

MENTAL HEALTH AND THE MENTAL HEALTHCARE ACT, 2017

Abstract

In India, mental health-related problems bear a heavy cost. One in ten Indians are thought to suffer from a mental health issue, while 0.8% are thought to have a "severe mental disorder." In India, the Mental Health Act of 1987 was superseded by the Mental Healthcare Act of 2017. When providing mental health services, the Mental Healthcare Act of 2017 placed a greater emphasis on guaranteeing the protection of the rights of those who suffer from mental illness. It includes provisions of advance directives, nominative representative, different rights of person with mental illness, independent and supportive admission, discrimination of suicide etc. not these provisions help the person with mental illness in protection of their rights also define mental illness as well as mental health professional who can provide different services to them.

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I. INTRODUCTION

In the World Health Organization's constitution, which went into effect on April 7, 1948, the term "health" is defined as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity." The writers of the Constitution expressly say that a person is only deemed healthy if they are free from illness, demonstrating their obvious preference to view health as a state that depends solely on the absence of disease.¹ These days, there are three ways to define health: first, as the absence of illness or impairment; second, as the ability to manage one's everyday demands; and third, as the state in which one is in balance or equilibrium with his or her social and physical surroundings.²

"A state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community" is how the World Health Organization (WHO) defines mental health. An integral component of human health and wellbeing, mental health supports people's individual and collective capacities to make choices, form bonds with others, and influence their environment. A fundamental human right, mental health is crucial for the socioeconomic, communal, and individual advancement of society. Everybody experiences mental health in a unique way, with varying degrees of challenges and distress as well as distinct social and clinical results. Mental health is a complex continuum. In addition to mental disorders, mental health conditions can encompass psychosocial disabilities and other conditions linked to considerable distress, incapacity to function, or danger of self-harm. It is not always the case that people with mental illness have lower levels of mental well-being, but this is the likelihood.³

According to the 2017 Mental Healthcare Act (MHCA), mental illness is defined as a significant disturbance of perception, thinking, emotion, memory, or orientation that hinders a person's capacity to make decisions, understand reality, and behave in a way that satisfies needs. It does not, however, cover mental retardation, a condition characterized by subnormal IQ or insufficient mental development. It does, however, cover mental conditions associated with drug or substance addiction. The act clearly define the mental illness as disorder which impaired the individual capacity to meets the demands of life because impairment in perception, thinking, mood or memory. This definition also includes impairment or mental condition due drug or substance abuse as condition of mental illness. It clearly separate the mental retardation from mental illness as mental retardation as condition of incomplete development of mind or intelligence.⁴

The World Health Organization estimates that one in eight persons worldwide suffer from a mental illness. About 40 million people worldwide suffered from bipolar disorder in 2019, whereas 24 million people have schizophrenia.⁵ In India, mental health-related problems bear a heavy cost. One in ten Indians are thought to suffer from a mental health issue, while 0.8% are thought to have a "severe mental disorder".⁶

II. THE MENTAL HEALTHCARE ACT (MHCA), 2017⁴

British India (before 1947) had several legislations related to mental health care i.e. The Lunacy Acts. The Indian Lunacy Act, of 1912 paid attention to protecting the general public from those considered to be dangerous to society (due to mental illness). After the freedom of India, the Government of India enacted The Mental Health Act of 1987 was

enacted to safeguard the property and other interests of individuals with mental illness, as well as to reinforce and modify the provisions for their care and treatment.. Nevertheless, there were several gaps in this law that prevented mentally ill people's rights from being adequately protected. When the Mental Health Act of 1987 was passed, it offered services to individuals with mental illnesses; but, as time went on, the importance of safeguarding the rights of those with mental illnesses became apparent. This Act was unable to address the concerns expressed on the rights of individuals with mental illnesses.. This Act was criticized for many reasons including inpatient procedures, neglect of community mental health services, and silence about rehabilitation and treatment of patients after discharge.⁷

The Government of India signed the United Nations Convention on the Rights of Persons with Disabilities [UNCRPD], in 2007.⁸ As per the convention, country requires the changes in the laws related to the rights of persons with disability. In consequence, The Rights of Persons with Disabilities (RPWD) Act, 2016 came into force which promotes and protects the rights and dignity of people with disability. After one year, the Mental Healthcare Act, 2017 was passed to empower the person with mental illness while providing them mental health treatment and services. It emphasizes the protection, promotion, and execute the rights of mentally ill people while providing mental healthcare treatment. At the same time, it was recognized and felt that there was a need for new mental health laws that suits the changing times.⁹

The Mental Healthcare Act, 2017 was first presented as The Mental Health Care Bill, 2013 in the Rajya Sabha on August 19, 2013. It was approved by the conference committee on November 20, 2013, and on March 30, 2013, the Rajya Sabha passed it into law. Following that, on March 27, 2017, the Lok Sabha passed and enacted this Act, which went into effect on July 7, 2018.

