

The mental health of children during covid-19: Legal and policy perspective

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ABSTRACT:

In this situation of worldwide disruptions, there have been numerous efforts to safeguard our physical selves but little attention is being paid to the effect pandemic is causing to our mental health. Stress and anxiety due to prolonged lockdown and isolation especially in children can be silent disruptors that may not have immediately visible outcomes but may cause prolonged and disastrous consequences. Although the mental health and holistic development of children have not received the amount of attention it deserved there are some silver linings too. The mental health care Act of 2017 is worth mentioning which has its focus on the developmental stage of an individual that is the childhood and teenage.

New education policy has been an effort in a similar direction brought to improve education and overall well-being of children. The policy has dedicated provisions regarding the mental health of children and also means to create awareness regarding it. The paper discusses all the important aspects responsible for a child's mental health like social structure, surrounding environment, interactions etc. It also studies the impact of government acts on the mental health of children in times of pandemic and also the loopholes in these acts while also trying to present a pragmatic way forward.

Keywords: *Mental Health, Children, Mental illness, Juvenile.*

INTRODUCTION

Coping with stress during the covid-19 pandemic has been a challenge for every person be it of any age group especially school children. The New Education policy has failed to accommodate the changing circumstances around the world leading to ill effects on the mental health of school students. With the increase of screen time, losing physical fitness to uninvited lockdown, Stress and Anxiety has been common. Mental Health Care Act, 2017 brought changes in Section 309 of IPC is a change in a positive direction that deals empathetically with people suffering from deep

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stress.¹ The prime reason for such a concerning situation is a lack of understanding, awareness, sensitivity, and social stigma associated with people experiencing mental health problems. In India, there is a massive shortage of mental health experts. “As per WHO, there are (0.3) psychiatrists, 0.12 nurses, 0.07 psychologists and 0.07 social workers per 100,000 population in India”.²

In 2007 Government of India ratified the “United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)”. The mental healthcare Act, 2017 amended the old law to fulfil the recommendations made in UNCRPD. There was an urgent need for the legislation to meet the international obligation and changing needs of the society. The preamble of the Mental Healthcare Act, 2017 (Act or MHCA) aims “to provide mental healthcare and services for persons with mental illness and to promote, and fulfil the rights of such persons during the delivery of mental healthcare and services”³. The amended act is Focused on protecting rights, it is progressive, patient-centric, and evolving.⁴

DEFINING MENTAL ILLNESS

Mental disorder is viewed as “a major illness of thinking, mood, perception, orientation, or memory that grossly impairs judgement, behaviour, ability to identify reality or ability to fulfil the ordinary demands of life”, but it does not include mental retardation, which is a condition of arrested or incomplete development of a person's mind, especially characterized by subnormal intelligence. As per my interpretation, the definition has a narrow scope. According to this definition, disabilities such as phobia, conversion disorder, panic disorders, and personality disorders, which are classified as mental illnesses by the International Classification of Diseases, are excluded. Another provision adds to the confusion by stating that mental illness is determined using national or international guidelines such as the ICD or Diagnostic and Statistical Manual⁵.

¹Sahu, Shilpi, (2019) India's Mental Healthcare Legislation: An Analysis: Retrieved from <<https://ssrn.com/abstract=3501663>>

² Innamuri Raviteja (2019) India's mental health crisis, Times of India Retrieved from: <https://timesofindia.indiatimes.com/readersblog/soulsurgery/indias-mental-health-crisis-2884/>

³ Mental Healthcare Act, (2017)

⁴ Pandey Roli, Kukreja Shilpi, Kumar Ravi Priya, (2020) COVID-19 Mental Healthcare without Social Justice? Economic & Political Weekly vol IV no 31

⁵ Mental Health Care Act 2017 (Section 2)

As a result, there is a conflict between following the definition of the Mental Health Care Act of 2017 and the international classification of diseases.

DECODING MENTAL HEALTHCARE ACT, 2017

Mental Healthcare Act, 2017, emphasizes the rights of mentally ill persons. Its preamble states that it is “An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.”

Mental Healthcare Act, 2017 decriminalizes attempts to commit suicide and prohibits inhumane forms of treatment. It also empowers persons with mental illnesses (PMIs) to decide the mode and method of their treatment, provided that they can comprehend the information provided to them. Additionally, it creates a smoother process for registration of mental health care institutions and psychiatrists and ensures their supervision through the establishment of Mental Health Authorities and Mental Health Review Boards.

Importantly, the Mental Healthcare Act, 2017 recognizes that all individuals have a right to mental healthcare by requiring states to treat mental illnesses at par with physical illnesses and ensuring that every person can access mental health services at government institutions. The Mental Healthcare Act states that mental healthcare services shall be of “affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination based on gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.”⁶

However, implementation of the Mental Healthcare Act, 2017 across states has not been uniform, with only a few states creating rules under the Act and constituting the authorities. Moreover, in recent years, the Supreme Court and Bombay High Court addressed the state’s poor infrastructure for mental health and requested compliance with the Act.

