

Social Justice, Social Discrimination and Mental Illness

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Definitions

- “Mental health” and “mental illness” are not polar opposites but may be thought of as points on a continuum. Mental health is a state of successful performance of mental function, resulting in productive activities, fulfilling relationships with other people, and the ability to adapt to change and to cope with adversity.

Definitions

- Mental health is indispensable to personal well-being, family and interpersonal relationships, and contribution to community or society.
- Mental health is the springboard of thinking and communication skills, learning, emotional growth, resilience, and self-esteem. These are the ingredients to successful functioning.

Definitions

- Many ingredients of mental health may be identifiable. But mental health is not easy to define. As Cowen (1994) notes: “. . . built into any definition of wellness . . . are overt and covert expressions of values. Because values differ across cultures as well as among subgroups (and indeed individuals) within a culture. The ideal of a uniformly acceptable definition of the constructs is illusory”.

Definitions

- Mental illness is the term that refers collectively to a diagnosable mental disorder. Mental disorders are health conditions that are characterized by alterations of thinking, mood, or behaviour (or some combination thereof) associated with distress and/or impaired functioning.

Social Determinants

- Social determinants of health affect everyone in the society
- This approach, according to the WHO Commission, needs conceptualisation, commitment and competency
- To reduce health inequalities efforts needed across all social gradients

Social Determinants

- Needs access across non-health sectors eg education, justice etc
- Overall health status is affected by health inequalities
- Fair distribution from economic gains and reducing inequalities is part of improving overall health

Social Determinants

- Health advocacy is critical
- Economic factors are critical in addressing health inequalities but in times of downturn these are the first ones to be abandoned

Challenges to Equity

- Related to: internalised stigma, external discrimination and prejudice
- Cartesian dichotomy- local models
- Conceptual failure to understand causal pathways
- Delivery chain failures
- Control strategy failures
- Public health failures

Social Justice

- Social justice is the virtue which guides us in creating those organisations called institutions
- Social institutions in turn when justly organised provide us with access to what is good for the person, both individually and in our association with others.
- Social justice imposes on all of us a personal responsibility to work with others and design and improve institutions

Social Justice

- Social justice accompanies economic justice.
- Economic justice touches the individual and the social order
- Institutions determine how much is paid, contracts and services with others
- Three principles of economic justice are: distributive justice, participative justice and social justice

Social Justice

- Society should treat all equally well who have *deserved* equally well of it , that is who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice towards which *all institutions* and the efforts of all virtuous citizens *should be made in the utmost degree to converge* Taparelli d'Azeglier 1840

Social Justice

- For mentally ill: it is about equality of opportunity in outcomes, social outcomes, recovery
 - But more importantly it is about housing, employment, social functioning, standards of living
- Bhugra and Ventriglio (2015)

Social Justice

- Distinction must be made between economic and social justice although both may be embedded in each other
- Inspiring, working with and organising those weaker than us is key to achieving social justice
- Capabilities to be healthy
Bhugra and Ventriglio(2015)

What is Capability?

Four key factors which affect, determine, influence, produce, cause, or constrain a person's functioning and longevity are:

1. biology
2. behaviour
3. external physical environment and
4. social conditions

Causative Factors

- Social conditions determine who is actually born and their genetic endowments, how they behave as well as the surrounding physical and social conditions
- Proximate individual level factors include biology, behaviours and external exposure
- Distal factors include social conditions

Capability to be Healthy

- Personal responsibility
- Societal responsibility
- Cultural responsibility

Principles - Health Equity

- Inequities is moral and ethical in contrast to inequalities
- Inequity - is avoidable, unnecessary and unfair or unjust
- Society is morally obliged to act to prevent and mitigate the health impairments that remain

Whitehead (1990,1992)

Principles - Health Equity

- Protection of human rights
- Promotion and protection of human rights and promotion and protection of health are fundamentally linked
- 'old epidemiology' links human rights with etiology

Health Rights

- Which rights based parity?
- Gender?
- Age discrimination?
- Human rights? Civil rights? Minority rights?
- Children's rights etc?????/

Health Rights

- Rights based language expresses that such interests require special attention from national governments and increasingly from foreign governments and international civic society
- Health rights properly constructed and justified can offer justification for substantive claims to public resources and constrain the effects of cost-cutting blindly

Social Justice

- Why should mentally ill die 15-20 years younger?
- Why should they not be full citizens?
- Why should socially inequalities affect mentally ill disproportionately?
- Why should outcomes be different?
- Interactions between physical and mental health?

