

# TRANSFORMATIVE JUSTICE: MENTAL HEALTH AND HUMAN RIGHTS AT THE WORKPLACE

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## Abstract

The rapid change in the work culture demands an individual to perform efficient work in limited time to meet up ever growing demands and simultaneously ensure their personal growth. Hence, the employees mostly run against time to meet up all these needs. There comes the challenge of maintaining a good mental health to ensure efficiency at all levels. Mental health at workplace is one of the most important yet less discussed topic in the contemporary world. A good mental health ensures productivity in the work as well. There are various factors which effect the mental health of the employees at the workplace such as lack of proper communication and lack of empathy. This paper deals, but is not limited to the effects of such factors on the mental health. The paper analyses the legal framework of U.K and India and makes a comparative analysis to suggest measures through which a collective effort could be taken for ensuring a good mental health to the women at workplace.

**Keywords** – Mental Health, Transformative Justice, Human Rights, Human Rights at Workplace

## 1. Introduction to the concept:

Human rights- every person's basic human rights and freedoms are protected by the law and are based on concepts such as dignity, fairness, respect and dignity. The human right Act of 1998 says that Employers as a public authority must follow these principles.<sup>1</sup>

The human right to work is human right to all men, women and youth to dignified, creative and productive labour, free from discrimination.

Everyone has mental health same as everyone has physical health that depends on lifestyle and environmental factors. This article will put the significance of environmental factors particularly at work place because the majority of life is spent at the workplace. So, what they experience during work ultimately affects their mental wellbeing

Just like physical health, everyone has mental health that depends on a variety of factors-

- Lifestyle & environmental factors: work, diet, lack of sleep.
- Childhood neglect or abuse- maltreatment during infancy can affect brain development. Neglect or abuse can lead to a lifelong battle with depression, relationship difficulties, and possible addiction to alcohol/drugs.
- Discrimination: based on gender, race, sexual orientation.
- Chronic health condition: facing new limitations in your ability to do routine work, feeling discouraged and hopeless after being diagnosed, adapting to the new reality, and coping with the changes, constant treatment, and hospital visits.
- Genetic factors: an individual's chances of having a mental disorder are higher if there is a family history of mental illness. Still, symptoms may be different. Epigenetics affects how people react to environmental factors, leading to mental disorders.
- Social Disadvantage: poverty and debt can lead to alcohol addiction.

Mental health is a state of well being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to his or her community.<sup>2</sup>

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Mental health is our collective and individual ability as humans to think, emote, interact with each other, earn a living and enjoy life. On the basis, the promotion, protection and restoration of mental health can be regarded as vital concern of individuals, communities and societies throughout the world

Conflict can occur even in the most solid workplace. There are a number of reasons because of which conflict arises, for example, lack of trust, unmet needs, miscommunication, misunderstandings, unexpected threats to employment status and misunderstandings. Our approach to resolve those conflicts is an important aspect of the workplace.

Transformative is one of the effective and healthy mediation models to resolve workplace conflict.

## **2. What is transformative justice?**

Transformative justice is a political framework and approach for responding to violence harm and abuse at workplace. At its most basic it seeks to respond to bad behaviour, violence without creating violence and same behaviour in workplace. Transformative justice is a way of handling conflict that recognizes and responds to variety of harm caused by conflict and capitalises on opportunities offered by bringing individuals together in process that encourages healing and growth.

The framework and principles of what is called alternative dispute resolution. There is a continuum of alternative dispute resolution transformative mechanisms ranging from informal negotiation to traditional adjudication by private courts. Alternative dispute resolution processes can be highly formal or quite informal. It can be voluntary and mandatory. Agreement can be negotiated or they may be imposed. The significance of transformative justice at the workplace in non criminal areas of law will lie in its ability of diverse forms of ADR that have developed over the past 2 decades.<sup>3</sup>

Restorative Justice supports non-violence, cooperation, and rare coercion. It was introduced in hopes of peacemaking. However, it did not address the issues of oppression, injustice, and social inequities within conflicts. Ruth Morris argued that Restorative Justice failed to address the economic and socio-political issues.<sup>4</sup>

Transformative Justice is about seeing the good in someone while also being aware of the complex systems. The term has its roots coined from "Transforming power". It aims at transforming a negative/violent situation into a positive/peaceful one.

