international organizations is greater given their experience across boundaries.

Unlike the State systems where the money is generated for an ever changing political agenda, NGOs have to think through an initiative and a proposal to intervene in the mental health facilities. For the interventions to have an impact, the work cannot be done in isolation as might be the case with independent bodies that visit and report the findings without engaging with professionals working on the field.

- Monitoring the country

*Mental Health Inspectorates:* With the legal backing, the formation of the inspectorates can vary across different contexts, and there is a possibility of making a pool of resources when one committee is not sufficient. The coverage of the inspectorates across the country is far greater, for instance, there could be a central committee with sub-committees keeping a check on the quality, and there could be other discreet bodies. Depending on the federal structure or geography or population numbers, there could be separate monitoring bodies with their independent reporting structures and authorities. The frequency of meetings can be arranged in this format, the visits by the committee could be unannounced.

*International Organizations:* They have to struggle to get the resources to cover the entire country. The interventions might be limited to a specific area or a context, while some investigations could be more far-reaching. The reports and recommendations to be made after the visits and for scaling-up their work, can be a more challenging task that requires lobbying with different States. Another issue is the constraint of information being withheld by the State as they are not mandated to share the information. With no legal obligation for the State to work with the organizations, identification of gaps in the existing mental health facilities might not be accepted by the State without building strategic alliances.

- Members of the committee

*Mental Health Inspectorates:* Ideally there should be a representation of a wide range of perspectives such as users, caregivers, women, advocates, civil society, mental health professional, members from minority communities and at times religious authorities. With the government appointing the inspectorate as part of the legal system, it is possible that the members part of the team are in favour of the people in power, which challenges the idea of being 'independent' of the State. Moreover, the individual power given to the inspectorate members has the potential for misuse of their power.

*International Organizations:* While there is no systematic procedure, they usually have a fair representation of varied expertise. The focus is usually on building local capacity and changing the attitudes which might not be covered by an 'inspectorate' body.

- Human Rights understanding

*Mental Health Inspectorates:* They have more decision making power with the Ministry, have access to reports and are supposed to make reports available to the political head; they report to legislative power; they have direct powers to force compliance: for instance, their decisions can impact accreditation and non-accreditation; it can have financial implications for the facility. Committees are mandated to use the legal system to prosecute, take legal action to have compliance to international and national human rights standards.

They are supposed to be aware of the national and international laws and can use these to their benefit for promoting rights of persons with mental illness. However, the risk of not adopting a collaborative and consultative process with service providers and budget making authorities can make it simply an anti-establishment report. For instance, closing of a facility must be accompanied by an alternative.

*International Organizations:* They take the help of international and national laws; they cannot directly influence any of the powers of the inspectorate. They have the responsibility to ensure that the mental health resources are in line with the quality, that alternatives to other mental health care facilities are available.

- Power

For *international organizations*, with power being restricted, they have more responsibility to prove their worth in investigating human rights issues. For the *mental health inspectorates*, with greater power, there is a greater risk of abuse and moreover, greater risk of this monitoring body becoming a token representation, which tends to lead to the question of 'who watches the watchmen?' With the lack of accountability and systematic way of functioning of the inspectorates, the chances of investigating and upholding human rights standards can be under threat. The inspectorates have a greater task of maintaining that fine line of being an independent authority while being sensitive to the context and getting co-opted by the system that it is required to enhance. To maintain the independence in thought is as crucial as the systemic independence.