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Right to Health of Persons with Mental Illness in India: A study with special reference to the Mental Healthcare Act, 2017

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ABSTRACT

The World Health Organisation defines health as, “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. A perusal of this definition makes it abundantly clear that mental health of a person is as important as physical health. The patients suffering from mental illness face a lot of taboos in the society and it becomes very difficult to treat and rehabilitate such patients. Mental illness has been looked upon from a completely different spectacle in the nation leading to a situation wherein people often tend to hide their mental issues and refrain from sharing the same with anyone due to the risk of being ridiculed and looked down upon by the society. People are afraid to even disclose about their mental illness due to the fear of being cut off by their relatives and friends. In such a social setting, it becomes too difficult to protect the patients with mental illness and ensure that their right to health is equally protected as that of the others. The Mental Healthcare Act, 2017 was enacted with a view to ‘provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto’. The Act lays down the various rights of the persons with mental illness in order to ensure that their right to health is protected but more than often it is seen that the rights as enumerated by the Act remains a dead letter while the patients are languishing and waiting to realise their right to health.

Keyword(s): Right to Health, Mental Health, Mental Illness, Mental Healthcare Act, 2017.

I. INTRODUCTION

The greatest wealth is the mental health...

- Dalai Lama

The human health is of utmost importance for leading a fulfilling life. A country can progress only when the population of that country is healthy and strong. But when a country consists of a frail and weak population then its progress becomes rather slow. Therefore, all the countries

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of the world strive to attain the basic health of its populace. Health has been defined ‘as not merely an absence of disease or infirmity but a state of complete physical, mental and social well-being²’. This definition makes it abundantly clear that health does not only encompass the physical well-being of a person but mental, emotional as well as social well-being form an integral part of a person’s health. Mental health is a state of mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community. Mental health is more than the absence of mental disorders. It exists on a complex continuum, which is experienced differently from one person to the next, with varying degrees difficulty and distress and potentially very different social and clinical outcomes. Mental health conditions include mental disorders and psychosocial disabilities as well as other mental states associated with significant distress, impairment in functioning, or risk of self-harm. People with mental health conditions are more likely to experience lower levels of mental well-being, but this is not always or necessarily the case³. Thus, safeguarding mental health is of utmost importance because that would be a determinant factor in ensuring the interpersonal relationships amongst the various elements in the society thereby protecting the internal peace and harmony of a country.

II. CONCEPT OF RIGHT TO HEALTH

The term right to health implies a legally enforceable right to one’s health. Such a right must be legally recognised and protected. The right to health is a human right because it is fundamental to the existence of the human. It can be termed to be such a right in the absence of which a human will not be able to lead a life of dignity. The right to health is one of a set of internationally agreed human rights standards, and is inseparable or ‘indivisible’ from other rights. This means achieving the right to health is both central to, and dependent upon, the realisation of other human rights, to food, housing, work, education, information, and participation. The right to health, as with other rights, includes both freedoms and entitlements:

- Freedoms include the right to control one’s health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and non-consensual medical treatment and experimentation).
- Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.

² Constitution of World Health Organisation

³ WHO, Mental Health <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (Last accessed on 12/03/2024)

The right to health was first articulated in the World Health Organisation Constitution⁴ which states that: “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.” The UDHR⁵ mentioned health as part of the right to an adequate standard of living. It was again recognised as a human right in 1966 in the ICESCR⁶, ‘the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. The Committee on Economic, Social and Cultural Rights, a body composed of independent experts in charge of monitoring the implementation of the Covenant, provided a broad interpretation of article 12 of the Covenant: ‘the right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health’. The right to health is relevant to all States. Every State has ratified at least one international human rights treaty that recognises the right to health. In India, the right to health has been recognised by the Hon’ble Supreme Court as a facet of right to life under Article 21 of the Constitution of India in various judgments. This right takes the form of right to timely and adequate medical treatment⁷ as well as the right to get instantaneous medical aid⁸. The evolution of right to health in the country depicts the fulfilment of the promise on the part of the country made to the world while ratifying the various treaties. India is in this manner trying to guarantee its citizens the basic human rights.

