

Human rights of people with mental illness: Provisions made in mental healthcare act 2017

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ABSTRACT

Human rights of people with mental illness are very frequently undermined or even violated by individuals, groups and agencies. Human rights are understood as those rights which are applicable to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other parameters. Human rights entail the right to life and liberty, freedom from slavery, discrimination and torture, freedom of speech and expression, the right to work and education, and many more. The Mental Health Care Act, 2017 (MHCA 2017) has replaced the Mental Health Act, 1987 for strengthening the rights and wellbeing of mentally ill people and making mental healthcare services more humane and complying to human rights of those people. This article aims to discuss how the Mental Healthcare Act 2017 is beneficial in protecting the human rights of mentally ill people in India.


Keywords: Mental health, mental healthcare act 2017, human rights, mental illness

INTRODUCTION

The Mental Health Care Act, 2017 has replaced the Mental Health Act, 1987 to ensure an optimal protection of the rights and wellbeing of mentally ill people. Human rights of the mentally ill are very frequently violated by individuals, groups, agencies and even organizations and people affiliated to the Governmental system.^[1] Mental health is the aggregation of biological, psychological, emotional and social factors and mental healthiness is understood as the presence of harmonious relationship among those factors. Mentally healthy people are satisfied with their lives and they have higher subjective wellbeing. Culture, language, ethnicity, and religion have a potential role in both interpreting and defining problems related to mental health. Empirical observation confirmed that having a diagnosis of mental illness or mental health-related issues makes a

person vulnerable to be labelled as socially inadequate and exposed to shame, humiliation, and loss of face.^[2] An individual should have an optimal level of satisfaction with his shelter and housing, work conditions, immediate community and social system and protection from the State. If those things are not made available to people, they could not remain mentally healthy for the long run. The egalitarian and just society, which is governed by democratic values and principles, could promote the positive mental health of their members. Those societies give maximum importance to individual rights and benefits. By doing this, those societies also promote the human rights of each member.^[2,3] Human rights are understood as the rights necessary for one's existence and living a dignified life. Human rights are regarded as 'natural law'. 'Human rights' refer specifically to those

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rights that an individual possesses by virtue of the fact that he or she is a human being. Mental illness opens up several issues which may cause significant dereliction of the basic rights of the affected individuals. Individuals with mental illness require specific protection because they are vulnerable to face challenges, difficulties, discrimination and ill-treatment.^[1-4]

⁴⁾ Violations of human rights of mentally ill people can be prevented successfully by efficient and progressive legislations. Appropriate legislation and the watchful governmental system can make the situation favourable for these people up to a significant extent. Mentally ill people are extremely vulnerable to physical and sexual abuse, discrimination and stigma, denial of opportunities, arbitrary detention in custodial settings, low access to health care, limited vocational and residential resources, denial of self-determination in financial and marital matters and other rights deprivations. Therefore, dedicated mental health legislation can take care of all those issues very efficiently.^[5-7] Mental health legislation can initiate a legal framework for taking care of the important tasks like community integration of mentally ill people, destigmatization, ensuring high-quality care for mentally ill people, and most significantly the protection of basic civil rights and rights associated to important areas like housing, education and employment. Additionally, good mental health legislation can also play a pivotal role in making the overall environment and system support to these people. This way, the focus of mental health legislation is not just limited to ensuring care and treatment of mentally ill people; rather it aims to create a supportive welfare-oriented environment for them.^[3-8]

CLAUSES AND PROVISIONS IN MHCA 2017

Until 2018, mental healthcare in India was governed by the Mental Health Act, 1987. This Act introduced destigmatizing terminology, revised supervision and admission procedures of mental patients. Although a significant advanced at that time, the 1987 Act attracted criticism in the forms of: 'failure to reduce stigma', 'failure to address the issue of homeless mentally ill people', 'inability to reduce socially sanctioned detention customs', 'failure to public mental healthcare delivery accessible to all' and 'protection of human rights of

mentally ill people concerning family, occupation, marriage and social life'. As India was a signatory of the Convention on Rights of Persons with Disabilities (CRPD) on 13th December 2006, therefore more efficient mental health legislation was required and this paved the way to Mental Healthcare Act, 2017.^[9-11]