Transformative Justice is a way of handling conflict that recognizes and responds to a variety of harm caused by conflict and capitalizes on opportunities offered by bringing individuals together in a process that encourages healing and growth.

The framework and principles of alternative dispute resolution entail that conflicts can be settled outside the courtroom without trial. There is a continuum of alternative dispute resolution transformative mechanisms ranging from informal negotiation to traditional adjudication by private courts. Alternative dispute resolution processes can be highly formal/informal, voluntary/mandatory. The agreement is subject to negotiation, or it may be imposed. The significance of transformative justice at the workplace in non-criminal areas of law will lie in its ability of diverse forms of A.D.R. that have developed over the last 20 years.<sup>5</sup>

## **3. Mental health rights at work – what does it mean? how is it governed?**

### **3.1. The mental health care act 2017-**

The mental health care act was commissioned in India in 2007. Its aim is to provide mental health care in a manner that is somehow in line with protecting, promoting and fulfilling the rights of persons with mental illness throughout the care process. The law gives every adult the right to make an “advance directive in writing which has to specify the manner to be treated or not be treated with mental illness along with provisions to appoint a nominated representative.<sup>6</sup>

### **3.2. The equality act 2010 (UK)-**

A mental health issue can be considered a disability under law if all following apply

- It has a “substantive adverse affect” on life of an employee
- It lasts at least 12 months
- It affects their ability to do their normal day to day activities

A mental health issue can be considered a disability even if there are not symptoms all time

If an employee has a disability, employers:

- Must not discriminate against workers because of their disability
- Must consider making reasonable adjustments<sup>7</sup>

### **3.3. Human rights at workplace**

International labour organization, a specialized agency of the United Nations with a mandate to promote social justice and internationally recognised human and labour rights. Its main aims are to promote right at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work related issues.

Let us now look at the various case laws that have specifically dealt with mental health and human rights at workplaces. Eventually, the readers will be able to discern how the guarantee of such basic human rights and dignity may lead to overall economic and personal development and progress.

#### **4. Case laws & precedents on transformative justice: mental health & human rights at the workplace**

##### **1. Ravinder Kumar Dhariwal & Anr v. The Union of India & Ors<sup>8</sup>**

In the Civil Appeal No. 6924 of 2021 in the Supreme Court of India (Civil Appellate Jurisdiction), disciplinary proceedings were initiated against the appellant Ravinder Kumar Dhariwal by the respondents The Union of India.

The High Court had coached the State to consider the case because of Section 47 Persons with Disabilities (PwD equal opportunities, protection of Right and Full Participation) Act 1995. The Division Bench of Gauhati then allowed an appeal against the initial judgment of the High Court.

###### **Facts of the case:**

Mr. Ravinder Kumar Dhariwal entered the Central Reserve Police Force (CRPF) in November 2001. In 2003, he served in Assam, then in Chhattisgarh, and then in Srinagar. He was then serving in Ajmer till 2010. On 18 April 2010, the Deputy Inspector General of Police complained about him in the Alwar Gate police station Ajmer alleging that the appellant threatened to shoot and was obsessed with killing.

Three inquiries were initiated against him, one being resolved. It was recorded that the appellant had started facing Obsessive-Compulsive Disorder (O.C.D.) along with Secondary Major Depression. After seeking treatments at various institutions, he was referred to Dr. Ram Manohar Lal Hospital, who categorized him as permanently disabled (having 40-70% disability). It was declared that the appellant was unfit for duty on 18 July 2016 and was placed under the S5(P) category. However, The Ministry of Social Justice and Empowerment had issued a notification on 10 September 2002 that exempted all the 'combatant personnel' of the CRPF from the provisions of this section.

###### **Findings of the court:**

The court found that the disciplinary proceedings were discriminatory under the RPwD act 2016 (Right to equality, life with dignity, and respect for their integrity equally). The appellant is to be re-assigned to an alternate post that does not require control over firearms. If needed, his pay and condition of service must be protected.

##### **2. Kunal Singh vs. Union Of India & Anr on 13th February<sup>9</sup>**

The appellant joined the SSB as a constable and suffered a leg injury which resulted in having his leg amputated. Following this, he was deemed permanently incapacitated and was discharged. He filed an appeal challenging the decision. As he was harmed in the line of duty, the court passed its judgement stating that the appellant falls under the category of Section 47 in the PwD act and should be provided relief per the same.