⁶ Mental Health Care Act 2017 (Section 18(2))

MENTAL HEALTH LEGISLATION AND INTERNATIONAL OBLIGATIONS⁷:

- It restricts the involuntary placement of minors in mental health facilities to situations in which all viable community alternatives have been exhausted.
- It suggests in case of minors getting treated they must have a separate living area from adults.
- It asserts that if minors are placed in mental health facilities, the environment must be age-appropriate and must take minors' developmental needs into account.
- It guarantees that all minors are represented by an adult in all matters involving them, including giving consent to treatment.

However, Mental Health Act, 2017 falls short of:

- The definition of mental illness misses out Act's stand on the spectrum of neurodevelopmental disorders.
- The minimal conditions that must be maintained in mental health facilities to provide a safe, therapeutic, and sanitary environment are not specified.
- The professional skill levels required to diagnose a mental disorder are not specified.
- There is no mention of any categories of professionals who may assess a person to determine the presence of a mental disorder.
- The need to consider minors' opinions on all issues affecting them (including consent to treatment), based on their age and maturity, has been completely overlooked.

STUDENTS' MENTAL HEALTH DURING THE COVID-19 OUTBREAK

Sound mental health is just as important as physical health during childhood for reaching developmental milestones. It improves children's emotional well-being and social skills. Furthermore, mentally healthy children perform well at home, school, and in their communities, and they have a better chance of leading a happy and successful life. On the contrary, poor mental health during childhood can have a significant impact on how children learn, behave, and deal with their emotions. The COVID-19 pandemic brought with it dozens of new challenges, most of which impacted mental health for everyone, including children and young adults. Distress, anxiety,

⁷ World Health Organization, International Statistical Classification of Diseases and Related Health Problems (ICD) (2010) Retrieved from: <https://icd.who.int/browse10/2019/en>

confusion, social exclusion, increased screen time, and parental fatigue have had a detrimental effect on children's mental health. Peer relationships and support from family are powerful stabilizing forces for children, but the COVID-19 pandemic has disrupted them as well. Longer quarantine periods, fears of infection, helplessness, frustration, boredom, insufficient supplies, insufficient information, financial loss, and stigma were all stressors. During such public health emergencies, some researchers have reported long-term psychosocial consequences. Such widespread reporting of mental health issues would necessitate a focused mental health policy and programme to reduce psychological and emotional issues during the COVID-19 outbreak.

- Millions of children's mental health has been jeopardized around the world, with at least one in every seven forced to stay at home due to nationwide public health orders – or recommendations – during the COVID-19 pandemic. Since the virus spread uncontrollably this time last year, more than 330 million children have been trapped at home for at least nine months, until March 2021.
- It is common for children to feel negative emotions such as fear, disappointment, sadness, anxiety, anger, loss, and so on. However, the COVID-19 pandemic's prolonged, restrictive, and widespread nature has exacerbated the situation. Additional challenges include increased screen time, strained family relationships, and a sedentary lifestyle at home.

MENTAL HEALTHCARE ACT AND PROVISIONS FOR CHILDREN AND ADOLESCENTS:

The Mental Healthcare Act, 2017 has brought new hope in India about mental health regulations. The amended Act is intended to fulfil the international obligation of being more patient-centred and rights-based than the earlier legislation (the Mental Health Act, 1987). It is challenging to decode the amended provisions for the betterment of adolescents and children as there is a major burden on society as children are the future and the share of mental health problems amongst children is increasing because of the changing society. And keeping the tender age in mind it is the society and law which can protect them from psychological problems.⁸

⁸ Sharma E, Kommu JVS. (2019) Mental Healthcare Act 2017, India: Child and adolescent perspectives. Indian J Psychiatry

The Mental Healthcare Act of 2017 explains the responsibility of nominated representatives who are mostly guardians/ parents to help improve by providing greater insight on a variety of issues concerning children's and adolescents' mental healthcare. The Act specifies the role of nominated representatives (parents/guardians or state-appointed individuals) in all aspects of decision-making for minors' mental health care. The Act makes the responsibility of nominated representatives Minors can also make advance directives through the Nominated representative. A minor must be accompanied by a nominated representative during admission to the hospital. A unique facet of the legislation is the requirement that infants and toddlers not be separated from mothers getting treatment for mental illness unless there is a risk to the child. This is a significant step because separation at such a young age can interfere with the child's nutritional, growth, and attachment needs, with long-term consequences on mental and physical growth. Another encouraging step is the decriminalization of suicidal behaviour. This is especially the case for adolescents, who exhibit high rates of self-harm and suicidal behaviour, indicating the existence of serious psychological distress that necessitates immediate medical, including psychiatric, intervention. Until recently, the criminal perspective on such behaviour and the legal consequences of such behaviour was a barrier to seeking help.

