The Dhaka University Studies, Part-F Vol. XV (2) : 17—22, December 2004

ARREST AND DETENTION PROVISIONS OF THE LUNACY ACT, 1912 : AN EVALUATION

Mr. Md. Khurshid Alam

Introduction

In our society lunatics or mentally ill persons are considered as curse. They are not treated as human being. Very commonly, they are addressed as 'mad.' Most of us behave with them cruelly. Lunatic persons are always deprived of their rights as human beings. Chaining, beating, dipping in water or branding with hot metal are common instances of mis-treatment of mental illness in Bangladesh. They are not getting proper mental or physical care. It is a clear violation of human rights.

The principles 1(1) and 1(2) of 'The Protection of Persons with Mental Illness and the Improvement of Mental Health Care' adopted by the UN General Assembly Resolution,[1] commonly known as the MI Principles, stated that:

> 'All persons have the right to the best available mental health care, which shall be part of the health and social care system.
>
> All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.'

Again, Article 2 of the 'Declaration on the Rights of Mentally Retarded Persons' proclaimed by the UN General Assembly resolution[2] provides that:

> 'The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential'.

---

1. Resolution no. 46/119 , 17th December 1991;
2. Resolution no. 2856(XXVI) of the 20th December 1971:

In Bangladesh the law relating to mentally retarded persons is contained in the Lunacy Act, 1912.[3] The Act provides various rules relating to the lunatics. The notion of the Act is debatable in respect of the protection of lunatics. It seems that the Act is more focused to protect the general people, rather than the lunatics. The Act empowers the police to arrest all persons found wandering and suspected of being lunatics.[4] The Act also provides for the detention of the lunatics.[5]

The arrest and detention provisions relating to the lunatics have become serious issues of the International Human Rights. Now, the states are more concerned about the mentally ill persons. In this context, we will study the arrest and detention provisions of the Lunacy Act, 1912 and evaluate these provisions in the light of the International Human Rights.

The Arrest and Detention Provisions of the Lunacy Act, 1912

Section 3(5) of the Act provides that 'lunatic means an idiot or person of unsound mind'.

The Act states the following rules regarding arrest and detention of the lunatics:

> Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large ... whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons ... whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.[6]
>
> Every officer in charge of a police-station who has reason to believe that any person ... is deemed to be a lunatics and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.[7]

---

3. Act no. IV of 1912;
4. Section 13 of Act of 1912;
5. Section 16 of Act of 1912;
6. Section 13(1) of the Act of 1912;
7. Section 13(2) of the Act of 1912;

> When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.[8]
>
> The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary:
>
> Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the magistrate.[9]

The implementation of the Arrest and Detention Provisions of the Act of 1912

The extensive use of the statutory power of the police to arrest the lunatics and to keep them in jail results in violation of human rights. It is also a violation of the right to liberty, right to humane treatment and right to medical help. In many cases persons, who are not mentally ill at all or temporarily stressed persons or mentally retarded persons are arrested. The law in our country is not modern enough to determine whether a person is lunatic or mentally ill.

The principles for 'The protection of Persons with Mental Illness and the Improvement of Mental Health Care' provides that:

> 'A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standard'.

The Act of 1912, however, does not provide any provision for check-up by psychiatrist or any specialized doctors for mental health, to diagnose whether a person is mentally ill or not. This gap results in lack of proper understanding of mental illness and

---

8. Section 16(1) of the Act of 1912;
9. Section 16 (2) of the Act of 1912 & proviso;

causes frequent violation of human rights of mentally handicapped persons.

In practice, the magistrates do not properly act under the Lunacy Act, 1912. In most cases they make an instant assessment of the persons deemed to be a lunatic and they are detained without following the statutory provisions, i.e. fixing the case, date of hearing or the duration of detention.

