

MUSING ON MENTAL HEALTH – BAR AND THE BENCH

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RABINDRANATH TAGORE’S eternal poem “Where the mind is without fear” grants us a window of imagination into a world that is free of fetters. This glimpse is evocative because each one of us yearns to exercise the fullest of our capabilities and live out our inchoate potential. Just as every imagined universe is also a guide, Tagore’s poem enjoins us to build an environment where individual aspirations can be fulfilled.

In our context however, the elimination of ‘fear’ can just as easily mean the fear of speaking out about mental health. The stigma that accompanies conversations of mental health is all-pervasive. It follows us at our homes and our workplaces and when we converse with our peers and seniors. The fear of being marked out as ‘different’ creates a chilling effect for everyone who wishes to speak out but cannot do so. One cannot prosper when one cannot speak about what truly ails them. One cannot build an environment where one’s abilities and talent are able to flourish if considerations of mental health remain suppressed under the surface.

In order to work towards Tagore’s dream, a collective conversation about the well-being of those around us is necessary. It is important to pierce the veil of uncomfortable silence that trails us in our offices and courtrooms. For only when our fear of thinking is eliminated, can we build our ‘heaven of freedom’.

The legal fraternity stands as a beacon of hope, a knight in shining armour, a flag bearer of justice to give an ear to the cry of the litigants. An outsider is often as oblivious about the human behind the lawyer, as he is about the working of the judicial system. The successful lawyer is the face he sees not knowing the midnight oil burnt that wrinkled those brows, the long battle to the top, the skills honed over decades. The struggle of the young lawyer often remains unknown and unattended.

The last two years have been a period of rising challenges for the legal fraternity but to many, both inside and outside the legal profession, the term ‘mental health of legal

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professionals' may sound like a contradiction. On the ground however, the term attains enormous significance. Limitless working hours, tight deadlines, client's expectations in the midst of cut throat competition and the adversarial nature of the practice of law undoubtedly leads to high stress situation that legal professionals encounter on a daily basis. The unspoken pre-requisite for being on the top of your game only adds to the lawyer's turmoil. In the cauldron of professional life, lawyers often find themselves unable to express or share their mental condition, lest they jeopardize their reputation and perception of mental 'fitness' to be a lawyer.

The endless race to the pinnacle of the legal profession has only stigmatized any discussion surrounding mental health. Thus, conversations on well being are hushed away behind piles of files/documents squeezed out of tiny office chambers and washed down hurried morning showers. Courtrooms come with their barrage of inextricable stress characterized by interpersonal tension, high stakes decisions, and sometimes, retellings of very serious and traumatic crimes. Needless to say, mental health and the judicial system are intrinsically interlinked.

The Indian legal fraternity is certainly not an exception to the problem at hand. Studies of far-away nations reveal disturbing facts on mental health of lawyers. Researchers at Johns Hopkins University discovered that lawyers had three times the rate of clinical depression compared to professionals in 25 other occupations. Approximately 15 % of lawyers have been found to encounter some form of depression during their careers.¹ A survey conducted by the Canadian Bar Association, reveals that about 58% of lawyers, attorneys, law students, judges experienced stress burnouts, whereas about 48% of the legal professionals were subjected to anxiety disorders and 25% of the lawyers were suffering from depression.² As is unfortunately often the case, significant professional stress is accompanied by unhealthy coping mechanisms. According to American Bar Association's 2020 profile of the profession, lawyers have been and still are more susceptible to addictions as compared to the general population.³ While developed western societies have led the discussion and acknowledgement around mental issues and well-being of lawyers, developing nations of the Asia-Africa-Pacific are yet to get there.

They say, "be willing to change because life won't stay the same." But no one knew it was going to be so drastic. Already sailing in troubled waters, the COVID-19 pandemic seems to have only added to the stress of legal fraternity. With courts and offices

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- 1 Andrew Imparato, "Mental Illness in the Legal Workplace" *Diversity and the Bar* (May/June 2005).
 - 2 Available at: https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Wellness%20PDFs/FINAL-Report-on-Survey-of-Lawyers-on-Wellness-Issues.pdf (last visited on Dec. 28, 2021).
 - 3 Available at: <https://www.abajournal.com/news/article/one-in-five-judges-surveyed-report-at-least-one-symptom-of-depressive-disorder> (last visited on Dec. 24, 2021).

shutting down in early 2020 due to the fear of spread of infection-lakhs of lawyers, clerks, law students, and support staff were left fending for themselves. The functioning of our court system, as well as legal offices had to be drastically altered. For practicing lawyers, coffee table conversations were replaced with quick-fire messages on virtual platforms, and in-person meetings transitioned to video calls. Interactive seminars and lectures shifted to faceless displays, and face-to-face interactions were even harder to come by than normal. For many professionals, remote working has blurred all physical and emotional borders between work and family lives, making it far more difficult to achieve a healthy work-life balance, especially for the young professionals and fresh law graduates who seem to be struggling the most in these uncertain times. Many reports show that lawyers who were satisfied in their work from home roles have also experienced early burnouts and severe mental hardships.

The duration of practitioners in the narrow confines of their homes for almost two years has compelled a process of introspection towards need to monitor mental well-being in addition to just physical health. It is said that in suffering is the opportunity to evolve and to grow. The promise of Article 21 of our great Constitution comes to mind – it is the promise of life, of liberty, of livelihood, of “Ubuntu”, which has sustained the society through the periods of lockdowns and confinements. One hopes that a more humane society built around ideas of equity and community would emerge. However, the fact is that the disparities have increased. Ironically, the society coming together to carry out its respective responsibilities in the battle against COVID-19 has emphasised the point that humans cannot live in isolation – community and mental well-being lie at the core of humanity. In fact, the human race must subsist with the different forms of life on the earth and the sea and one must, with deep sense of regret, accept the “*inteba*” of the human race against other forms of life. The human race seems to be living with an unreal assurance as if it possesses more than one earth’s resources to live by. The strength of the mind is important to both acknowledge and remedy the ground reality.

