Page 636 - 646 **DOI:** *https://doij.org/10.10000/IJLMH.114012*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

A Study of Laws in India for Persons with Mental Illness

ASTHA POONIA[1]

ABSTRACT

People with mental disorders (hence referred to as PwMI) are frequently marginalised, stigmatised, discriminated against, and humiliated. As a result, mental health law serves as a crucial tool for preserving the rights and dignity of people with mental illnesses. Additionally, it offers a legal framework for addressing issues like admission, treatment, care, and release from institutions; civil, political, economic, social, andss cultural rights; and the execution of mental health policies and programmes. Indian mental health laws have seen significant modification in recent years.

The United Nations Convention on the Rights of Persons with Disabilities (hereafter UNCRPD), which India adopted in 2007, has had a significant impact on disability law internationally. Therefore, a glimmer of hope for the realisation of PwMI rights emerged with the entry into effect of two significant pieces of legislation, namely the Mental Healthcare Act, 2017 (hereinafter MHCA) and the Rights of Persons with Disabilities, 2016 (hereinafter RPwD Act). The efforts implemented, however, have not been successful in realising the desired goal due to inadequate execution and a lack of resources.

Keywords: *Mental Illness, civil, political, economic, social, and cultural rights.*

I. INTRODUCTION

People with mental disorders (hence referred to as PwMI) are frequently marginalised, stigmatised, discriminated against, and humiliated. As a result, mental health law serves as a crucial tool for preserving the rights and dignity of people with mental illnesses. Additionally, it offers a legal framework for addressing issues like admission, treatment, care, and release from institutions; civil, political, economic, social, and cultural rights; and the execution of mental health policies and programmes. Indian mental health laws have seen significant modification in recent years.

The United Nations Convention on the Rights of Persons with Disabilities (hereafter UNCRPD), which India adopted in 2007, has had a significant impact on disability law internationally. Therefore, a glimmer of hope for the realisation of PwMI rights emerged with

[1] Author is a PhD Scholar at MLSU Udaipur, India.

 [ISSN 2581-5369]

the entry into effect of two significant pieces of legislation, namely the Mental Healthcare Act, 2017 (hereinafter MHCA) and the Rights of Persons with Disabilities, 2016 (hereinafter RPwD Act). The efforts implemented, however, have not been successful in realising the desired goal due to inadequate execution and a lack of resources.

This essay clarifies the historical context of PwMI regulations from the British era to the post-independence era prior to the implementation of the MHCA. The Indian Lunacy Act of 1912 and the Mental Health Act of 1987 have both been critically examined. The essay's last section explains the current legislation and regulations in India, the two most significant of which are the MHCA and RPwD Act.

II. HISTORICAL BACKGROUND

The Indian Lunatic Asylum Act, 1858 (with revisions approved in 1886 and 1889), The Lunacy (Supreme Courts) Act, 1858, and The Military Lunatic Acts, 1877 were all passed when the British crown took control of the governance of India in 1858. The background of India's lunatic laws during that time period was the British scenario that existed in the middle of the 19th century. These Acts provided criteria for the construction of mental hospitals and the admissions process. The Indian Lunacy Act, 1912 was passed as a result of increased public awareness of the appalling circumstances in mental hospitals during the first decade of the 20th century.[2]

It completely overhauled India's mental health services and their management. After the law was passed, the so-called mental institutions, which operated similarly to prisons, were released and placed under centralised control. The admissions and certification processes were both spelt out in detail. It was decided to include the option of voluntary admittance. It was recognised that treating individuals with mental disease requires the expertise of experts like psychiatrists. The public's need to be protected from those who are mentally ill is of the utmost importance, yet the law views those who are mentally ill as potentially hazardous.[3] The rights of those with mental illnesses were not prioritised. It ignored human rights and didn't care about anything but prison time.

The UN General Assembly approved the Universal Declaration of Human Rights following World War II. To replace the outdated ILA-1912, the Indian Psychiatric Society presented a draught Mental Health Bill in 1950. The President finally gave his approval to this law (in May 1987) after more than three decades of effort. The Mental Health Act (MHA) of 1993 became formally operative in April. MHA is broken out into 10 chapters with 98 parts each. It required

[2] C L Narayan, D Shikha, *Indian legal system and mental health*, 55(Suppl) Indian Journal of Psychiatry, 2013.
[3] Ramanpreet Kaur., *Mental Illness in India 2*(1) Defence Life Science Journal, 2017

