
THE RIGHT TO MENTAL WELL-BEING: A CRITICAL EXAMINATION OF LEGAL AND SOCIAL DIMENSIONS

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ABSTRACT

Mental health is a vital component of overall well-being, and its recognition and treatment are of increasing concern in India. The country has taken significant steps in addressing mental health issues by enacting specific legislation, including the Mental Healthcare Act of 2017. This research critically analyses the legal framework surrounding mental health in India, with a focus on the “Mental Healthcare Act”. It evaluates its impact on access to mental health care and the protection of individuals’ rights. The research commences with an overview of the historical context of mental health laws in India, exploring the societal attitudes and stigmas that have influenced the development of mental health policies. The study then explores the key elements of the Mental Healthcare Act, critically assessing its strengths, weaknesses, and potential gaps in safeguarding the rights of persons with mental illnesses. In this research aims to provide a comprehensive and critical analysis of mental health laws in India, offering valuable insights into the effectiveness of the legal framework in safeguarding the rights of people who suffer from mental diseases as well as encouraging access to high-quality mental health services. The findings are expected to contribute to informed discussions, policy reform, and further research in the realm of mental health law and practice in India.

Keywords: Mental Health, Legislation, Mental Health Care Act, 2017, Critical Analysis

INTRODUCTION

Individuals who are in a state of mental well-being known as mental health are better able to deal with challenging life circumstances, realize their potential, learn and work effectively, and give back to their communities. Various kinds of developments¹ like physical, social, and personal depend on it. The “Comprehensive mental health action plan 2013-2030” goal is to promote mental health, it is important to develop efficient management and oversight, to offer comprehensive, integrated, and responsive grassroots efforts treatment, to put promotion and prevention strategies into practice, and to strengthen systems for data, empirical data, and research. All WHO Member States are devoted to executing this strategy.

According to the “World Health Organization (WHO)”² definition in 2011, mental illness refers to a recognizable and diagnosable disorder characterized by abnormal thoughts, emotions, behavior, and interpersonal relationships³. These conditions can have a profound impact on a Person’s everyday life, affecting their mental, emotional, and social capabilities⁴. India had to align and harmonize its mental health laws⁵ because it had signed and ratified the “Convention on the Rights of Persons with Disabilities”⁶ on 1 of October, 2007. Furthermore, it became clear that the Mental Health Act of 1987 was unable to fully safeguard the rights of those who suffer from mental diseases and to advance their access to mental health care. The Mental Healthcare Act of 2017⁷ was passed as a result of this. By establishing a justifiable right to mental healthcare, the Act signifies a substantial shift in India's approach to mental healthcare.

BACKGROUND OF MENTAL HEALTH LAWS IN INDIA

Mental health legislation refers to a set of laws and regulations specifically designed to address issues related to mental health, mental disabilities, and the care and treatment of individuals

¹ <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>, (last visited 03 August 2023)

² WHO is the United Nations agency that connects nations, partners, and people to promote health, keep the world safe and serve the vulnerable – so everyone, everywhere can attain the highest level of health founded in 1948.

³ <https://www.who.int/> (last visited 07 August 2023)

⁴ Abraham P. Francis & Beth Tinning, “Introduction in Social Work in Mental Health - Contexts and Theories for Practice”, 2014

⁵ In order to implement the CRPD and safeguard the rights of people with disabilities in India, in addition to the Mental Healthcare Act of 2017, India also passed the Rights of Persons with Disabilities Act of 2016 (which gained presidential assent on 27 December 2016 and went into effect on 15 June 2017).

⁶ Sixty-first session of the General Assembly by resolution A/RES/61/106

⁷ Mental Healthcare Act, 2017 received Presidential assent on 7 April 2017 and came into effect on 29 May 2018. Due to the significant quantity of changes required to adhere to the CRPD provisions, the existing legislation in India (The Mental Health Act, 1987) had to be replaced rather than revised.

with mental health conditions. Such legislation aims to protect the rights of individuals with mental illnesses, promote mental health care, and ensure the humane treatment and care of those seeking mental health services. The introduction of mental health legislation varies from nation to nation and is often controlled by historical and social factors. In many cases, the laws governing mental health have changed over time to reflect alterations in public opinion and improvements in the field of mental health treatment.