Under section 14 of the Act, the Magistrates are empowered to make a reception order for the admission of lunatics into an assylum. However, in our country there is only one Mental Hospital in Pabna. Besides that, there are few hospitals which provide short term treatment for mentally handicapped persons. The 'Instrument' of Hemayetpur Hospital is old and backdated and is not consistent with the modern concept of treatment of mentally ill persons. The beds of the hospitals are also limited. Therefore it is very difficult for the arrested lunatics to get proper treatment. The Act is silent in this respect.

Detention of mentally handicapped persons or lunatics has become a serious issue of international human rights. 'Human Rights in the Administrations of Justice: Protection of Persons Subjected to Detention or Imprisonment'[10], setting 'standard minimum rules for the treatment of prisoners', provides that: [11]

> Persons who are found to be insane shall not be detained in prisons and arrangement shall be made to remove them to mental institution as soon as possible.
>
> Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

In India, through 'public interest litigation,' detention of mentally ill persons are considered by the Courts as human right issues. The states are now more active in this issue. The Free Legal Aid

---

10. adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 and approved by the Economic and Social Council by its resolution no. 663 (XXVI) of 31st July 1957 and 2076 (LXII) of 13th May 1977;

11. Rules 82(1) & (2);

Society, at Hazaribag in Bihar addressed a letter to Justice Bhagwati of the Indian Supreme Court in 1982 about the detention of certain persons over a period of two or three decades.

In Veena Sethi vs. State of Bihar (1982)[12] the Indian Supreme Court held that:

> 'There must be an adequate number of institutions for looking after the mentally sick and the practice of sending ... persons of unsound mind to the jail for safe custody is not at all a healthy or desirable practice, because jail is hardly a place for treating those who are mentally sick.'

Again, in Sheela Barse vs. Union of India and Another,[13] the Indian Supreme Court issued certain directions which is significant for the treatment of the mentally ill persons. In this case, a letter was addressed to the Court where it was described that many children and adults were in jail as 'non-criminal lunatics' but most of them were not mentally ill at all, some were normal, some were under stress, or in a period of disturbance and very few were actually retarded. The Court held that:

> 'Admission of non-criminal mentally ill persons to jail is illegal and unconstitutional ...The Judicial Magistrates will, upon a mentally ill person being produced, have him or her examined by a Mental Health Professional /Psychiatrist and if advised by such MHP/ Psychiatrist, send the mentally ill person to the nearest place of treatment and care ... The Judicial Magistrates will send reports every quarterly to the High Court stating the number of cases of persons sought to be screened and sent to places of safe custody and action taken by the Judicial Magistrates thereon.'

In Bangladesh, the attitude towards mentally ill persons is being developed. In our country the state of mental health service is poor and it is even poorer in comparison with facilities available for physical illness. Discrimination on the ground of mental illness in respect of treatment, marriage, employment, heir to property,

---

12. (1982) 2 SCC 583 at 586;
13. (1993) 4 SCC at 204;

recreation and living facilities are very frequent. Violation of Human Right due to stigma, lack of proper understanding and awareness regarding mental illness are also common. Further, absence of modern law on mental health care makes the situation worse.

Conclusion

From the above discussion, we can say that the Lunacy Act, 1912 in various aspects, is completely inadequate to fulfill the interests of the lunatics. The Act does not reflect various serious issues which are essential for the mentally ill persons. The Act provides law for the lunatics but there is a gap between the intention and the provisions of law. The provisions of the Act are inconsistent with the modern concept of the treatment of the lunatics. So, we have to amend and update the Act. While doing so, the following considerations are required:

- Provisions of arrest and detention must be in accordance with the international human rights;
- There must be a provision for examination of the lunatics by psychiatrist or mental health professional;
- The facilities of mental health service should be upgraded;
- Rehabilitation procedure should be more specific, although 'Bangladesh Protibandhi Kallayan Ain, 2001' sets various rules regarding rehabilitation, education, medical service, transport facilities etc. for the retarded people;
- The law must affix liability for abuse of power in relation to the lunatics and provide for compensation in the case of such abuse.

Lunatic persons are part of our society. They live a miserable life. They need care. With a little care from the state and the society, their life could become a little better. Don't they deserve that?