##### **3. Bears Cave Estate vs. The Presiding Officer on 22 September<sup>10</sup>**

The petitioner was the management of the Bear Caves Estate and had challenged the decision passed by the 1st respondent labour court. The labour court had directed that the petitioner had to reinstate the 2nd respondent as her termination was illegal. She had served the estate for 15 years and was verbally denied employment on 2.9.2002. She was given no notice or memo, and her livelihood depended solely on the wages. It was found that she may have had a mental disorder but had not taken any credible examination. Considering that she was not paid since her termination, the court directed the petitioner to Rs 1,00,000/- as a final settlement within four weeks of the judgement. After this, the petitioner will have no further rights to her employment in this matter.

##### **4. ADGA Group Consultants v. Lane.<sup>11</sup>**

###### **Summary of the case:**

Under s. 398, the Supreme Court of the United States has jurisdiction over cases involving human rights. 41(1) (b) of Code to award actual damages to compensate for loss of right to be free from discrimination and for expertise of victimization -- court subsidisation \$35,000 to plaintiff who was laid-off 10 days when he started work once he disclosed that he had manic depressive

illness and commenced exhibiting pre-manic symptoms -- court additionally subsidized damages of \$10,000 for painfulness -- Awards affordable -- Human Rights Code, R.S.O. 1990, c. H.19, sec. 41(1)(b).

#### **Facts of the Case:**

Plaintiff was suffering from manic depressive illness, which resulted in episodes of wild and depressive moods with periods of stability. His role was to test package program for the leader. The duty was delineated to the plaintiff as being nerve-racking and as involving tight deadlines. Once he applied for the duty, the plaintiff failed to reveal that he had manic depressive illness. Shortly when beginning work, the plaintiff disclosed to his supervisor C that he had manic depressive illness, told her a way to determine once he was turning into wild, and asked her to intervene if she ascertained any inappropriate behaviour on his half. Shortly subsequently, the plaintiff entered a pre-manic part and commenced to exhibit signs of wild behaviour. Plaintiff was fired after he had just begun work, because he had twisted his ability to perform the essential duties of his position. When he was fired, the complainant's condition deteriorated into a full-blown mania within hours, and he was hospitalized. He then experienced a full-blown severe depression, his family's financial situation deteriorated, and his wedding was cancelled. A manic-depressive illness-related lawsuit was filed by the plaintiff claiming the leader discriminated against him on the grounds of his incapacity. In its ruling, the Human Rights court ruled that the leader discriminated against the plaintiff.

According to the complainant, it must still be able to accommodate the complainant's incapacity without imposing undue hardship under section 5 of the Human Rights Code. As well as special damages, the plaintiff also received actual damages of \$35,000, damages for pain of \$10,000, and certain public interest remedies. According to Section 41(1)(a). Appeals were made by the leader. Against this decision, the Commission has cross- appealed, seeking an extension of actual damages.

The appeal should be granted in part, while the cross-appeal ought to be dismissed. Hence, the court was right in allowing an individual with manic depressive illness, who cannot be a health care provider, to be the witness as he serves as the president of a support group of individuals with depression and manic-depressive illness, among other diseases. As part of the witness's testimony, he provided relevant and helpful background and discourse data concerning manic depressive illness that were outside the court's expertise and information. Further, the court did not err in qualifying as a witness the pinnacle of an academic department of medical specialty and relying on his testimony to identify, treat and manage manic depression and disapproval issues associated with it. In response to the employer's allegation that the complainant had song concerning his condition during the hiring process, the evidence about stigma was relevant and necessary to understand the plaintiff's reasons for not at the outset disclosing his manic depression to him.

#### **Findings by the Court:**

The Tribunal's discrimination finding was reasonable. If a worker has been lost to incapacity because of termination, it is not necessary to own a comparator cluster. In finding that the leader failed to meet its procedural duty to accommodate the plaintiff, the court did not err because it did not acquire all relevant data about the complainant's incapacity, his ability to perform job duties, and his capabilities for various tasks. The court did not err in finding that the leader did not comply with its substantive duty to accommodate the complainant's incapacity wanting undue hardship. To establish undue hardship, one cannot rely on impressionistic or anecdotal proof or justify it after the fact. The court found that the plaintiff was fully capable of fulfilling the essential duties of the job when he wasn't headed towards or was already at one of the two ends of the bipolar spectrum.