India as a founding member of the United Nations, has ratified various international conventions promising to secure mental health care right of individuals. The eventual enactment of Mental Healthcare Act, 2017 setting maximum standards for institutional care, has been a step in the right direction at the right time, conferring citizens with the right to healthcare, lives in the community, legal aid, contracting rights, information and protection from cruel treatment. Various initiatives like the District Mental Health Program providing basic mental healthcare services at community level and guidelines and policies under the aegis of National Taskforce for the finalisation, implementation, and monitoring of the psychosocial action plan for COVID-19, have been satisfying initiatives.⁴ The National Human Rights Commission and the Indian Psychiatry Society

4 Resources, Behavioural Health, *available at*: <https://www.mohfw.gov.in/> (last visited on Dec. 24, 2021).

have also taken initiatives towards active research and recommending action plans to promote mental health and well-being to the government. NGOs across the nation have launched community programs to increase mental health awareness by launching mental health boot camps in urban and rural areas and providing research and training facilities at educational institutions. The Department of Empowerment of Persons with Disabilities has launched a 24x7 toll-free helpline aimed at anonymously providing mental health rehabilitation to people undergoing stress due to the pandemic.⁵

It is also heartening to see the fillip given to mental health in the Union budget of 2022. The Central Government's decision to set up 23 tele-mental health centres across the country comes at an opportune moment, as many in our country are often unable to find the language or courage to articulate their mental turmoil. The government has now put the issue front and centre in the public forum, and the same should hopefully encourage more and more people to seek the help that they may require.

The problem surrounding the mental health issue in the legal fraternity is also required to be dealt with on a war footing. A recent example of timely and appropriate judicial activism is by the Madras High Court which was dealing with a petition to create a psychiatric wing for mental health treatment in prisons. The court took note of the lack of mental health treatment infrastructure across India. The high court while expanding the scope of the writ petition *suo moto* impleaded different government ministries and asked them to immediately address issues surrounding lack of mental health infrastructure in India. The high court's activism in raising crucial questions around the state of the mental health epidemic in India especially in the present times, deserves appreciation. The High Court of Delhi,⁶ has also come to the cause and rescue of mentally unwell patients. Sensitizing on the issue of mental illnesses, the high court observed that “...*mental illnesses can also be debilitating and destructive. The recent pandemic also highlights this beyond any doubt. Circumstances leading to patients requiring isolation, healthy persons being subjected to lock-downs, work from home conditions, loss of employment leading to lack of confidence for long durations have led to several mental problems. Such mental conditions need to be dealt with immediately.*”

More and more state and local bar associations have recognized the reality of lawyers experiencing mental health issues. A number of lawyer assistance programs on handling issues of burnout, depression, addiction and other psychiatric tendencies have taken shape. The Supreme Court of India has taken some encouraging steps in coming to the aid of mentally unwell individuals and professionals. In an initiative envisioned towards ensuring overall wellness and creating awareness amongst stakeholders, the

5 Soniya Agrawal, “Government launches KIRAN, a 24×7 helpline for people to seek mental health counselling”, *The Print*, Sep. 7, 2020.

6 *Shikha Nischal v. National Insurance Company Ltd.*, WP (C) 3190 of 2021, decision dated Apr. 19, 2021.

Supreme Court successfully conducted an interactive workshop called “*Mind Matters*”⁷. In an on-going matter, the Supreme Court recently urged the Central Government to take the condition of patients in mental health care institutions “more seriously” amid the COVID-19 pandemic, and to test, trace, and vaccinate those suffering from mental illness on priority.⁸

It is also important to stay abreast of international best practices in dealing with mental health in legal workplaces. One such encouraging technique is that of ‘trauma-informed lawyering’, where lawyers are trained to engage with clients in a manner that minimizes the traumas of both the client and the lawyers themselves. This is especially useful in cases of family disputes, such as divorce or custody issues. A scientific and rational approach such as this improves advocacy and aids lawyers in maintaining a healthy mental balance.

As Kakuzo Okakura said, “the art of life lies in a constant readjustment to our surroundings”. In today’s times, mental health is as important as maximizing the use of technology, reconfiguring courtrooms to provide social distancing, identifying strategies to hold virtual hearing, and determining how to return to “business as usual”. Timely intervention, awareness about the issue, availability of professional help and appropriate policies is the only way to improve the situation. It is thus imperative to shatter stigmas, initiate serious and concerted conversations and a collaborative public-private-social partnership approach to redress issues of mental health and well-being. It is more important than ever that the legal system makes significant improvements in its approach by creating an emotionally and mentally healthy workplace. Undeniably, there is now a greater sense of understanding within the legal industry that could help propel progress toward improved mental health beyond the duration of the pandemic. The current crisis should be an eye opener for the legal profession to carefully think through what lessons to extract, including how to adapt to a changed reality.

To end, we must reminisce the words of Late Martin Luther King, Jr. (whose debilitating depression and eventual rise gives us new appreciation) “Only in the darkness can you see the stars.”

7 Bar and Bench, Supreme Court to hold a workshop on Tuesday, Sept. 15, to create awareness on mental health issues caused by COVID-19 pandemic, Sep. 14, 2020, *available at* <https://www.barandbench.com/news/mental-health-workshop-distress-covid-19-supreme-court-cji-sa-bobde> (last visited on Dec. 24, 2021).

8 Contempt Petition (C) No. 1653/2018 in W.P.(C) No. 412/2016.