

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Mental Healthcare Act, 2017: A Human Rights Perspective

ADITYA SHISHODIA¹

ABSTRACT

The enactment of the Mental Healthcare Act, 2017 marked a transformative shift in India's approach to mental health, moving away from a custodial and institutional model to one that upholds dignity, autonomy, and the fundamental human rights of individuals with mental illness. Replacing the outdated Mental Health Act of 1987, this legislation aligns with international human rights standards, particularly those outlined in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The Act introduces key provisions such as the establishment of regulatory bodies, formation of Mental Health Review Boards, registration of mental health establishments, provision of free treatment for those below the poverty line, and mechanisms to ensure patient rights and legal support. Despite these progressive measures, the full implementation of the Act remains challenged by systemic issues such as inadequate infrastructure, limited financial and human resources, and the persistent stigma surrounding mental illness in Indian society.

This paper explores the Mental Healthcare Act, 2017 from a human rights perspective, critically analysing its provisions and benefits. It also highlights the urgent need for specialised training in forensic psychiatry and the development of expert centres to bridge existing gaps in service delivery. The study underscores that while the MHCA 2017 has laid a strong legislative foundation, meaningful reform in mental health care requires not only legal advancement but also proactive policy support, public awareness, and the development of a skilled mental health workforce. The Act is a vital step forward in securing equitable, dignified, and rights-based mental health care for all Indians.

I. INTRODUCTION

Mental health forms the foundation of emotional, psychological, and social well-being. It determines how individuals handle stress, build relationships, and make daily life decisions. In a vast and diverse country like India, where societal pressures, poverty, and lack of awareness often aggravate mental health conditions, the subject of mental health has historically remained marginalised. Despite its increasing impact, India has faced an acute shortage of mental health resources—both in terms of infrastructure and trained professionals. According

¹ Author is a Student at Symbiosis Law School, Noida, India.

to the National Mental Health Survey (2015–2016)², nearly 150 million Indians require mental health care services, yet only less than 30 million are able to access treatment. This gap is further widened by persistent stigma, lack of awareness, and insufficient policy implementation.

Historically, Indian mental health legislation was deeply influenced by colonial British laws³, which treated persons with mental illness (PMI) as a threat to society rather than individuals in need of care and protection. Acts such as the Lunacy Acts of 1858⁴ and the Indian Lunatic Asylum Act⁵ were primarily custodial and focused on isolating individuals with mental disorders. These laws remained in place for decades until growing political consciousness, public awareness, and the global movement for human rights highlighted the need for reform. The Mental Health Act of 1987⁶ was a progressive step at the time, shifting the focus slightly from mere institutionalisation to care and treatment. However, it was still criticised for its complicated procedures, lack of implementation mechanisms, and for failing to adequately uphold the rights and dignity of patients. The Act also did not align with evolving international human rights standards, particularly those outlined in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)⁷, which India ratified in 2007.

The Mental Healthcare Act, 2017⁸ was enacted as a response to these criticisms and as an attempt to bring Indian mental health law in line with global human rights norms. This Act repealed the MHA-1987 and marked a transformative shift in the legislative approach to mental healthcare. One of the most notable aspects of the MHCA is its decriminalisation of attempted suicide—a recognition that such actions are often the result of severe psychological distress, not criminal intent. Under Section 115 of the Act, any person who attempts suicide is presumed to be suffering from mental illness unless proven otherwise, and is entitled to care, treatment, and rehabilitation.

More importantly, the MHCA 2017 establishes a rights-based framework for the delivery of mental health services. It guarantees every individual the right to access affordable, quality mental healthcare, the right to make informed decisions about their treatment, and protection

² (Dec. 27, 2016), <https://indianmhs.nimhans.ac.in/phase1/Docs/Report2.pdf>.

³ *Indian legal system and mental health*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC3705679/>.

⁴ *Mental health law in India: origins and proposed reforms*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC5618879/>.

⁵ *Indian Lunacy Act, 1912*

⁶ India Code, (June 29, 2016), <https://ncwapps.nic.in/acts/THEMENTALHEALTHACT1987.pdf>.

⁷ ((June 9, 2010), <https://www.slic.org.in/uploads/2018/10/Harmonizing-Laws.pdf>. June 9, 2010), <https://www.slic.org.in/uploads/2018/10/Harmonizing-Laws.pdf>.

⁸ Anil Kumari, (Feb. 3, 2023), <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf>.

from cruel, inhuman, or degrading treatment. It introduces the concepts of ‘advance directive’ and ‘nominated representative’, empowering individuals to have a say in their treatment even when they are not in a state to do so. The Act also differentiates between ‘independent admissions’ and ‘supported admissions’⁹, replacing the outdated concept of involuntary institutionalisation with a more participatory approach.

Furthermore, the Act calls for the establishment of Central and State Mental Health Authorities and Mental Health Review Boards¹⁰ to regulate mental health institutions and safeguard patient rights. This framework ensures that mental healthcare providers are accountable and that patients have avenues for grievance redressal. In this sense, the MHCA not only modernises the legal framework but also attempts to destigmatize mental illness and promote the integration of mental health into public health systems.

Despite these significant strides, the implementation of the Act remains uneven across the country. Challenges such as inadequate infrastructure, lack of trained personnel, and limited public awareness hinder its full realisation. However, the Act stands as a landmark reform that repositions mental health as a matter of dignity, autonomy, and human rights, rather than control and seclusion.

This paper seeks to examine the Mental Healthcare Act, 2017 from a human rights perspective, tracing its evolution, highlighting its key features, and analysing its effectiveness and challenges in the context of India’s mental health landscape. The study aims to contribute to the ongoing discourse on how legislation can be a powerful tool to transform mental healthcare, promote inclusivity, and safeguard the fundamental rights of individuals with mental health conditions.

II. MENTAL HEALTH AND INDIAN LAWS

The legal framework governing mental health in India has evolved significantly from its colonial roots to align with contemporary human rights standards. The Indian Constitution, under Article 21¹¹, guarantees the right to life and personal liberty, which includes the right to read, write, express oneself, and move freely—rights equally applicable to persons with mental illness (PMI). However, certain statutory exclusions exist; for instance, the Representation of People Act, 1950 disqualifies individuals declared of unsound mind by a competent court from voting or holding public office. Further legal recognition of mental

⁹ https://www.researchgate.net/publication/352519500_Admission_and_discharge_procedures_in_MHCA_2017.

¹⁰ Xi: *Mental Health Review Boards*, XI: MENTAL HEALTH REVIEW BOARDS <https://mhca2017.com/index.php/act/chapter-xi-mental-health-review-boards>.

¹¹ (Oct. 13, 2015), <https://www.mea.gov.in/images/pdf1/part3.pdf>.

health came with the Persons with Disabilities (Equal Opportunity, Protection of Rights, and Full Participation) Act, 1995 (PDA 95), which classified mental illness as a form of disability, thereby entitling PMI to various benefits. Although the Act aimed to ensure integration, prevent discrimination, and promote a barrier-free society, implementation challenges such as the exclusion of PMI from the 3% employment reservation persist. Mental health legislation in India was historically shaped by British colonial laws, such as the Lunatic Asylums Act of 1858 and the Indian Lunacy Act of 1912, which primarily focused on custodial care and institutionalization. Post-independence, the Mental Health Act of 1987 marked a shift by incorporating safeguards against patient abuse and emphasizing judicial oversight. However, its limited focus on rights-based treatment and rehabilitation laid the groundwork for its eventual replacement. The Mental Healthcare Act, 2017 emerged as progressive reform in response to global human rights obligations, marking a decisive transition from custodial care to patient-centric, rights-based mental healthcare¹².

III. KEY PROVISIONS OF THE MENTAL HEALTHCARE ACT, 2017: A HUMAN RIGHTS PERSPECTIVE

The Mental Healthcare Act, 2017 marks a significant shift in India's approach to mental health by placing human rights at its core. It establishes a rights-based framework aimed at safeguarding the dignity, autonomy, and equality of individuals with mental illness.

1. Recognition of Mental Healthcare as a Right

For the first time in Indian legislation, access to mental healthcare has been recognized as a legal right of every citizen. This includes access to quality, affordable, and accessible mental health services provided or funded by the government (Vasudevan, Sanju, & Swaran, 2019). The Act mandates a comprehensive range of services, including inpatient and outpatient care, community-based rehabilitation, mental health services for children and the elderly, halfway homes, and supported accommodations¹³.

2. Protection of Dignity and Freedom from Inhuman Treatment

The Act explicitly affirms the right to live with dignity for persons with mental illness and ensures they are protected from inhumane or degrading treatment in all mental health establishments. This includes safeguards against cruelty, abuse, or neglect¹⁴.

¹² *Indian legal system and mental health*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC3705679/>.

¹³ *World Mental Health Day: Mental Health is a Universal Human Right*, (Oct. 10, 2023), <https://www.who.int/southeastasia/news/detail/10-10-2023-world-mental-health-day-mental-health-is-a-universal-human-right>.

¹⁴ https://www.indiacode.nic.in/show-data?actid=AC_CEN_25_54_00002_201649_1517807328299&orderno=6.

3. Rights-Based Provisions Ensuring Autonomy and Participation¹⁵

I. Right to Access Mental Healthcare (Section 18)

Section 18 guarantees that every person has the right to access mental healthcare services provided or funded by the government. These services must be:

- Affordable, of good quality, and available without discrimination
- Cover a wide range of services such as outpatient, inpatient care, rehabilitation, community-based services, and emergency services
- Include access to essential medicines and mental health treatment in every district

It also places a duty on the appropriate government to ensure these services are accessible and to make necessary resources and infrastructure available.