**1. The Indian Lunatic Asylum Act 1858⁸ (with revisions passed in 1886 and 1889),
The Lunacy (Supreme Courts) Act 1858⁹, The Lunacy (District Courts) Act 1858¹⁰:**

The aforementioned Acts were all passed on September 14, 1858. The Lunacy Act of 1858 clarified the admission process for people with mental diseases and set instructions for the establishment of mental asylums. Later, in 1888, the Act was revised to contain comprehensive guidelines and instructions to control the admission and care of criminal lunatics. The Act reflected the legalistic approach to treating mental disease that was used in the current English Lunacy Acts. Asylums were overcrowded between 1858 and 1912, which led to a decline in the maintenance and upkeep of these facilities. These Acts marked the initial efforts of the British government to address the issue of mental health in India. However, they were largely focused on providing custodial care and control of individuals with mental illnesses rather than promoting their rights or ensuring appropriate treatment and care.

The Military Lunatic Act 1877¹¹:

It was legislation introduced during the British colonial rule in India to address mental health issues concerning members of the military. The Act provided provisions for the care and treatment of military personnel who were deemed to be suffering from mental illnesses.

⁸Ramani Kanta Doss, “The Law Of Lunacy In British India”, 179–200, 1906 <https://southasiacommons.net/artifacts/2358456/the-law-of-lunacy-in-british-india/3343237/> (last visited 03 August 2023)

⁹Ramani Kanta Doss, “The Law Of Lunacy In British India”, 5–21, 1906, <https://southasiacommons.net/artifacts/2358456/the-law-of-lunacy-in-british-india/3343237/> (last visited 03 August 2023)

¹⁰Ramani Kanta Doss, “The Law Of Lunacy In British India” 22–40 1906, <https://southasiacommons.net/artifacts/2358456/the-law-of-lunacy-in-british-india/3343237/> (last visited 03 August 2023)

¹¹ The Act had 9 sections

1. The Indian Lunacy Act, 1912¹²

All previous acts dealing with lunacy were unified, updated, and repealed by the Indian Lunacy Act of 1912. The English Lunatics Act, 1845 was a major inspiration for the Act. The purpose and justifications for the bill's introduction matched the widespread concern over the "false detention of some people." The Indian Lunacy Act of 1912's mechanism for issuing reception orders was based on the English Lunacy Act of 1890. Much earlier than when it was first introduced in England and Wales by the Mental Treatment Act of 1930, the provision for voluntary admission in asylums was made in India¹³ by the 1912 Act.

The Mental Health Act, 1987¹⁴

The Mental Health Act, of 1987, was a crucial piece of legislation enacted in India to govern and regulate mental health services and the rights of individuals with mental illnesses. It replaced the outdated Indian Lunacy Act of 1912 and aimed to modernize mental health care practices in the country. The Act introduced the concept of voluntary admission to mental health facilities, allowing individuals to seek treatment for mental illnesses without undergoing involuntary detention. It mandated the formation of Mental Health Review Boards at the district level to review and scrutinize involuntary admissions and treatment plans. These boards served as independent bodies to protect the rights of individuals with mental illnesses. While the Mental Health Act, 1987, represented a significant step forward in modernizing mental health legislation in India, it also faced criticisms for not fully addressing concerns related to human rights and patient care. The Act primarily focused on institutional care and lacked a comprehensive framework for community-based mental health services. Subsequently, in 2017, the Mental Healthcare Act was introduced to replace the Mental Health Act, of 1987, with a more rights-based and comprehensive approach to mental health care in India. The Mental Healthcare Act, of 2017, emphasizes community-based care, advances the rights of individuals with mental illnesses, and aligns with international human rights standards, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD)¹⁵.

¹² The Act had 8 Chapters, 101 Sections, and a Schedule with 8 forms.

¹³ Through the efforts of the then-Governor of Madras, a provision for the inclusion of a new group of patients (voluntary boarders) was implemented. The Indian Lunacy Act of 1912 created provisions for voluntary borders.

¹⁴ The Act had 10 Chapters and 98 Sections.

¹⁵ The purpose of this Convention is to promote, preserve, and safeguard the full and equal enjoyment of all human rights and basic freedoms by all individuals with disabilities, as well as to encourage respect for their inherent dignity.