Social Justice

- Social determinants of mental health
- Preventable mental illness
- Public mental health agenda
- Significant variations in rates and services for mental ill-health according to geography, social, educational and occupational status

Social Discrimination

- Commissioning Centre for Mental Health Law in Pune, India.
- Assessing discrimination in 4 fields: social, personal, political and economic
- Laws of 193 countries studied

Social Discrimination

- Four rights explored:
- Right to vote (political)
- Right to inherit property and to make a will (economic)
- Right to employment (personal)
- Right to marriage (personal)

Method

- We obtained copies of Family Codes, Civil Codes, Marriage and Divorce Laws, of 193 UN Member States from various databases including LandWise (<http://landwise.resourceequity.org/>), NATLEX of International Labor Organization (<http://www.ilo.org/dyn/natlex>), and World Intellectual Property Organization (<http://www.wipo.int/portal/en/index.html>). For federal countries, we analyzed laws of most populous state as a representative state of that country. When pertinent legislation was not found, we extended our search to non-codified sources like academic papers, books, university reports and government's reports. For non-English versions of laws, we used available authoritative translations. In other cases

Terms Used

- We identified provisions of marriage, divorce, capacity and mental health conditions and other family relations using following keywords:
- *mental, unsound, mind, insane, sane, mad, cognitive, intelligence, infirm, imbecile, dementia, demented, full reason, deficient, derangement, disturbed, defect, capacity, incapable, ability, disability, disorder, disease, illness, disturbance, handicap, health, fitness, sickness, capacity, lunatic, family, impediments, requirements, curable etc.*

Method

- We studied electoral laws and the Constitution of United Nations Member States from various databases including WHO MiNDBANK, International Disability Law Index, NATLEX of International Labor Organization, and the Constitution Project.
- When pertinent laws was not found, we extended our search to official government websites of the particular States. In case of Federal Member States, we relied on federal legislation and if this was absent, used legislation from the province with the largest population as representative of that Member State.

Method

- We identified relevant provisions of legislation using key terms or combination of key terms listed below. For non-English versions of legislation, if an authoritative English translation was available, it was used for analysis. In other situations, we used translators to translate key terms and pertinent provisions of legislation. Where we did not find bare acts, we relied on non-codified and secondary sources of information such as government reports, academic papers.

Results

| | |
|--|-----------------|
| No restriction on voting | 21 (11%) |
| Persons with mental health problems barred from voting in elections | 69 (36%) |
| Cannot vote if Detention under law | 21 (11%) |
| Cannot vote if Declaration by Court | 56 (29%) |
| No information/ insufficient information | 20 (10%) |
| Not Applicable (Non-democratic countries) | 4 (2%) |
| Unclear | 2 (1%) |

1

Right to vote and persons with mental health problems

Every citizen shall have the right and the opportunity, without any of the distinctions...and without unreasonable restrictions to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors - Art. 25 (b) of ICCPR

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and be elected - Art. 29 of CRPD