Salient Features of the MHCA 2017

- A. Incorporation of Broad Definition of Mental Illness: 'A substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, 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' [Section 2(1) (s)].^[12]
- B. Defining Capacity of Mentally Ill People: This Act recognized the decision-making capacity of mentally ill people with regards to the selection of treatment options and availing mental health services. This act states that: 'Every person, including a person with mental illness, shall be deemed to have the capacity to make decisions regarding his mental healthcare or treatment if such person can understand the information which is relevant to take a decision on the treatment or admission or personal assistance and can appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance as well as communicate the decision by means of speech, expression, gesture or any other means' [Section 4(1)].^[12]
- C. Provision of Advanced Directives: Under this Act, every adult 'shall have a right to make an advance directive in writing', specifying 'the way the person wishes to be cared for and treated for a mental illness', 'the way the person wishes not to be cared for & treated'. An advanced directive is used only if the person ceases to have the capacity to make mental healthcare decision and shall remain effective till the person regain the capacity to take decisions.

D. Nominated Representatives: This provision is a unique feature of this Act. As per this Act person who is not a minor can appoint a nominated representative. The nomination shall be made in writing on plain paper with the person's signature or thumb impression. The person who is appointed as nominated representative shouldn't be a minor, capable to fulfill his duties given to him under this act.^[12]

Order of precedence for the nominated representative is as follows:

- (a) The individual appointed as the nominated representative;
- (b) A relative;
- (c) A caregiver;
- (d) A suitable person appointed by the concerned Board;
- (e) If no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative.
- (f) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be considered as the lack of capacity of the person to take decisions about his mental healthcare. In the case of minors, the legal guardian shall be their nominated representative.

E. Mental Health Review Board: This Act states that the State Authority shall constitute Mental Health Review Boards' [Section 73(1)].^[12] Introduction of Mental Health Review Board is a positive aspect of the Act. This Board has been entrusted to upkeep the basic rights and privileges of mentally ill individuals. This Board has to oversee the issues like Advance Directives (ADs), appointing Nominated Representatives, curbing the malpractice and improper treatment from the sides of Mental Health Professionals and Mental Health Establishments, deciding for nondisclosure of information related to mental illness and visiting jails for seeking information about mentally ill individuals.^[10-13]

- (a) District Judge, or an officer of the State judicial services or a retired District Judge (who shall be the chairperson of the Board);
- (b) A representative of the District Collector or District Magistrate or Deputy Commissioner where the Board is to be constituted;
- (c) Two members of whom one shall be a psychiatrist and the other shall be a medical practitioner;
- (d) Two members who shall be persons with mental illness or care-givers or persons representing organizations of persons with mental illness or caregivers or non-governmental organizations working in the field [Section 74(1)].^[12]

The powers and functions of the Board are:

- (a) To register, review, alter, modify or cancel an Advance Directive;
- (b) To appoint a Nominated Representative;
- (c) To receive and decide application from a person with mental illness or his nominated representative or any other interested person against the decision of medical officer or mental health professional in charge of mental health establishment' under Section 87 ('admission of minor'), Section 89 ('supported admission') or Section 90 ('supported admission beyond 30 days'); the Board has the power to dispose of an application challenging supported admission under Section 90 within a period of twenty-one days from the date of receipt of the application.
- (d) To receive and decide applications with respect to non-disclosure of information;
- (e) To look at the complaints regarding deficiencies in care and services and ensuring proper care and treatment of the mentally ill individuals by Mental Health Professionals and Mental Health Settings;
- (f) To visit and inspect prison or jails and seek clarifications from the medical officer-in-charge of health services in such prison or jail.