 [ISSN 2581-5369]

the establishment of both central and state mental health authorities (Chapter 2); established licencing requirements for psychiatric hospitals and psychiatric nursing homes (Chapter 3); regulated the admission and discharge of both voluntary and involuntary patients; established a category of "admission under special circumstances" that took the judiciary's authority away from it in an effort to facilitate admissions; facilitated discharge procedures (Chapter 5); and made p. The MHA also included a chapter for the protection of the human rights of people with mental illnesses, which sought to prevent any degrading treatment, prevent participation in research without consent, and protect the person's right to communication (Chapter 8). It also established procedures and penalties for violations of its sections (Chapter 9).[4]

Despite a lot of advantages, the Act has drawn criticism ever since it was introduced. Given its substantial focus on dealing with inpatient treatment in licenced facilities, the Act has been interpreted as a "Mental Hospital Act". Additionally, the Act does not apply to the psychiatric departments of government general hospitals. Because of its fundamental presumptions that people with mental illnesses are aggressive and dangerous and that mental illness is incurable, many people believe the Act to be gravely defective. The Act has drawn criticism for failing to address social stigma and societal ignorance, failing to address community-based mental healthcare, failing to pay attention to WHO guidelines, failing to outline substantive procedures for emergency treatment, and failing to spread awareness and educate the general public about mental health. There were no guidelines for dealing with authorities and family members who asked for a person's unjustified incarceration in mental facilities and nursing homes. Even though the statute simplified the discharge process, no provisions were created for patient care and rehabilitation following release. By retaining the criminal court's authority to impose control over admissions and discharges of non-criminal mentally ill people, it was unable to eliminate the criminal flavour.[5] Admission to and care in hospitals received a lot of attention. Once more, this raised the price of healthcare. No plans were made for at-home care.[6]-[7]

In a similar vein, the "Economic and Social Commission for Asian and Pacific Regions" approved the "Proclamation on the Full Participation and Equality of People with Disabilities

[4] Pratima Murthy, *The Mental Health Act 1987: Quo Vadimus? 7* (3) *Indian Journal of Medical Ethics*, 2016.
[5] No person admitted on the request of another person can be kept in the mental hospital for more than 90 days unless admitted under a Reception Order (Sec. 19(2)). Apart from voluntary admission, a mentally ill person can be admitted through Reception Order. An application for reception order may be made by the Medical Officer in charge of a mental hospital, by the spouse or by any other relative of the mentally ill patient for admission to the Magistrate. A mentally ill patient admitted by relative or friend can also apply to the magistrate for discharge (Sec. 19(3)).
[6] JK Trivedi, *Mental Health Act, salient features, objectives, critique and future directions,* 51 *Indian Journal of Psychiatry*, 2009.
[7] *Supra* n. 3

 [ISSN 2581-5369]

in the Asian and Pacific region" in Beijing in December 1992, with India as a signatory. The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995 (PwD Act) was passed to carry out the proclamation's requirements.[8] The law has gone into effect on February 7th, 1996. It was an important move that guaranteed the inclusion of individuals with disabilities in all aspects of nation-building and provided them with equal opportunity. The Act covered both preventive and promotional aspects of rehabilitation, such as education, employment and vocational training, reservations, research, and the development of human resources. It also covered the creation of barrier-free environments, the rehabilitation of people with disabilities, unemployment benefits for the disabled, a special insurance programme for disabled workers, the establishment of homes for people with severe disabilities, and other things. According to the Act, a person is "suffering from 40% or more disability" if they meet this definition. However, as there is no comparable instrument for mental illness, this quantification obscures the problem.[9] Additionally, only three types of disabilities (blindness or low vision, hearing impairment, and locomotor disability or cerebral palsy, with a 1% allocation for each) qualified for the three percent reservation for the disabled.[10] Despite the PwD Act's legal recognition of the mentally disabled group, they were not given any job quotas.

The UNCRPD was ratified by India on October 1st, 2007. Following India's acceptance of the agreement, it was mandated that all disability-related legislation be updated to comply with the UNCRPD. The Mental Health Care Act of 2017 (MHCA) and the Rights of Persons with Disabilities Act of 2016 (RPwD Act), respectively, have replaced the MHA of 1987 and the PwD Act of 1995.

III. LAWS SAFEGUARDING THE HUMAN RIGHTS OF PMI: NATIONAL RESPONSES TO MENTAL HEALTH CHALLENGES

(A) Constitution of India

Insofar as their disability does not prevent them from enjoying those rights or insofar as their enjoyment is not expressly or implicitly prohibited by the constitution or by any other Statutory law, the mentally ill have the same human and fundamental rights as every other citizen of India.

