

## HUMAN RIGHTS AND MENTALLY ILL PATIENTS: A NECESSARY DISCUSSION

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### Abstract

This research analyses the situation of mentally ill patients and human rights. The subject is justified because it brings contributions for the legal perspective, especially the right to health. The goal of this investigation is to verify some psychiatric hospitals and methods of treatments around the world as well as discussing legislations aspects, with a special view on the Brazilian Psychiatric Reform and its anti-asylum law – Lei Antimanicomial – that brought improvements for the protection of patients and non-abusive treatments. The methodology used in this research follows the hypothetical-deductive method and consists mainly from bibliographic analysis through books, dictionaries, newspapers, periodicals, articles, official databases, national and international laws as well as the use of all types of materials and instruments available on the Internet. It was possible to demonstrate that our contemporary society still struggles when dealing

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with mentally ill individuals. The psychiatric institutions analyzed in Serbia, Mexico, Brazil, Lithuania, India and Indonesia, demonstrated strong violations of human rights, discrimination, social exclusion, lack of public health policies, lack of infrastructure, mistreatment and suffering. It was also discussed the issues of voluntary and involuntary internment, social exclusion and social inclusion. We concluded that we have to break up this paradigm based on exclusion. It's necessary to deconstruct the idea that a mentally ill individual is incapable or dangerous. The States have the responsibility to protect violations of human rights, but in some point, we have to remember that we're all human beings and we all have to be treated in respectful way.

**Keywords:** Discrimination. Insanity. Mistreatment. Right to Health.

## **DIREITOS HUMANOS E DOENTES MENTAIS: Uma discussão necessária**

### **Resumo**

Esta pesquisa analisa a situação dos doentes mentais e dos direitos humanos. O tema é justificado porque traz contribuições para a perspectiva jurídica, especialmente o direito à saúde. O objetivo desta investigação é verificar alguns hospitais psiquiátricos e métodos de tratamentos em todo o mundo, bem como discutir aspectos legislativos, com uma visão especial sobre a Reforma Psiquiátrica

Brasileira e sua Lei Antimanicomial que trouxe melhorias para a proteção de pacientes e tratamentos não abusivos. A metodologia utilizada nesta pesquisa segue o método hipotético-dedutivo e consiste principalmente na análise bibliográfica através de livros, dicionários, jornais, periódicos, artigos, bases de dados oficiais, leis nacionais e internacionais, bem como o uso de todos os tipos de materiais e instrumentos disponíveis na Internet. Foi possível demonstrar que nossa sociedade contemporânea ainda luta para lidar com indivíduos mentalmente doentes. As instituições psiquiátricas analisadas na Sérvia, México, Brasil, Lituânia, Índia e Indonésia, demonstraram fortes violações dos direitos humanos, discriminação, exclusão social, falta de políticas públicas de saúde, falta de infraestrutura, maus-tratos e sofrimento. Também foram discutidos os temas de internação voluntária e involuntária, exclusão social e inclusão social. Concluímos que precisamos romper esse paradigma baseado na exclusão. É necessário desconstruir a ideia de que um indivíduo mentalmente doente é incapaz ou perigoso. Os Estados têm a responsabilidade de proteger as violações dos direitos humanos, mas em algum momento, temos que lembrar que somos todos seres humanos e todos temos que ser tratados de maneira

respetosa.

**Palabras-Chave:** Discriminação. Insanidade. Maus tratos. Direito à saúde.

### **Introduction**

This research analyses the situation of mentally ill patients and human rights. In some parts of the world, mentally ill individuals are discriminated by society and don't receive the kind of treatment that they need. Besides, there are many reports claiming that violations of human rights have been occurring inside psychiatric institutions or hospitals.

The subject, therefore, is justified because it brings contributions for the legal perspective, especially when it comes to the right to health.

The goal of this investigation is to analyze some psychiatric hospitals and methods of treatments around the world as well as discussing legislations aspects, with a special view on the Brazilian Psychiatric Reform and its anti-asylum law –

Lei Antimanicomial – that brought improvements for the protection of patients and non-abusive treatments.

