


Chapter 26


Ethical and Legal Nuances in Child and Adolescent Mental Health

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ABSTRACT

Child and adolescent psychiatry are mainly concerned with the diagnosis and treatment of mental disorders in child and adolescent populations. The children are vulnerable and their ability to understand matters related to their well-being is restricted. Common ethical issues in children and adolescents include assent, consent, autonomy, confidentiality, justice, and equity. The chapter discusses ethical issues as well as the difficulties faced in following ethics. The chapter outlines the summary of the existing laws pertaining to children and adolescents in India including the basic rights and criminal responsibility. The laws related to child and adolescent mental health are discussed in detail. The provisions related to treatment of minors under Mental Health Care Act, 2017 is discussed along with the critical appraisal. Critical appraisal of other relevant laws/Acts allied to children and adolescent mental health is discussed. The need for formal training of all mental health professionals regarding the laws and acts of the land is also highlighted.

INTRODUCTION

Approximately forty percent of the total population of India are children and adolescents. Higher rate of psychiatric morbidities among this age group have been reported in the recent studies. (Koelch et al., 2008) The significant burden of mental health problems among the young emphasize the need to set

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minimum standard for the mental health care of minors. There exists a significant gap in fulfilling their mental health care needs in India (Coleman DL., 2007). Mental health professionals deal with a lot of sensitive issues while addressing psychological demands of this population. Considering the delicacy involved in mental health care of minors, there is need to have adequate knowledge and competencies related to following ethical principles and mental health legislations.

It is well known that practices of medicine as well as psychiatry are bound to follow the laws laid by the land. While child and adolescent psychiatry is mainly concerned with the diagnosis and treatment of mental disorders in child and adolescent population, psychiatrists often find them in situations where they have to address legal issues about individual cases. The legislative system primarily works for the welfare of the society, rather than any individual. Hence the concepts like the determination of competence, criminal responsibility, diminished responsibility and dangerousness of the individual take precedence over individual requirements like confidentiality, autonomy etc (Chaddha RK., 2013).

The ethical issues during treatment of mental health problems in children and adolescents arise due to difference in the developmental perspective of children across ages 0-18 years. Common ethical issues among children and adolescents are related to assent, consent, autonomy, confidentiality, justice and equity. Concerns like setting up of therapeutic boundary and therapeutic space, counter-transference, lack of proper communication and involvement of multiple agency, also arise while involving children in management and psychotherapy.

The laws pertaining to people with mental illness were mostly adapted from the British Constitution. As time has passed, these laws have changed, and the recent ones are now taking into account the rights and care of the persons with mental illness. Children and adolescents are usually considered less sophisticated psychologically. Anyone less than eighteen years of age are considered as minors in India. This population is vulnerable, and their ability to understand the matters related to their well-being is diminished. This poses many challenges on the legal systems of the country.

Thus, it becomes important to understand the ethical and legal issues related to child and adolescent mental health and further discuss the challenges posed, along with the future directions.

ETHICAL CONCERNS IN CHILDREN AND ADOLESCENTS

Until 18 years of age, children are usually considered undergoing the process of developmental maturation. The factors like children-guardian conflicts, decision making, need for information dissemination arise due to continuous developmental maturation going on among children (Langarizadeh et al. 2017). This frequently leads to ethical dilemmas concerning physical as well as mental health of children and adolescents.

Multiple Agency

Multiple Agency is a very common issue faced by mental health professionals while treating children. Often, the psychiatrists feel bound to be responsive to individual child's interested parties which usually pursue conflicting agendas. In these situations, the mental health professionals must act in the best benefit of their patients (minor) and not to be swayed by the goals of other parties (parents, guardians, insurance company, etc.) and their own personal biases.

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