



The mental health care act 2017: A landmark legislation for mentally ill persons in India

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Abstract

The Mental Health Care Act 2017 aims to protect the rights of persons with mental illnesses and to promote and provide mental healthcare services to those in need. This legislation has complied with the resolutions adopted in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) 2006. This Convention adopted a broad categorization of persons with disabilities and ensured that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. In this context this Act is extremely important for our country which has more than seventy million people suffering from mental disorders. This Act states that mental illness must be determined in accordance with nationally and internationally accepted medical standards including the latest edition of the International Classification of Disease of the World Health Organisation. Moreover, this Act asserts that no person or authority shall classify an individual as a person with mental illness unless in directly in relation with treatment of the illness. Additionally, insurers are now bound to make provisions for medical insurance for the treatment of mental illness on the same basis as is available for the treatment of physical ailments. The basic theme of this paper is to highlight the outstanding features of the Mental Healthcare Act which is obviously a landmark legislation for poor developing country like India.

Keywords: mental health, mental healthcare, the mental health Act 1987, the mental healthcare Act 2017

Introduction

Mental Health Care: Historical Perspective

Mental illness is a ground for exclusion of criminal liability under the provisions of Indian Penal Code ^[1]. According to the provisions of Sec. 84 of the Indian Penal Code, "Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law." Thus the criminal responsibility of mentally ill persons are considered by our Criminal Laws in India. Moreover if defence is proved or established on the ground of insanity, such persons are committed to the Psychiatric Hospitals as per the provisions of Sec. 47 of the Code of Criminal Procedure 1973.

In fact the occurrence of mental illness has been identified and documented since ancient times. The earliest predecessor of mental hospitals on record was a Greek Sanctuary Epidauros. The fourth century AD witnessed the establishment of institutions solely for the mentally ill in Byzantium Jerusalem. Thereafter Christian and Muslim religious orders established places of refuge for the mentally ill and patients were treated and the first psychiatric hospitals were built in the medieval Islamic World in the early 8th century. The hospital was built in Baghdad (705 AD). But the first major modern hospital was opened in London in 1247. The conditions of the mentally ill patients were poor ^[2]. In the late eighteenth and early nineteenth century, Pinel revolutionized care of the mentally ill by propagating a humane approach to care and around the same time the York retreat was established by William Tuke to provide a kind and tolerant approach towards the mentally ill. Dorothea Dix proposed setting up of state run hospitals for treatment of the mentally ill persons based on Pinel's moral approach. Afterwards Mid 1950s saw emergence of two major forces which influenced the evolution of modern

psychiatry as specific drugs like chlorpromazine were discovered for treatment of mental

Illness and the second is the antipsychiatry movement led by Goffman Szasz and others for deinstitutionalization of mentally ill persons ^[3].

Protection of Mentally ill persons in India

The first serious effort was taken in the year of 1987. In India, the Mental Health Act was passed on 22 May 1987. The law was described in its opening paragraph as "An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto."

The Act superseded the previously existing national law governing the mental health issues, the Indian Lunacy Act of 1912.

The Mental Health Act was a serious upgrade on the Indian Lunacy Act of 1912. The Indian Lunacy Act 1912 laid out the rules and procedures for admission to and discharge from these institutions. However, the abysmal conditions in many of these hospitals became evident during a National Human Rights Commission evaluation. Public interest litigation, directives from the Supreme Court and monitoring have led to slow, nevertheless positive changes in many of these hospitals suggesting that legal directives, stringent monitoring and resource enhancement can have a positive impact. However, mental healthcare encompasses several issues beyond institutional care, and mental health laws need to reflect national mental health policies, India launched a National Mental Health Programme (NMHP) in 1982 with the objectives of integrating mental health into primary healthcare and making mental healthcare available, accessible and affordable. Community care was emphasised under this programme. However, little actually changed in

terms of improved care for the mentally ill. Only recently, under the 11th five year plan, the NMHP has been strengthened and re-strategised. The last half century has also witnessed a growth of general hospital psychiatry as well as a growing private and non-governmental sector providing mental health services ^[4].