The methodology used in this research follows the hypothetical-deductive method and consists mainly from bibliographic analysis through books, dictionaries, newspapers, periodicals, articles, official databases, national and international laws as well as the use of all types of materials and instruments available on the Internet.

It will be possible to demonstrate that our contemporary society still struggles when dealing with mentally ill individuals. The psychiatric institutions that will be analyzed in further detail are Serbia, Mexico, Brazil, Lithuania, India and Indonesia. It will be also discussed the issues of voluntary and involuntary internment, the Brazilian Anti-Asylum Law as well as the subject of social exclusion and social inclusion.

### **Considerations about insanity/madness**

Before starting the discussion, it becomes necessary to try to make a definition of the word madness. The term madness can be understood as a circumstance of the human mind that is

characterized by thoughts and behaviors that are judged incompatible or abnormal in the context and concept of what is conceived as normal by a certain society.

Thus, according to Júnior and Medeiros (2007, par. 57, our translation):

[...] the theoretical conception of Mental Health perceives madness essentially as a phenomenon of intolerance and exclusion from social life, in which a rejection of the madman arises because he is seen as mentally ill, which leads to a hospital stay even against his will, in order to be isolated. Hospitalization is seen as the pinnacle of social exclusion, and not as a way contrary to intolerance.

In this sense, according to the Human Rights Monitoring Institute (2014), one in four people come up with some kind of mental illness. Yet, almost two thirds of those afflicted by mental illnesses never get the adequate treatment. It just so happens mainly because of the fear to be exposed in front of the community as well as the fear of consulting to a psychiatrist or to be sent to psychiatric hospital, stigma and discrimination also proportionate feelings of fear.

In some parts of the world, people do not have the adequate basic mental health care that they need in order to treat their mental disabilities and live a dignified life. Sometimes, however, “[...] the absence of community based mental health care means the only care available is in psychiatric institutions which are associated with **gross human rights violations including inhuman and degrading treatment and living conditions.**” (WHO, 2018, par. 2, our griffin).

Other times, even outside the hospitals, those people who suffer from mental disabilities, they still have to face all kinds of discrimination and they feel excluded from the community where they live as if they were not part of it. Then, what basically happens is that they don't find a job, they don't have access to education and in the worst case scenario they don't have access to housing and some of them have to live a lonely life on the streets. In some countries, they are treated as if they are not able to vote, marry and have children. Therefore, the majority of them live in extremely poverty (WHO, 2018).

All of it just so happens because in some countries, either it's believed that people with mental disorders are possessed by bad spirits and so they have to be locked away from the community or it's because they're mistakenly seen as dangerous people and therefore they have to be contained, being locked in cages or tied in order to not disturb the peace inside the community.

On the following, we'll be discussing the issue of psychiatric hospitals/institutions and its relation

to human rights.

Are psychiatric hospitals/institutions worse than prisons?

Oftentimes, psychiatric hospitals are more feared than prisons. In some of them, most of the times behind closed doors, there are the occurrence of a wide range of abuses, mistreatments and torture. Besides, “[...] unhygienic and inhuman living conditions are common in many facilities, as are inadequate, degrading and harmful treatment practices.” (WHO, 2007, p.1).

Here we can see how the fundamental human rights of shelter, food and clothing are disrespected and as a consequence, lots of people have to live an absolutely unbearable life. We may realize that sometimes society becomes insensible and ruthless. With all those mentioned rights denied those people can’t integrate in society and rebuild their lives.

So we have to keep in mind that hospitalization in some cases works although it is not always the best help option for people who are having problems in their lives. Likewise, the challenge is to find new and more effective ways - for each specific case - to avoid suicide and also to help the individual.

Now, let’s pass to the next topic, on which one, we’ll be addressing the methodology, and right after that, the international perspective about the mental ill people and the kind of treatment that they receive around the most considered dangerous and fearsome psychiatric institutions/hospitals on the world.

