enquiry followed by action. Equally so the power of recalling the Peoples Representative should also be absolute and result oriented without right to Appeal in approaching the Courts under any provision of the Constitution barring the Writs of Jurisdiction also. The Appellate Jurisdiction should be vested with the Speaker. The Speaker in turn may (should not be construed as "shall") consult with the Leader of the Opposition and the Prime Minister in case of M.Ps and like manner in the case of MLAs. The Political Party who consider the name or names of the candidates must obtain foolproof opinion not only from Revenue authorities but also several agencies like Police, concern Municipal authorities *etc.* The Minimum Education qualification should be prescribed so as to enable the representative to distinguish between Act and Notification, Amendment, Bills and Law to be introduced. In fine the Parliament and Assembly should not be a hunting ground for interfering in any sort of Money transaction muchless in the affairs of day-to-day administrative machinery prohibiting them from interference in recommending release from Police Custody till the person is cleared of offence by the Court of Justice. Equally is in case any Representative comes under the rigour of any provision of Act, the Political Party who sponsored the candidature shall be directly responsible along with the Representative. In effect the Representative shall be debarred from contesting the election for life and looses his Pension and Perks while the Political Party shall be derecognised for recommending mean and criminal minded as a candidate.

At the initial setup it looks hard and impractical but in long run Parliament and Assemblies will be saved from the mockery which is presently creating the impriation that Parliamentary entertainment has become a Part of life of the Citizens. The foolproof check on the Representatives will drive away corruption slowly but surely from all departments since they can no more take shelter under the Pale of Representative's interference.

MENTAL HEALTH SERVICES – NEED FOR EXPANSION

By

–VIRUPAKSHA DATTATHREYA GOUDA,
Senior Civil Judge, Secretary
District Legal Services Authority,
Chittoor, A.P.

The first wealth is health : Emerson

It is said that nothing is valued until it is lost. The same appears to be the case with mental health. Health as defined by the WHO is not merely the absence of disease but a state of total well-being of the individual – physically, mentally and socially. Good mental health is one of the greatest gifts of nature and is so essential for good quality of life. Health and mental health are interconnected. There is adequate scientific evidence now to show that if one is under stress and suffering from anxiety or depression, there are more chances to get a heart attack or cancer or some infection. It is known that a state of stress or depression reduces the body's immune response, making one more prone to many diseases. Serious mental disorders like psychosis, severe depression, mental retardation, dementia *etc.*, affect only a small section of population. A sizable population

suffers from common mental disorders like anxiety, depression, fear, obsession, somatic symptoms due to tension, alcohol and drug abuse, *etc.*

The World Federation of Mental Health – the sponsors of World Mental Health Day, celebrated on 10th October every year, ever since 1992 – has suggested the following three points in the definition of mental health :

*1. Are you comfortable within yourself ?

*2. Are you comfortable with other people ?

*3. Are you able to meet life's demands ?"

If the answer to all the three questions is "yes", you can assume yourself to be mentally healthy.

If the above test were applied, all of us at sometime in our life would be branded as persons suffering from mental ill health. There is a very thin line between mental health and mental illness. As school children we suffer from certain psychological and emotional disturbances. The increased life expectancy has resulted in large section of senior citizens who are often neglected by their children. Such neglect has created certain psychological problems for senior citizens. The misdirected youth and such of those who are not achievers in this competitive world face a different set of problems. Women more particularly those who are the victims of domestic abuse suffer from severe depression. However none of them seek proper help at the appropriate stage and the same results in aggravation of the problems. Help is not sought both on account of lack of mental health services and also due to the accompanying stigma, which attaches to such behaviour. Increased availability of mental health services and removal of stigma and treatment in community setting are some of the basic necessities to ensure mental health in the society. The Government of India has launched the National Mental Health Programme (NMHP) long ago in 1982, for the prevention and treatment of mental and neurological disorders and to ensure availability and accessibility of minimum mental health care for all particularly to the most vulnerable and underprivileged sections of population. However there has not been much progress in this regard. It continues to be a low priority issue.

