EFFECTIVENESS OF MENTAL HEALTH LAW IN INDIA

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ABSTRACT

The notion of mental health and mental healthcare in India has transpired out to be a matter of immense concern in recent past years. The emphasis is being put over superior mental healthcare treatment facilities, mental healthcare professionals, and a significant contemplation towards sturdy mental and emotional health of the children, youths, and adults of India. Thus, the Indian legislature has enacted and brought into force the new mental health law, named the Mental Healthcare Law, 2017, to vouchsafe the right to equality and right to life and liberty enshrined under articles 14 and 21 of the Constitution of India.

In this article, the author focused upon one of the most palpitating questions that persist, i.e. –

- Whether the Mental Healthcare Act, 2017 is effective with the present Indian scenario?
- Whether this act would prove to be helpful to the people of all the age groups belonging to different strata of the society, across the country to acquire stable and healthy mental health?

Keywords: Mental Health, Health, Law.

INTRODUCTION

India is a welfare state and a country with a total population of 1.3 Billion people, which amounts to 17.7% of the total world population. Being the second most populated country in the world, India is surrounded by numerous issues, of them one of the most challenging issues is the issue of achieving stable mental and better mental healthcare facilities as these are an integral part of health. In an attempt to make this dream come true, the Central government legislated the ***Mental Healthcare Act,2017 (MHCA)*** which aims at providing required and proper mental healthcare facilities and treatment to the mentally disabled or ill persons and which also aims for the better and secured rehabilitation of the same. The ***Mental Healthcare Act, 2017*** was enacted on 7th April 2017 and came into force on 29th May 2018, whose main

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objective as clearly mentioned in its Preamble is "to provide mental healthcare and services for persons with mental illness, and to protect, promote and fulfill the rights of such persons during the delivery of mental healthcare and services and for matters connected therewith or incidental thereto."

The present Act repealed the act of 1987 which concentrated majorly on the administrative functions and procedures instead of concentrating on the actual conditions and requirements and above all over the rights of the mentally ill person, it neither clarifies the roles and functions of the mental healthcare professionals and care-givers nor does it talks about various effective modes of rehabilitation of the mentally ill persons. The MHCA, 2017, the outcome of the ***United Nations Convention for Rights of Persons with Disabilities (UNCRPD)*** and its Optional Protocol which was adopted on 13th December 2006, and India is a signatory to this convention and this convention came into force on 3rd May 2018, whereby India has obliged to bring all the disability laws in harmony with the UNCRPD.

The MHCA, 2017 is brought into force by repealing its predecessor the Mental Healthcare Act, 1987. The present-day act is futuristic and is streets ahead of the act of 1987 in various ways, some of them are as follows-

Sr. No.	***MENTAL HEALTHCARE ACT,2017***	***MENTAL HEALTHCARE ACT, 1987***
1.	It provides an elaborative and liberal definition of "mental illness".	It restricted the definition of "mental illness" to "mental disorder" only.
2.	This act primarily focuses on the guidelines laid down by the ***World Health Organization (WHO)*** and also adopts the protocol of ***UNCRPD***.	The act of 1987 fails to comply with the guidelines put forward by the ***WHO.***
3.	MHCA, 2017 emphasizes the medical procedures, facilities, and professionals for the treatment of ***Persons with Mental Issues (PMI***.	This act stressed largely over the administrative authorities.

4.	This act decriminalizes attempt to suicide.	Attempt to suicide was a crime and was therefore penalized.
5.	Special prominence was given to the rights of PMI with the incorporation of the ***Universal Declaration of Human Rights (UDHR)***.	The act of 1987 fails to comply with the ***Universal Declaration of Human Rights*** and also it doesn't prattle much about the rights of PMI.

These are some major differences between the MHCA, 2017, and the act of 1987.

POSITIVE IMPROVEMENTS MADE IN THE MHCA, 2017

The legislature tried to put an appreciable effort to bring forth an eloquent law, which would deal with every pertinent aspect relating to mental health and mental healthcare. Some of the positive steps taken in this direction are:

1. Attempt to define *"mental illness"* in a broader and liberal sense

Section 2(s) of the Act defines it as "mental illness means a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but it doesn't include mental retardation which is a condition of arrested or incomplete development of mind of the person, especially characterized by subnormality of intelligence. This definition strives to make a clear stand that this act doesn't apply to every person with mental illness but only to those who are suffering from severe mental disorders. Also, ***section 3*** of the Act clearly set out the way for the determination of mental illness. It says that mental illness shall be determined in accordance with such nationally or internationally accepted medical standards.

