OBITUARY

Keshav Desiraju: Mental health matters

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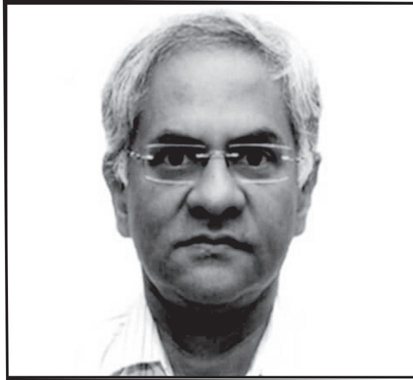

Keshav Desiraju (1955-2021) former Union Health Secretary, who passed away on September 5, 2021, was an uncommon bureaucrat and extraordinary human being. Many obituaries and eulogies have been written about his contribution to public health in India and his personal qualities in helping those in need. Here I will focus specifically on his contribution to the mental health sector in India, to which he contributed significantly in his last few years as a health bureaucrat, and even after his retirement.

There have been two major policy initiatives in mental health in the last decade in India – the National Mental Health Policy which was released by the Government in 2014 and the Mental Healthcare Act passed by Parliament in 2017. Neither of these would have been achieved, if Mr Desiraju was not at the helm in the Union Ministry of Health and Family Welfare.

The National Mental Health Policy breaks new ground for two reasons – the process followed in drafting the policy and the actual content of the policy. For the first time, that I am aware of, the drafting of a health policy was left to a group (Policy Group appointed by Ministry of Health & Family Welfare) of mental health stakeholders including those with lived experience, family care-givers, NGO leaders providing mental health services in the country, health and mental health activists and mental health professionals, with Mr Desiraju as chairperson, guiding the group to arrive at a consensus policy document. The Policy development process was also marked by a series of community consultations across the country, with changes incorporated into the policy where appropriate.

The Policy takes an inclusive, participatory, rights and evidence-based approach. As the Preamble (which Mr Desiraju drafted) acknowledges "the policy does not reduce mental health interventions to merely disease and disability prevention" and recognises the "significance and importance of relevant and useful local knowledge and practices."(1) The strategic areas of action in the Policy include effective governance and accountability, promotion of mental health, prevention of mental disorders and suicide, universal access to mental health services, enhancing the availability of human resources, community participation, and research, monitoring and evaluation. The Policy outlines in simple terms, specific programmatic actions required in each of these strategic areas.

As is often the case, while India's Policy is hailed internationally as good practice and a model for other low-resource countries to follow, India itself has not seen the Policy put into practice. It is now seven years since the Government adopted the Policy, but there is little progress in implementing the policy actions outlined in the document.

The Mental Healthcare Act 2017 will probably be Mr Desiraju's most enduring and well-remembered legacy to mental health in India. While a lot has been written about its rights-based provisions and putting the person with mental health needs at the centre of the Act, what is much less known is the influence of the Act on jurisprudence in diverse areas such as the decriminalisation of homosexuality (Sec 377), and passive euthanasia (2).

In the *Navtej Singh Johar vs Union of India* case (3), the Supreme Court of India quotes the Mental Healthcare Act extensively in making the argument for reading down Section 377. In particular, the Court highlights Sections 18 and 21 of the Act pertaining to universal access and non-discrimination in providing mental health services.

To quote from the judgment:

> *It is pertinent to mention that in India the Mental Healthcare Act, 2017 came into force on July 7, 2018. Sections 18(1) and (2) read with 21(1)(a) of the Mental Healthcare Act, 2017 provide for the right to access mental healthcare and equal treatment of people with physical and mental illnesses without discrimination, inter alia, on the basis of sexual orientation.*
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> *This gives rise to a paradoxical situation since Section 377 criminalises LGBT persons, which inhibits them from accessing health-care facilities, while the Mental Healthcare Act, 2017, provides a right to access mental healthcare without discrimination, even on the ground of sexual orientation*.(3)

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In para 66 of the judgment, under the section titled "Mental Healthcare Act 2017" the Court remarks "Parliament is also alive to privacy interests and the fact that persons of the same-sex who cohabit with each other are entitled to equal treatment."(3)

In para 67 of the judgment, the Supreme Court says "A recent enactment, namely the Mental Healthcare Act, 2017, throws a great deal of light on recent parliamentary legislative understanding and acceptance of constitutional values as reflected by this Court's judgments." (3)

Shorn of the legal language, the Court is saying that Parliament, by enacting the Mental Healthcare Act prohibiting discrimination on the grounds of sexual orientation, had already accepted the need to remove discrimination on grounds of sexual orientation.

Section 21(1) (a) of the Act says "(a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability".(2)

This section read together with the above Supreme Court judgment therefore extends constitutional protection against non-discrimination to other groups, such as those with disability, not specifically mentioned in Article 15 (non-discrimination) in the Constitution of India (4).

In the *Common Cause vs Union of India* judgment, the Supreme Court (5) once again quoted extensively the provisions for Advance Directives in Section 5 of the Mental Healthcare Act and decriminalisation of suicide in Section 115 of the Mental Healthcare Act (2) as representing the will of Parliament and proceeded to frame guidelines for Advance Directives for passive euthanasia using the Mental Healthcare Act provisions as the template.

There are other recent cases where the Supreme Court and High Courts have drawn upon the Mental Healthcare Act provisions to pass judgments for example, in *Accused X vs. the State of Maharashtra*[i] (2019)(6) regarding privacy for accused persons with mental illness; *Gaurav Kumar Bansal vs. Mr Dinesh Kumar* (2019)(7) regarding rehabilitation of persons with mental illness; and the Delhi High Court judgment in *Shikha Nischal vs. National Insurance Company Limited & Anr* (2021)(8) regarding parity in provision of health insurance for treatment of mental illness.

As the above discussion highlights, the Courts have used the Mental Healthcare Act not only to protect the rights of persons with mental illness, but made creative use of its provisions to extend the principles in the Mental Healthcare Act to benefit other vulnerable and disadvantaged groups.

Unfortunately, we cannot rely on the Courts to hasten implementation of the National Mental Health Policy as courts in India will generally not interfere with policy which is seen as the domain of the Executive. The National Mental Health Policy therefore is completely dependent on a politician or bureaucrat like Mr Desiraju making it their mission to ensure its implementation.

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