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THE MENTAL HEALTHCARE ACT AND A RIGHT TO LIVE WITH DIGNITY

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Abstract

The Mental Healthcare Act, 2017 provides for rights of mentally ill person such as; Right to access mental healthcare, community living, protection from cruel, inhuman and degrading treatment, equality and non-discrimination, information, confidentiality, restriction on release of information in respect of mental illness, access medical records, personal contacts and communication, legal aid and right to make complaints about deficiencies in provision of services. This act also specify the responsibilities of other agencies such as police officers, Magistrate, Prison administration, instructions are given to take proper care of Persons in custodial institutions and the judicial process to deal question of mental illness. There is no difference between any mentally ill person living in society or with family and the person undergoing punishment. She/he also has the same rights as any normal person a right to live with 'dignity'. This paper endeavors to look into the provisions of the Mental Healthcare Act, 2017 and the legal right of an ill person to live with dignity.

Key Words: - Mental Health, Health care, mental illness, right to live with dignity, Protection of Persons with Mental Illness

Introduction

The constitution of India enshrines in its Article 21, the right to life that too with dignity¹. The United nations adopted an Convention on Rights of Persons with Disabilities as well its Optional Protocol, on 2007 and as it was "necessary to align and harmonise the existing laws with the said Convention" India repealed the then existing act and enacted a new act. The Mental Healthcare Act, 2017 as the name declares is an act for healthcare, services and protection to mentally ill persons. This act also provides for promotion and fulfillment of the rights of "such persons while providing healthcare and services or matters associated or incidental to it²".

¹ Article 21, the Constitution of India

² The Mental Healthcare Act, 2017 (Act No. 10 of 2017) received assent of the President on 7th April, 2017

The principles of Mental Health Care have been derived from the Principles for Protection of Persons with Mental Illness, 1991³. World Health Organization, Geneva (1996) has described “Ten Basic Principles of Mental Health Care Law” as given below:-

1. *Promotion of Mental Health and Prevention of Mental Disorders Description everyone should benefit from the best possible measures to promote their mental well-being and to prevent mental disorders.*
2. *Access to Basic Mental Health Care Description everyone in need should have access to basic mental health care.*
3. *Having developed and/or adapted at national level quality assurance guidelines and instruments by and for all qualified professionals or governmental bodies;*
4. *Offering mental health care which is culturally appropriate;*
5. *Calling for and taking into consideration the patient's assessment of the quality of care;*
6. *Having treatments, decisions and measures regarding a person to whom mental health care is provided, documented in the person's medical record;*
7. *Introducing a mental health component into Primary Health Care;*
8. *Promoting health insurance programs (public or private) offering coverage to the widest possible number of individuals and which do not exclude but specifically include mental health care;*
9. *Having a voluntary admission procedure incorporated into the mental health law scheme which is abided by in practice;*
10. *Having mental health care geographically "accessible" according to WHO's indications, i.e.:*
 - a. *by making basic mental health care available within one hour walking or travelling distance; and*
 - b. *by making available the essential drugs identified by WHO.*

The Mental Health Care Act, 2017

The Parliament of India enacted the Mental Healthcare Act, 2017 to give for mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto. The newly enacted The Mental Healthcare Act (hereinafter the Act) is divided into sixteen Chapters and contains 126 sections.

This act through its various chapters deals with determination of mental illness as per accepted medical standards nationally or internationally and capacity to make decisions regarding mental healthcare and treatment⁴. Through this act every person who is major, have a right to make in writing, all or specific advance directive about his wishes about his care, treatment, order of preference, appointment of his nominated representative related to his mental illness⁵. It also provides for the Manner in which such advance directive shall be made⁶. The act provides for amendments, cancellation or revocation of such previous advance directive⁷. Duty medical officer to follow advance directive⁸, power of the Board to modify, alter, review, or cancel advance directive and liabilities of medical health professional so related to advance directive.

The act provides for appointment of nominated representative for an adult as well as a minor and their duties. It also provide for its alteration, revocation etc, by the Board⁹. The Chapter V deals with the ‘rights of persons with mental illnesses’. In this chapter section 18 to 28 highlight various rights of mentally ill person.

