

**EMERGENCY MENTAL HEALTH LEGISLATION IN RESPONSE TO THE COVID-19
PANDEMIC IN INDIA**

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Abstract

As the world faces a global pandemic with humanitarian, economic and industrial repercussions like none before, an effective legislation must be enacted in order to ensure that necessary steps are taken towards curbing the pandemic as well as its after effects in a holistic manner. Psychological disorders, if left undiagnosed and thus, untreated, tend to worsen the general health status of a person, hamper prognosis of physiological ailments, increase susceptibility to future viral infections, and may also occur because of the pandemic. As mental health is inextricably linked to overall individual health status of a person, it may worsen due to the conditions created of the COVID-19 pandemic. There has always been an immense and urgent need for legislation to bridge the gap between the fields of medicine and law, so as to ensure that mental healthcare response is integrated into the broad healthcare response to COVID-19 by India. This would eventually lead to holistic treatment of every individual who has been affected by any aspect of the pandemic.

Introduction

Beginning as an unexplained clustering of pneumonia and other respiratory illnesses in Wuhan, the Hubei Province of China, novel coronavirus disease, a member of the coronavirus's family, often-overlooked, has now reached the stature of a global pandemic. The official assignment of the term 'global pandemic' has affirmed that the health crisis traversing borders and affecting countries across the world is not just any health crisis, but a major one at that. Combatting the invisible enemy at large, is a task far from easy and medical systems across the globe have adapted to the best of their capacities and resource availability.

In medicine, when one learns of the definition of 'Health', it can be observed that it discusses physical, social as well as mental well-being. However, it is the latter and also equally salient aspects of health that are glossed over as unimportant. Whilst numerous nations are trying to stave off from past errors in terms of mental healthcare, and thus have authorized/implemented, or are authorizing, emergency psychological support and mental health legislation with regards to the pandemic,¹ our country is yet to even begin to do the same. The proviso to Section 94 of the Mental Health Act 2017,² references the government emergency but is yet to be adequately executed. The need for formulating, curating, and implementing provisions specific to the current situation is paramount.

Pathophysiology of Mental Health Disorders in a Pandemic (With Specific Reference to Respiratory Disorders)

Chronic physiological disorders often have attached psychological manifestations and vice-versa.³ In research and medical practice, this has been a developing and genuine reason of concern for the past many years.

Anxiety is a condition that can be both persistent and perilous when left unchecked. In a stressful environment, there is a trigger of the sympathetic nervous system response of the body, which is the 'battle' or the 'fight or flight' model of response, discharging a surge of concoctions, enzymes, and hormones like adrenaline into the body framework. As a

¹ Brendan D. Kelly, *Emergency Mental Health Legislation in Response to the Covid-19 (Coronavirus) Pandemic in Ireland: Urgency, Necessity, and Proportionality*, 70 INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY 1, 7 (2020).

² The Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).

³ Bruce ML et al., *The Impact of Depressive Symptomatology on Physical Disability: Macarthur Studies of Successful Aging*, 84 AMERICAN JOURNAL OF PUBLIC HEALTH 1796, 1796-1799 (1994).

compensatory mechanism, this increases both an individual's heart and respiratory rate to meet the increased demand for oxygen by the brain.⁴

Similarly, stress, by definition, is a response to any variable that hinders the peace and sanctity of our physical and mental equilibrium. The variables at hand- are aplenty, be it the nature of the lockdown and home/self/institutional quarantine, uncertainty regarding the job market, unfamiliar learning environments one has to adapt to, or even the dread of contracting the disease and so forth. On the off chance that these stressors continue to exert their presence (as is the current scenario) with no end in sight, reactionary measures can prompt the body to never get the sign to come back to typical working or normal functioning. This debilitates the already-vulnerable framework, prompting the individual to get increasingly susceptible to further viral diseases, which can prove to be an extremely frightening scenario for the near future.⁵

Contrary to prevalent thinking, that is primarily concerned about the emergence of post-traumatic stress disorder as a result of the pandemic, it has been observed that any medical conditions from natural causes such as potentially hazardous viral infections like COVID-19, does not fulfil the criteria for a diagnosis of PTSD. However, in all probability, other psychological ailments like depression, anxiety, and stress can appear because of it.⁶

Furthermore, it has been scientifically proven that mental health disorders have a debilitating effect on the recovery period of a patient with a chronic respiratory disorder.⁷

Emergency Mental Health Legislature: The Urgency of Requirement

The ensuing of a lockdown in numerous countries of the world (that contribute greatly to the worldwide economy) has prompted a break in worldwide supply chains and subsequently, influenced the worldwide economy in an extremely negative manner.⁸ Transport has been influenced universally and educational establishments like schools and colleges have moved

⁴ Kozłowska K, Walker P, McLean L, Carrie P, *Fear, and the Defense Cascade: Clinical Implications and Management*, 23(4) HARVARD REVIEW OF PSYCHIATRY 263, 263-287 (2015).