F. Decriminalization of Suicide- This Act states that any person who attempts to commit suicide shall be presumed unless proved otherwise, to have severe stress and shall not be tried and punished. It is the duty of government to provide care, treatment and rehabilitation to a person, having severe stress and has attempted suicide and to reduce the risk of recurrence of attempt to commit suicide' [Section 115(2)].^[12]

G. Revised Admission and Discharge Procedure for Mentally Ill Persons:

Admission: The Mental Healthcare Act, 2017 outlines four admission statuses: independent admission (voluntary admission), admission of a minor, supported admission (admission and treatment without patient consent) and supported admission beyond 30 days.^[12]

- (a) Independent Admission- It refers to the admission of a person with mental illness who has the capacity to make mental healthcare and treatment decisions or requires minimal support in making decisions' [Section 85(1)].
- (b) Admission of Minor- For the admission of a minor [Section 2(1) (t)] the nominated representative of the minor shall apply to the medical officer in charge of a mental health establishment for admission' [Section 87(2)].
- (c) Supported Admission (admission & treatment without patient consent)- A person shall be admitted as a supported admission upon application by the nominated representative of the person if:
 - i) The person has been independently examined on the day of admission or in the preceding seven days, by one psychiatrist and the other being a mental health professional or a medical practitioner and both independently conclude that the person has a mental illness of such severity that the person (i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or others (ii) has recently shown or is showing an inability to care for

himself to a degree that places the individual at risk of harm to himself.

- ii) The person is unable to receive care and treatment as an independent patient because the person is unable to make mental healthcare and treatment decisions independently & needs very high support from his nominated representative in making decisions'[Section 89(1)].
- iii) Supported admissions must be notified to the Mental Health Review Board within three days (for 'a woman or a minor') or seven days (others) [Section 89(9)].^[12]

HUMAN RIGHTS OF MENTALLY ILL PEOPLE IN INDIA

Human rights have been held as the primordial rights for each human being. Human rights cannot be taken away or cut down. Every individual should be given the basic privileges, opportunities and overall a safe environment. Mentally ill people are being held as one of the most vulnerable segments of society in terms of violation of human rights. In most of the countries, the condition of human rights of the mentally ill people is abysmally miserable. In 1996, the World Health Organization promulgated the Guidelines for the Promotion of Human Rights of Persons with Mental Disorders for member countries for safeguarding the human rights of mentally ill people.^[15] This Guideline enlisted 10 basic principles which should be incorporated in mental health legislation, thus:

1. Promotion of mental health and prevention of mental disorders
2. Access to basic mental health care
3. Mental health assessments in accordance with internationally accepted principles
4. Provision of least restrictive type of mental health care
5. Self-determination
6. Right to be assisted in the exercise of self-determination
7. Availability of review procedure
8. An automatic periodical review mechanism
9. Qualified decision maker
10. Respect for the rule of law

This Guideline, as well as the UN Convention on the Rights of the Persons with Disabilities (2006), has had a pivotal role in the formulation and enactment of the Mental Healthcare Act, 2017. In past some steps were taken to address the human rights of individuals with mental illness in India, e.g., 'The Bengal Enquiry (1818)', 'Investigation of Native Lunatics in Bengal (1840)', 'Mapother's Report of 1938', 'Moore Taylor's Report (1946)', 'The Bhore Committee Report (1946)', 'Mudaliar Committee Report (1962) or Health Survey and Planning Committee Report' and 'National Mental Health Programme in 1982', 'replacement of Indian Lunacy Act, 1912 with Mental Health Act, 1987', 'increased fund allocation for mental health in Five Year Plans (9th, 10th and 11th Five Year Plans)', 'implementation of District Mental Health Programme in more number of districts in the country' and 'Recommendations of Central Mental Health Authority of minimum standards of care in all the mental hospitals in the country (1999)'. In India, the judiciary has always been sensitive to human rights of vulnerable segments of the society like mentally ill people. The Supreme Court of India opined in the case of Chandan Kumar Bhanik vs. State of West Bengal (1988) as: "*Management of an institution like the mental hospital requires the flow of human love and affection, understanding and consideration for mentally ill persons; these aspects are far more important than a routinized, stereotyped and bureaucratic approach to mental health issues*". Subsequently, in many cases, (e.g., Sheela Barse vs. Union of India, Rakesh Ch. Narayan vs. the State of Bihar, B.R. Kapoor vs. Union of India, PUCL vs. Union of India, Erwadi Mental Asylum Fire Incident) honourable Supreme Court has played a crucial role by directing the concerned authority and policymakers to be proactive in preserving the human rights of mentally ill people and redressal of their concerns. Despite the presence of dedicated Acts like Mental Healthcare Act, 2017 or earlier Mental Health Act, 1987, violation of human rights of mentally ill people is not controlled in this country, because the importance of preserving the rights of these people is still not well understood in the society. According to the National Human Rights Commission (NHRC), the condition of many mental hospitals in