³ adopted by the UN General Assembly Resolutions, 1991

⁴ Including the latest edition of the International Classification of Disease of the World Health Organisation and as may be notified by the Central Government. (section 3 & 4)

⁵ Section 5

⁶ Section 6

⁷ Section 8

⁸ Section 10

⁹ Chapter IV, Sections 14-17

Under Chapter XIII is enumerates the responsibilities of other agencies such as police officers, Magistrate, Prison administration, instructions are given to take proper care of Persons in custodial institutions as well as how to deal question of mental illness in judicial process. This act imposes duties on Government to take measures regarding promotion, creating awareness, conducting preventive programmes, training, reducing stigma about mental illness¹⁰.

Chapter VII provides for establishment of Central Authority, its composition, term of office, Functions, liabilities etc, Chapter VIII provides for establishment of State Authority, its composition, term of office, Functions, liabilities etc, Chapter X establishment and duty of mental health establishment. Chapter XI deals with Mental Health Review Boards, its constitution, composition, proceedings before it, powers and functions, provision of appeal against order passed by Authority or Board to the High Court.

There is also clear mention of Admission of person-major and minor- to mental health establishment treatment, emergency treatment, discharge, and transfer from one establishment to another. There is prohibition of procedures such as electro-convulsive therapy, sterilisation of men and women, chained while treating; restriction on psychosurgery. Such persons shall not be subjected to solitary confinement or seclusion. This act also declares as when and how mental illness persons shall be discharges from the mental health establishment they were admitted to¹¹. This act also allows for research of any kind conducted on or for the persons of mental illness so far as it is not harmful to them¹².

The Rights of Persons with Mental Illnesses

While emphasising on Right to access mental healthcare, the Act declares that there shall be a right of every person to access any kind of mental healthcare and treatment their off from mental health services which are either run by the Government or funded. Such services must be affordable, as well as of good quality, accessible geographically. There shall be no discrimination on the basis of religion, class, caste, culture, gender, sex, sexual orientation, social or political beliefs, any disability or any other basis. It shall be the duty of the government to make provision sufficient for required range of services. Further it provides to make necessary arrangements with respect to sheltered accommodation, to support family of person (with mental illness), child mental health services as well as old age mental health services. This section deals with community based rehabilitation, acute mental healthcare services for outpatient and inpatient as well. According to this section it shall be the duty of the government to provide treatment in such a way that persons with mental illness can live with their families as a part of the community. It ensures long term care through a mental health establishment in exceptional circumstances. It also ensures that mental health services shall be available in each district that too funded by Government, that there shall be no need to any person irrespective of age to travel long distances to seek access for mental health services. Persons living below the poverty line, destitute or homeless with or without below poverty line card shall be treated free of charge¹³.

The Act focuses on right of mentally ill person to community living. Every person who is suffering with mental illness shall not be deprived and segregated from society but shall have a right to live in it as a part of it. If someone is not having a family or is homeless or refused by his family or relatives then it will be the duty of the government to extend appropriate support so that such person can through legal aid exercise his right for family and living in the family home. In case the person is abandoned by his family then it shall be the responsibility of the government to provide such person for longer stay at mental hospitals¹⁴.

Mentally ill person is to be protection from cruel, inhuman and humiliating treatment. Right to live and that too with dignity is prime important. Under this section person with illness is protected as the responsibilities are imposed on mental health establishment. It shall be its responsibility to provide safe and hygienic environment; adequate sanitary conditions; facilities for leisure, religious practices, recreation and

¹⁰ Chapter VI

¹¹ Chapter XII

¹² Section 99

¹³ Section 18

¹⁴ Section 19

education; privacy; proper clothing so that his body is covered properly so as to maintain his dignity; there must be compulsion to undertake work and if at all they are working then they must get proper remuneration. This act is also taking care of women's personal hygiene too. It stresses on providing access to stuff required during menstruation. There must not be compulsory toning, should not be compelled to wear uniform. They shall be protected from abuse- physical, sexual, emotional and verbal¹⁵.