⁵ Laura D. Kubzansky, Ichiro Kawachi, Scott T. Weiss & David Sparrow, *Anxiety and Coronary Heart Disease: A Synthesis of Epidemiological, Psychological, and Experimental Evidence*, 20(2) ANNALS OF BEHAVIORAL MEDICINE 47, 47-58 (1998).

⁶ Betty Pfefferbaum & Carol S. North, *Mental Health and the Covid-19 Pandemic*, NEW ENGLAND JOURNAL OF MEDICINE 1, 4 (2020).

⁷ A. Misra et. al., *Effects of Mental Health (Depression, Anxiety, and Stress) on Recovery Period of Chronic Lower Respiratory Tract Infection (LRTI) Patients*, 7(9) INTERNATIONAL JOURNAL OF ADVANCED RESEARCH 339, 339-345 (2019).

⁸ Peterson Ozili & Thankum Arun, *Spillover of COVID-19: Impact on the Global Economy*, SSRN ELECTRONIC JOURNAL 1, 5 (2020).

online. The vulnerability and delay of admissions, job opportunities, unemployment and examinations are additional stressors for the youth.

As discussed in the previous section, though the prevalence of stress, anxiety, and depression has not gone unnoticed, the possible susceptibility to viral infections once the immune system is weakened enough, is an alarming fact and needs to be curtailed, especially considering the issue at hand concerns a deadly viral disease, with an imminent second and third wave on their way, unless a treatment plan can be devised soon.

As for the main combatants of the invisible enemy- health care providers themselves, the unique circumstances that have befallen them are also accompanied by distressing variables like inadequate testing, lack of a finite treatment plan or drug treatment of choice, insufficient personal and protective equipment, extended shifts at work and the raging anxiety of not only contracting the disease but transmitting the same to more vulnerable populations, communities and family members. These stressors have quite the potential to overpower any individual's systems. Whilst healthcare providers are attuned to the concepts of self-care, there is a great need for healthcare systems to address the stress on these individual caregiving professionals and general operations of the functioning of hospitals with COVID-wards. This can be done by passing stringent legislation that creates schedules, modifies assignments, keeps a constant check on safety standards, and more importantly, creates and implements a mechanism to offer psychosocial support to any professional in need, without them having to take self-care matters simply into their own hands.

The emergence of a novel disease that has had such devastating effects on different aspects of life, like the disruption in the supply chain which threatens the livelihoods of daily-wage laborers, who are unaware of the technicalities or details of the same, has also led to rising trends of fear, social stigma, and confusion.

In the Indian context, citizens from the North-Eastern part of the country have been constantly subjected to discrimination during this pandemic. The misconception that North Eastern citizens are responsible for the coronavirus pandemic is extremely problematic as it promotes a hate culture towards citizens of our own country. Consequently, there has been a surge in the number of hate crimes against the north eastern citizens of the country since the pandemic began. The government needs to take note of these crimes and accordingly, laws need to be enacted by the legislature to tackle these hate crimes.

Another fact that must be stressed upon is that a majority of COVID-19 cases will be distinguished, assessed, and treated in hospital settings by health-care professionals with little to no training with regards to mental health therapy. This refers to frontline workers, not including doctors and nurses who may have a basic knowledge or awareness of the concept of mental health in their educational curriculum. A cross-sectional study by Li et al.,⁹ found significant results that stated that traumatization related to COVID-19 was higher among non-front-line nurses ($p < .001$) and that traumatization among the general public was higher than that for front-line nurses ($p < .005$) but not non-front-line nurses.

The world has come to a standstill because of one biological and infectious disease. The time has now come to bridge the gap between law and medicine. Legislators in India should be aware of the psychological outcomes of physiological diseases, and the manifestations and correlation of the same in specific situations i.e. the current pandemic. There is a dire need for strategies to not just be created for these specific situations but also to be better prepared as a precautionary measure in the future. It is imperative that these legislations are framed in such a way that it encompasses the needs and requirements of specific populations. These identifiable populations that appear to be at a higher risk of adverse mental health outcomes,¹⁰ includes patients who have tested positive for COVID-19 and their families that may or may not have the same test results, individuals with pre-existent and chronic physical or psychological disorders, and healthcare workers.