According to the Indian Constitution, Articles 15 and 16 require the States to provide real equality and prohibit discrimination on the basis of "religion, race, caste, sex, place of birth or

[8] Megha Nagpal, *Minimizing Vulnerability of Persons with Disabilities through Legislative Responses in Criminal Procedure in India* , 6 Nirma University Law Journal, 51, 2017.
[9] Prashant Srivastava, Kumar Pradeep, *Disability Its Issues and Challenges: Psychosocial and Legal Aspects in Indian Scenario*, 18(1) *Delhi Psychiatry Journal*, 2015.
[10]Under Sec 2(i), 7 catagories of disability are listed, namely blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation, mental illness.

any of them." Article 14 guarantees equality for all citizens before the law and equal protection of the law. Further, the Indian Constitution's Article 16 (3 & 4) encourages the State to draught any laws that provide for the reservation of positions or appointments in favour of any disadvantaged group of citizens that, in the State's opinion, is not adequately represented in the services. This is done to ensure equality in the results. According to Article 21, no one may be deprived of their life or personal freedom until a legal process has been followed. People with disabilities have the same fundamental rights as people without disabilities. In order to further the welfare of the populace, directive principles of state policy must preserve the social order. Inequalities must be reduced, the right to a sufficient standard of living must be protected, and the functioning of the judicial system must be ensured to advance justice. In circumstances of unemployment, old age, illness, disability, and other unjustified need, the State should provide for the right to labour, education, and public assistance (Article 41). The State must also take special effort to further the economic and educational interests of the less fortunate groups of the population (Article 46).[11]

(B) National Trust For The Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation[12] And Multiple Disabilities Act, 1999

By promoting measures for their protection in the event of their parents' passing, developing procedures for the appointment of their guardians and trustees, and promoting equal opportunities in society, the 1999 Act establishes a National Trust to enable people with Autism, cerebral palsy, and multiple disabilities to live independently.

The objectives of the National Trust are[13]:

- To make it feasible for people with disabilities (those who fall under the National Trust) to live as independently and completely as they can in the neighbourhood where they belong.
- To upgrade the facilities that assist people with disabilities in living in their own families and in assisting those without family to live independently.
- To offer additional help to recognised organisations that assist families of people with disabilities depending on their needs.

[11] Hemlata, *A critical analysis of various legislations and policies on disability in India* 1 MIER Journal of educational studies, trends and practices, 2011.
[12] Sec. 2(g): Mental retardation means a condition of arrested or incomplete development of mind of person which is specially characterised by sub-normality of intelligence
[13] The National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act 1999, Sec. 10

 [ISSN 2581-5369]

- To encourage the implementation of care plans for people with disabilities in the event that their parent or legal guardian passes away.
- To develop a process for the appointment of trustees and guardians for people with disabilities who need to be protected.
- To make it easier for people with disabilities to realise their rights to equal opportunity, protection, and full participation.

The Board of Trustees established pursuant to Section 3 of the Act shall receive funds from the Central Government in each fiscal year, as may be deemed necessary, to provide financial assistance to organisations registered by the board pursuant to Section 12 for carrying out approved programmes, which may include promoting independent living in the community, daycare services, establishment of residential homes, development of self-help groups, and establishment of local committees to grant

The National Trust Act has come under fire for the appointment of guardians to look after and make decisions on behalf of the disabled, among other things. This Act is also being updated to comply with the UNCRPD and broaden its scope.

National Mental Health Programme (NMHP) and District Mental Health Programme (DMHP):

The Government of India launched NMHP in 1982, with the following objectives:

- To encourage the application of mental health knowledge in general healthcare and in social development;
- To encourage community participation in the development of mental health services; and
- To ensure the availability and accessibility of minimal mental healthcare for all in the near future, particularly to the most vulnerable and underprivileged sections of the population.