The Court upheld a Tribunal decision that the complainant was discriminated against based on his bi-polar disorder when his employer failed to accommodate him and terminated his employment.

This is one of the most important cases concerning mental health and human rights at workplace. Here, it was held justly and fairly that an employee suffering from mental illnesses cannot be discriminated against and must not be terminated on the basis of that only.

Let us now look at another case on the same subject matter.

## **5. Entrop vs. Imperial Oil Ltd.<sup>12</sup>**

#### **Facts of the Case:**

Entrop worked in a highly safety-sensitive position, shifting oil products from place to place. A ship suddenly struck the bottom and spilled oil into the ocean off the coast of Alaska. One of the allegations was that the captain was an alcoholic and that he had been drinking. As a result, Imperial Oil ("IO") maintains strict rules regarding addictions. For positions with security-sensitive functions, the requirement was two years of sobriety.

Although he had been a functioning alcoholic, Mr. Entrop had been sober for quite a while. As a result, IO removed him from his safety-sensitive position, which he felt was a change. In addition, he needed to undergo random tests for alcohol. In a 60-minute grievance, he alleged he was discriminated against because of his incapacity or perceived incapacity.

## **Findings of the Court:**

The Tribunal and the Ontario Court of Appeal confirmed that alcoholism was a disability. In addition, it was confirmed that the company's drug and alcohol testing policy was discriminatory, and that requiring employees to disclose an ongoing or previous substance abuse problem constitutes direct discrimination under the Code. A recent Ontario Court of Appeal decision affirms that random testing of employees for drug and alcohol impairment, absent reasonable cause, is a violation of employees' rights to privacy and intrudes on their dignity.

Here too, the Court was of the opinion that addiction (in this case, alcoholism) was indeed a mental health issue and that it should not be an excuse to discriminate against that employee, or infringe upon their privacy and dignity. The court's humanitarian and fair treatment towards the employee is certainly admirable.

## **5. Mental health and human rights at workplace in the Indian context: in consonance with international standards**

The Rajya Sabha passed the Mental Health Care Bill 2013 in August 2016. The author is of the opinion that it is possible to improve the lives and experiences of people with mental illnesses and their families through reforms of mental health law.

This is very much in line with the international norm under the international Convention on the Rights of Persons with Disabilities which says "*The purpose of the Convention is to promote, defend, and guarantee the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to mark respect for their inherent dignity*" (Article 1).<sup>13</sup> Often, this is the way it should be. The Indian legislation is certainly difficult for services, and there are already problems with the compliance with pre-existing standards (e.g., as regards prisoners), but modification is moving in the right direction.

The right to liberty must not only be addressed, but also treatment, social care, social inclusion, and political management of people with mental disabilities. As some scholars' points out, what matters most is whether measures designed to mark justice truly understand this goal in daily life, and not simply in theory. That's, one would like to appear at the real life outcomes of measures supposed to guard rights, as hostile merely validating that current legislation and different arrangements seem doubtless to market human rights. India would like to specialize in what truly happens, it's necessary that the relevant principles and values are applied not solely within the development of legislation, however additionally in its application, and in psychological state and social services, courtrooms, prisons, and different locations across India, the rest of Asia et al round the world.

There is a vast difference between the RPwD Act of 2016 and its predecessor PwD Act of 1995. The RPwD Act, which has now replaced the PwD Act, includes 21 disabilities like cerebral palsy, dwarfism, mental illness, muscular dystrophy, chronic neurological disorders, blood disorders, acid attack victims, speech & language disability, and intellectual disability. It has broadened the range of disorders, thus assuring that people with these disabilities are now eligible to avail of benefits under this Act. This Act also has clearer definitions of disability and gives a holistic view of the biological, social, environmental, and relational determinants of the disability.<sup>25</sup>

The RPwD Act gives a better understanding of mental illness, limited guardians, inclusive education, surveys to find and treat disabilities, and specific mention of quantum punishments regarding offences and punishment.

