MENTAL HEALTHCARE ACT 2017

भारत का राजपत्र

The Gazette of India

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EXTRAORDINARY

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PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 7th April, 2017/*Chaitra* 17, 1939 (*Saka*)

The following Act of Parliament received the assent of the President on the 7th April, 2017, and is hereby published for general information:—

THE MENTAL HEALTHCARE ACT, 2017

Preamble of the Constitution

"We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all its citizens JUSTICE; social, economic and political, LIBERTY; of thought, expression, belief, faith and worship.

EQUALITY of status and of opportunity and to promote among all its citizens;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution."

OVERVIEW

HISTORY

INTRODUCTION

NEW TERMINOLOGIES

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REFERENCES

HISTORY

In Pre independence era India

1. The Lunacy Supreme court Act 1858(Act XXXIV of 1858)
2. The Lunacy District Courts Act 1858 (Act XXXV of 1858)
3. The Lunatic Asylum Act 1858 (Act XXXVI of 1858)
4. The Indian Lunatic Asylums (Amendment)Act 1886 (Act XVIII of 1886)
5. The Indian Lunatic Asylums (Amendment)Act 1889 (Act XX of 1889)
6. Indian Lunacy act 1912

7. IPS revives 1947; propose Mental Health Bill draft 1950
8. Mental Health Act 1987
9. Disabilities Act 1995
10. Mental Health Care Bill 2013
11. MENTAL HEALTHCARE ACT 2017

This Act superseded the previously existing Mental Health Act 1987 that was passed on 22 May 1987

The new act intends to align and harmonize existing laws with the Convention on Rights of Persons with Disabilities of UN and its optional protocol which India ratified in 2007.

MHA 1987	MHCA 2017
Focus on regulation	In tune with UNCRPD
Focus on institutionalization	Patient centric (safeguard pts interest)
	Focus on community
	Check on voluntary admission

INTRODUCTION

- **16 Chapters and 126 sections/clauses under them**

Enacted by Parliament in the Sixty-eighth Year of the Republic of India

Passed by the Lok Sabha – 27rd March 2017

Passed by the Rajya Sabha – 30th March 2017

Got assent of president of India – 7th April 2017

Came into force from 7th July 2018

"Patient centric"- mainly focuses on the 'rights' of persons with mental illness(PMI)

SALIENT FEATURES

The Mental Healthcare Act 2017 aims at decriminalising the Attempt to Commit Suicide, who have attempted suicide are offered opportunities for rehabilitation from the government as opposed to being tried or punished.

The Act seeks to fulfil India's international obligation pursuant to the Convention on Rights of Persons with Disabilities and its Optional Protocol.

Recognises the agency of people with mental illness, allowing them to make decisions regarding their health, given that they have the appropriate knowledge to do so.

The Act aims to safeguard the rights of the people with mental illness. Additionally, insurers are now bound to make provisions for medical insurance for the treatment of mental illness on the same basis as physical ailments.

The Mental Healthcare Act 2017 includes provisions for the registration of mental health related institutions and for the regulation of the sector. These measures include the necessity of setting up mental health establishments across the country

To ensure that no person with mental illness will have to travel far for treatment, as well as the creation of a mental health review board which will act as a regulatory body.

The Act has restricted the usage of **Electroconvulsive therapy** (ECT) to be used only in cases of emergency, and along with muscle relaxants and anaesthesia. Further, ECT has additionally been prohibited to be used as viable therapy for minors.

The responsibilities of other agencies such as the police with respect to people with mental illness has been outlined in the 2017 Act.

The Mental Healthcare Act 2017 has additionally vouched to tackle stigma of mental illness, and has outlined some measures on how to achieve the same.

Newer Terminologies

Persons with Mental Illness(PMI)

Mental Health Professional(MHP)

Mental Health Establishments(MHE)

Advance directive (AD)

Nominated representative (NR)

Mental Health Authorities(Central, State)

CHAPTERS

Chapter I - Preliminary

Chapter II – Mental illness and Capacity to make mental healthcare and treatment decisions

Chapter III – Advance directive

Chapter IV – Nominated representative

Chapter V – Rights of persons with mental illness

Chapter VI – Duties of appropriate government

Chapter VII – Central Mental Health Authority

Chapter VIII – State Mental Health Authority

Chapter IX – Finance, Accounts and Audit

Chapter X – Mental Health Establishment

Chapter XI – Mental Health Review Board

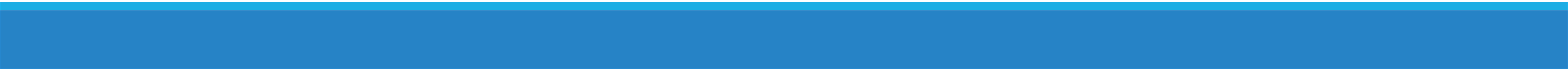
Chapter XII – Admission, Treatment and Discharge

Chapter XIII – Responsibilities of other agencies

Chapter XIV – Restriction of functions by Professions

Chapter XV – Offences and Penalties

Chapter XVI – Miscellaneous



Chapter I - Preliminary

Clause 1- Deals with the title, extent and commencement of the Act

Clause 2- Definitions of various terms

- **Mental health establishment** (MHE) means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy establishment **and will include any general hospitals or nursing home**
- **Mental health professional** (MHP) means either a Psychiatrist or any one with a qualification in Ayurveda , Unani or Homeopathy
- **Psychiatrist** means a medical practitioner possessing a post-graduate degree or diploma in psychiatry awarded by an university recognized by the University Grants Commission

Any medical officer has been declared by government for the purpose of the act.

- **Advance directive -** means a written document made by a person expressing their wishes
- **Authority -** central mental health authority state mental health authority
- **Board** - mental health review board constituted by the State
- **Local authority** - means a Municipal Corporation or Municipal Council, or Zilla Parishad, or Nagar Panchayat, or Panchayat

- **Care-giver** - means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration.

- **Minor** means a person who has not completed the age of eighteen years

- **Prisoner with mental illness** - a person with mental illness under-trial or convicted of an offence and detained in a jail or prison

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 characterised by sub normality of intelligence.

Informed consent - means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person

Mental healthcare - includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness

CHAPTER II- Mental Illness and Capacity to make decisions

Clause 3- Determination of mental illness- by nationally or internationally accepted medical standards, (latest edition of ICD), as noted by central govt

Clause 4- Every person , including a PMI is **deemed to have capacity to make treatment decisions** if he/she can

- Understand the relevant information
- Retain that information, appreciate foreseeable consequence of the decision.
- Use that information as part of the process of making the mental health care or treatment decision
- Communicate his decision by speech, gestures, expression.

Chapter III- Advance Directive

deals with the Advance directives a written document made by a person expressing their wishes

Clause 5

Every person (who is not a minor) shall have the right to make an advance directive in writing(plain paper with sign/thumb) specifying:

How to be cared for and treated for mental illness/ How not to be cared for/ treated for mental illness/ who to appoint as Representative (irrespective of his past mental illness or treatment for the same)

An advance directive made under, shall be invoked only when such person ceases to have capacity to make mental health care or treatment decisions and shall remain effective until such person regains capacity to make mental healthcare or treatment decisions

Clauses 7-13

Every board should maintain an online register of all the advance directives registered with it. An advance directive may be revoked, amended or cancelled by the person who made it at any time. (Any advance directive made contrary to any law for the time being in force shall be ab initio void)

Note:

- Advance directive shall **not apply** to EMERGENCY TREATMENT of the said person
- The board has the right to cancel or modify the advance directive if needed
- If the MHP/caregiver/ relative doesn't wish to follow A.D.- submit an application to the conc. Board to review/modify or cancel the A.D.

It is the duty of every psychiatrist to plan treatment, keeping advance directive in mind.

If any one from psychiatrist or care giver are unsatisfied can approach to the concerned board.

A medical practitioner or a mental health professional shall **not be held liable for any unforeseen consequences on following a valid advance directive**

The medical practitioner or mental health professional **shall not be held liable for not following a valid advance directive, if he has not been given a copy** of the valid advance directive.

Chapter IV – Nominated Representative

Clause 14- Every person , who is not a minor , shall have a right to appoint a nominated representative

The nomination **can be made in writing on a plain paper** with the persons signature or thumb impression

The Nominated representative should **not be a minor**, and should **give his consent in writing** to the MHP.

If no representative is available , a relative, a caretaker, or any one appointed by the board, or Director of Department of Social welfare or his designated representative will act as nominated representative

Clause 15-17- In case of minors; Legal guardian is the nominated representative (N.R).

The concerned board can revoke/change the N.R anytime. Duties of the N.R includes giving full support to the PMI.

Chapter V- Rights of PMI

Clause 18 – Right to access mental health care

Ensure that as a minimum, mental health services **run or funded by Government shall be available in each district**

PMI living below the poverty line or who are destitute or homeless shall be entitled to mental health treatment and **services free of any charge** at all mental health establishments run or funded by the appropriate Government

Government shall notify Essential Drug List and all medicines on the **Essential Drug List shall be made available free of cost** to all persons with mental illness at all times at health establishments starting from Community Health Centres and upwards

Clause 19 – Right to community living and not be segregated from society

Clause 20 – Right to protection from cruel, inhuman and degrading treatment - Right to live in safe and hygienic environment , to live in privacy , not to be forced to work in the MHE , not to be forcefully head shaven and not to be forced to wear uniforms

Clause 21 – Right of equality and non – discrimination- equal treatment as those with physical illness, ambulance and emergency services, Insurance should make provision for treatment of Mental illness as is available for physical illness

Clause 22 – Right to information - The PMI and nominated representative will have the RTI regarding patients admission, nature of illness and treatment options available.

Clause 23 – 25 – Right of confidentiality and right to access medical records- No photograph or any other information relating to a person with mental illness undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness PMI has the right to access medical records **BUT,** the MHP can withhold it if the disclosure will result in serious mental harm to the PMI/others.

Clause 26 – Right to personal contacts and information - Right to receive and refuse visitors , Right to receive and make phone calls

A child under the age of three years of a woman receiving care at a mental health establishment shall ordinarily not be separated from her except in cases of harm. And it should be reviewed every 15 days

Clause 27 – Right to legal aid- entitled to free legal aid

Clause 28 – Right to make complaints regarding deficiencies in provision of services

Chapter VI- Duties of appropriate government

Clauses 29 – 32- Creating awareness about mental health, reducing stigma, Human resource development and training

Gives directive to the government to implement so that

- mental health services shall be available in **each district**
- Persons below the poverty line are entitled to mental health treatment and services **free of any charge**
- **all medicines** on the Essential Drug List shall be made available **free of cost** to all persons with mental illness

Chapter VII – Central Mental Health Authority - Clauses 33 – 44 – Formation, composition and duties of CMHA ; List of members *ex officio*

Chapter VIII – **State Mental Health Authority** - Clauses 45 – 56 – Formation , composition and duties of SMHA

Chapter IX – Finance, Accounts and Audit - Clauses 57 – 64 – Grants, Funds and auditing

Chapter X – **Mental Health Establishment** - Clause **65 – 72** - Registration, review and inspection of MHE by board. First is provisional registration valid for 1 yr and renewable. Permanent registration, Audit every 3 yrs.

Earlier only mental hospitals were included under the MHA but under this bill General hospitals have been included and they will function as General Hospital Psychiatric Units

Chapter XI- Mental Health Review Boards

Clauses 73- 84

Requisite number, location and the jurisdiction of the Boards shall be specified by the State Authority in consultation with the State Govts.

MHRB constituted by The State Authority consists of 6 members

District Judge as chair person of board, Representative of the District collector/magistrate, 1 Psychiatrist, 1 Medical practitioner, 2 other members (either Person with Mental illness/caregivers of PMI)

Can hold the office for 5 years or up to age 70yrs (whichever is earlier)

Central Authority will appoint an expert committee to prepare guidance document for MHP/medical practitioners for treatment and care procedures.