## **Methodology**

The methodology used in this research follows the hypothetical-deductive method and consists mainly from bibliographic analysis through books, dictionaries, newspapers, periodicals, articles, official databases, national and international laws as well as the use of all types of materials and instruments available on the Internet.

## **Results and discussion**

As states Gostin and Gable (2004, p. 20, griffin added by the authors),

“[...] violations of human rights...are a reality to be found in every corner of the globe!”. And so the numbers of abuses on mental hospitals worldwide are countless.



For instance, in Guatemala, there is a mental hospital which is considered to be one of the most dangerous mental hospitals in the world. It's been reported that patients used to be raped by the nurses and guards while sedated, others lying sleeping sedated on the courtyard on the burning sun, others are happened to be found on the wards totally naked and dirty by their own faeces and urine (Rogers, 2014).

Conditions of depredation, in other words, it's a classic sign of child neglect. Likewise, children who are diagnosed with Down's syndrome are often put in those kinds of institution for their entire lives (Haze, 2013).

Furthermore, in India the amounts of abuses are unimaginable and unbelievable. According to a study made by Dr. Shiv Gautam, thereabout 68 percent of mentally ill people are firstly brought to quack healers before a psychiatrist. It just so happens because in the Indian culture, it is believed that people who suffer from some mental illness are possessed by demons and therefore faith healers are called to get rid of them. Thus, they use different methods and techniques in a try to cure mentally ill people. The majority of those practices are literally torture, it includes whipping, inhalation of smoke from burnt chilly, branding with red hot coins, beating, chaining etc. Despite having laws to bane those kinds of things, these laws are almost never carried out (Sharma & Krishna, 2013).

Even more troublesome, lots of families use to dump their mentally ill relatives on the jungle. In most of the times, they hire truck drivers to drop those people –which can be men, women or children - in the India's forest reserves. When it involves women, the drivers use to rape them before dropping into the jungle. There are reports of organ trafficking as well (Sharma & Krishna, 2013).

In this same context, in some psychiatric hospitals in Mexico, we may find unpleasant places where there are feases and urine everywhere and the stench is unbearable. In one of these hospitals, medications are distributed by one of the patients. And there are also terrible reports of astonishing things such as the patient who lives with a helmet in his head and his arms tied behind his back in order to keep him from hitting his head all the time. In addition, another one “[...] at the facility [that] hasn't gotten out of bed for 15 years [...].” (Litoff, 2010, par. 5).

In Brazil, in the so-called Hospital Colônia, from 1930 to 1980, where more than 60 thousand people have died there. This historic place became so popular that they have written some books and made a documentary with a much- suggested title: ‘The Brazilian's Holocaust, because of the horrific things that had happened in there. Some claim that that place was definitely the hell on

earth (Mutabis, 2017).

In Lithuania, inside many psychiatric hospitals, patients whose conditions are characterized by moods of aggressiveness and agitation and therefore are apparently very difficult to deal with, they are commonly physically and chemically restrained through strait jackets and sedatives, respectively (Human rights monitoring institute, 2014).

According to the same source, they're also given large and heavy doses of medications and/or sedatives in order to calm them down, and after these types of procedures they're left alone even for days and nights without the possibilities of, for example, taking a shower, going to the bathroom, interacting with somebody etc. Yet, during this time, the hospital's staff did not watch them.

Additionally, in Indonesia, about 19,000 patients are currently living chained. Inside the mental institutions they're submitted to all kinds of abuses such as electroshock therapies, seclusion, and sexual violence – at this last one they're even forced to contraception. One of the cases really caught the attention of the researchers which was about a girl who had been shackled for about 15 years by her father. Although she was released, the man also mentioned that she had been locked up in her room for a decade and a half where she was never bathed, neither clothed or visited by anybody and used to defecate inside the room which was never cleaned up at all this time (Jones, 2016).

Besides, in the majority of psychiatric hospitals worldwide, the kind of treatment that the patients receive is simply a bunch of pills and that's all. It's really rare and unique to meet with the psychiatrist, there is almost no psychotherapy, and the all what the patients can do is just to stay lying on a bed, wandering in the hospital corridors or watching TV (when there is one set).