Globally

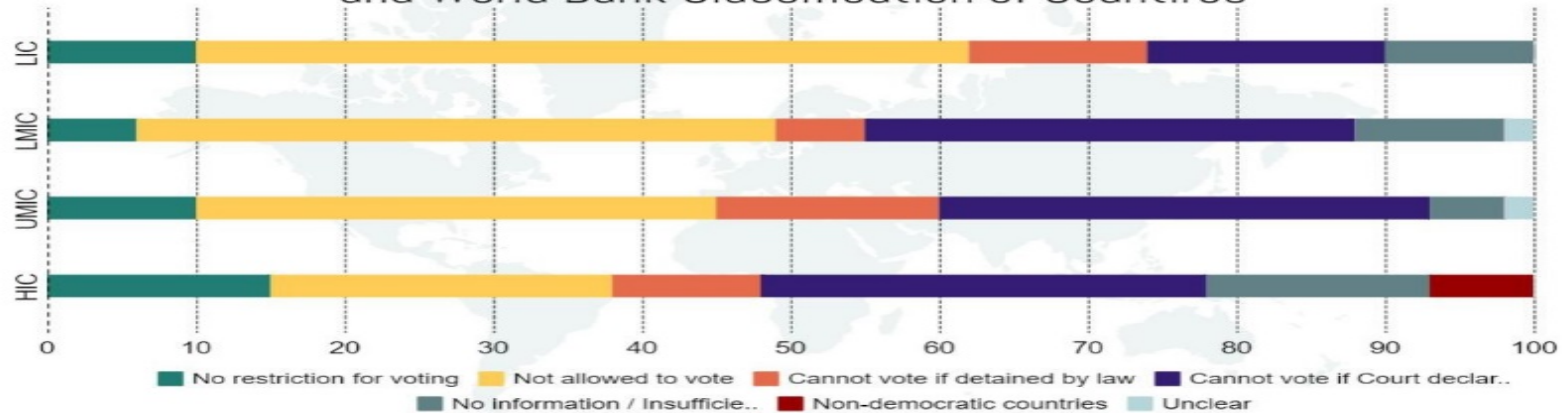
11%

COUNTRIES ALLOW VOTING WITHOUT ANY RESTRICTION

36%

COUNTRIES DO NOT ALLOW VOTING

Voting Laws for Persons with Mental Illness and World Bank Classification of Countries



11%

Countries' laws do not allow voting if a person with mental health problems is detained under the law.



29%

Countries' laws do not allow voting if the Court declares a person with mental health problems as incapacitated.



- We reviewed domestic legislation of United Nations Member States to identify their compliance with the provisions of Art. 27 of CRPD. We were keen to explore if domestic laws pose structural barriers to participation of persons with mental disabilities in competitive employment by failing to protect persons with mental disability from discrimination on the basis of their disability at the recruitment stage, by allowing discontinuation of employment on the basis of mental illness or disability, by failing to mandate access to reasonable accommodation at the workplace and by not framing provisions to promote employment of persons with mental disabilities through affirmative action. Country legislation from all UN member states was therefore examined for compliance on the above five issues.

- 1 Does the definition of disability include those with mental health problems?
- Q. 2 Does the law prohibit discrimination on the grounds of mental illness/mental health problems at the time of recruitment for employment?
- Q. 3 Does the law prohibit dismissal/termination/suspension of employment on the basis of mental illness/problems/disability?
- Q. 4 Does the law provide access to reasonable accommodation to persons with mental illness/problems/disabilities at the workplace?
- Q. 5 Does the law promote employment of persons with mental illness/problems/disabilities through affirmative actions?

- The key terms we searched for in legislation were: *mental, unsound, mind, insane, infirm, psychological, emotional, psychiatric, imbecile, illness, disability, disorder, disease, health, fitness, sickness, diminished, loss, capacity, ability, recruit, hire, job, application, employ, discriminate, prohibit, distinction, exclude, suspension, dismiss, termination, eviction, extinction, expiry, breach, cancellation, discharge, duty, contract, access, reasonable, accommodation, adjustment, environment, condition, undue burden, hardship, affirmative, positive, action, mandatory, quota, reserve, tax, financial contribution, disability fund, right, labor, work, equal, promote, protect.*

Does definition of disability contain mental illness?

| | |
|----------------------------------|-----------|
| | |
| Yes or implied | 126 (65%) |
| No / Unclear/No information | 13 (8%) |
| Mental disability is not covered | 2 (1%) |
| Not defined in the law; | 52 (27%) |
| | |