In fact most middle and low-income countries devote less than 1% of their health expenditure to mental health. As per a mental health survey reported by Dr. *R.S. Murthy* and conducted by WHO (as reported in Times of India, Kolkata dated 13.5.2002) our country spends about 0.83 per cent of the total budget allocations on mental healthcare. This meagre allocation is not even sufficient for maintenance of hospitals and very little is spent for treatment. Consequently mental health policies, legislation, community care facilities, and treatments for people with mental illness are not given the priority they deserve. In fact the time taken for passing Mental Health Act (MHA) and for its implementation are all indicative of the importance given to mental health services. Mental Health Act was introduced in Lok Sabha in 1979 and it lapsed when the House was dissolved in 1980. The Act was reintroduced in 1981 and referred to Joint Committee on 27th July 1982, and was discussed in 22 meetings. But the bill lapsed when the 7th Lok Sabha was dissolved on 31st December 1984. The Bill was referred to new Joint Committee on 29th April 1985 : After 18 meetings, amended Bill was adopted on 24th April 1986; and finally it was passed by the Rajya Sabha on 26th November 1986 and by the Lok Sabha, with amendments, on 22nd April 1987. President's assent was accorded on 22nd May 1987. There was a further delay in its implementation and it was implemented with effect from 1st April 1993. Thus the present Act reached the Lok Sabha after decades of

sustained efforts by several stalwarts of Indian Psychiatry. It took another eight years for it to be enacted into law, and further six years before being notified for implementation by the Government of India. Thereafter Mental Health Act merely remained on the Statute Book without any further steps being taken by the concerned authorities. The Supreme Court which took *suo motu* action on the basis of a news item published in all leading national dailies about a gruesome tragedy in which more than 25 mentally challenged patients housed in a mental asylum at Erwadi in Ramanathapuram District were charred to death as the patients could not escape the blaze since they had been chained to poles or beds, observed that there is slackness on the part of the concerned authorities to implement the laws enacted by the Parliament and that this is one such instance. The Erwadi incident resulted in several directions being issued by the Supreme Court for effective implementation of Mental Health Act. But unfortunately Mental Health Act was drafted at a time when it was assumed that the mentally ill are violent and that they are a danger to themselves and others and that mental illness is incurable. The entire focus was on care and protection in institutions. At about the same time there was perceptible change in the outlook towards mental health internationally. In 1990, the Pan American Health Organisation adopted the Declaration of Caracas, which called upon nations to take specific actions to protect the rights of people with mental disabilities. The Declaration of Caracas stated that mental health systems relying exclusively on psychiatric hospitals "isolate patients from their natural environment generating greater social disability" and called on states to "promote alternative service models that are community-based and integrated into social and health care networks." Thus even before the Mental Health Act came into force on 1.4.1993, there was a sea change in the policy across the globe. There are several criticisms about Mental Health Act 1987. A General Hospital or a General Nursing Home established or maintained by the Government, which provides also psychiatric services is not included in the definition of Psychiatric Hospital or Psychiatric Nursing Home. This definition often creates serious problems both for the patients as well as the doctor and management of hospitals as improper reception of mentally ill persons is punishable under the Act. Especially in cases of emergency, this definition would cause immense agony if the patient is not admitted in the nearby General Hospital, which also provides psychiatric services. Secondly, the minimum facilities required under Mental Health Act for establishment of Psychiatric Hospital/Psychiatric Nursing Home (PH/PNH) require huge expenditure. For instance, for every 10 bedded hospital or Nursing Home (a) one full time qualified psychiatrist (b) one Mental Health Profession Assistant, Clinical Psychologist or Psychiatric Social Worker (c) Staff Nurses in the nurse : patient ratio of 1:3 (d) attenders in the attender : patient ratio of 1:5, *etc*., are required. Considering the shortage of manpower providing mental health services, such requirements appear to be impracticable. For these reasons also, it may be advisable to consider suitable amendments to Mental Health Act.

Even the conditions in the existing institutions were not very encouraging. A report prepared for the National Human Rights Commission (NHRC) in 1999 after an empirical study of Mental Hospitals in the country has made the following observations with regard to the state of Mental Health Institutions.

> "The findings reveal that there are predominantly two types of hospitals, the first types do not deserve to be called 'hospitals' or Mental Health Centers. They are 'dumping grounds' for families to abandon their mentally ill member, for either economic reasons or a lack of understanding and awareness of mental illness. The living conditions in many of

these settings are deplorable and violate an individual's right to be treated humanely and live a life of dignity. Despite all advances in treatment, the mentally ill in these hospitals are forced to live a life of incarceration. The second type of 'hospitals', are those that provide basic living amenities.

Their role is predominantly custodial and they provide adequate food and shelter. Medical treatment is used to keep patients manageable and very little effort is made to preserve or enhance their daily living skills. These hospitals are violating the rights of the mentally ill persons to appropriate treatment and rehabilitation and a right to community and family life."

Considering the changed outlook various countries in the world have made proposals for suitable amendments to Mental Health Legislations. In our country we are still in the process of sensitizing various functionaries about the provisions of Mental Health Act. While the Legislature may consider suitable amendments to the Act in due course, it is the duty of one and all to bring about awareness about nature of mental illness, about the procedure for admission and discharge of mentally ill persons into PH or PNH and about the rights of mentally ill persons. In fact the Supreme Court has directed both the Central and State Governments to undertake a comprehensive awareness campaign with a special rural focus to educate people as to provisions of law relating to mental health, rights of mentally challenged persons, the fact that chaining of mentally challenged persons is illegal and that mental patients should be sent to doctors and not to religious places such as Temples or Dargahs.