The Mental Healthcare Act, 2017⁴ has sixteen different chapters as discussed below:

Chapter I: The initial chapter of the Act is dedicated to providing definitions and terms as outlined in the Act. Mental illness is defined as a significant disorder affecting perception, thinking, mood, memory, or orientation, thereby impairing an individual's capacity to make judgments, recognize reality, and effectively manage life's demands. This definition also encompasses mental conditions associated with drug or substance abuse but explicitly excludes mental retardation, which pertains to an incomplete development of the mind or sub-normal intelligence.

“Care-giver” (MHCA, 2017) means any individual who is residing with a mentally ill person and the individual is responsible for taking care of that mentally ill person, which included any relative or any significant other who do this function either with compensation or free.

The paragraph defines mental health professionals as follows: Psychiatrists, who hold a Post-Graduation (PG) Degree or Diploma in Psychiatry; Psychiatric Social Workers, who possess a PG Degree in Social Work along with an M. Phil. in Psychiatric Social Work; Clinical Psychologists, who have a PG Degree in Psychology coupled with an M. Phil. in Clinical Psychology or Medical and Social Psychology; Mental Health Nurses, who hold a Diploma or Degree in Psychiatric Nursing; and Professionals in the field of Mano Vignyan

Avum Mans Roga (Ayurveda), Moalijat (Unani), and Sirappu Maruthuvam (Sidha), who possess a Post-Graduation Degree (MHCA, 2017).

Chapter II: The second chapter deals with mental illness and capacity assessment. Capacity assessment pertains to an individual's ability to make unbiased decisions regarding their mental health treatment and care. This means that every person, including those with mental illness, is presumed to possess the capacity to make decisions regarding their mental healthcare or treatment. To assess capacity, an individual (including persons with mental illness) should demonstrate an understanding of the information provided to them about decisions related to their admission, treatment, or personal assistance. They should also be capable of appreciating the foreseeable consequences of their decisions and effectively communicating their decision through any means. According to the Mental Healthcare Act, 2017, only mental health professionals are authorized to assess "Capacity." The capacity assessment tool, developed by the Government of India, Ministry of Health and Family Welfare, serves as a guiding instrument for capacity assessment, which mental health professionals can employ for this purpose.

Chapter III: The third chapter is focused on Advance Directives. An 'Advance Directive' is a documented form that outlines the desired manner in which an individual wishes to receive care and treatment for their mental illness in the future. It is the duty of all medical officers in the field of mental health or the overseeing psychiatrist of mental health facilities to ensure that a person is provided with treatment in accordance with a valid advance directive issued by the individual with mental illness.

Chapter IV: this chapter lays down the guidelines for determining a nominated representative. 'Nominated representative' is a person who provides support in need of high support to persons with mental illness in making treatment decisions under Section 89 or 90 of the MHCA, 2017 during the delivery of the treatment, it may be a family member or a relative already nominated by a person with mental illness.

Chapter V: Incorporates a range of rights for individuals with mental illness, encompassing the entitlement to access mental healthcare, the right to equality and freedom from discrimination, the right to community-based living, safeguards against cruel, inhuman, and degrading treatment, the right to maintain personal contacts and communication, access to information regarding their treatment records, the right to confidentiality, limitations on the disclosure of information concerning individuals with mental illness, and the right to legal assistance, among others.

Chapter VI: This chapter addresses the responsibilities of the relevant government authorities, which encompass the promotion of mental health services and preventative initiatives. The government is obligated to raise awareness about mental health, diminish the stigma linked to mental illnesses, and undertake efforts to enhance and offer training for the mental health workforce, among other duties.

Chapter VII: This chapter outlines the regulations for the formation of the Central Mental Health Authority (CMHA). It encompasses all the provisions regarding the formation, composition, and responsibilities of the CMHA.