Law prohibits discrimination

| | |
|-----------------------------|-----------|
| | |
| Yes | 124 (64%) |
| May be | 27 (14 %) |
| No | 29 (15%) |
| Not covered/ No Information | 14 (8%) |
| | |
| | |

Law prohibits dismissal/termination/suspension

| | |
|----------------|----------|
| Yes | 68(35%) |
| May be | 20 (10%) |
| No | 98 (51%) |
| No Information | 8 (4%) |

Access to reasonable accommodation

| | |
|----------------|-----------|
| | |
| Yes | 109 (56%) |
| May be | 13 (7%) |
| Not covered | 58 (30%) |
| No information | 14 (7%) |

Promote employment of persons

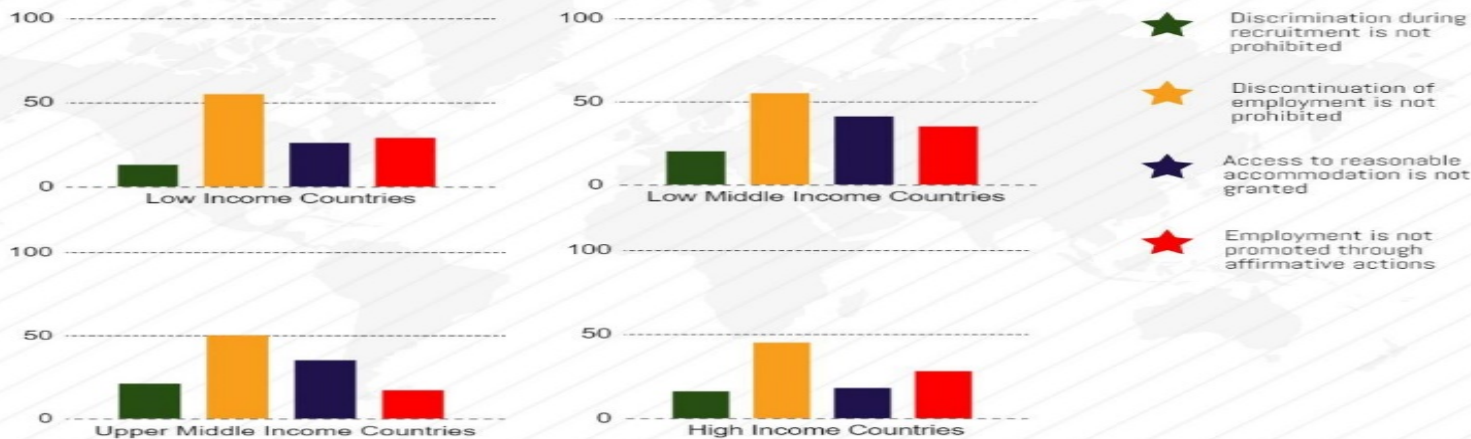
| | |
|----------------------------|-----------|
| | |
| Yes | 115 (59%) |
| Yes, from secondary source | 2 (1%) |
| May be | 10 (4%) |
| Not covered | 53 (26%) |
| No information | 14 (7%) |

2

Right to work and employment of persons with mental health problems

State Parties shall prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions - Art. 27 (1)(a) of CRPD

Employment Laws for Persons with Mental Health Problems and World Bank Classification of Countries



Concept of disability is not defined in countries' employment, human rights laws.

27%

51%

CRPD ratified countries do not prohibit discontinuation of employment on the basis of mental health problems.



Source

Renuka Nardodkar, Soumitra Pathare, Antonio Ventriglio, João Castaldelli-Maia, Kenneth R. Javate, Julio Torales & Dinesh Bhugra (2016): Legal protection of the right to work and employment for persons with mental health problems: a review of legislation across the world, International Review of Psychiatry, DOI: 10.1080/09540261.2016.1210575

Method

- For marriage and annulment provisions, we searched key words or combination of key words including – *marry, at the time of marriage, void, voidable, divorce.*