Functions of board

- Register, review, alter, modify, cancel advance directive;
- Appoint NR
- Receive & decide application from a person with mental illness against decision of M.O. or psychiatrists in charge of mental health establishment
- Receive & decide applications in respect to non-disclosure of information
- Visit and inspect prison or jails and seek clarifications from the medical officer in charge of health services in such prison or jail
- Any PMI/N.R./representative of NGO with the consent of PMI can file grievances, which the board will have to dispose off within 90 days and all the proceedings of the board shall be held in camera.

Chapter XII- Admissions, Treatment& Discharge

Clause 85- Independent admission- refers to admission of PMI to an MHE who has the capacity to make such decisions or need minimal support. Provided he has the severity needed for admission, will benefit from the admission and has the capacity to consent.

Clause 87- Admission of a minor

- The nominated representative should apply to the MO in charge of MHE
- Two Psychiatrists or One psychiatrist and one MO or One psychiatrist and one MHP should independently see the minor and certify the need for admission.
- Minor should be accommodated separately from adults and along with the nominated representative
- Board should be informed within 3 days of admission, which will conduct a review esp. if the admission exceeds 30days.

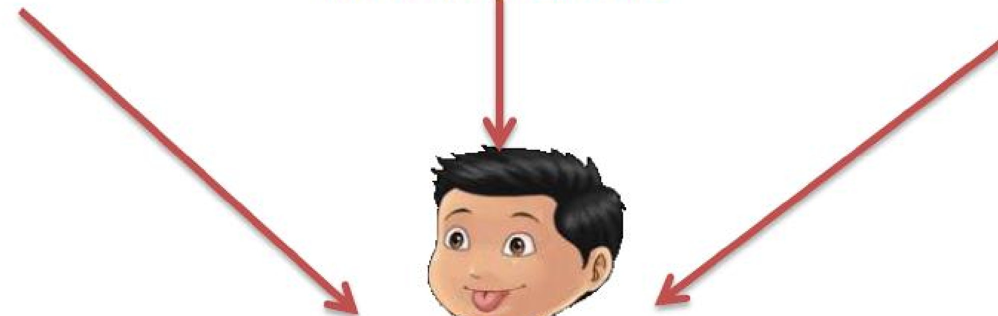
Minor becoming major under inpatient care, can decide as independent pt

Admission of minors

2 Psychiatrists

1 Psychiatrist & 1 mental health professional

1 Psychiatrist & 1 medical practitioner



Clause 88- Discharge of independent pts

Any patient admitted as an independent patient has the right to be discharged at any time. However a MHP can prevent the discharge of a PMI admitted for a **period of 24 hours** so as to assess him for admission under clause 89.

Clause 89- Supported admission (within 30 days)

The nominated representative should apply to the MO in charge of MHE for an involuntary admission

1 psychiatrist and 1 MO/ MHP should independently see the PMI on the day of admission or preceding 7 days and certify the need of admission as

- Threat to self
- Threat to others
- Unable to care for himself
- Inability to make valid and competent decisions

The MO/MHP in charge of the MHE shall report admissions to the concerned Board within 3 days if woman /minor or else within 7 days.

Capacity of the patient to give consent will be reviewed every 7 days.

Admission of a person with mental illness to a mental health establishment under this section shall be limited to a period of 30 days and cannot be readmitted for 7 days unless Clause 90 is applicable

Clause 90- Supported admissions/readmissions beyond 30days (pt. with high support needs)

2 psychiatrists should evaluate the patient and certify the need for continued admission. Review with board within 7 days

Admission under this section shall be limited to a period up to 90 days in first instance

Admission beyond period of 90 days may be extended for period of 120 days at first instance and thereafter for period of 180 days.

Order in writing: The magistrate will authorize the admission of the person with mental illness in a mental health establishment for such period not exceeding 10 days to enable the M.O. or psychiatrist to carry out assessment of the person

Clause 91 – Absence on leave

A PMI admitted maybe granted leave from the MHE by the MO/MHP

Clause 92 – Absence without leave or discharge

A PMI who absents himself from the MHE without leave or discharge is liable to be taken under protection by the Police upon request from the MHP, and shall be sent back to the same MHE

Clause 94- Emergency treatment

Any Registered Medical Practitioner can initiate emergency treatment to any PMI if there is serious threat to self/ others/ objects or property, and includes transportation to the nearest MHE.