Legislators also need to be aware of the immense lacunae in the detailing and understanding of Emergency Mental Health provisions, which need to be mulled over time through more widespread research and bridging across streams for better and more holistic solutions.

Therefore, it is an important and almost basic requirement that appraisal and intervention for psychosocial concerns be initiated, implemented, and regulated. In an ideal setting, the integration of emergency mental health legislation pertaining to Covid-19 care needs to be addressed through state governments and local arrangements with regards to the COVID status of said area. The legislature must ensure the proper arrangement of instrumentation and methodologies for diagnosis and treatment of mild, moderate or severe psychosocial outcomes

⁹ Li Z. et al., *Vicarious Traumatization in The General Public, Members, and Non-Members of Medical Teams Aiding in COVID-19 Control*, BRAIN BEHAVIOR AND IMMUNITY 1, 5 (10 March 2020).

¹⁰ Shigemura J. Et Al., *Public Responses to the Novel 2019 Coronavirus (2019 – Ncov) in Japan: Mental Health Consequences and Target Populations*, 74(4) PSYCHIATRY AND CLINICAL NEUROSCIENCES 281, 282 (2020).

because of the pandemic; as well as guarantee a safe and secure work environment for healthcare professionals, ensuring their mental stability.

The Execution of Emergency Mental Health Legislation

Policy-making is only the first step in alleviating issues pertaining to mental health problems that may prop up during the COVID-19 pandemic.

It is the planning, execution, and implementation of the same that is critical in the successful management of co-morbid diseases.

Another aspect that needs to be addressed is with reference to the fact that an individual might be a risk to themselves or others in a public place because of a mental health issue. This could be due to a lack of compliance with social distancing or other physical causes of endangerment. A model of the legislature that one can look at is *The UK's Coronavirus Act, 2020*,¹¹ for example, which sets out extensive changes to mental health and mental capacity legislation in England and Wales, Scotland, and Northern Ireland. Section 10 is the crux of the mental health provisions. Schedule 8, 9, and 10 are the variations in implementations based on geographical area. The Coronavirus Act 2020 has made amendments to the *Mental Health Act 1983*.¹² These amendments propose several alterations like increasing the number of times patients can be detained, changing the need or requirement for a second professional opinion to approve or authorize certain decisions and allow telephonic mental health tribunal hearings.

Key changes under the aforementioned emergency legislature are-

- The decision to detain a person under the MHA can now be made using a single medical practitioner's opinion, rather than the two doctors plus one mental health professional normally required;
- Time limits on an individual's detention period may be extended or suspended.

An individual may be surveyed under the Mental Health Act to check whether he should be kept in a medical clinic, for his safety or for the safety of his close points of contact. The Mental Health assessment can be conducted by the Professional by video calls if the conditions qualify certain postulates- if it is safe and appropriate to do so, the individual or the professionals have a high risk of transmitting COVID-19, or there is a high risk to personal and/or others' safety

¹¹ Coronavirus Act, Chapter 7, § 10, 2020 (UK).

¹² Mental Health Act, 1983 (UK).

if the results are delayed. In these settings, minimum quality standards and safeguards have to be met.

These progressions won't be presented as a sweeping methodology yet and enforced only if important. The enactment will be for as long as two years, and forces can be turned on or off by any of the four UK devolved governments.

In Ireland, as opposed to the earlier requirements of 3 sitting members of a Tribunal, the 2020 Act permits the Mental Health Commission to appoint a one-member-tribunal- a practicing barrister or solicitor (Section 20).¹³ If reports from the independent and treating psychiatrist do not suffice, then such a tribunal, if possible, will consult with a consulting psychiatrist (or if it is otherwise necessary for the patient's interest as per Section 18).

However, the U.K. made the cardinal error of overlooking the humanitarian considerations surrounding the mental health debate. This re-affirms the need to routinely evaluate, update, and give importance to mental health in a clinical setting and push for a legislation regarding the same, especially during a pandemic.

The U.K. legislation limits itself from integral aspects of protection and betterment of mental health, leading us to better exemplary models evoked by NIMHANS and UN's recommendations.