III. MENTAL HEALTH SCENARIO IN INDIA

Mental illnesses are health conditions involving change in emotion, thinking or behaviour (or a combination of these). Mental illnesses can be associated with distress and/ or problems functioning in social, work or family activities⁹. Mental illness means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise 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, specially

⁴ Adopted in 1946

⁵ Article 25, Universal Declaration of human rights, Adopted in 1948

⁶ Article 12, International Covenant of Economic, Social & Cultural Rights

⁷ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996) 4 SCC 37

⁸ *Parmanand Katara v. Union of India* AIR 1989 SC 2039

⁹ American Psychiatry Association <https://www.psychiatry.org/patients-families/what-is-mental-illness> (Last accessed on 18/03/2024)

characterised by subnormality of intelligence¹⁰. The national mental health policy related survey conducted revealed that, in the country almost 13.7% people suffer from mental disorders while 10.6% of them require immediate medical intervention. Out of these 1.9% suffer from severe mental disorders like schizophrenia and bipolar disorder¹¹. In 2017, 197.3 million people had mental disorder in India, including 45.7 million with depressive disorders and 44.9 million with anxiety disorders. One in seven Indians were affected by mental disorders of varying severity in 2017. The proportional contribution of mental disorders to the total disease burden in India has almost doubled since 1990. Substantial variation exists between states in the burden from different mental disorders and their trends over time¹². The various studies conducted reveal that there is a high prevalence of mental disorders of varying nature in the country. Often the people are ignorant about the same either due to lack of awareness or due to a lack of education. Moreover, those aware also do not want to seek medical intervention due to the stigma attached to the mental disorders in the country. People do not understand that mental disorder is something just like an unexpected injury, or heart related ailment or diabetes and requires medical intervention as early as possible. Even the family members of the persons with mental illness are often seen plainly denying their family member having any mental issues due to the fear of being segregated from the society. The prevalence of mental disorders is seen more in the urban areas due to a fast paced and stressed lifestyle and many of such patients are educated enough to understand the impact of their own actions but they fail to seek medical help due to the embarrassment that they would face with being diagnosed as a mentally ill patient. The picture is dreary in the rural areas where mental health assistance is scarce and people are completely ignorant or unaware. It can also be seen that females suffering from mental disorders are more stigmatised in our society than their male counterparts. Thus, when there is a discrepancy between the allocation of the available resources as well as in general tussle between societal acceptance and rights of the persons with mental illness the law has to step in to act as a facilitator of the rights of the persons with mental illness.

IV. MENTAL HEALTH & THE LEGISLATIONS IN INDIA

In a welfare state, the protection of the rights of mentally ill persons is state responsibility. Thus, mental health issues and state intervention by way of laws are closely interconnected. In

¹⁰ Section 2(s), Mental Health care Act, 2017.

¹¹ Vandana kamath, 13.7% Indians are mentally ill, study says, Times of India, <https://timesofindia.indiatimes.com/city/bengaluru/13-7-Indians-are-mentally-ill-study-says/articleshow/54805096.cms> (Last accessed on 15/04/2024)

¹² India State-level Disease Burden Initiative Mental Disorders Collaborators, The burden of mental disorders across the states of India: the Global burden of Disease study 1990-2017, *Lancet psychiatry* 2019, Volume 7 Issue 2, P148-161, Published online December 23, 2019, [https://doi.org/10.1016/S2215-0366\(19\)30475-4](https://doi.org/10.1016/S2215-0366(19)30475-4)

order to match the international standards in mental health care an effective legislation and other legally prescribed mechanisms are imperative. The relationship between law, mental illness and the treatment of persons with mental illness can be termed as a dynamic one. As noted by Rappeport, for the psychiatrists the court is “another house... with its different motives, goals and rules of conduct.” While psychiatrist is concerned primarily with the diagnosis of mental disorders and the welfare of the patients, the Court is often mainly concerned with the determination of the competency, dangerousness, diminished responsibility and/ or welfare of the society¹³.

The relationship between psychiatry and law most often comes into play at the time of the treatment of the persons suffering with mental illness. The treatment of persons with mental illness often involves curtailment of their personal liberty by lodging them in mental health institutions. Most countries of the world have laws regulating the treatment of psychiatric patients. Though there are elaborate descriptions of various forms of mental disorders in various treatises in Ayurveda, the care of mentally ill in asylums in India is a British innovation. After the takeover of the administration of India by the British Crown in 1858 a large number of laws were enacted in quick succession for controlling the care and treatment of mentally ill persons in British India¹⁴. The legislations governing the persons with mental illness in the pre-independence era were concerned simply with controlling such persons and establishment of asylums to seclude and treat them. The following Acts were prevalent in the British era:

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

All the above Acts provided for a procedure to admit the mentally ill patients as well as to establish asylums in the Country. In the early 20th Century, the Indian Lunacy Act, 1912 was enacted due to the increased public awareness about the pitiable conditions of the mental hospitals. This Act guided the destiny of psychiatry in India. The most important feature of this Act was that the provision of voluntary admission was introduced. But even this Act was more concerned with protecting the society from the dangerousness of the mentally ill and taking care that no sane person is admitted in these asylums. However, the situation started changing

¹³ Choudhary Laxmi Narayan & Deep Shikha, Indian Legal System and Mental Health, *Indian Journal of Psychiatry*, 2013 Jan; 55(Suppl 2): S177- S181. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705679/>

¹⁴ Supra note 10

after the second World War when the Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948. The Indian Psychiatric Society submitted a draft Mental Health Bill in 1950 to replace the Indian Lunacy Act, 1912.

The Mental Health Act was enacted in 1987 and came into force in April 1993. This Act defined mental illness and focused upon the establishment of the various mental health authorities in order to ensure the regulation and smooth functioning of the mental hospitals and institutions. The Act also laid down the role of the police authorities and magistrates while dealing with persons with mental illness and homeless persons with mental illness. In India the Persons with disability (equal opportunities, protection of rights, full participation) Act, 1995 was passed which came into force in January 1996. The main objective of this Act was to remove any kind of discrimination faced by the persons with disabilities and prevent their exploitation and abuse. The persons with mental illness have also been included in this Act and it also contains a provision dealing with grant of 3% reservation to persons with mental illness in vacant government jobs.

It is pertinent to mention here that all the legislations that were in place in respect of mental health were primarily concerned with custodial aspects of persons with mental illness and protection of the society from such persons. But the situation changed after the adoption of the United Nations Convention for Rights of Persons with Disabilities (UNCRPD)¹⁵. This Convention led to a paradigm shift in the legislations relating to the disabilities in India which led to a change in the laws towards a human rights centric approach. This in turn ushered the amendment of the Mental Health Act and thus, the Mental Health Bill 2013 came into being.

V. MENTAL HEALTHCARE ACT, 2017

The Government of India in order to make efforts to improve the mental health services in India formulated the National Health policy, 2014 and also enacted the Mental Healthcare Act, 2017. The object of the Act is “to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto¹⁶”. The Act also lays down an elaborate definition of mental illness¹⁷. The most important feature of the Act is the Chapter V which is the heart and soul of the Act. It enumerates the various rights of the persons with mental illness. This chapter dedicated completely to the rights has its

¹⁵ United Nations Convention for Rights of persons with disabilities, adopted in December 2006, ratified by India in May 2008.

¹⁶ Statement of Object of The Mental Healthcare Act, 2017.

¹⁷ Supra note 7 at 3.

source in the international instruments for human rights as well as the international concerted efforts to achieve the humane living conditions and removal of discrimination against the persons with disabilities. The various rights as enumerated in the Act are as follows:

1) **Right to access mental healthcare¹⁸**: Every person has a right to access mental healthcare and treatment from mental health services run and funded by the appropriate Government. Such health services must be of affordable cost, good quality, must be available in sufficient quantity, accessible geographically, without any discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to the persons with mental illness and their families and care-givers. The persons with mental illness who are below poverty line, destitute or homeless shall be granted mental health services and treatment free of cost and at no financial costs¹⁹. The persons with mental illness are entitled to get all the medicines on the Essential drug list free of cost at all times at the health establishments run or funded by the government starting from community health centres and upwards in the public health system²⁰.