By the same token, that's why international human rights instruments are absolutely necessary in the context of mental health. Moreover, Ventura (2014, par.

2) underlines that “[...] mental health and human rights are inextricably linked [...].”

But before the World War II, whenever a violation of human rights occurred it was considered be as an internal matter within the country's borders and almost any violation was submitted to external examinations. Hereinafter, it was realized that this system wasn't working pretty well in terms of promoting the adequately protection of rights and freedoms of the individuals. Thus, an international framework of human rights was adopted with the aim to recognize those rights and freedoms, preventing future violations. Therefore, “[...] human rights are a matter of international law enforceable against the state on behalf of persons living within or under the control of the state.” (Gostin & Gable, 2004, p. 22).

It's recognizable that the mental health policies have the goal to work for the benefit and welfare of the patient as well as the family and the society as a whole. But, sometimes, those same policies can violate human rights. It can directly affect the autonomy and the privacy of the patient as well as his rights related to property and liberty (Gostin & Gable, 2004).

Gostin and Gable (2004, p. 29) give us a pretty good example:

Consider the importance of mental health and human rights to women in society. Without good mental health, women cannot function within the family, community, and workplace or participate in the political process. Furthermore, women's mental health will suffer if they are subjected to discrimination, enforced conditions, violence in sexual relationships or marriage, limits on their possession or use of property, or restrictions on their social status or means of livelihood. Seen in this way, a woman's mental health may improve by safeguarding her human rights—for example, by reforming laws relating to divorce, property distribution, labor, and rape. A woman's power to secure her rights may improve if the government provides services and other conditions necessary for mental health.

According to Brethour (2018, par. 5), “[...] discrimination and silence all prevent access to care [...]”. However, human rights can help to support mental health care in several different ways. Bozelko (2015, par. 11) says that “the problem with modern mental health care is not that people who want it can't get it or that those who need it won't take it, but that the services they receive in the inpatient setting are inferior [...].”

By this context, we get to the topic of voluntary versus involuntary internment, which has been generating a great debate among the legal profession – especially about lawyers and judges –, because, most of the times, the patient's denial in not taking the treatment comes from his own mental illness. So, it could be pretty much a symptom of the disease to refuse medication or treatment. And what happens is that the patient's self-evaluation jeopardized as a result of his mental condition. In other cases, the patient doesn't take the medications correctly either because he fears the possible side effects or he takes part of the medication in accordance to what he thinks is best. Other times, the patient fears the social stigma and so he doesn't take the treatment in order to not be misunderstood as a crazy person.

Many psychiatrists often argue that “[...] underlying many people's doubts about a right to refuse treatment is their belief that a patient's refusal is almost always related to his psychosis [...].” (Appelbaum, 182, par. 16).

Undoubtedly, this is a strongly debated issue. Dr. Okin quoted by Appelbaum (1982, par. 33),



elegantly “[...] talks of giving committed patients a right to choose among effective treatments, but not a right to reject all of them [...].”

The rejection of any kind of treatment requires that the patient has the capacity to realize that he is sick and therefore manifesting it through the acceptance of the diagnosis. Otherwise, in case the patient is acting insanely because of his illness and it represents risks of self-harm and trouble to the society around him, then it’s advisable to follow an involuntary treatment.

For example, if we take what is prescribed by the Brazilian legislation, specifically, the Law N° 10. 216, from April 2011, also known as the Anti-Asylum Law – Lei Antimanicomial -, which deals basically with three forms of hospitalization on its article 6°, single paragraph, subsections I, II, III, namely: voluntary hospitalization, involuntary hospitalization and compulsory hospitalization. The difference is due to the fact that the first one is given through the consent of the patient; the second one, without the consent of the patient, but with the request of a third party; and, finally, the third one, which is determined by justice (Brasil, 2001).