II. Right to Confidentiality (Section 23)

Section 23 ensures that every person with mental illness has the right to confidentiality regarding:

- Their mental health condition
- Treatment details
- Medical records and personal information

This information can only be shared with:

- The person themselves
- Their nominated representative
- Others with the person's consent or as required by law

III. Right to Legal Aid (Section 27)

- Individuals are entitled to legal services under the Legal Services Authorities Act, 1987.
- This ensures they can exercise their rights, seek redressal, and defend themselves in any proceedings under the Mental Healthcare Act.

IV. Right to Equality and Non-Discrimination (Section 21)

It ensures that persons with mental illness are treated equally and are not discriminated against

¹⁵ Anil Kumari, (Feb. 3, 2023), <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf>. Anil Kumari, (Feb. 3, 2023), <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf>.

on any grounds, including:

- Gender
- Sexual orientation
- Religion
- Caste
- Disability
- Economic or social status

V. Right to Protection from Cruel, Inhuman and Degrading Treatment (Section 20)

- No physical or mental abuse in any mental health establishment
- Right to live in a safe, hygienic environment
- Access to adequate food, clothing, sanitation, privacy, and recreational activities
- No chaining, solitary confinement, or degrading practices allowed

VI. Right to Information (Section 22)

It gives every person with mental illness the right to receive information about:

- Their mental health condition
- Proposed treatment and alternatives
- Rights available under the Act
- Rules and procedures related to their care

The information must be:

- Provided in a language and format the person understands
- Given in a way that respects their dignity and comprehension ability

VII. Right to Community Living (Section 19)

- No person shall be forced to live in a mental health institution just because they have no family or home.
- The government must provide support such as halfway homes, group homes, or supported accommodation.
- Promotes social inclusion and independent living with necessary support services.

IV. BENEFITS OF MENTAL HEALTH LAWS

The Mental Healthcare Act of 2017 has significantly changed how mental health treatments are provided and how people with mental illnesses are perceived. One of the many benefits of this act is that it raises awareness of the rights of those with mental illness, including the freedom to choose the kind and length of treatment, as well as the right to be treated with dignity and without cruelty.

The act's decriminalisation of suicide by making it unpunishable under Section 309 of the Indian Penal Code has been another crucial contribution. Additionally, this law forbids treating anyone with mental illness inhumanely. This has been accomplished, among other things, by limiting the use of shackles, outlawing solitary imprisonment, and banning the use of sterilisation techniques to treat mental diseases¹⁶.

Additionally, the Mental Healthcare Act of 2017 grants individuals with mental diseases the ability to designate a representative and create an advance directive (Digvijay, 2021). Additionally, by designating mental health review boards, the Mental Healthcare Act of 2017 governs the creation, administration, and operation of mental healthcare facilities.

V. CONCLUSION

The Mental Healthcare Act, 2017 represents a landmark step in India's journey toward a more humane, inclusive, and rights-based approach to mental health. By shifting the focus from institutionalisation and control to dignity, autonomy, and equality, the Act aligns domestic law with international human rights standards such as the UNCRPD. Its comprehensive provisions—including the right to access care, live in the community, receive information, maintain confidentiality, and be protected from discrimination and inhuman treatment—reaffirm the status of persons with mental illness as equal citizens under the law.

However, the true success of the Act lies not merely in its legislative promise but in its effective implementation. Persistent challenges such as lack of infrastructure, shortage of trained professionals, and widespread stigma continue to hinder the full realisation of its objectives. Addressing these gaps requires not only administrative commitment and resource allocation but also societal change through education, awareness, and community engagement.

From a human rights perspective, the Mental Healthcare Act, 2017 is a progressive and transformative framework that redefines mental health as an essential component of public

¹⁶ Influence of the new mental health legislation in India, PMC, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8277537/>.

health and social justice. For India to fully honour the spirit of the Act, a collective effort from policymakers, mental health professionals, legal authorities, and civil society is essential. Only then can the vision of a compassionate and equitable mental healthcare system truly be achieved.

VI. REFERENCES

1. *Xi: Mental Health Review Boards*, XI: MENTAL HEALTH REVIEW BOARDS <https://mhca2017.com/index.php/act/chapter-xi-mental-health-review-boards>.
2. (Oct. 13, 2015), <https://www.mea.gov.in/images/pdf1/part3.pdf>.
3. *World Mental Health Day: Mental Health is a Universal Human Right*, (Oct. 10, 2023), <https://www.who.int/southeastasia/news/detail/10-10-2023-world-mental-health-day-mental-health-is-a-universal-human-right>.
4. Anil Kumari, (Feb. 3, 2023), <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf>.
5. *Evaluating India's Mental Health Laws: Implementation, Benefits, and Challenges » The International Journal of Indian Psychology*, (Oct. 17, 2024), <https://ijip.in/articles/mental-health-laws/>.
6. *Influence of the new mental health legislation in India*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC8277537/>.
7. *Mental Health Care Bill and Electroconvulsive Therapy: Anesthetic Modification*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC3821197/>.
8. (June 9, 2010), <https://www.slic.org.in/uploads/2018/10/>
9. *The ongoing process of amendments in MHA-87 and PWD Act-95 and their implications on mental health care*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC3267348/>.