Chapter VIII: This chapter addresses the provisions for establishing the State Mental Health Authority (SMHA) and encompasses provisions related to its formation, composition, and responsibilities.

Chapter IX: This chapter encompasses financial matters, accounting, and auditing, including the accounts, audits, and annual reports conducted by the Central and State Mental Health Authorities..

Chapter X: This chapter pertains to mental healthcare facilities and encompasses the processes for the registration, inspection, and investigation of mental health establishments.

Chapter XI: This section covers the establishment of Mental Health Review Boards, encompassing aspects such as their registration, composition, auditing, inspection, inquiry into mental health matters, decision-making processes, and the authority vested in these boards.

Chapter XII: This chapter pertains to the admission, treatment, and discharge procedures for individuals with mental illness. Independent admission, referring to individuals below the age of eighteen who perceive themselves to have mental health issues and possess the capacity to make decisions regarding treatment and admission, cannot occur without their written informed consent. They may also request admission as independent cases under Section 86 by approaching the head of the mental health establishment.

Section 87 deals with the admission of minors and Section 88 deals which the discharge of independent patients. Supported Admission it deals with the treatment and admission of mentally ill persons, with high support needs through his nominated representative. 'Nominated representative' is a person who provides help in decisions related to treatment and admission to a person with mental illness under Section 89 or 90 of the MHCA, 2017 during the delivery of treatment.

Chapter XIII: this chapter deals with the responsibilities of other agencies. This chapter gives guidelines in terms of the duties of police officers with respect to persons with mental illness. It also gives guidelines to police in terms of prisoners with mental illness.

Chapter XIV: Restrictions on medication and unapproved duty were included in this chapter.

Chapter XV: It addresses the consequences of creating or operating mental health facilities in violation of this Act's provisions.

Chapter XVI: The Mental Healthcare Act of 2017 concludes with a miscellaneous chapter. It addresses the Central Government's authority to enact legislation and the decriminalization of suicide attempts under Section 115.

III. THE MAJOR IMPLEMENTATION OF THE MENTAL HEALTHCARE ACT, 2017

The major provisions of the MHCA, 2017⁴ included a new definition of mental illness, define Mental Health Professionals, Advance directives that gives rights to person

with mental illness how they wish to choose treatment, various rights for persons with mental illness, nominated Representative who will provide support in the treatment of mentally ill person, suicide has been decriminalized, Mental Health Board to regulate the mental health treatment in the country, elimination of the barbarous treatments, etc. The Act is focused on protection of rights of person with mental illness while delivering the mental health services. Additionally, the Act establishes, for the first time, the provisions for the rehabilitation of individuals with mental illness in the least restrictive setting feasible while upholding their dignity.¹⁰

The guidelines, composition, operation, and other aspects of the Mental Healthcare {Central Mental Health Authority (CMHA) and Mental Health Review Boards (MHRB)}¹¹ Rules, 2018 were passed on May 29, 2018. According to a Times of India report dated December 4, 2018, the CMHA was given the authority to oversee and manage all mental health facilities in the nation.

A guidance paper for mental health practitioners regarding capacity assessment was released on August 16, 2019, by the Ministry of Health and Family Welfare, Government of India (Capacity Assessment)¹³. This aids mental health practitioners in determining a person with mental illness's capacity to make decisions about their treatment and admissions.

The Tele Mental Health Assistance and Networking Across States (Tele-MANAS) initiative was launched by the Indian government's Ministry of Health and Family Welfare in October 2022 as an alternative to providing mental health services for everyone. The program aims to offer free telemental health services 24/7 to people throughout the nation, with a special focus on underserved or remote areas. For those in need of mental health assistance, it offers free telemental health services 24/7 to anywhere in the county. There will be two tiers for this service. Tele-MANAS will be one, while the other will consist of experts from the District Mental Health Programme (DMHP)/Medical College resources for in-person consultations and/or e-Sanjeevani for consultations via audiovisual means.

After the implementation of the MHCA, 2017, the Government of India has developed the necessary rules and regulations, documents which are necessary under this Act. It has come in regular practice all over India to serve persons with mental health needs and care. This Act focuses on the protection of the rights of persons with mental illness and the delivery of mental health services. After the implementation of the MHCA, 2017 made paradigm shift in mental health treatment by focusing on protecting the rights of person with mental illness and giving patient right to choose the treatment how he/she wish to be treated.

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