2) **Right to Community Living²¹**: Every person with mental illness shall have a right to be a part of and live in a society and not be segregated from the society. This provision creates an important right in favour of those persons with mental illness who do not have a family or are not accepted by their families due to their mental illness and those who are homeless. This right makes it abundantly clear that persons with mental illness shall not be languishing in mental institutions only because they do not have anybody to look after them or due to lack of community based facilities. The government has been cast a duty to make sure that such persons are granted proper legal aid or other help in order to protect their right to living within their family homes or their right to family homes. The government also is duty bound to make provisions for halfway homes or group homes in order to facilitate the rehabilitation of persons with mental illness back in the society who are on the verge of recovery and no longer require staying in mental health establishments.

3) **Right to Protection from Cruel, Inhuman and Degrading treatment²²**: The persons with mental illness have a right to live a dignified life and protect themselves from cruel or inhuman treatment. Such persons have a right to stay in safe and hygienic environment and to have adequate sanitary conditions. The persons with mental illness also have a right to reasonable

¹⁸ Section 18, MHCA, 2017.

¹⁹ Section 18 (7), Ibid

²⁰ Section 18 (10), Ibid

²¹ Section 19, Ibid

²² Section 20, Ibid

facilities for leisure, recreation, education and religious practices. They have a right to privacy. They have a right to proper clothing in order to avoid any exposure thereby protecting their bodily integrity. Such persons cannot be forced to work in a mental health establishment and in case they undertake any work they must be sufficiently remunerated for the same. In addition, the persons with mental illness have a right to wholesome food, sanitation, space and access to articles of personal hygiene in particular women's personal hygiene relating to menstruation. The persons with mental illness have a right to be protected from compulsory tonsuring. They have a right to wear their own personal clothes if so wished and not to be forced to wear uniforms. The persons with mental illness have a right to be protected from all sorts of physical, verbal, sexual and emotional abuse.

4) Right to equality and non-discrimination²³: Every person with mental illness has a right to be treated on par with those suffering from physical illness during their treatment in terms of emergency services, quality of treatment, ambulance, etc. Moreover, no discrimination can be done on the grounds of gender, sex, caste, class, religious or political beliefs, sexual orientation, and disability. The provision also protects the rights of a mother receiving treatment for mental illness to not be separated from her child below the age of 3 years, or in alternative visitation rights under supervision.

5) Right to Medical Insurance²⁴: This provision casts a duty upon every insurer to make sure that provisions for medical insurance for treating mental illness are granted to the persons with mental illness similarly like those granted to the persons suffering from physical ailments.

6) Right to Information²⁵: The person with mental illness or their nominated representative has a right to know under which provisions of the Act such person has been admitted and also the criterion for the same. The persons with mental illness have a right to information regarding the facets of their treatment along with the known side-effects of such a treatment in an understandable language.

7) Right to Confidentiality²⁶: The persons with mental illness have a right to confidentiality in respect of his mental health, mental healthcare, treatment and physical healthcare. No photograph or any other information of such a person undergoing treatment shall be released to the media without the consent of the person with mental illness. The right to confidentiality

²³ Section 21, Ibid

²⁴ Section 21 (4), Ibid

²⁵ Section 22, Ibid

²⁶ Section 23, Ibid

also extends to electronic and digital records²⁷.

8) Right to Advance Directives²⁸: A right has been given to the person with mental illness to make an advance directive in respect of the way he should be treated or the way he should not be treated in case of his mental illness. He also has a right to appoint a nominee who shall be duty bound to act on behalf of the person with mental illness in taking treatment decisions and for all other purposes as mentioned in the Act.

The above referred are some of the most important rights enshrined in the MHCA. The Chapter 5 also contains certain other rights like the right to access the medical records²⁹, right to personal contacts and communication³⁰, right to legal aid³¹ and the right to make complaints about the deficiencies in provision of services³². The Act has been enacted as a complete treatise of the various rights of the person with mental illness and bestows corollary duties upon the government to ensure the fulfilment of the vision of this Act. The Act also contains strict provisions regarding punishment in case of flouting of the provisions of the Act.