India is not livable for mentally ill people. Those mental hospitals are having substandard infrastructures and many of them don't even offer basic amenities and services for people with mental illness. Besides this, mentally ill people are ill-treated by their caregivers and family members at home. They are not given adequate support and care by their kith and kin. Mentally ill people are often being deserted by their families and they are forced to live in a mental asylum.^[10-12,16-18]

Issues pertaining to human rights are adequately addressed in the Constitution of India. The right to have a fulfilled and satisfying life for every citizen is enshrined in the Constitution of India (Article 21: Protection of Life and Personal Liberty). Time to time, the Supreme Court of India urged the executive and policymakers to make public health system available and accessible to each citizen because it is directly linked with the Article 21 of the Constitution. Like any other citizen mentally ill people also have the right to get optimal healthcare service and enjoy humane living conditions in the mental health settings. The right to life in Article 21 of the Constitution does not talk about mere survival of the citizens rather it means every citizen has the right to live a dignified and meaningful life; without basic amenities like health, education, healthy living situation and environment it is not possible. Mentally ill persons are to be given rightful access to work and stay in their own community, enjoy an optimal level of autonomy and privacy and lead a normal family life.^[17] But, the public mental healthcare is still miserably inadequate India to address the burgeoning mental health needs of the people. The National Mental Health Survey (NMHS-2016) stated that nearly 150 million Indians do require active interventions for their psychological problems and the existing insufficient and inequitably distributed public mental health system is not in a position to meet their needs.^[19] The patient-clinician ratio in India is incredibly low in comparison to developed nations or even many developing nations. As per the NMHS-2016, the number of psychiatrists in India varies from 0.05 in Madhya Pradesh to 1.2 in Kerala per lakh population and annual budgetary allocation for mental health is only 1.3% of its total health budget.^[19,20] In 2014, the first-ever National Mental Health Policy

was proclaimed with the objective of providing universal psychiatric care to the population by 2020. This Policy is quite ambitious in terms of providing quality mental health services to a wide range of people through integrated care services. This Policy has been influenced by the principles of universal access, equitable distribution of services, community participation, inter-sectoral coordination and application of appropriate technology. However, present mental health scenario in India is not conducive to serve the actual needs of people. In India, only 0.7 physicians are available for 1000 population and only one psychiatrist is available for every 343,000 Indians. The numbers of other important mental health professionals (e.g., Clinical Psychologists, Psychiatric Social Workers and Psychiatric Nurses) are also very disappointing. With this limited manpower fulfilment of the goal of quality mental health care for all is not possible. Not offering an optimal level of clinical services to a large section of citizen is indeed a sign of human rights violation and a welfare nation like India cannot afford to do it.^[20-23]

RIGHTS OF MENTALLY ILL PEOPLE INSCRIBED IN THE ACT: CRITICAL ANALYSIS

The Mental Healthcare Act, 2017 mentions that every person shall have the following rights:

1. ***Right to access mental healthcare and treatment***- accessibility of optimal mental healthcare from the Government to the needy people and there should not be any discrimination on the basis of place of residence, geographical location, gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis.
2. ***Right to community living***- mentally ill people have the right to live in and be a part of society and not be segregated from it.
3. ***Right to protection from cruel inhuman treatment and degrading treatment*** – mentally ill people have the right to live with dignity in a safe and hygienic environment with proper clothing, privacy, wholesome food, adequate sanitary conditions, facilities for leisure, education, recreation and religious texts and they should not be exposed to cruel and inhuman treatment. They are to be protected from any sort of physical, sexual and emotional abuse.
4. ***Right to equality and non-discrimination***- every mentally ill person shall be treated equal to a person suffering from physical illness and shall also be offered some type of healthcare services and treatment like the person with physical illness. The insurer shall make provision for medical insurance for treatment of mental illness on the same basis applicable for treatment of physical illness.
5. ***Rights to information***- information pertaining to the provisions of the Mental Healthcare Act, 2017 or any other Acts related to admission in a mental health setting, reviewing the admission, nature of illness and treatment plans and side effects of treatments shall be given to mentally ill persons and his nominated representative. The language of communicating this information to the mentally ill people and their nominated representatives should be made understandable.
6. ***Right to confidentiality***- All mental health professional has to make sure that they should keep all the information obtained during care and treatment of a mentally ill person as confidential. No photograph or any other information shall be released to media unless consent is given by the mentally ill person to do so.
7. ***Restriction on the release of information in respect of mental illness***—everyone has to be respectful to the patient's right to privacy. Therefore, no photographs or any other means (e.g. electronic or digital or virtual space) which could prove to be against the privacy of a mentally ill person taking treatment at a mental health establishment shall not be made public unless the concerned patient gives his consent to do so.
8. ***Right to access medical records***- mentally ill person to access his medical records, which may be prescribed to him.
9. ***Right to personal contacts and communications***- mentally ill persons have the right to refuse and receive visitors; right to receive and make a telephonic call; send and receive an email.

10. **Right to legal aid-** mentally ill people are entitled to get free legal assistance to exercise any of his rights given under this Act.
11. **Right to make complaints about deficiencies in the provision of services-** the person with mental illness or his nominated representative can complain regarding deficiencies to the medical officer or mental health professional, concerned board or state authority.

The present Act is the replacement of Mental Health Act, 1987 (MHA), because MHA has some inherent limitations, e.g., 'inadequate review processes or appeal processes for mentally ill individuals', 'absence of categorization of mental health settings (i.e., mental hospitals, psychiatric nursing homes, private general hospital psychiatry centres and convalescent homes)', 'exclusion of government mental hospitals from licensing', 'not including faith healing or traditional healing centres in the purview of the Act', 'not giving importance to choice or autonomy of the mentally ill individuals in relation to opting treatment', 'barring any attempt of denigration or defamation or wrongful portrayal of mentally ill people, mental illness and mental health interventions in media', 'keeping mental health facility out from general health settings', 'not much emphasis on community based mental health facility', 'not giving importance to capacity of mentally ill people', 'failing to address stigma of mental illness' and 'not mentioning humane treatment and environment for mentally ill people'.^[18,20-22] The Mental Healthcare Act, 2017 has some positive aspects which made this Act better than its predecessors (e.g. Indian Lunacy Act, 1912 and Mental Health Act, 1987). This Act has given a comprehensive definition of mental illness, guaranteed the civic and human rights of mentally ill people, made mental health services accessible to all, emphasized the autonomy and decision-making capacity of mentally ill people, introduced novel provisions like Advanced Directives with regards to selection or rejection of psychiatric treatment and specifying the roles of the governmental system in overseeing the programmes and policies for the prevention of mental illness and promotion of positive mental health. However, this Act has some intricate limitations, e.g., not considering the

rights of families and caregivers, their competence and guardianship, not mentioning the rights of non-protesting patients, not mentioning involuntary community treatment, being an overly ambitious and farfetched, highly legalized pattern of care, exposing clinical exercises and decisions to the judicial system or curtailing the clinical decision-making capacity of the treating clinicians which may have paradoxical consequences in the forms of 'barriers to care'. This Act has given the importance of the rights of the mentally ill people, shown respect to their decision-making abilities, autonomy and personal choices by incorporating provisions like 'mentioning the capacity to make mental healthcare and treatment decisions', 'defining the process of determining mental illness as per the in accordance with nationally or internationally accepted medical standards', 'Advanced Directives', 'Nominated Representatives' and 'putting up an exhaustive list of the rights of mentally ill persons. But this Act can be counterproductive to address the rights of mentally ill people by reducing their right to get optimal treatment, not getting suitable treatment at right time due to overly involvement of judiciary. This way this Act can limit the well-being of mentally ill people and deny their rights.'^[14,18,24]

CONCLUSION

The Mental Healthcare Act 2017 aims to ensure better care and greater social justice for the mentally ill in India. Globally, the rights of the mentally ill have been neglected for long periods and even today many countries do not have structured as well as updated legislations to take care of the rights of mentally ill people. Promulgation and enactment of updated and all-encompassing legislation can protect the rights of mentally ill people efficiently. The present Act has some novel features which could lessen the instances of human rights violation of this segment of the population in this country.

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