Every person, suffering with mental illness shall have right to equality same as that of person with physical illness and must be protected from discrimination is provides under this act. No person shall be discriminated on any basis of religion, caste, class, disability, culture, sex, gender, sexual orientation, social or political beliefs. There shall be no discrimination while providing emergency facilities and services, use of ambulance services, living conditions and health services in health establishments. A female patient who is receiving care or treatment or rehabilitation and is staying at a mental health establishment, if she is having a child who is less than of three years of age, then such child not be separated from its mother during her stay. But if is risky or harmful for safety of the child then it shall be temporarily separated from her however she shall meet the child under but such supervision of her family member or the staff of such establishment where she is treated. The decision so taken to separate the mother and child has to be reviewed every fifteen days while the mother is staying at the mental health establishment. If circumstances are improved the separation shall be terminated¹⁶.

Any person with mental illness as well as representative nominated by him shall have the rights to information. He shall have right to information with respect to the provision of this law as well as any other law existing regarding his treatment. Why he has been admitted, about the criteria for his admission, right to make an application or for a review of his admission to the Board. The nature of his mental illness also about the treatment so proposed, its side effects. Such information must be given in a language person receiving it can understand. In case due to mental illness the person at the time of his admission for treatment it is not possible to give complete information, then medical officer or psychiatrist in-charge shall ensure that full information is given to when he has recovered and in a position to understand it, but the nominated representative shall given such information immediately¹⁷.

The Right to confidentiality is enumerated under this act. Right to confidentiality shall be the right of person with mental illness. The information about his mental health, the treatment given, his mental and physical healthcare must be kept confidential by health professionals providing treatment or care to such person. Exceptions to this information sharing is only when it is shared with,

- 1) his nominated representative so that he can fulfil his duties,
- 2) to other health professionals for further treatments,
- 3) if it is so necessary to protect the patient or any other person from him so that he many no harm him or become victim of his violence and vice-versa, and
- 4) the interests of public security and safety.

Such release of information shall be made after receiving order from either the concerned Board, or the Central Authority , or on order of the High Court or the Supreme Court or in case from any other statutory authority competent to give such order¹⁸.

The mental health establishment should seek consent before sharing any photograph or information which is related to a person undergoing treatment for mental illness. People with mental illness also have right to confidentiality for all information stored either in electronic or in digital format, irrespective of such information stored in real or virtual space¹⁹.

Persons suffering with mental illness have a right to access medical records which are basic and prescribed by the person treating them. Mental health professional who is in charge of such records can

¹⁵ section 20

¹⁶ Section 21

¹⁷ section 22

¹⁸ section 23

¹⁹ Section 24 restricts on release of information pertaining to mental illness.

withhold specific information only if there is serious mental harm to the patient, or there is possibility of harm to other persons. On an application of such mentally ill person the concerned Board may make an order of releasing such medical records so withheld²⁰.

A mentally ill person who is admitted to be treated to any mental health establishment has the right to refuse or receive visitors, also to refuse or receive phone (telephone or mobile) calls. He can send and receive mails through e-mail or any electronic mode but if does not want any mail or e-mail from any named person he should inform the same to the medical officer in charge, the officer can then restrict any communication from such person. However the above restriction of visit or communications shall not be applicable to Judges or officers authorised by a competent court, members of the concerned Board including those of Central or State Authority, Member of Parliament or State Legislature. The visits of nominated representative, medical practitioner, person authorised by Government, his lawyer or legal representative of this sick person²¹.

A mentally ill person is entitled to receive free legal²² aids and services for exercising any of his rights under this Act²³. Any representative of person with mental illness, or the person himself have the right to complain regarding treatment, deficiencies in provision of care and services of the establishment for mental health to the medical officer, and also have provision of appeal to the concerned Board and subsequently to the State Authority²⁴.

Duty of Police towards People with Mental Illness

A mentally ill person, not able to take care of himself or is likely to risk to himself or others person because of his mental illness, the officer who is in-charge of police station shall take under protection such person if found wandering within the limits of jurisdiction of that police station. It shall be his duty to inform about the grounds to the person taken into protection or to his representative (nominated) under this Act. Such person shall within twenty-four be taken to the nearest public health establishment and provide any healthcare so required. Under no circumstances he shall be detained by police in lock up or prison²⁵. If a police officer finds a mentally ill person wandering or homeless it's a duty of police to trace the family and if there is a FIR logged with police station of a missing person then the police must inform the family about person²⁶.

