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Status of Mental HealthCare Act, 2017

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ABSTRACT

India's new Mental Health Act 2017, which entered into force on May 29, 2018, specifically aims to comply with the United Nations Convention on the Rights of Persons with Disabilities and provide legally binding mental health care rights to more than 1.3 billion people. The main actions include (a) a new definition of mental illness and mental health facilities; (b) a revised "legal capacity" to provide mental health care; (c) "advance directives" that enables people with mental illness to guide future care (D) It is not necessary to be the "nominated representative" of family members; (e) Mental health rights and comprehensive social rights of patients with mental illness; (f) Establishment of government agencies to supervise services; g) Mental health expert group in-depth consideration of other issues; h) Revised the procedures of "self-direction", "assisted guidance" (guidance and treatment without patient consent) and "minor guidance"; (I) revised handling, containment, and investigation rules; j) The de facto decriminalization of suicide. The main challenges involve allocating resources for mental health services and the new structures proposed in the legislation, the adequacy of seemingly more institutionalized care methods, and the conflicting effects of creating barriers for treatment. The debate on specific measures (such as banning electroconvulsive therapy without the use of muscle relaxants and anesthetics) continues, reflecting the need for continued collaboration with stakeholders, such as patients, families, and the Indian Psychiatric Society, despite these challenges. But the new legislation offers significant potential benefits beyond India but also applies to other countries that want to bring their laws into compliance with the United Nations Convention on the Rights of Persons with Disabilities and Mental Illness.

Keywords: *Mental Health, Mental Disorder, Legislation, Advance Directive.*

I. INTRODUCTION

The Mental Healthcare Act, 2017 commenced from 29th May 2018. The Main aim is to provide mental healthcare services for persons with mental illness. It ensures that these people have a right to live their life with dignity and by not being discriminated against or harassed.² In 2007 the Indian government ratified the United Nations Convention on the Rights of Persons with

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² <https://www.thehindu.com/>

Disabilities (UNCRPD).³ The convention states that the country's laws and regulations must follow its recommendations. This law absolutely had to be adapted according to the times and brought into line with the UNCRPD. Therefore, the legislature has harmonized national laws.⁴ The preamble to the Mental Health Act of 2017 (MHCA) aims to provide mental health care and services to people with mental illness and to promote and uphold their rights while it is being provided of mental health services and nursing. The law is progressive, patient-centered, and rights-based.⁵ Chapter 5 on the "Rights of People with Mental Illness" forms the core of this legislation.⁶

II. MENTAL HEALTH ACT, 1987 V/S MENTAL HEALTHCARE ACT, 2017

The Introduction of Mental HealthCare Act,2017 repealed the earlier law (Mental Health Act,1987) which did not specifically provided for definition of Mental Illness. It defined a "mentally ill person" as "a person who is in need of treatment by reason of any mental disorder, other than mental retardation".⁷ substance use disorder (SUD) was not specifically mentioned anywhere else, except in Chapter III.

This obligated government to set up separate psychiatric hospitals for those addicted to Alcohol and drugs.

However, MHCA 2017, has included SUD in the definition of mental illness itself.⁸ The law defines "mental illness" as "a substantial disorder of thinking, mood, perception, orientation or memory that affects judgment, behaviour, the power to ascertain reality or the power to cope with the ordinary demands of the world. However, satisfying life's mental states related to alcohol and drug abuse does not include intellectual disability, which is a state of stopped or incomplete mental development of a person, particularly characterized by subnormal intelligence."⁹

According to present definition, the Law applies only to those that have "significant" impairment of thinking, mood, cognition, orientation, or memory, impairment of judgment, behaviour, the power to ascertain reality, or the power to cope the ordinary demands of people to meet, seriously affect life. ¹⁰

³ <https://www.mondaq.com/india/healthcare/972410/>

⁴ <https://www.mondaq.com/india/healthcare/972410/>

⁵ <https://www.indianjpsychiatry.org/article.asp>

⁶ <https://www.mondaq.com/india/healthcare/972410/>

⁷ *The Mental Health Act, 1987 and Persons with Disability Act, 1995 with the UNCRPD*

⁸ <https://www.thehindu.com/>

⁹ <https://legislative.gov.in/sites/default>

¹⁰ <https://www.thehindu.com/>

III. CURRENT STATUS OF MENTAL HEALTHCARE ACT, 2017

Overall Reaction to this act is mixed. It has received bricks as well as bouquets. It has been praised for upholding the rights of persons with mental illness. It also has some pitfalls in relation to limited mental healthcare resources and an ambiguity on which category of substance use disorder (SUD) to include in the ambit of MHCA,2017. The Act in its current form is ambiguous. Either act needs to be amended or rules to be formulated. To implement new provisions, there are directions to establish central mental health authority, state mental health authority and MHRB's.