It was believed that the district should be the program's administrative and implementation unit in order to get over NMHP's restrictions and expand it up. During a pilot project (1985–1990) in the Bellary District of Karnataka, the National Institute of Mental Health and Neurosciences (NIMHANS) tested the viability of the DMHP and showed that it was possible to provide basic mental healthcare services at the district, taluk, and PHCs by trained PHC staffs under the guidance/support of a district mental health team. The 'Bellary model' was a success, and it cleared the way for the DMHP, which was introduced as part of the NMHP in 1996 (during the IX Five Year Plan). In 1996, it was subsequently started with an initial budget of 280 million rupees in 27 districts. Under the 10th, 11th, and 12th Five Year Plans, DMHP has undergone

 [ISSN 2581-5369]

significant change during the previous 15 to 20 years.[14]

By decentralising treatment from Specialised Mental Hospital based care to basic health care providers, the major goal of DMHP is to provide Community Mental Health providers and integrate mental health with General Health Services. The DMHP's goals are to:

- Provide the community with dependable basic mental health care and link those services with other medical services
- Treatment and rehabilitation of mental patients inside the community.
- Early diagnosis and treatment of patients within the community itself.
- Reducing the stigma of mental disease via public awareness.

(C) National Mental Health Policy, 2014

The "National Mental Health Policy" was introduced by the central Ministry of Health & Family Welfare on October 10, 2014, in accordance with World Health Assembly Resolution WHA 65.4 on the burden of mental disorders worldwide and the need for an all-encompassing, coordinated response from the health and social sectors at the local level.

Its mission is to provide all people with excellent, readily available health and social care throughout their lives, within a framework based on human rights, with the goal of promoting mental health, avoiding mental disorders, facilitating rehabilitation, and enabling socioeconomic participation for those afflicted by mental illness. The aim is to improve awareness of mental health, develop leadership in the mental health sector, and minimise stress, disability, illness, and premature death related to mental health disorders.

The objectives of the policy are:

- To make mental health services available to everyone.
- To increase the number of people with mental health issues who have access to and use comprehensive mental health services, such as prevention, care, and support services.
- To improve access to mental health treatments for vulnerable populations such as the homeless, those living in distant locations or on tough terrain, as well as those in underprivileged regions in terms of education, society, and the economy.
- To lessen the effect and prevalence of risk factors linked to mental health issues.

[14] S Gupta , R Sagar, *National Mental Health Programme-Optimism and Caution: A Narrative Review*, 40(6) Indian Journal of Psychological Medicine, 2018.

 [ISSN 2581-5369]

- To lower the danger, occurrence, and rate of suicide and suicide attempts.
- To guarantee that the rights of people with mental health issues are respected and that they are shielded from harm
- To lessen the stigma attached to mental health issues.
- To increase the accessibility and fair distribution of knowledgeable human resources for mental health.
- To gradually increase financial resources and boost their use for mental health promotion and treatment.
- To recognise and treat the social, biological, and psychological factors that influence mental health issues, as well as to offer effective solutions.[15]

(D) The Rights Of Persons With Disability Act, 2016

- To be in compliance with the UNCRPD, the RPwD Act 2016 superseded the Persons with Disabilities Act, 1995. It was passed on December 28, 2016, and it became effective on April 19, 2017. The following are important aspects of the Act that have an impact on PMI:
- This Act's preamble makes it clear that it seeks to protect the dignity of all Persons with Disabilities (PwD) in society and to end all forms of discrimination. Additionally, the law assures that people with disabilities can participate fully in society and are fully accepted. Any individual with long-term physical, mental, intellectual, or sensory impairments who, when engaging with barriers, prevents effective and equitable social development is referred to as PwD. The number of impairments covered by the Act has increased from 7 to 21.[16]
- The PwD Act referred to mental illness as "any mental disorder other than mental retardation." The new Act, which is a step forward, gives a broader definition of mental illness that is consistent with the MHCA's definition.
- The right to legal capacity, or the right to equal recognition of PwDs before the law, has been introduced by the RPwD Act. PwDs have the ability to govern their financial

[15] Ministry of Health and Family Welfare, Government of India, *National mental health policy of India: New Pathways New Hope*, 2014.

[16] The RPwD Act includes cerebral palsy, dwarfism, muscular dystrophy, chronic neurological disorders (including Parkinson's disease and multiple sclerosis), blood disorders (including hemophilia, thalassemia, and sickle cell disease), acid attack victims, speech and language disability, and intellectual disability (ID; which includes specific learning disability [SLD] and autism spectrum disorder)

 [ISSN 2581-5369]

affairs, obtain credit, and vote as a result of this. They also have the right to possess or inherit property. The option of a limited guardian, who can assist the person in making legally binding decisions, is also available to PwDs. The PwD has the ability to substitute a different guardian if there is a conflict of interest or when it is judged necessary.