The Mental Healthcare Act, 2017¹⁶

The Mental Healthcare Act, of 2017, is a landmark legislation in India that aims to provide comprehensive and rights-based mental health care to individuals with mental illnesses. The Act was enacted to replace the outdated Mental Health Act of 1987 and align India's mental health care practices with norms for international human rights, such as the United Nations Convention on the Rights of Persons with Disabilities¹⁷.

Key features and provisions of the Mental Healthcare Act, of 2017, include:

- Rights of individuals with mental disabilities: The Act recognizes the rights of individuals with mental disabilities to access mental health care and treatment without discrimination. It ensures that their dignity, autonomy, and privacy are protected during the treatment process¹⁸.
- Advance directives: The Act allows individuals to create advance directives that specify their preferences for treatment and care during times when they might not be able to make decisions due to their mental condition.
- Decriminalization of attempted suicide: The Act decriminalizes attempted suicide and focuses on providing medical care, support, and appropriate treatment to individuals in distress.
- Capacity and informed consent: The Act outlines clear guidelines for determining the capacity of individuals with mental illnesses to make decisions about their treatment and care. It emphasizes the importance of obtaining informed consent from the individual or their nominated representative.
- Mental Health Review Boards: The Act mandates the institution of Mental Health Review Boards¹⁹ at the state and district levels. These boards are responsible for

¹⁶ The Act is divided into 16 Chapters and has 126 sections.

¹⁷ *Supra* note 17 at 4

¹⁸ Sireesha Srinivas Rao, "The mental health care act 2017: A critical review" 55-56, 4(2), *Telangana Journal of Psychiatry*, July-December 2018

¹⁹ The State Authority shall, by notification, constitute Boards to be called the Mental Health Review Boards, for the purposes of this Act.

reviewing and safeguarding the rights of individuals subjected to involuntary admission, treatment, or guardianship.

- **Prohibition of inhumane practices:** The Act prohibits the use of seclusion, electroconvulsive therapy (ECT) without anesthesia or muscle relaxants, and other inhumane practices in mental health facilities.
- **Responsibilities of the government:** The Act places responsibilities on the government to provide accessible, affordable, and quality mental health services. It also establishes a Central Mental Health Authority and State Mental Health Authorities to oversee the implementation of the Act.
- **Mental health professionals:** The Act defines the roles and responsibilities of mental health professionals and sets standards for their education, training, and ethical conduct.

The Mental Healthcare Act, of 2017, represents a significant shift in mental health care in India by prioritizing the rights of individuals with mental illnesses. It advocates for a more inclusive and humane approach to mental health care, promoting community-based services and striving to reduce the stigma and discrimination faced by those seeking help for mental health issues.

CRITICAL ANALYSIS OF THE MENTAL HEALTH ACT, 2017

Nearly all mental health facilities were subject to regulation under the 2017 Mental Healthcare Act²⁰. The Mental Healthcare Act of 2017's Preamble said that the Act's goals were to "provide mental healthcare and services for persons with mental illnesses" and "protect, promote, and fulfil the rights of persons with mental illnesses during mental healthcare delivery."

While the Mental Healthcare Act, of 2017, represents a significant step forward in mental health legislation in India, it has also faced some criticisms and challenges. Some of the main criticisms of the Act are as follows:

- **Inadequate funding and resources:** One of the significant criticisms of the Mental Healthcare Act, of 2017, is the lack of adequate funding and resources to implement its provisions effectively. Without sufficient financial support, it becomes challenging to

²⁰ Suresh Bada Math et al., "Mental Healthcare Act, 2017—Aspiration to Action", 61, Indian Journal of Psychiatry, 2019

establish and maintain community-based mental health services, which are vital for reaching a broader population in need of care.