## **6. Concluding remarks, potential risks and the way forward**

While a layman think that mental health and human rights at workplace is an individual matter or concern, it is not so. It is very much a societal problem that concerns every person who lives in a society. The mental health and basic rights and dignity become even more important when that person is a worker employed in an organisation or establishment. This paper and the literature referred in it also point to the fact that mental health and human rights and dignity at workplace is in fact, a social justice issue. More specifically, it is a new form of justice that goes beyond the common norms and values of the traditional justice system. A systemic lack of proper mental health care at the workplace is an increasing trend all around the world,<sup>14</sup> and that is certainly worrying.

Various human rights organisations and activists have advocated that mental health is very much health care (which in turn, is a human right) and that it should be free, public, and accessible to all, irrespective of colour, class, race, nationality, age, ethnicity, or sexual orientation. For sure, this guarantee of basic civil rights and dignity is becoming challenging and problematic<sup>15</sup> for those who benefit from this unjust and inequitable system. How much of this has actually been achieved, and how many governments or policy makers are working to make this a ground reality, remains to be seen, and it perhaps may be better suited for another, dedicated essay.

## **Potential Risks and the Way Forward:**

Certainly, the links between human rights and labour policies is established. But still, there are many risks that may be associated with it, according to labour attorneys. First of all, historically speaking, there has been a lack of interaction between these two subjects of law.<sup>16</sup> Apart from this, there are many "potential areas of concern, where a human rights perspective might be expected to fall short as the framework for adequate regulation of employment relations." Many fear that the supremacy of individual interests under human rights may make the collective greater good of the society to take backseat.<sup>17</sup> (L. Savage 2008) In other

words, these two may not reconcile.<sup>18</sup> (L. Savage 2008) Another scholar opines that individual human rights of a person may replace brotherhood and class solidarity, and may hamper the ability of labourers or workers in an organisation to collectively resist authorities and unfair policies.<sup>19</sup> (J. Youngdahl 2009)

However, as the author opined in the previous section, individual human rights do not threaten the greater good or the common good,<sup>20</sup> (K. Ewing 2004) as the end goals of both these things is eventually the same. Any society after all, is made up of people itself. It is the people who make the system. It is even possible, or in fact, necessary that human rights of all be enforced in a collective manner.<sup>21</sup> (G. Caffentzis 2016) In other words, workers' unions may play a significant role in evaluating and making employees' basic rights and dignity at workplace a reality. This, when one thinks about it, is of paramount importance to the contribution of a better, just, more economically advanced world, along with the betterment of individual worker's overall well being.<sup>22</sup> ( A. L. Kalleberg,, S. P. Vallas 2017) Individual well-being will eventually lead to societal wellbeing and progress. These two things, the author thinks, are closely and intrinsically related. They are not mutually exclusive. This is also in line with the principles of international organisations like the United Nations (UN)<sup>23</sup> and the International Labour Organisation (ILO).<sup>24</sup> (L. Blustein, Annamaria Di Fabio, Maureen E. Kenny, and Jean Guichard 2018) These organisations believe that the guarantee of basic human rights and dignity at work will eventually lead to an overall better society. The ILO in fact, thinks that human rights and basic dignity at work is a vehicle for greater good and social justice.<sup>25</sup>

Having said that, the basic right to mental health care and dignity at the workplace is necessary "to help build a better world where peace, freedom, responsibility, justice, humanity, and morality prevail"<sup>26</sup> and this per se, should be inalienable and non debatable. In this light, there certainly needs to be more research and studies in the future and a careful examination of the normative as well as legal principles, along with a better and more dedicated understanding of the interconnection between human rights and mental health in respect of labour laws.<sup>27</sup> Such a dedicated study or doctrinal research should subsequently form the basis of labour laws and policies across the globe.<sup>28</sup>

All in all, the guarantee by state of basic human rights of mental health care and dignity at workplace is necessary for the overall progress of our economy as well as the society in general.

Although many more disabilities are now recognized, the reservation percentage is inadequate for mental health disorders. These allowances need an urgent extension. It will help represent the number of people who have a mental illness.

A decentralized process of assessment and certification of disabilities needs to be adopted (as in the 2009 amendment rules) so that the process is less hectic for the PwDs. The guarantee by the State of basic human rights of mental health care and dignity at the workplace is necessary for the overall progress of our economy and society in general. It serves everyone involved.

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