- According to the Act, children with benchmark disabilities between the ages of 6 and 18 are entitled to free education, and people with benchmark impairments are given a 5% seat reservation at government-funded and higher education institutions.
- The Act only reserves 1% of employment for SLD, ID, mental illness, autistic spectrum disorder, and multiple impairments when these conditions are present together. This result of 1% for all the aforementioned categories appears low in a nation where depressive illnesses rank seventh on the list of conditions that most severely impair people's capacity to work.
- National and state funds will be established to help people with impairments financially.The Act outlines penalties for actions against people with disabilities as well as violations of the new law's rules.

(E) Mental Healthcare Act 2017

Following India's adoption of the UNCRPD in 2007, the MHCA went into effect on May 29, 2018, and it adheres to the UNCRPD's principles. The nationwide Mental Health Survey was conducted between 2014 and 2016 in 12 Indian states as a large-scale, multicenter nationwide investigation on the many aspects and traits of mental health disorders among people ages 18 and above. In this regard, the Indian government began to work to enhance mental health care by creating the National Mental Health Policy in 2014 and the Mental Health Care Act in 2017.

The law is forward-thinking, patient-focused, and founded on rights. According to the preamble of the Act, its goals are to offer mental healthcare and assistance to those who have mental illnesses as well as to safeguard, advance, and uphold those people's legal rights while providing such services.

Key features of the Act are:

- **Presumption against suicide**: MHCA provides a presumption of extreme stress about anybody who has tried suicide, regardless of anything in S. 309 of the IPC, until refuted. Additionally, it requires the government to rehab these individuals so that future suicide attempts don't happen again.

 [ISSN 2581-5369]

- **Human Rights granted to PwMI**: It guarantees everyone's right to get mental health care. Such services must to be of a high standard, practical, reasonable, and available. Furthermore, it offers access to free legal services, safeguards against inhumane treatment, and medical records.
- **Advance Directives**: This gives a mentally ill person the authority to choose a representative and to create an advance directive outlining how they wish to be treated for their specific disease. This instruction has to be approved by a doctor.
- **Restricted Usage of Electroconvulsive Therapy**: Electroconvulsive therapy can only be used in emergency situations and even then, only in conjunction with anaesthetic and muscle relaxants. It outright forbids using ECT to any minor.
- **Free Quality Treatment for Poor and Homeless Persons**: Additionally, it guarantees that those with mental illnesses who are homeless or live below the poverty line (BPL)—whether or not they possess a BPL card—will receive free, effective care.
- **Ensures Right to Confidentiality:** Additionally, it gives persons with mental illness the right to anonymity regarding their physical and mental health, as well as their medical care. Additionally, it guarantees that no pictures or other details about the patient will be shared with the media without their permission.
- **Special Provisions for Women:** Women have been given specific healthcare considerations, including the prohibition on removing mothers from their young children unless it is absolutely essential.
- **Strict Punishments for Flouting**: The penalty for breaking this Act's rules is a maximum 6-month jail sentence, a fine of Rs. 10,000, or both. Repeat offenders who break this Act's rules might spend up to two years in prison, pay a fine of 50,000 to 5 lakh rupees, or both.
- **Rehabilitation and Treatment**: Additionally, it makes sure that persons with mental illnesses receive the correct medical care, treatments, and rehabilitation services without jeopardising their rights or dignity.

IV. CONCLUSION

An essential tactic for preventing discrimination and stigma is the distribution of knowledge about mental illnesses and the human rights of people with disabilities. States are required "to provide education and access to information concerning the main health problems in the community," which may include psychiatric diseases. For guaranteeing equitable access to care

 [ISSN 2581-5369]

and the respect of the human rights and dignity of people with mental impairments within care, it is equally crucial to provide human rights and disability awareness training for health workers and personnel in related sectors.

It is crucial that people with mental disabilities and the organisations that represent them are involved in all phases of the creation, implementation, and evaluation of laws, policies, programmes, and services pertaining to mental health and social support as well as more general policies and programmes, such as those that affect poverty reduction. States should formally request their opinions. Family members frequently have a significant role in determining care decisions as well as legislative and policy procedures since they give care and support. To guarantee that the requirements of people with mental impairments are satisfied, it is important to include mental healthcare consumers, their families, and representative organisations in the design and execution of all pertinent programmes.

Many Indians suffer negatively as a result of mental illnesses. India needs to make significant investments in mental health services due to the inadequate access to mental health care, the lack of awareness, and the stigma associated with mental illnesses in the nation. These investments should be made in an effort to combine mental and physical health services.

*****

 [ISSN 2581-5369]