Any person who is mentally ill has been, not capable to take care of himself or is likely to risk to himself or others person because of his mental illness, the officer who is in-charge of police station shall take under protection such person if found wandering within the limits of jurisdiction of that police station. It shall be his duty to inform about the grounds to the person taken into protection or to his representative (nominated) under this Act. Such person shall within twenty-four be taken to the nearest public health establishment and provide any healthcare so required. Under no circumstances he shall be detained by police in lock up or prison²⁷.

Any person who believes that certain person is suffering with mental illness and is being ill-treated by his family members or neglected by any such person who is having responsibility to care for him/her, such person, shall report the fact to the police officer in-charge of the police station. Care is to be taken that while reporting the person with mental illness must be residing in the jurisdiction of that police station²⁸.

²⁰ section 25

²¹ Right to personal contacts and communication as contained in section 26.

²² he is entitled to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987) or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.

²³ Section 27 enumerates the right to legal aid.

²⁴ Such right can be exercised in accordance to the section 28.

²⁵ Section 100 (1) to (5)

²⁶ Section 100(7)

²⁷ Section 100 (1) to (5)

²⁸ Section 101 (2)

Duty of Medical officer towards People with Mental Illness

The medical officer shall be responsible for providing consideration of the person the needs of the person who is mentally ill and shall act as per the circumstances. If the medical officer opines that such person is not having any mental illness but are homeless persons he shall seek help from the police officer²⁹.

The medical officer as well as the mental health professional so in-charge of the place namely the public mental health establishment shall provide all kind of help to the person who has taken asylum with the establishment and it shall be the duty of the police officer to take the person to the his or her house and in case of homeless persons they must find a place of shelter in any government establishment.

Duty of Courts towards People with Mental Illness

If a homeless person who is also mentally ill found wandering, a First Information Report (FIR) of a missing person has to be lodged to the concerned police station wherein the person is found. It shall be the duty of the police officer in-charge to find out his family and inform them about such person. If he finds that the person is being ill-treated and neglected by his family then such incident must be reported to the Magistrate, then inform about the facts to the magistrate within his jurisdiction the incident happens or the person with mental illness resides³⁰.

After receiving the report of such a police officer or even otherwise if the Magistrate has substantial reason to believe that any person suffering with mental illness, residing within the local limits of his jurisdiction is being ill-treated or neglected, Magistrate may ask to produce the person so suffering with mental illness to be produced before him and after all inquiry he may pass an order in accordance with the provisions as that of section 102³¹.

When any mentally ill person is brought before a Magistrate he may order to a public mental health establishment for assessment and treatment of such person. Such order shall be in writing. Thus such person shall be admitted for ten days so that the medical officer, or officer- in- charge of such mental health establishment may carry out some checkups etc of the person so that they can make a plan so necessary for his treatment. After such assessment he have to submit the report to the Magistrate³².

If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.³³

Rights of Prisoners with Mental Illness

Whenever there is an order directing the admission of a prisoner with mental illness into any suitable mental health establishment made under s. 30 of Prisoners Act, u/s 144 of the Air Force Act, or u/s 145 of the Army Act, or u/s 144 of the Navy Act, or u/s. 330 or s. 335 of the Code of Criminal Procedure, 1973 shall be sufficient authority for the admission of such person in such establishment. Thereafter such person may be lawfully transferred for care and treatment therein. The act further makes a condition that the transfer of a prisoner with mental illness to the psychiatric ward in the medical wing of the prison shall be sufficient to meet the requirements, further it states that where there is no provision for a psychiatric ward in the medical wing, the prisoner may be transferred to a mental health establishment with prior permission of the Board.

²⁹ Section 100

³⁰ Section 101(1)

³¹ Section 101(3)

³² Section 102

³³ Section 105

The law further makes it mandatory to provide the process, modalities and practice by which the transfer of a prisoner shall be affected. The medical officers of such prison or jail have to send a quarterly report forwarded to the concerned Board with certification that there is no prisoner with mental illness. If any prisoner is kept in the prison then explanation is to be given as to why the prisoner with mental illness is still kept in the prison. The Board may visit the prison and ask the medical officer for treatment of such person in the prison. The medical officer once in every six months shall make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.³⁴

State run custodial institution such as beggar's homes, orphanages, women's protection homes and children homes etc, run or funded by the Government, are likely to have a person with a mental illness as its resident. If the person in-charge of such institution comes to know about such illness of its inhabitant, he shall take such resident to the nearest mental health establishment for assessment and treatment. The medical officer of that a mental health establishment shall provide all help for assessment, the treatment required for the person, with mental illness. And take necessary actions and decisions in accordance with the provisions of this Act³⁵.