Emergency treatment limited to 72hrs. Subject to informed consent from the Nominated Representative

- Advanced directive is not valid for emergency treatment
- ECT should not be used as an emergency treatment

Clause 95– Prohibited procedures

ECT without anesthesia

MECT for minors (below 18)(if required, consent from guardian & board)

Sterilization as a treatment for mental illness

Chaining in any manner

Clause 96 – Psychosurgery

Psychosurgery needs informed consent and permission of the board

Clause 97 – Physical restraints and seclusion

Should be used only when absolutely needed and least restrictive method to be used and it should be recorded in the patients notes.

Nature of restraint justification for its imposition and the duration of the restraint are to be immediately recorded in the person's medical notes.

Chapter XIII- Responsibilities of other agencies

Clause 100- It is the duty of the police to bring any PMI wandering to a MHE. They should not be put in lock up or jail, after being taken under protection- take him to nearest public hospital w/in 24 hrs of taking into protection for assessment.

Clause 101-105- Duty of the Magistrate, Prisoners with Mental illness and Persons in custodial institutions

CHAPTER XIV- Restriction of functions by Professions

Chapter XV – Offences and Penalties

Unauthorized institutions will be punished Rs.5000-50000 for 1st time, up to Rs. 2 Lakhs for 2nd time, up to Rs. 5 Lakhs if even 3rd time or more

Any person who work against the Act, are liable to give up to Rs.10 000 or six months of jail or both. Rs. 50 000 – 5 Lakhs or 2yrs in jail (both) for 2nd time

Chapter XVI – Miscellaneous

Section 115 Any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under IPC 309.

Special provisions for States in north-east and hill States

MHA Act- Boon or Bane ?

MERITS

- ✓Newer and reformed terminology like PMI , MHP and MHE
- ✓**Decriminalization of suicide which was punishable under Section 309 of the Indian Penal Code** and appropriate Government will be bound not only to provide care, treatment, and rehabilitation of such persons but also to take measures to reduce its recurrence
- ✓**Provision for medical insurance for treatment of mental illness** at par with physical illness by all insurers
- ✓**Newer options like advanced directive, nominated representative etc.**
- ✓**Clearly describes the "Duties of appropriate Government** "- giving the responsibility to reduce stigma, promote mental care

DEMERITS

- Avoidance of MR from mental illness
- The issue of capacity to make MHC and treatment decisions is inadequate and may have dangerous consequences as the patients may refuse treatment owing to their symptoms
- Advance directive an ill conceived concept in India. There occurs a dilemma in terms of striking a balance between the rights of the individual (even western literature e.g. Cochrane reviews on advance directive showed mixed results)
- Advance directives increases the work of psychiatrist whose number is already less in our country
- Focuses only on treatment of PMI in MHE and completely silent about their care in community or their rehab
- **"Harm"** term is not defined clearly in many places

- Poor representation of Psychiatrist in the Authorities and MHRB. While the idea of board is good, to have only one psychiatrist to take decision is not sufficient
- It included AYUSH doctors but did not included mental health nurse, clinical psychologist as mental health professionals.
- Need to report to MHRB every detail which may cause delays in patient care
- Management of properties of persons with severe mental illness is completely absent. Rehabilitation and integration of homeless mentally ill into the community and management of their assets and properties are completely absent
- Waiting for the Board's approval for ECT in minors or emergency is withholding the much-needed treatment, which can otherwise save their lives. *Andrade et al.* have published a well- argued position statement regarding unmodified ECT.

CONCLUSION

- Was much needed for the country to help citizens realise their rights better and eliminate the stigma around mental health treatment and institutions
- Introduction of newer terms like advance directive, nominated representative, Mental Health Professional, MH Establishment, Mental Health Authorities and boards
- Patient centred Act, with a lot of drawbacks
- Decriminalisation of suicide
- Psychiatrists have not been given due consideration in the Act, with very poor representation in the authorities and boards
- ECT , being a very effective procedure in emergencies, is banned in “minors”

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THANK YOU