- **Limited awareness and implementation:** There is a lack of awareness about the provisions of the Act among the general public, mental health professionals, and even law enforcement agencies. This leads to inadequate implementation of the Act and may result in the continued violation of patients' rights in some instances.
- **Shortage of mental health professionals:** India faces a shortage of mental health professionals, psychologists, and welfare workers. The Act emphasizes the need for qualified professionals to provide mental health care, but the existing scarcity poses a significant barrier to the effective implementation of the Act.
- **Stigma and discrimination:** Despite the Act's emphasis on reducing stigma and discrimination, social stigma towards mental illnesses remains prevalent in India. This stigma can hinder individuals from seeking help and may lead to delays in accessing mental health care services.
- **Challenges in rural areas:** The Act emphasizes community-based care, but rural areas often lack adequate mental health facilities and professionals. This results in unequal access to mental health care services, with rural communities facing greater challenges in receiving timely and appropriate care.
- **Involuntary admission and rights protection:** While the Act introduced Mental Health Review Boards to protect the rights of individuals subjected to involuntary admission, there have been instances where procedural safeguards have not been effectively implemented, leading to potential violations of patients' rights.
- **Integration with general health care:** The Act emphasizes the integration of mental health care with general health care services, but in practice, this integration has been slow and fragmented, resulting in limited access to mental health care within the broader health care system.
- **Limited focus on preventive measures:** The Act primarily addresses the provision of treatment and care for individuals with mental illnesses but lacks a comprehensive focus

on preventive measures and mental health promotion initiatives.

Despite these criticisms, it is essential to acknowledge that the Mental Healthcare Act of 2017, represents a significant improvement in mental health legislation in India. Addressing these challenges and ensuring effective implementation will require collaborative efforts from the government, mental health professionals, civil society organizations, and the broader public to create a more inclusive and compassionate mental health care system in the country.

CONCLUSION

To address the shortcomings of the previous Mental Health Act of 1987, there is a pressing need to focus on improving the skills and resources of mental health professionals and providing adequate financial support. Unlike the previous law, which lacked a clear definition of mental illness, the current Mental Health Care Act of 2017 has made significant progress by including substance use disorder “SUD”. However, a notable flaw in the MHCA, 2017, lies in Section 89, which allows for the admission and treatment of a person with mental illness without their consent if a chosen representative makes such a request. The “Mental Health Act of 2017” has some shortcomings that need to be addressed to better support patients, practitioners, and healthcare administrators. One significant oversight is the Act's neglect of the family's role as the primary caregiver. In reality, clinicians often rely on the support of patients' families. Therefore, proper family support is essential for the well-being of the patient, the practitioner, and the healthcare system as a whole. Additionally, the Act fails to acknowledge the existence of the government's mental health program, which should have been made mandatory for all states to develop under the guidance of the state mental health authority. To promote mental health awareness and support, it is crucial to introduce mental health programs in educational organizations colleges, and schools. Allocating a fixed budget for implementing such programs across India can significantly improve mental health care and create a more inclusive and supportive environment for those in need.

SUGGESTIONS

As mental health continues to be a critical aspect of overall well-being, the following are some suggestions for strengthening mental health laws in India:

- **Enhanced Funding and Resource Allocation:** Increase government funding and

resource allocation for mental health care to ensure the availability and accessibility of quality mental health services across the country. Adequate funding can support the establishment and maintenance of mental health facilities, community-based care initiatives, and the training of mental health professionals.

- **Strengthen Community-Based Care:** Promote community-based mental health care models that involve local communities, non-governmental organizations, and primary healthcare providers.
- **Focus on Prevention and Mental Health Promotion:** Develop preventive strategies and mental health promotion programs to create awareness and reduce the burden of mental illnesses. These programs can include stress management, resilience-building, and mental health education in schools and workplaces.
- **Empowerment and Rights of Individuals:** Prioritize the rights and empowerment of individuals with mental illnesses by ensuring their participation in decision-making processes regarding their treatment and care. Strengthen the role of Mental Health Review Boards in protecting patients' rights during involuntary admissions and treatment.
- **Training and Capacity Building:** Invest in capacity-building programs for mental health, general healthcare providers, and law enforcement personnel to increase their understanding and competence in dealing with mental health issues.
- **Integration with General Healthcare:** Facilitate better integration of mental healthcare services with general healthcare facilities to provide holistic care and reduce the stigma associated with mental illnesses.
- **Suicide Prevention:** Develop and implement comprehensive suicide prevention programs to address the rising rates of suicide in the country. These programs should include community awareness, counselling, and crisis helplines.
- **Research and Data Collection:** Encourage research on mental health issues to better understand the prevalence, causes, and effective interventions for different mental illnesses. Collect and analyse data to inform evidence-based policies and programs.

- Workshops for Public Awareness: public awareness workshops for increasing understanding about mental health issues, treatments, and available support services.

By incorporating these suggestions, India can strengthen its mental health laws and create a more inclusive, rights-based, and effective mental health care system that benefits all individuals needing support and treatment for mental illnesses.

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