The National Institute of Mental Health and Neuro-Sciences (NIMHANS), India has recently come up with a handbook of practical recommendations and solutions, some of which pertain to the training of mental health care professionals, emphasis on telepsychiatry services, etc.¹⁴

Carefully interceded treatment and telepsychiatry, which has been run successfully by NIMHANS in the state of Karnataka ought to be scaled up. A psychosocial well-being start-up funded by the Startup India Program ought to provide the vital driving force required to generate advancements in medical technology that can tap advances like computerized reasoning, artificial intelligence, and even technology like chat-bots. Utilization of low-technology means like instant-messaging can prove to be profoundly powerful in expanding

¹³ *Supra* note 178, at § 20.

¹⁴ Department of Psychiatry, National Institute of Mental Health & Neurosciences, Mental Health in the Times of COVID-19 Pandemic: Guidance for General Medical and Specialised Mental Health Care Settings, NIMHANS (May 29, 2020, 5:40 PM), <http://nimhans.ac.in/wp-content/uploads/2020/04/MentalHealthIssuesCOVID-19NIMHANS.pdf>.

reach and access, diminishing the same and inciting self-care for not just high-risk populations but also the general population.

Similarly, The Psychosocial Centre of the International Federation of Red Cross and Red Crescent Societies has released a set of guidelines with regards to a concept they have coined as ‘Psychological First Aid’ or ‘PFA’. The guidelines bear the air of the urgent formation (or the utilization of an already-existing) of a National Society, members of whom could help carry out the objectives of the guidelines and also be trained in the same. Remote psychosocial help can also be provided by Red Cross Red Crescent National Societies in collaboration with the society and other volunteers for the same.¹⁵

In order to successfully carry out the said measures, there is a need to foster a relationship between legislators and individuals or organizations that can help carry out the requirements, like, independent consulting psychiatrists, clinical psychologists, NGOs, UN Bodies, and other national and international agencies.

It is imperative to pass legislation aimed at integrating Emergency Mental Healthcare Response into the naturalistic and broad framework of the COVID-19 Healthcare Response of our country. The UN leads by example in stating that mental health services are an essential part of all government responses to COVID-19.¹⁶

Conclusion

In today’s day and age, a general trend of lack of awareness and ignorance towards the importance of mental health can be observed, not only in the medical community but also in most other governing bodies and communities. This issue is not garnering global recognition in the manner it should. Even (and especially) during a pandemic, psychological disorders, if left undiagnosed and thus, untreated, tend to worsen the general health of a person and hamper the improvement of a physiological ailment. There is further requirement to substantiate psychological disorders as the threat they are to physiological health,¹⁷ [Voltmer E, Kieschke

¹⁵ Psychosocial Centre, International Federation of Red Cross and Red Crescent Societies, [Remote Psychological First Aid during the COVID-19 pandemic, Interim Guidance – March 2020](https://reliefweb.int/sites/reliefweb.int/files/resources/IFRC-PS-Centre-Remote-Psychological-First-Aid-during-a-COVID-19-outbreak-Interim-guidance.pdf), Reliefweb (March 23, 2020) <https://reliefweb.int/sites/reliefweb.int/files/resources/IFRC-PS-Centre-Remote-Psychological-First-Aid-during-a-COVID-19-outbreak-Interim-guidance.pdf>.

¹⁶ Antonio Guterres, *Mental health services are an essential part of all government responses to COVID-19*, UN NEWS (May 13, 2020), <https://www.un.org/en/coronavirus/mental-health-services-are-essential-part-all-government-responses-covid-19>.

¹⁷ Voltmer E. et al., *Psychosocial Health Risk Factors and Resources of Medical Students and Physicians: A Cross-Sectional Study*, 8 BMC MED EDUC. 1, 6 (2008).

U, Schwappach DL, Wirsching M, Spahn C. Psychosocial health risk factors and resources of medical students and physicians: a cross-sectional study. BMC Med Educ. 2008 Oct 2; 8:46.]. However, for the most part, we dismiss them off as perfunctory disorders, general stress, mood swings, and general feelings of sadness and fatigue. Unfortunately, despite years of research, the science of psychology has not found prominence in medicine. It is because the roots are not strong, that it hasn't had a strong footing in the legislature, as one can infer from the obvious gaps and lacunae in the U.K. Coronavirus Act 2020 with respect to its amendments to mental health. There is an urgent, imperative and essential need for Emergency Mental Healthcare Legislature to effectively attempt to curb the maladaptive effects of these major psychiatric illnesses that have already set into motion (during the pandemic), to help healthcare workers holistically diagnose and treat the same, but most importantly, prevent the post-pandemic after-effects.