Even though there were many cases where involuntary treatment was understood as a pejorative synonym for punishment, torture, or cruelty, in theory, it is a way of taking care of the patient, not letting him hurt himself or others. Therefore, a legislative approach, such as the example of the aforementioned Brazilian legislation, are mechanisms that serve not only to regulate, but, above all, to prevent that dangerous situations take place, both for the patient and for society.

It is important to realize that “[...] unlikely other minorities, the mentally ill are the ones that least express the segregation they suffer and their longings do not reflect socially. ” 1 (Viladeutopia, 2017, par. 5, our translation).

Besides having to live with all the problems related to the disease such as hallucination, restlessness, fear, insomnia, sadness, rage, paranoia, dementia etc. A mentally ill person still have to face the stigma and discrimination of being understood as dangerous or violent person.

In this context it is important to make a definition of stigma and we can rescue the meaning of this word simply through the dictionary. Stigma can be seen as a pejorative mark over specific circumstances or persons. In other words, “[...] a strong feeling of disapproval that most people in a society have about something, especially when this is unfair. ” (Cambridge dictionary, 2018, par. 1, emphasis added by the author).

Now, when we talk about a social stigma we’re basically referring to that kind of stigma in which the condition of the individual is part of an inferior group. So, social stigma is also a structural stigma that can create barriers for mentally ill patients as well. Finally, this leads to unequal access to treatment services and policies (Ahmedani, 2011). So far we know, the mental ill individual

was always excluded from the social bonds. Every single person who would demonstrate to have any signs of craziness would be taken out of society and put to hospitalization in psychiatric facilities. There, they would be given a bunch of medication and would be far from family, job market and social relations. Some of them would even be there for the rest of their lives.

As points out Silver (2007, p.1), social exclusion is “[...] a dynamic process of progressive multidimensional rupturing of the ‘social bond’ at the individual and collect levels”. In other words, “[...] social exclusion involves keeping out certain groups or sections of society from the mainstream, denying them access to basic resources and opportunities that are available to the rest of society, often treating them with indignity.” (Krishnan, 2015, p.156).

Social exclusion also brings social inequalities such as “[...] discrimination, prejudice and intolerance [...].” (Nicholson; Cooper, 2013, p. 334). Notwithstanding, mentally ill individuals are frequently stigmatized principally because of those three social inequalities and so what happens is that they’re discriminated because of their condition, they’re rejected and ignored by society.

Amartya Sen (200, p. 9) would say that “[...] the language of exclusion is so versatile and adaptable that there may be a temptation to dress up every deprivation as a case of social exclusion [...].”

According to Szazz (1978), throughout the history, social exclusion for mentally ill people started mainly because of the capitalist system which lays emphasis on normality and productivity. Therefore, people committed by this evil thing would be put to hospitalization and would be cared by the psychiatrists.

For now, let’s pass to the final considerations and examine some alternatives for some of the problems pointed so far.

## Final Considerations

However, there is a light at the end of the tunnel. Besides the existence of social exclusion, at the other hand, there exists the term social inclusion which can simply be characterized “[...] as a process that helps to integrate people who have been excluded from society”. (Nicholson & Cooper, 2013, p. 334). Logically, both terms may be considered as antonyms, however, it’s possible that a particular group may be included in one specific situation as well as excluded from other specific situation (Krishnan, 2015).

At the same way, some measures have to be taken as soon as possible. Countries should adopt, for example, policies and laws that can bring a larger range of protection for those people; They

should also proportionate employment according to each individual's conditions and limits; Laws that empower and help to prevent the violations of the human rights; Governments have to increase the investments related to mental health; Mental health professionals such as psychiatrists and nurses, police officers and even judges and lawyers, they should receive training on human rights issues for the purpose of understanding the rights of the patients and put it in practice (WHO, 2018).

Finally, we, as a society, have to break up this paradigm based on exclusion. It is necessary to deconstruct the idea that sustains that a mentally ill person is incapable or dangerous. In some point, we have to remember that we are all human beings and therefore we all have to be treated in a respectful way.

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