The Indian Lunacy Act was repealed with the enactment of the Mental Health Act 1987 which replaced many of the archaic terminologies of the ILA, mandated the setting up of central and state mental health authorities established licensing procedures for psychiatric hospitals and for psychiatric nursing homes regulated admission and discharge procedures of voluntary patients, created a category of “admission under special circumstances” which divested powers from the judiciary, and attempted to make admissions easier eased discharge procedures made provisions for the management of property possessed by a mentally ill person and established liability to meet the cost of maintenance of a mentally ill person during admission. The MHA also has a chapter for protection of the human rights of mentally ill persons, which seeks to safeguard against any indignity or cruelty during treatment, prevent involvement in research without consent, and safeguard the person’s safeguard against any indignity or cruelty during treatment, prevent involvement in research without consent, and safeguard the person’s right to communication and lays down penalties and procedures in case of contravention of its sections. A miscellaneous section empowers the government to make rules, protects action taken in good faith and briefly mentions the effect of the Act on other laws ^[5].

But there are so many lacunas in the Mental Health Act 1987 which were required to be changed or rectified by a new legislation. The focus needs to shift beyond the medical care like hospitalization, drugs and physical treatments to other areas like accommodation, rehabilitation education and employment. The law needs to regulate care in government and non-governmental sectors to ensure minimal standards of care and to prevent human rights abuse and finally the Mental Health Care Act 2017 came.

Rights of Persons with Mental Illness: Sec. 18 to Sec. 28 of the Mental Health Care Act, 2017

18. 1. Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

2. The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without distinction on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provide in a manner that is acceptable to persons with mental illness and their families and care-givers.

3. The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

Without prejudice to the generality of range of services under sub-section (3), and services shall include—

- a. provision of acute mental healthcare services such as outpatient and services;

- b. provision of half-way homes, sheltered accommodation, supported as may be prescribed;
- c. provision for mental health services to support family of person with mental illness or home based rehabilitation;
- d. hospital and community based rehabilitation establishments and services as may be prescribed;
- e. provision for child mental health services and old age mental health services.

5. The appropriate Government shall, —

- a. integrate mental health services into general healthcare services at all levels of healthcare including primary, secondary and tertiary healthcare and in all health programmes run by the appropriate Government;
- b. provide treatment in a manner, which supports persons with mental illness to live in the community and with their families;
- c. ensure that the long term care in a mental health establishment for treatment of mental illness shall be used only in exceptional circumstances, for as short a duration as possible, and only as a last resort when appropriate community based treatment has been tried and shown to have failed;
- d. ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides;
- e. ensure that as a minimum, mental health services run or funded by Government shall be available in each district;
- f. ensure, if minimum mental health services specified under sub-clause (e) of sub-section (4) are not available in the district where a person with mental illness resides, that the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such establishments in that district will be borne by the appropriate Government.

6. The appropriate Government shall make available a range of appropriate mental health services specified under sub-section (4) of section 18 at all general hospitals run or funded by such Government and basic and emergency mental healthcare services shall be available at all community health centres and upwards in the public health system run or funded by such Government.

7. Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other mental health establishments designated by it.

8. The appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no discrimination be made in quality of services provided to persons with mental illness.

9. The minimum quality standards of mental health services shall be as specified by regulations made by the State Authority.

10. Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all

medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system ^[6].

19. 1. Every person with mental illness shall, —
 a. have a right to live in, be part of and not be segregated from society; and
 b. not continue to remain in a mental health establishment merely because he does not have a family or is not accepted by his family or is homeless or due to absence of community based facilities.

2. Where it is not possible for a mentally ill person to live with his family or relatives, or where a mentally ill person has been abandoned by his family or relatives, the appropriate Government shall provide support as appropriate including legal aid and to facilitate exercising his right to family home and living in the family home.