Conclusion

The World Health Organisation defines health as, "*Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*"³⁶

The notion of mental health obviously includes personal well-being, evident self-efficacy, independence, capability, intergenerational dependence and appreciation of the ability to comprehend one's intellectual and emotional potential. Human being must be able to cope with the stress in one's life. If one becomes victim to the circumstances then it is obviously possible that he/she may need some assistance for his stability and preserve his/her mental health.

Though there is no provision of appointing a guardian for ailing person under the Mental Health Care Act, 2017 "..... there can be no manner of doubt that conceptually the wife can be said to be best-suited to be the guardian of her husband who is under a state of incapacity or disability on account of being in a comatose condition or vegetative state"³⁷.

Mental health is concern of every single individual; it should not be limited only for those who undergo through any form of mental disorder. The emphasis on the unique being of an individual is the salt of his/her life. Denial of self-expression is inviting death. Irreplaceability of individuality and identity is grant of respect to self. This realization is one's signature and self-determined design³⁸. The Court rightly pointed out in *Dr. Verma's case* "*Mental health problems affect society as a whole, and not just a small, isolated segment. They are therefore a major challenge to global development. No group is immune to mental disorders, but the risk is higher among the poor, homeless, the unemployed, persons with low education, victims of violence, migrants and refugees, indigenous populations, children and adolescents, abused women and the neglected elderly.*" further it opines that ... "*For all individuals, mental, physical and social health are closely interwoven, vital strands of life. As our understanding of this interdependent relationship grows, it becomes ever more apparent that mental health is crucial to the overall well-being of individuals, societies and*

³⁴ Section 103

³⁵ Section 104

³⁶ The Constitution of World Health Organisation, Geneva, 1948

³⁷ *Rajni Hariom Sharma Vs. Union of India* and another https://www.livelaw.in/pdf_upload/pdf_upload-380571.pdf accessed on 13-11-2022 07:59:13; also see *Sairabanu Mohammed Rafi v State of Tamil Nadu* 2016 SCC Online Mad 8091; *Philomena Leo Lobo v Union of India* 2017 SCC Online Bom 8836.

³⁸ *Navej Singh Johar v. Union of Indian Thr. Secretary Ministry of Law and Justice*. Writ Petition (Criminal) No. 76 of 2016., https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf Accessed 11/13/2022 7:50:55 AM.

countries. Unfortunately, in most parts of the world, mental health and mental disorders are not accorded anywhere the same importance as physical health. Rather, they have been largely ignored or neglected”³⁹.

Suggestions

1. There is immense need of amending the Metal Healthcare Act, 2017 as it is not possible sometimes even to the court after taking help of other legislations to give relief to some litigants in want of appropriate laws.⁴⁰
2. Increase awareness about mental health, laws and human rights of people suffering with mental illness.
3. Improve the standards of treatment, treatment centres specially those run by the government.
4. Proper training must be given to people dealing with psychiatry, forensic psychiatry to deal with the people with mental illness.
5. Establish and maintain high standards while providing diagnostic and investigative facility for any kind of mental illness.
6. Police personal, Magistrates, law practitioners and Medical officers must be trained to be sensitive and supportive.
7. Funding and support must be provided for research in forensic psychiatry.
8. Meditation, yoga, spirituality, and psychological development must be encouraged in every institution either government or private.
9. WHO guidelines related to mental health must be made mandatory in every institution⁴¹
10. A very strong National Policy on Mental Health must be designed and strictly implemented.

For every life matters....!

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³⁹ Dr. Vijay Verma vs Union Of India And Others on 1 June, 2018 <https://indiankanoon.org/doc/80173720/> Accessed 11/13/2022 8:04:54 AM

⁴⁰ In *Rajni Hariom Sharma Vs. Union of India*, the court declared that “Rights of Persons with Disabilities Act, 2016 would not be applicable to persons lying in a comatose condition or in a vegetative state. Infact, there is consensus at the Bar that at present there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state.

⁴¹ WHO guidelines on mental health at work. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO.