IURIS IURA OF A PERSON WITH MENTAL ILLNESS

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ABSTRACT

The Article is all about the revolution of the Mental Health, Mental illness and their rights and powers their Disabilities of Rights. The post and pre Independence has bought drastic changes in the law system of Indian in connection with the Mental illness. The Article talks about Indian Legal System and what are the provisions provided to them. How the government has tracked down different ways to handle the problem of PMI.

KEYWORDS

Mental Healthcare, PMI, Disorders, Mental Healthcare Act, Mental illness

People suffering with Mental illness are highly suspected to finding themselves in vulnerable position. For a country like India it is important to make some hard and soft laws concerning Mental Illness situation. About 14% of Indian population is affected with mental disorders; sadly people suffering from mental illness are sometimes victim of abuse and violation of their basic legal rights.

The Mental Health Care Act, 2017 has defined mental illnesses as substantial disorder of perception, behavior, mood, memory that impairs judgment. abuse of alcohol and drugs are also a great contributor to mental health disorder.[[1]](#footnote-2) It is the law which has bridge the gap of social acceptance and rights to people who suffer from mental illnesses. Mental Health Care Act, 2017 is one such step of the legislators to provide remedies to people trapped in this web.

The Indian Legal System in respect to Mental Health Care

Let’s bifurcate the Pre and Post Independent era Legal System to get a better picture of the development made in the Legal System in context with Mental Disorders and the rights of the person suffering from it.

The provisions lay down are from the Pre Independence Era

1. The Lunacy Act (Supreme Court), 1858
2. The Lunacy Act (District Court), 1858
3. The Indian Lunatic Asylum Act, 1858
4. The Military Lunatic Act, 1877

The Indian Lunatic Act marked the beginning of the era where people started taking note of mental disorders and mental health it’s that turning point where national and political views also surrounded the rights of mentally ill people. A draft was submitted by the Psychiatric Society, “Mental Health Bill” in the year 1950 to replace: The Indian Lunatic Asylum Act as it seems to be outdated.

Section 16 of the Representation of People Act 1950, ‘A person who is of unsound mind or is so declared by the competent court, that person is disqualified for registering himself for the electoral poll. Hence, a person with an unsound mind cannot hold parliamentary position.’ Article 21 enshrined as a fundamental right in the constitution of India that guarantees the right to life and personal liberty to every person.

Now let’s understand the scenario Post Independent Era

Mental Health Act, 1987

The act speaks and defines mental illness, establishment of authorities to regulate mental hospital and nursing homes, the roles of police and magistrates while dealing with the case of people with mental illness.

1. Persons with Disability Act, 1995

The Act deals with discrimination faced by disabled people and prevent their exploitation and abuse in any manner whatsoever. The act can into force in January 1996 which laid down definition of illness, employer, committees, etc.

1. Mental Healthcare Act, 2017

The Act is patient- centric, and right- based of the people dealing with Mental illness. This Act under Section 2(s) defines mental illness as “a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, especially characterized by sub normality of intelligence.” The Act further provides rights to mentally ill patients to access facilities that includes rehabilitation services in the hospital, community, and home, sheltered and supported accommodation, community living, confidentiality, the right to access medical records, the right to protect from cruelty and inhumane treatment.

Chapter 15 too under his Act are very stringent but there are weak points too, How does one make an assessment whether a contravention is accidental or on purpose. But now that India has already come this long way after post independence in recognizing mental illness if some reforms are made through amendments of this flagship Act of mental health then there are better scope of this act to perform in a more accurate way.

Rights under Mental Health Care Act, 2017

1. Right to make Advance directive

The Act offers the PMI with two rights, one to make advance direction with respect to the way the person should and should not be treated in case of his mental illnesses and the second he has the right to appoint a nominee who has the duty to act on his behalf in taking treatment decisions and related decisions best for PMI.

2. Right to access HealthCare Service

The PMI holds all the rights that are funded by the government, The Act provides that such mental health care services have to be acceptable to the PMI and their families, among other criteria.

The service provided to the PMI should be of- Good quality, so that financial status is not an impediment for person suffering from mental disorder.

• There should not be any geographical hindrance, what has to take care that PMI does not have to travel far to access treatment.

• Healthcare facilities should be available in every district for the PMI, and the cost of which will be borne by the appropriate government.

• Discrimination should be done on the basis of caste, creed, gender etc.

3. Right to Free of cost Healthcare Service

The person living below poverty line also qualifies to get free healthcare service by the appropriate government, and the list of drugs that should be required in the treatment shall also be provided in the medical facility where the person has the access to medical treatment, that’s the duty of the appropriate government.

4. Right to Live in a Community

Every person suffering from mental illness has all the rights to live with his family in the community no one has the authority to discriminate with him or his family. A mentally ill mother who has a baby of 3 years or less cannot be separated from her baby unless there is harm to his life.

5. Right to protection from inhuman and degrading treatment

Article 21 clearly states how a person should get a dignified life and has all provisions to do so. The same is carry forwarded in the Mental Health Act, Every mentally ill person has the right to live with dignity, and in a clean and hygienic environment too.

6. Rights not to be treated under prohibited treatment

The Act prohibits electroconvulsive therapy for children. Even for adults the therapy is performed under precautions.

7. Right to Information

The act assumes that every person has the right to decide and even the mentally ill person has the right to do so. In that case he should be informed about all the decisions taken for his treatment and the side effects of it and other related decisions too. His denial should also be recorded.

8. Right to Legal Aid and Complaint

Article 39 A of the Indian Constitution lays down the directive of free legal aid. The person is free to complaint as normal citizen of the country with respect to the deficiency in mental health care services or facilities provided to him.

Rights and Disabilities of person with mental illness under other laws

Some added rights have been given to the PMI but there are other rights too which have been taken away from them.

1. Right to Enter into a Contract

Only during the lucid intervals under Indian Contract Act 1872, a person is allowed to make a contract rather then that it is assumed that a person with mental illness is not fit to understand a contract and take a wise decision. He is not capable of deciding the pros and cons of the contract that’s the reason he cannot enter into a contract.

2. Right to Marry

Every community has their own way of marriage and are governed with different Acts too, but all the Acts stand a mentally ill person not a fit for marriage even under the Special Marriage Act 1954. As the PMI is unable to understand the vows of marriages and abide by it, a marriage with a mentally ill person is always considered a voidable marriage.

3. Right to Vote or hold Public offices

Under the Representation of Peoples Act 1950, the person does not hold a right to register himself in the electoral roll. Competent court should declare such mental illness of PMI people are also not allowed to hold offices in parliamentary positions.

4. Right to make Will

The Indian Succession Act 1925, speaks about how a person with mental illness is not fit to make decisions on their own until they are in their lucid intervals.

5. Right to not be held liable in a Criminal offence

There are always two elements that should be present to commit a crime mens rea and actus reus and in case of a mentally ill person the mens rea is missing thus. The Indian Penal Code, 1860 exempts a person with unsound mind for criminal offence.

Conclusion

The Mental Healthcare Act, 2017 has been a revolution to the Indian Mentally ill people and the understanding of Mentally challenged people in our changing society have also been developed a lot. ‘Acceptance is the key’.

1. Section 2(s), Mental HealthCare Act, 2017 [↑](#footnote-ref-2)