3. The appropriate Government shall, within a reasonable period, provide for or Support the establishment of less restrictive community based establishments including half-way homes, group homes and the like for persons who no longer require treatment in more restrictive mental health establishments such as long stay mental hospitals ^[7].

20. 1. Every person with mental illness shall have a right to live with dignity.

2. Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely: —

- a. to live in safe and hygienic environment;
- b. to have adequate sanitary conditions;
- c. to have reasonable facilities for leisure, recreation, education and religious practices;
- d. to privacy;
- e. for proper clothing so as to protect such person from exposure of his body to maintain his dignity;
- f. to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;
- g. to have adequate provision for preparing for living in the community;
- h. to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;
- i. to not be subject to compulsory tonsuring (shaving of head hair);
- j. to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and
- k. to be protected from all forms of physical, verbal, emotional and sexual abuse ^[8].

21. 1. Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all Healthcare which shall include the following, namely:-

- a. there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability;

- b. emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;
- c. persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;
- d. living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and
- e. any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

2. A child under the age of three years of a woman receiving care, treatment or rehabilitation at a mental health establishment shall ordinarily not be separated from her during her stay in such establishment:

Provided that where the treating Psychiatrist, based on his examination of the woman, and if appropriate, on information provided by others, is of the opinion that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the woman during her stay at the mental health establishment:

Provided further that the woman shall continue to have access to the child under such supervision of the staff of the establishment or her family, as may be appropriate, during the period of separation.

3. The decision to separate the woman from her child shall be reviewed every fifteen days during the woman's stay in the mental health establishment and separation shall be terminated as soon as conditions which required the separation no longer exist.

Provided that any separation permitted as per the assessment of a mental health professional, if it exceeds thirty days at a stretch, shall be required to be approved by the respective Authority.

4. Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness ^[9].

22. 1. A person with mental illness and his nominated representative shall have the rights to the following information, namely: —

- a. the provision of this Act or any other law for the time being in force under which he has been admitted, if he is being admitted, and the criteria for admission under that provision;
- b. of his right to make an application to the concerned Board for a review of the admission;
- c. the nature of the person's mental illness and the proposed treatment plan which includes information about treatment proposed and the known side effects of the proposed treatment;
- d. receive the information in a language and form that such receiving the information can understand.

2. In case complete information cannot be given to the person with mental illness at the time of the admission or the start of treatment, it shall be the duty of the medical officer or psychiatrist in-charge of the person's care to ensure that full information is provided promptly when the individual is in a position to receive it ^[10].

23. 1. A person with mental illness shall have the right to confidentiality in respect of his mental health, mental healthcare, treatment and physical healthcare.

2. All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely: -

- a. release of information to the nominated representative to enable him to fulfil his duties under this Act;
- b. release of information to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental illness;
- c. release of information if it is necessary to protect any other person from harm or violence;
- d. only such information that is necessary to protect against the harm identified shall be released;
- e. release only such information as is necessary to prevent threat to life;
- f. release of information upon an order by concerned Board or the Central Authority or High Court or Supreme Court or any other statutory authority competent to do so; and
- g. release of information in the interests of public safety and security^[11].

24. 1. No photograph or any other information relating to a person with mental illness undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness.

2. The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.

25. 1. All persons with mental illness shall have the right to access their basic medical records as may be prescribed.

2. The mental health professional in charge of such records may withhold specific information in the medical records if disclosure would result in—

- a. serious mental harm to the person with mental illness; or
- b. likelihood of harm to other persons.

3. When any information in the medical records is withheld from the person, the mental health professional shall inform the person with mental illness of his right to apply to the concerned Board for an order to release such information^[12].

26. 1. A person with mental illness admitted to a mental health establishment shall have the right to refuse or receive visitors and to refuse or receive and make telephone or mobile phone calls at reasonable times subject to the norms of such mental health establishment.

2. A person with mental illness admitted in a mental health establishment may send and receive mail through electronic mode including through e-mail.