Right to Marry

| | |
|------------------------------|----------|
| Overall frequencies | (N=193) |
| No restriction | 58 (30%) |
| Barred from getting married | 71(37%) |
| Conditional approval | 11 (6%) |
| Rendering marriage Void | 21(11%) |
| Marriages governed by Sharia | 12(6%) |
| Law not found | 18(9%) |
| Not Clear | 2 (1%) |

Right to Marry

| Overall frequencies (N=193 countries) | N |
|--|----------|
| Mental illness is a ground for divorce | 23 (12%) |
| Mental illness not a ground for divorce | 121(63%) |
| Mental illness of 3 to 5 years of illness / incurability as a ground for divorce | 8(4%) |
| Marriages governed by Sharia | 11(6%) |
| Law not found | 30(16%) |

3

Right to Marry and Persons with Mental Health Problems

Globally

States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family... on an equal basis with others, so as to ensure that the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized.
- Article 23.1(a) of CRPD

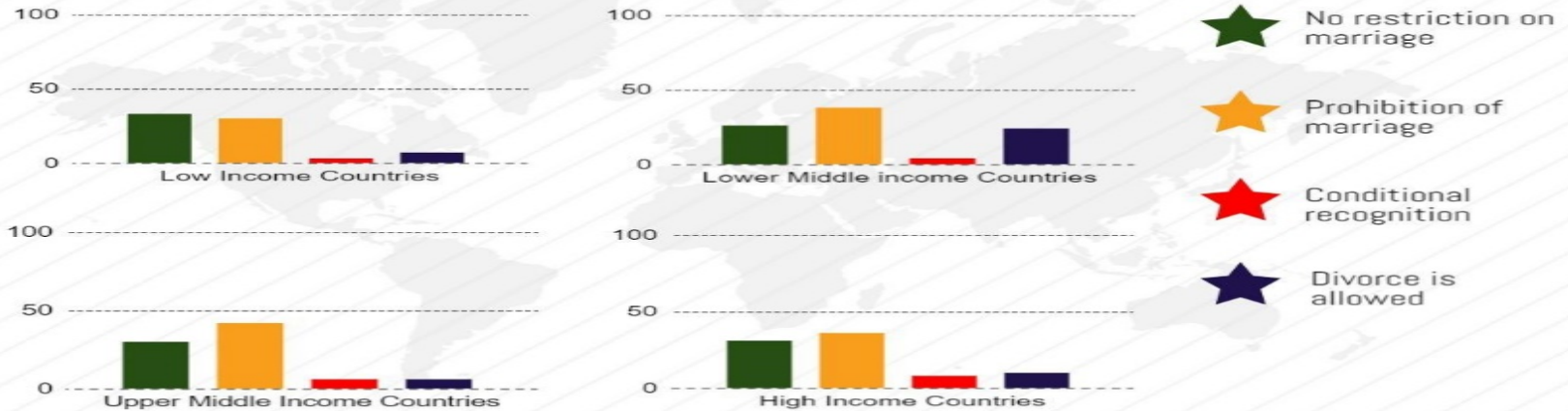
37%

Countries do not allow persons with mental health problems to marry.

12%

Countries allow divorce on the ground of mental illness of the spouse.

Marriage Laws for Persons with Mental Health Problems and World Bank Classification of Countries



41%

Countries that have ratified CRPD do not allow persons with mental illness to marry.

12%

Countries that have ratified CRPD grant divorce on the ground of mental illness of the spouse.



Source

Dinesh Bhugra, Soumitra Pathare, Renuka Nardodkar, Chetna Gosavi, Roger Ng, Julio Torales & Antonio Ventriglio (2016): Legislative provisions related to marriage and divorce of persons with mental health problems: a global review, International Review of Psychiatry, DOI: 10.1080/09540261.2016.1210577

Method

- For contract- ability, capacity, obligation
- (iii) For succession: unworthy, heir, disqualified
- (iv) For wills: testament, testamentary capacity, will, capacity to make will
- To enable systematic comparison of legislation, we used World Bank Classification of countries by income levels and Member States' ratification status of ICESCR and CRPD as mentioned in the United Nations Treaty Collection.