IV. VARIOUS RIGHTS ENSURED UNDER THE LAW

The law provides patients with the right to access a variety of mental health facilities. If these services are not available, a PMI is entitled to government compensation.¹¹ Access to medical records, the right to protection from cruelty and inhuman treatment, and the right to equality and non-discrimination are guaranteed by law are all ensured under the law.

V. CONCEPT OF ADVANCE DIRECTIVE

The concept of advance directive gives patients more power to decide on their own certain aspects of their treatment like- How to be treated, how not to be treated, who to decide i.e., Nominating a representative.¹² The mental health care (PMI) approach in India has advanced. The MHCA 2017 was founded with the great hope of ensuring the accessibility and availability of mental health services for all. Only a few procedures that appear to be manifestly contrary to human rights are strictly prohibited.¹³ These procedures make mental health seem like an utterly scary experience, but these patients should be aware that these procedures are prohibited and that they should not panic and appear with a positive attitude towards treatment. Electroconvulsive therapy without Relaxants and anaesthesia, electroconvulsive therapy for minors, sterilization of men or women if this sterilization is for the treatment of a mental illness, chained in any way or form.¹⁴ No psychosurgery will be performed until: the informed consent of the patient to whom it is addressed Operation performed. Approval of the appropriate body to carry out the operation.¹⁵

¹¹ <https://www.indianjpsychiatry.org/article.asp>

¹² <https://legislative.gov.in/sites/default>

¹³ <https://www.indianjpsychiatry.org/article.asp>

¹⁴ <https://www.thehindu.com/>

¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/>

VI. IMPLICATIONS

A major change has been shifting in society's attitudes. People are accepting towards mental healthcare problems and more supportive to the issue. They are more aware of common mental disorders such as depression/anxiety and are willing to talk to health professionals and seek treatment.¹⁶ Depression/ Anxiety where capacity/ability to meet ordinary demands of life are not affected may not come under this definition and thus can be discharged or admitted form hospital like other illness.¹⁷ The recently introduced decriminalization of suicide is definitely a welcome move.

VII. DECRIMINALIZATION OF SUICIDE

Section-309 deals with the 'Attempt to Commit Suicide'. Section reads – “Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment with a term which may extend to one year, or fine or both.”¹⁸ Today the discussion revolves around whether Section- 309 IPC has been repealed or still exists, the section will be continued in the IPC. What happens is that the Mental Health Care Act (MHCA), 2017, has significantly reduced the scope of Section 309 IPC - and made it punishable only in exceptional cases. The bill provides that a person who has attempted suicide should be presumed to be under severe stress and should not be punished. According to Section 115 (1) of the MHCA, “Notwithstanding the content of Section 309 of the Indian Penal Code, it is believed that anyone who has attempted suicide is, unless proven otherwise, under severe stress and will not be convicted or punished under the said code.”¹⁹ Article 115 (2): “The competent government has a duty to care for, treat and rehabilitate a person who is under severe stress and who has attempted suicide in order to reduce the risk of suicide.”²⁰

VIII. SCOPE OF SECTION-309 IS REDUCED, BUT STILL IT CAN'T BE REPEALED

Undoubtedly, the application of Section 309 IPC will withdraw treatment from the victim within the golden hour. The argument in favour of Section 309 of the IPC is that people threaten suicide by appearing in government offices if their prompts are not followed. In such a scenario, the person uses the MHCA to act as a form of unfair pressure o If Section - 309 is repealed, there is no way of dealing with such rioters.²¹ Section 309 must be amended in such a way that

¹⁶ <https://digital.nhs.uk/blog/>

¹⁷ Barua A, Ghosh MK, Kar N, Basilio MA. Prevalence of depressive disorders in the elderly. *Ann Saudi Med.* 2011;31:620–4. - PMC - PubMed

¹⁸ *Section-309 Indian Penal Code*

¹⁹ *The Mental Healthcare Act, 2017 Section-115(1)&(2)*

²⁰ *The Mental Healthcare Act, 2017 Section-115(1)&(2)*

²¹ <https://indianexpress.com/article>

it can uphold the law, but at the same time cannot be used against the mentally ill. In the case of dowry-related burns / attempted murders, this can be falsely portrayed as an attempted suicide and does not justify the necessary care.²²

²² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/>