Nature of Mental Illness :

In the past ignorance resulted in many prejudices about all forms of mental illness. Such strange behaviour was considered to be due to possession by evil spirits. Today, we know that mental illness is just like any other illness. Mental illness is both preventable and curable. Mental disturbance is more often caused by wrong attitudes or by dwelling on negative illogical and self defeating thoughts. In a majority of cases all the symptoms can be brought under control just as in the case of diabetes, hypertension, *etc.* In many cases, a total cure too can be achieved and we have today any number of doctors, lawyers, bankers, accountants, businessmen, teachers, farmers, housewives and students all functioning normally and doing their jobs while taking medicines for mental illness, just like diabetics, hypertensives and asthmatics. Most mental illnesses can be cured or controlled in less than 90 days and the patients continue to keep well with medication. For rendering better treatment to the needy it is necessary to acquaint oneself with the procedure for admission and discharge of mentally ill persons in a PH or PNH.

Procedure for admission and discharge of mentally ill persons

Voluntary Admissions and Discharge

Any person who has completed the age of 18 years or a guardian of a person who has not completed 18 years may make a request for admission as a voluntary patient. On such request, Medical Officer in-charge of PH or PNH after enquiry within 24 hours, if thinks necessary may admit applicant/ minor as a voluntary patient. The Medical Officer shall discharge such patients on request by applicant/guardian as the case may be within 24 hours of request for discharge. However if he is satisfied that the discharge is not in the interest of the patient, he shall constitute a board consisting of two Medical Officers which would decide whether to discharge and whether to continue the treatment for a further period not exceeding 90 days at a time.

Involuntary Admission and Discharge

A mentally ill person who is unable to express his willingness for admission as a voluntary patient may be admitted as in patient on the application by friends or relatives. Such application should be supported by two Medical Certificates (one of them shall be by a Government doctor) to the effect that mentally ill person should be under observation and treatment in PH or PNH. In such cases Medical Officer in-charge of PH or PNH may admit the patient if he is satisfied that it is in the interest of the mentally ill person. Alternately instead of such certificates the Medical Officer may get the mentally ill person examined by two doctors working in PH or PNH. But no person admitted as an in patient shall be kept in the PH or PNH for a period exceeding 90 days except under a Reception Order passed by a competent Magistrate. Such a Reception Order may be passed on the application of the Medical Officer or on the application of the husband, wife or any other relative of the mentally ill person. If the Magistrate after enquiry and after considering the Medical Certificates, and after personal examination of the mentally ill person is of the opinion that it is necessary to detain him in the PH or PNH and that it is in the interest of health or personal safety or for the protection of others, the Magistrate may pass Reception Order. In the case of such admission the mentally ill person or any relative or friend may apply to the Magistrate for discharge. The Magistrate after issuing notice to person at whose instance he was admitted and after enquiry may allow or dismiss the application. A police officer may take into protection and produce before Magistrate any person who due to mental illness is incapable of taking care of himself or who is dangerous by reason of mental illness. A private person may also report to a Magistrate about any person who is mentally ill and who is not under proper care and control or who is not ill-treated or neglected by any relative. The Magistrate may cause the production of mentally ill person before him and summon the relative and direct such relative to take proper care of mentally ill person. If such relative fails to follow the direction he may be sentenced with fine upto Rs.2,000/-. If there is no person to take care of such mentally ill person, the Magistrate may pass Reception Order. The Magistrate instead of passing Reception Order may handover the mentally ill person to a relative/friend if they execute a bond stating that they will take care of him and prevent danger to him or others. A Medical Officer may order discharge of mentally ill person on the recommendation of two Medical Officers. If any person feels that he has recovered from illness he may apply to the Magistrate for his discharge. Similarly the person on whose application the detention was ordered or any relative or friend may apply for discharge. Such an application will be forwarded to the Magistrate who will pass appropriate orders.

Rights Awareness

It is found that, clients, their family member, Mental Health Workers, Attorneys, Judges, and other persons involved in the promotion and protection of mental health have limited knowledge about nature of mental illness, about the rights of persons with mental illness. There is a greater need today to educate the general public on the problems facing the mentally ill and on their potential for meaningful lives. In one of the decisions the Supreme Court has directed that patients and their guardians shall be explained their rights by a team of 2 members of the Legal Aid and Judicial Officer, under the Mental Health Act, in a language known to them, at the time of the admission to any institute and that they should also be informed whom to approach in case their rights are being infringed. Mentally ill persons have certain fundamental freedoms and basic rights such as the right to be treated with humanity and respect, the right to voluntary admission, the right to

privacy, freedom of communication, the right to receive care and rehabilitation in the community after discharge, the right to give informed consent before receiving any treatment, and finally the right not to be subjected to any kind of social exclusion or ostracism.