Results

| Overall frequencies (N=193 countries) | N (%) |
|---|---------|
| Right to contract of persons with mental health problems is recognized | 40(21%) |
| Right to contract of persons with mental health problems is not recognized but law provided for some facilitative mechanism | 17(9%) |
| Right to contract of persons with mental health problems is not recognized | 74(38%) |
| No information/ insufficient information/Translation not possible | 51(26%) |
| Not clear | 11(6%) |

Results

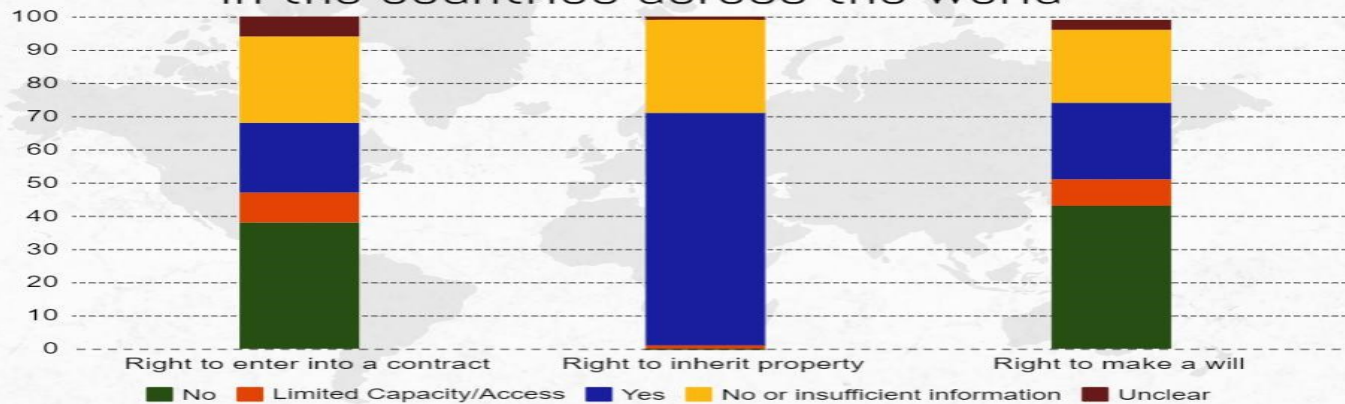
| <u>Overall frequencies (N=193 countries)</u> | N (%) |
|---|----------|
| Right to make a will of persons with mental health problems is recognized | 45 (23%) |
| Right to make a will of persons with mental health problems is limited | 16 (8%) |
| Right to make a will of persons with mental health problems is not recognized | 83 (43%) |
| No information/ insufficient information/Translation not possible | 43 (22%) |
| Not clear | 6 (3%) |

4

Right to property, inheritance, and contract and persons with mental illness

States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property - Art. 12 (5) of CRPD

Property rights of persons with mental health problems in the countries across the world



42%

CRPD ratified countries deny right to enter into a contract.

71%

CRPD ratified countries allow inheritance of property.

43%

CRPD ratified countries deny right to make a will.

Source

Dinesh Bhugra, Soumitra Pathare, Rajlaxmi Joshi, Renuka Nardodkar, Julio Torales, Edgardo Juan L. Tolentino Jr, Rubens Dantas & Antonio Ventriglio (2016): Right to property, inheritance, and contract and persons with mental illness, International Review of Psychiatry, DOI: 10.1080/09540261.2016.1210576

Social Discrimination

- Majority of countries discriminate on some or all of these
- Ignoring is the best policy
- Understanding discrimination related to stigma?
- Discrimination in definitions and interpretations
- Role of psychiatrists

Social Discrimination

- Challenges for profession:
- Difficulties in definitions
- Terms used include mental illness, mental instability, mental disorder, insanity, lunacy etc.
- No clear definition
- Mostly to do with subjective interpretation

Conclusions

- Would human rights based parity have better success?
- Would it bring better research funding?
- Better care?
- **But ...it is urgently needed at all levels – local, national and international**