3. When a person with mental illness informs the medical officer or mental health professional in charge of the mental health establishment that he does not want to receive mail or email from any named person in the community, the medical officer or mental health professional in charge may restrict such communication by the named person with the person with mental illness.

4. Nothing contained in sub-sections (1) to (3) shall apply to visits from, telephone calls to and from mail or e-mail to,

and from individuals, specified under clauses (a) to (f) under any circumstances, namely:-

- a. any Judge or officer authorised by a competent court;
- b. members of the concerned Board or the Central Authority or the State Authority;
- c. any member of the Parliament or a Member of State Legislature;
- d. nominated representative, lawyer or legal representative of the person;
- e. medical practitioner in charge of the person's treatment;
- f. any other person authorized by the appropriate Government^[13].

27. 1. A person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under this Act.

2. It shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.

28. 1. Any person with mental illness or his nominated representative, shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to, —

- a. the medical officer or mental health professional in charge of the establishment and if not satisfied with the response;
- b. the concerned Board and if not satisfied with the response; (r) the State Authority.

2. The provisions for making complaint in sub-section (1), is without prejudice to the rights of the person to seek any judicial remedy for violation of his rights in a mental health establishment or by any mental health professional either under this Act or any other law for the time being in force^[14].

The Mental Health Care Act 2017: A New Dimension in the Development of Psychiatric Services in India

The Mental Healthcare Act 2017 aims to provide mental healthcare services for persons with mental illness. It ensures that these persons have a right to live life with dignity by not being discriminated against or harassed. There are many positive/constructive aspects to this bill, but it is not without its shortcomings, it is not foolproof in the Indian context. Few of these are elaborated here: This act states the right to live life with dignity and no discrimination on basis of sex, religion, culture, and caste. Every person shall have a right to confidentiality in respect of his/her illness and treatment.

This act empowers accessibility to mental health services for all. This right is meant to ensure that services be accessible, affordable, and of good quality. It also mandates the provision of mental health services be established and available in every district of the country. However, with already inadequate medical infrastructure at district and subdistrict levels, the financial burden to be borne by the state governments will be massive unless the central government allocates a larger portion of the budget to incur the expenditure.

The concept of advance directive, which gives patients more power to decide certain aspects of their own treatment, has been picked up from the West. However, unlike developed countries, local factors such as existing mental health resources and lack of awareness about mental illness in India have not been taken into account. Mentally ill persons who suffer from serious psychological disorder often lack the ability to make sound decisions and do not always have a relative to speak on their behalf. In such a situation, treating physician is the best to take decisions because patients or their nominated representatives have limited knowledge on mental health and mental illness. Hence, from a physician perspective, this new directive will definitely lengthen the tune of admission of mentally ill persons ^[15].

The act also recognizes the right to community living; right to live with dignity; protection from cruel, inhuman, or degrading treatment; treatment equal to persons with physical illness; right to relevant information concerning treatment, other rights and recourses; right to confidentiality; right to access their bask medical records; right to personal contacts and communication; right to right aid; and recourse against deficiencies in provision of care, treatment, and services.

In developing countries like India, persons with mental illness and their situations are being aggravated by socioeconomic and cultural factors, such as lack of access to healthcare, superstition, lack of awareness, stigma, and discrimination. The bill does not direct any provisions to address these factors. The mental healthcare bill does not offer much on prevention and early intervention.

The Indian judiciary has played a major and active role in safeguarding the interests of people suffering from mental disabilities. It has Liken various measures to see that such people ore not prejudiced against and also interpret and set up laws in such a way as to promote their wellbeing and safety ^[16].

But the reality is surprising and shocking as in the case of *Rakesh Cliandra Naraytm vs State of Bihar*, (SCC 1989) the Supreme Court of India says, "We are astonished that even when prisoners are transferred for treatment from jails where they were undergoing sentences of imprisonment, no follow up action has been taken from the jails on their own and even when the hospital authorities had required the prisoners to be taken back no response has been made."

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