UN General Assembly has laid down fundamental freedoms and basic rights of the mentally ill and the same are accepted by all nations of the world :

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.
2. All persons with a mental illness shall be treated with humanity and respect for the inherent dignity of the human person.
3. All persons with mental illness have the right to protection from economic, sexual and other forms of exploitation, physical and other abuse and degrading treatment.
4. There shall be no discrimination on the grounds of mental illness.
5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized by the Universal declaration of Human Rights.

Legal Aid

It is observed by the Supreme Court that under Section 43 of the Mental Health Act (Mental Health Act), a patient is required to apply to the Magistrate in order to be discharged. The procedure prescribed under the section, on occasions causes difficulties to the patients inasmuch as many patients may not be in a position to make the requisite applications before a Magistrate, nor would they be aware of their rights and the procedure to seek discharge and therefore directions are issued that two members of the Legal Aid Board of each State be appointed to make monthly visit to such institutions, so as to assist the patients and their relatives in applying for discharge from the institutions if they have fully recovered, and do not require institutional assistance any longer or to find out whether as a matter of fact they require any such treatment as in-patients. As per Section 12 of Legal Services Authorities Act, such persons are entitled for free legal services.

Stigma and Discrimination

Despite such declarations of rights, all over the world, societies are still struggling with the impact of mental illness. Rejection, social exclusion and avoidance of mentally disabled people are common in every society. People with mental health problems are stigmatized by the society and labelled as violent, unpredictable and dangerous. At times there is a misconception that mental illness is self inflicted more so in the case of addiction and consequently there is no sympathy towards those persons. Another serious problem concerns people's attitude towards their own mental illness. They avoid seeking help for fear of stigma and discrimination and consequently suffer aggravation of the disease. The prejudices attached to mental ill health are most problematic when they lead to individuals experiencing discrimination in their everyday life. From being denied job opportunities to being harassed in their neighbourhoods, people with mental health conditions complain of frequent discrimination.

It is therefore obligatory on the part everyone concerned to resolve to work for the protection of the various rights guaranteed to mentally challenged persons. Allocation of sufficient budget is a prime requirement. It is also essential to integrate mental health services with primary health care by giving suitable and adequate training to Paramedical staff so as to bring mental health services within the reach of common man. Instead of mere preoccupation with care of diseases

after they actually occur, it would be of immense benefit to the society if sufficient attention were paid to prevent mental illness. Emotional literacy, anger management, conflict resolution, stress management, interpersonal relations *etc.*, are topics, which should be introduced even at the school level. Above all every attempt should be made to rid mental illness of all types of prejudices, stigma and discrimination. A few years ago persons diagnosed as HIV positive were shunned by the society. Due to concerted and aggressive campaign, today such persons are able to live with dignity. Attitudes can be improved by associating well-known personalities in such campaign. The print and electronic media can also play a significant role in this regard by adopting a positive and constructive role in highlighting the impact of culture and diversity on mental health in changing world, which is the theme of World Mental Health Day, 2007.

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TRADE IN LEGAL PROFESSION & ITS CHALLENGES**

**** Speech delivered by Hon'ble Sri Justice T.Ch.Surya Rao, Judge, High Court of Andhra Pradesh, Hyderabad, at the Seminar organized by All India Lawyers' Union, Hyderabad and Ranga Reddy District Committee on 25.11.2006**

HISTORY OF THE LEGAL PROFESSION :

The institution of trained lawyers who might be engaged by the litigants to appear on their behalf in the law Courts is of ancient origin in Europe as well as in the East. In England, the profession dates from 1181 when, in the reign of Henry II, certain persons of clerical training were appointed attorneys but whose functions were not exactly defined. Some years later, in the reign of Edward I there created the Order of Serjeants who could appear in Courts to represent litigants. The Order of Serjeants finally came to an end in 1875.

The institution of men, learned in the law, who as private agents, plead for others in the Courts is also of ancient origin in India. Mention is made of such lawyers by Narada, Virihaspati, Katayana, Manu and Shukra. It appears, however, from their writings that before persons could plead and argue for another in Court, he had to establish either that he was a relative or the appointed agent of the party. For instance, Narada says:

> "He deserves punishment who speaks on behalf of another, without being either the brother, the father, the son, or the appointed agent, and so does he who contradicts himself at the trial.[1]"

1. Vide Anand's Book on Professional Ethics of the Bar, 2nd Edition 1987, Pages 1 and 2.