2. The Act envisages the 'rights of persons with mental illness' under ***Chapter –V*** from **section 18 – section 28.** The patient can retrieve out a good range of mental healthcare services and facilities using these rights which includes:

- Right to access mental healthcare;
- Right to community living;
- Right to protection from cruel, inhuman, and degrading treatment;
- Right to equality and non-discrimination ;

- Right to confidentiality; etc.

In case of infringement of any of these rights, persons with medical illness are entitled to compensation from the appropriate government.

3. Conceptualization of Consent - Chapter III of the Act revolves around 'autonomy'. ***Section 5*** of the Act gives the right to every person to make ***advance directives*** in writing, specifying as to 'how they wanted to have cared' and 'how they don't want to be cared' in case they are mentally incapacitated because of some illness. This section also prescribes that any person (not being a minor) can appoint any individual or individuals as a ***'nominated representative' (NR)***. 'NR' can be appointed by following the procedure prescribed under section 14 of ***Chapter IV*** of the Act. The responsibility of the nominated representative is to take care of the person with mental illness and to assist the persons with mental illness regarding treatment-related decisions. ***Section 17*** gives detailed information about the duties of nominated representatives.

4. Incorporation of Right to Privacy - The Act goes hand in hand with the right to privacy of the person with mental illness. No information of the persons with mental illness shall be released without the consent of the person with mental illness about the treatment and identity of the patient without their consent or without the consent of the nominated representative as the case may be. Under this Act, the person can be taken into admission involuntarily with the consent and support of the nominated representative; it is also mentioned that the nominated representative can make appeals to the ***Mental Health Review Board (MHRB)***, which can also review every admission that is extended beyond 30days.

5. Decriminalization of Suicide - The most laudable improvement is the introduction of ***section 115*** in the MHCA, 2017. According, to this section there is a presumption that the person has attempted to commit suicide out of severe mental pressure therefore, in place of penalizing the person in accordance with ***section 309*** of the ***Indian Penal Code, 1860,*** the appropriate government is given the duty of ensuring that due care is provided to them and are assisted with proper treatment and rehabilitation to them. So that, instances of such kind of suicide could be avoided in the future.

6. Directions to the Government - The Act imposes certain duties over the Central and State government and directs them to act in accordance with them by planning and implementing

such programs which would seek to promote the concept of mental health and to take the edge off the stigma surrounding it. So that, there would be a better and healthy environment for them. It has also been directed that the appropriate governments should also establish halfway homes for the persons with mental illness who doesn't have any family or whose family refuses to accept them; so that they could also get shelter and live a good life post-treatment.

Section 31 is another such provision that sanctions upon the government a great responsibility of ensuring that all medical, mental healthcare in public hospitals or the prison cells should passably be trained, so as to get aligned up to the internationally accepted standards. Therefore, this provides aggrandized international dimension to the MHCA, 2017. This Act also directs the government to make schemes that would benefit the mentally ill persons and also to make assure free and quality treatment for those who are homeless or those who belong to the poor strata of the society or is unable to afford or avail the treatment. The MHCA, 2017 puts restrain over inhuman procedures of treatment like ***chaining, seclusion, sterilization of men and women.*** It also puts a ban on the use of ***Electro Conclusive Therapy (ECT).***

CRITICISM OF MENTAL HEALTHCARE ACT, 2017

Though the Mental Healthcare Act, 2017 contains very appreciable provisions it has a few shortcomings too. Some of them are as follows:

- This Act fails to provide any direct provisions to address the socio-economic and cultural aspects which antagonize the situation of persons with mental illness.
- It is amusing but the Act lacks even a single provision that deals with the withdrawing of Nominated Representatives.
- The provision regarding advance directives under ***section 5*** is enigmatic as it doesn't establish a clear standardized procedure of conferring advance directives.
- The Act fails to lay down the basic and minimum qualifications to be medical and mental health professional. This certainly will affect the standard of medical care and would even make the competency of the medical health a questionable one and would even seed the plant of fear and unreliability in the minds of people and therefore, they would, even more, resist and become hesitant to approach medical or mental healthcare professional for the treatment.