NEW EDUCATION POLICY AND RECOGNITION OF THE IMPORTANCE OF MENTAL HEALTH OF CHILDREN:

Education is not about loading a child with information. It is just to develop the body and the mind to the highest possible capability. The New Education Policy (NEP) announced after 34 long years has taken many steps in this positive direction, and is expected to transform the education system. Allocation of 6% of the GDP to education, importance to vocational courses, standardization of Indian sign language (ISL) is some of the highlights of the new education policy, 2020.⁹

The human mind thinks both emotionally and rationally. Right from birth, until adulthood, a child undergoes progressive stages of development with cultural, social, genetic and environmental factors contributing towards his/her mental development.

⁹ Ministry of human resource development, New Education policy (2020) Retrieved from: https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf

Many schools in the developed nations check for the psychological well-being of the students periodically and the same is reported back to the parents. In this way, the emotions and the emotional needs of the child are taken care of.

In our country, if this is implemented, we would be able to address the issues of the children and counsel them appropriately. Issues disturbing students may range from something very fundamental like fewer marks or improper sleep to severe issues like domestic violence or abuse.

It is difficult for children to express their feelings, but psychologists can see how a child interacts with their parents, teachers, and themselves. As the child grows, more complex emotions emerge, such as confidence, hope, guilt, and pride. It is critical to teach them how to manage their emotions. Therapists/psychologists can spot unusual behaviour in children early on and help them express their emotions in a healthy, positive way.

The COVID-19 pandemic has evolved from a public health crisis to an all-encompassing humanitarian crisis that necessitates strong social welfare measures to mitigate its negative consequences. The education sector in India is one important sector that has been severely impacted by the lockdown and restrictions imposed to slow disease transmission¹⁰. “Although the Department of School Literacy and Education is involved in improving access to education through various online platforms and initiatives like National Repository of Open Educational Resources (NROER), Digital Infrastructure for Knowledge Sharing (DIKSHA), e-Pathshala and a National Online Education platform called SWAYAM (Ministry of Statistics and Programme Implementation, 2017–2018) but the accessibility and acceptability of such initiatives need to be focused upon”.¹¹

CHILD IN CONFLICT WITH LAW

Juvenile crimes are serious public health issues that impose an emotional and financial burden on society. Adolescence, the period between childhood and adulthood, is characterized by rapid

¹⁰ Sharma, A (2020, June 10). COVID-19 lockdown lessons and the need to reconsider draft new education policy.

¹¹ Jena, P. (2020). Impact of pandemic COVID-19 on education in India. *International Journal of Current Research*, 12, 12582–12586.

growth, development, and maturation, as well as biological, psychological, cognitive, and social changes. Conflicts between different roles, attitudes, and relationship patterns adopted by the adolescent may result in the occurrence of adaptation problems during this transition period. Adolescent criminal behaviour may be observed when negative familial or environmental factors are added to these issues. Many studies have found that adolescence is the time when people are most likely to engage in criminal behaviour.¹² Factors associated with juvenile delinquency and crime are strikingly similar across countries. According to an international study, family disadvantage leads to educational disadvantage, which leads to underachievement, economic marginalization, social education, and mental stress.¹³

Children's mental health and delinquent behaviour are linked in conflict law. This could be because they have similar biopsychological vulnerabilities, or because one condition aggravates the other. Failure to address or avoid these interconnected issues may result in a recurrence of the offence. As a result, addressing and acknowledging such children's mental health, as well as other related issues, is critical.

Apart from their advisory role in the juvenile justice system, mental health professionals can make a significant contribution to this process on the preventive, therapeutic, and rehabilitative fronts. The Act has taken this fact under consideration and provided that no social worker shall be appointed to the Juvenile Justice Board¹⁴ or Child Welfare Committee¹⁵ unless they have prior teaching experience or a degree in child psychology, psychiatry, sociology, or the law. They have teaching experience or are working professionals with degrees in child psychology, psychiatry, sociology, or the law. The Act requires that if a child between the ages of 16 and 18 is accused of committing a heinous crime, a preliminary assessment of their mental and physical capacity be ordered.¹⁶ The Board will consult with experienced psychologists, psychosocial workers, and other

¹² Serhat Nasiroğlu & Bengi Semerci (2017) Mental problems and sociodemographic characteristics in children driven to committing crimes and the preparation of forensic reports, *Psychiatry and Clinical Psychopharmacology*, 27:2, 132-138, DOI: 10.1080/24750573.2017.1316601

¹³ Friday, Paul C., (2006) *Juvenile Delinquency: An International Perspective*, 1-3 *Indian Journal of Criminology*

¹⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015 (S. 4(3))

¹⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015 (S. 27(4) and S. 4(3))

¹⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015 (S. 15,)

experts in the field. It has been discovered that children under the age of 14 who come into contact with the law are more likely to have mental health issues than older children.¹⁷

Because mental health professionals are frequently called upon as experts in such cases, their role becomes critical, particularly when such cases are highlighted in the media and the court procedure is likely to be influenced by such factors.