VI. AFTERMATH & THE WAY FORWARD

The enactment of the MHCA is just the first stepping stone in order to ensure the right to health of the person with mental illness. But whether the Act has been able to achieve its object in the past six years after its coming into force is a moot question. Recently, the NHRC³³ has issued notices to the various stakeholders on the deplorable and inhuman conditions in the various mental health establishments of the country³⁴. The report stated that cured patients are being kept illegally in the hospitals and there is an acute shortage of doctors and staff. This report therefore, is an eye-opener of the blatant violation of the provisions of the Act. The State of Maharashtra has made rules under the MHCA but has not notified them yet³⁵. These aspects make it abundantly clear that although the Act has made provisions in terms of the international aspirations but is severely lacking in terms of actual implementation. There is a serious mental

²⁷ Section 24, Ibid

²⁸ Section 5, Chapter 3, Ibid

²⁹ Section 25 Ibid

³⁰ Section 26 Ibid

³¹ Section 27 ibid

³² Section 28 ibid

³³ National Human Rights Commission

³⁴ NHRC says all the 46 Government mental healthcare institutions across the country depict a very pathetic and inhuman handling by different stakeholders; issues notices, 25th January, 2023 <https://nhrc.nic.in/media/press-release/nhrc-says-all-46-government-mental-healthcare-institutions-across-country-depict> (Last accessed 12/01/2024)

³⁵ No rules notified yet for Mental Health Act, 2017, Times of India, 6th June 2022, <https://timesofindia.indiatimes.com/city/mumbai/no-rules-notified-yet-for-mental-health-act-2017/articleshow/92028747.cms> (Last accessed on 02/02/2024)

health care gap in India which means a gap between how pervasive mental health conditions are and the lack of resources or care or treatment for those living with these conditions. In India, nearly two-thirds of those living with mental health disorders never seek professional help moreover there is a very low budgetary prioritization which translates into insufficient care facilities at primary, secondary and tertiary levels. According to WHO, about 25% countries do not have three most commonly prescribed drugs used to treat schizophrenia, depression and epilepsy at the primary health care level. In India there is a severe shortfall of trained mental health professionals, for example, there are currently less than 4000 psychiatrists available across the country³⁶. Therefore, in order to ensure the protection of right to health of persons with mental illness the following measures are pivotal:

1) Role of Family Members: It becomes very important that family members of person with mental illness participate actively in their treatment and rehabilitation. A family is an asset and should be able to add value to the life of a person with mental illness by their care and warmth. Such patients would be in a better position to fight with their illness alongside their families. Therefore, family members should be made aware and educated in terms of how they can help the person with mental illness.

2) Role of Community: The entire society as a whole must be sensitized and trained to deal with the person with mental illness. This would also help in taking off the load from the government resources and establishments which are already overburdened.

3) Increase in the number of trained professionals: As stated Supra, the ratio of the trained professional to the patient is very poor in the country. In such a scenario if the students can be taught psychiatry in their undergraduate level, they would be able to treat the person with mental illness after the completion of their MBBS degree. Moreover, the role of psychologists also assumes great importance. They can be helpful in order to counsel the person with mental illness regarding their mental health issues and possibly help those with lesser degrees of illness to get cured.

4) Role of NGOs and other Institutions: There are many non-government organisations, religious organisations like temples, mosques, churches etc. already doing a lot of work for the person with mental illness. Many social and religious organisations shelter the person with mental illness and help them with treatment & not render them homeless.

³⁶ Why implementing India's Mental Health Care Act should Concern us All, <https://www.patientsengage.com/news-and-views/why-implementing-indias-mental-health-care-act-should-concern-us-all> (Last accessed on 12/01/2024)

5) Availability of resources: The Act has laid down a treatise on human rights of person with mental illness but the same is very difficult to protect in the absence of sufficient resources in terms of economic, workforce or infrastructure. The State will be burdened with the costs of treatment, accommodation, shelter, food and clothing of the patients. In such circumstances, the private players should be encouraged so that mental healthcare of a good quality and quantity is provided to the stakeholders.

VII. CONCLUSION

The MHCA has laid down the basic human rights of the person with mental illness and aspires to protect the right to health of such persons. The implementation of the Act is a major hurdle & the rights of the persons with mental illness are being violated. If we want to protect the right to health of the person with mental illness we must as a society also be duty bound to help the state deal with such patients. This will be achieved only when the stigma associated with the mental illness is addressed and people are made aware and educated in terms of mental illness. The burden should not only be cast upon the State and the medical professionals who are working in scarce resources but the people must come forward and fulfil their own duty towards the society.