- On one hand, the Act speaks about the 'NR', but on the other hand, it fails to specify the role of the family and its members in taking care of the family during the treatment and also post-treatment.

INSTANCES OF EFFECTIVE APPLICATION OF MENTAL HEALTHCARE ACT, 2017

The ***Indian Psychiatric Society (IPS)*** and Mental Healthcare Act, 2017 played a crucial role in the case of ***Navtej Singh Johar vs Union of India (2018)*** in decriminalizing ***'homosexuality'***. The Supreme Court while reading down ***section 377*** of the ***Indian Penal Code, 1860*** relied on ***section 3*** of the Mental Healthcare Act, 2017 which defines mental illness. The judgment of the court, in this case, can preferably be used to elicit the right to equality and non-discrimination in enshrined under ***section 21*** of the Mental Healthcare Act, 2017. The Supreme Court also reiterated that diagnosing mental illness must essentially be based on internationally recognized standards, for instance, the ***International Classification of Diseases (ICD – 10)*** according to which ***'homosexuality'*** isn't a mental illness.

In the case of ***Common Cause vs Union of India, (2018)*** the constitutional bench of the Supreme Court vindicated passive euthanasia. The Court took into consideration the global development and observed that there is an exigency to re-evaluate the criminalization of suicide. The court relied on ***section 115*** of the Mental Healthcare Act, 2017 which clearly says that presumption of serious stress should be taken in case of attempt to suicide so it opposes the punishment prescribed under section ***309 of IPC, 1860***. The court observed that –"***Section 115*** marks a pronounced change in the law about how society must treat an attempt to commit suicide. It seeks to align Indian law with emerging knowledge on suicide, by treating a person who attempts suicide being the need of care, treatment, and rehabilitation rather than penal sanctions."

The Court also cited ***section 5*** of the Mental Healthcare Act, 2017 while framing recommendations on how to apply advance directives for passive euthanasia. Similarly in another case, the Court again showed an effective application of the Mental Healthcare Act, 2017. In ***Shikha Nischal vs National Insurance Company Limited and Antr. (2021),*** the High Court of Delhi remarked that the Mental Healthcare Act, 2017 acknowledges the rights of persons with mental illness to health insurance and also makes it mandatory to the insurance companies whether public or private to furnish the required insurance for mental illness. In the

present case, there was an infringement of ***section 21*** of the act which is based upon the '***principle of parity'*** which means mental illness being treated at par with physical illness. The court interjected that the insurance company made a mistake by rejecting the petitioner's claim of reimbursing her for the treatment of mental illness.

The above-cited cases show not only the effective application of the act but also the essential role that the judiciary played in effectively applying the act by adopting a social-legal approach towards examining and interoperating the scope and provisions of the Mental Healthcare Act, 2017 this has definitely stumped up to the furtherance of the rights of persons with mental illness by reaffirming or rationalizing the concept of progressive jurisprudence.

PRESENT-DAY SITUATION

An increase in issues relating to mental health has become an issue of serious concern in India. The emergence of the ***Covid-19*** Pandemic and the havoc caused by it acted as a catalyst and augmented mental health issues. Before 2019, India was among those countries which possessed the highest happiness rate but after the emergence of covid-19, it's now or among those countries which have the highest suicide rates. In India, every 1 out of 7 people is suffering from a mental health issue. It has been reported that about 15 people are suffering from depression and 1 people are facing anxiety issues in every hundred people. This means that in India around 7 Crores people are suffering from depression and around 4 Crores of people are facing in society issues. It has been estimated that a total of six to seven percent of the population are suffering from mental health issues. The pandemic has emanated as a mind-boggler and brought into light the frailty of the Indian mental health infrastructure and mental health care system. Relying on a report that was presented in the Lok Sabha in 2018, we are at an immense shortage of psychiatrists and mental health care professionals and also of nurses at mental health hospitals.

Presently there are only about 0.75 psychiatrists over per 1, 00,000 population against the expected estimated requirement of around 3 psychiatrists; this data is according to a journal which was published in the Indian Journal of Psychiatry, 2019. To overcome this deficiency by the end of 2029 India needs to have 2700 new psychiatrists every year. According to the World Health Organization, about 70 to 80% of the people who are working in the corporate industry or the business world are suffering from mental illnesses like depression or anxiety. The organization remarks that these two mental issues that are anxiety and depression are not

cured in the near future effectively then it will shatter down the Indian GDP. According to the World health organization if these mental issues are not treated it then it will cause a massive economic loss of 1.03 trillion USD dollars between the years 2012-2030.

CONCLUSION

To sum up, according to my opinion the legislature has worked enormously to bring a strong mental health law and judiciary equally participated in 28 to make it an effective and successful act but there are still some loopholes which need to be treated and also there is a failure on the executive front which hinders the effectiveness and successful application of the act. It is already high time that the Central and State government need to brace up and support the mental health care system of India. The government should also sincerely work over the implementation of mental health care programs for procuring a stable and healthy mental well-being is possible only if they make consequential commitments to rise up the financing in the mental health sector which would bring life-changing out turns.

REFERENCES

1. Navtej Singh Johar V Union Of India, [2018], AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016; D. No. 14961/2016
2. Common Cause V Union of India [2018], 5 SCC 1, AIR 2018 SC 1665
3. Shikha Nishchal V National Insurance Company Limited & Antr. [2021], W.P.(C) 3190/2021
4. Mental Healthcare Act,2017, s. 2(s)
5. Mental Healthcare Act,2017, s.115
6. Mental Healthcare Act,2017, s. 21
7. Mental Healthcare Act,2017, s.5
8. Mental Healthcare Act,2017, s.3
9. Mental Healthcare Act,1987
10. Manisha T Karia, Kamini Deshmukh, 'Urgent need for reforms in law and policy for Mental Health in India' (Bar and Bench, 13 December 2020) < https://www.barandbench.com/columns/urgent-need-for-reforms-in-law-and-policy-for-mental-health-in-india> accessed on 20 December 2021
11. Utkarsh A Singh, 'Disentangling India's mental health distress: Does India have the resources to control the impending mental health crisis?' (Research Matters, 30 October 2020) <https://researchmatters.in/news/disentangling-india%E2%80%99s-mental-health-distress-does-india-have-resources-control-impending-mental> accessed on 16 December 2021
12. Arjun Kapoor, Sayali Mahashur, 'Right to Health Insurance: Ensuring Parity for Mental Illness in India' (Jurist Legal News and Commentary, June 18, 2021) < https://www.jurist.org/commentary/2021/06/kapoor-mahashur-health-insurance-india/> accessed on 17 December 2021
13. Eesha Sharma and John Vijay Sagar Kommu, 'Mental Healthcare India: Child, Adolescents perspectives' (2019) 61(Suppl 4) Indian J Psychiatry < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6482686/> accessed on 16 December 2021
14. Sourajit Sarkar, 'Mental Health and Human Rights: A Correlative study' <https://www.legalserviceindia.com/legal/article-2788-mental-health-and-human-rights-a-correlative-study.html> accessed on 15 December 2021

15. Sahil Sood, 'India: Mental Healthcare Act: A Legislation For The People' (mondaq, 06 August 2020) <https://www.mondaq.com/india/healthcare/972410/mental-healthcare-act-a-legislation-for-the-people > accessed on 16 December 2021
16. Richard M. Duffy, Brenden D. Kelly, 'Indian's Mental Healthcare Act,2017: Content, context, controversy' (2019) International Journal of Law and Psychiatry vol. 62 <https://www.sciencedirect.com/science/article/abs/pii/S0160252718301171> accessed on 16 December 2021
17. Harikumar Pallathadka, 'A Critical Review Of India's Mental Healthcare Law' [2020] EJMCM vol.7 issue 8 < https://ejmcm.com/pdf_11769_ebbb594c2ceb85c3918d3f46bc1c6112.html> accessed on 15 December 2021
18. Manisha Shastri, Arjun Kapoor, Soumitra Patre, 'The Central Role India's Court Have Played to Protect People with Mental Illness' (Science- The Wire, 21 October 2021) <https://science.thewire.in/health/mental-health-care-act-2017-india-courts-progressive-jurisprudence/> accessed on 18 December 2021