To avoid litigation, the Act requires that confidentiality be maintained when dealing with children who are in conflict with or are likely to conflict with, the law. This is consistent with the most recent Mental Healthcare Act, 2017, which emphasises the importance of maintaining a person's privacy and confidentiality while suffering from a mental illness.¹⁸

The Juvenile Justice Act is built around rehabilitative and reintegrative services. It requires child care institutions to provide mental health and addiction services to their children. The Act also states that, if necessary, a child may be transferred to a mental health facility or a delinquency centre for treatment. What is required is the development of a comprehensive post-discharge plan to ensure continuity of care and to prevent the psychological or behavioural problem, as the case may be, from worsening.

MEETING THE MENTAL HEALTH NEEDS OF CHILDREN:

Whereas the Juvenile Justice Act requires regular and basic mental health facilities, including specific need-based counselling sessions, many institutions involved in the system lack regular and qualified mental health professionals, or have irregular visits from experts who volunteer with NGOs providing supplementary services such as health and recreation. According to a study conducted by the National Commission for the Protection of Child Rights, children in child care homes face a variety of mental traumas such as bullying by senior inmates, sexual abuse, overcrowding, and so on. As a result, child care homes should be monitored regularly to ensure that children are being treated properly and that the Act's provisions are being followed.

¹⁷ Scott James G, Mihalopoulos Cathrine, Erskine Holly E, Roberts Jacqueline, and Rahman Atif., (2016) Childhood Mental and Development Disorders, 4 *Mental, Neurological, and substance use disorders: Disease Control Priorities*, 3rd Edition Volume 4. Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK361938/>

¹⁸The Mental Healthcare Act, 2017 (S. 23)

Biasness and social stigma are significant barriers to such children's reintegration and rehabilitation. Society frequently perceives these children to be dangerous or to have a bad character. This results in marginalisation and a lack of social integration, which can lead to stress, inferiority complexes, and other mental health issues in children.

The unawareness about psychological problems, as well as the stigma associated with them, is a barrier to early intervention. This causes a delay in seeking assistance until the juvenile comes into contact with the juvenile justice system. It is critical to raise awareness about mental health and the value of mental health care.

SUGGESTIONS:

we should take mental health seriously right from the classroom, today's school reform is mostly oriented on completing the syllabus and quality education and instruction are focused on engaging children in a rat race of good marks, success, students will succeed in school, at home, and in life only when we take care of his mental health.

Childcare facilities should be better equipped by regularly appointing mental health professionals. Furthermore, regular audits of childcare institutions should be performed to ensure proper operation, the availability of qualified staff and mental health professionals, and compliance with the provisions of the applicable laws. The authority in charge of the childcare facility should be held accountable and answerable for any shortcomings.

There should be a mandatory practice of counselling of children & juveniles at the time of entry into the institutions(prison/School) as a norm. The counselling should address the reason they are being held in the institutions, potential situations that they may face during their stay, such as bullying by a senior inmate, and the authority that they should contact in such cases. Furthermore, a simple screening mechanism for the detection of mental disorders should be developed that is simple to use by staff at childcare institutions with proper training and does not require the assistance of mental health professionals. This would allow institutions to assess the mental health of children at the entry level and provide the necessary assistance.

Employment and livelihood based vocational training tailored to the children's skills and interests should be provided. Digital learning and technology-driven courses should be preferred to

facilitate their reintegration into society and make it easier for them to find suitable employment after their release.

Training and counselling sessions with prior inmates about substance use problems, or other issues, should be available. Since inmates often share similar socio-economic backgrounds and experiences inside the juvenile justice system, it would be easier for the children to talk to and relate to the prior inmates and help in better dealing with the environment in the system.

Counselling sessions with previous inmates about substance abuse or other issues should be available. Because inmates frequently share similar socioeconomic backgrounds and experiences within the juvenile justice system, it would be easier for the children to talk to and relate to previous inmates, allowing them to cope better with the system's environment. Build professional competence in teachers of regular and special schools in delivering online teaching.

- Special focus on students from poverty prone/ marginalized areas.
- Improve internet connectivity and use of electronic media across marginalized areas and various socioeconomic strata.
- Upscaling of technological infrastructure

We have accomplished a great deal in the field of education, and if educators rise to the occasion by accepting this challenge, we will undoubtedly witness and be a part of an amazing societal transformation.