



# Mental Health Care Laws in Relation with Forensic Psychiatry in India

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## ABSTRACT

Supportive laws and policies are required for the protection of human rights and the mental health of vulnerable populations. Internationally and domestically, "hard" and "soft" laws pertaining to mental health services have been developed. In the field of mental health care in India, it is frequently necessary to make changes to existing laws as well as to create new ones. The majority of mental health care reform to date has been reactive, but newer laws and policies offer promise for proactive change. One of the main issues with providing adequate mental health care in India is a shortage of qualified human resources. In India, forensic psychiatric services also require development, proper organization, and support.

## Introduction

People with mental disorders are vulnerable to abuse and violation of their basic rights (WHO, 2005). Such abuse or violation may occur from diverse elements in society including institutions, family members, caregivers, professionals, friends, unrelated members of the community, and law enforcing agencies. This sets an imperative for a protective mechanism to ensure appropriate, adequate, timely, and humane health care services (Math & Nagaraja, 2008). Such protective mechanisms include legislative provisions and policies to ensure that the rights of this vulnerable group are protected. In the undeniable context that every society needs laws in various areas to maintain the well-being of its people, mental health care is one such important area that requires appropriate legislation.

In this paper, we first provide a brief overview of the "hard" and "soft" laws that have been influential in mental health, policy and care, laws nationally. We then provide a brief glimpse of some of the efforts at the national level to address issues of human rights of persons with mental illness. This is followed by a summary of the broad areas that forensic psychiatry embraces. We then examine the status of forensic psychiatry in India and finally discuss the need to develop comprehensive forensic services and training in India.

## Mental Health Care Reform in India

Although the National Mental Health Programme in the country has been existent since 1982 and was re-strategized in 1996, it would be appropriate to state that policy and programming in mental health so far has been more reactive than proactive. Tragedies like Erwadi and a series of public interest litigations (PILs) that have been filed before the Supreme Court of India have been major drivers of change (Murthy & Isaac, 2016). Some of the PILs have not only focused on institutional treatments but also focused on economic, social, and cultural rights of persons with mental illness. A series of reports from the (National Human Rights Commission, 1999 &

Nagaraja & Murthy, 2008) highlights the gross deficiencies that existed in institutional care of persons with mental illness and also demonstrated the positive changes that could be brought about with persistent monitoring, collaboration, and proactive intervention – structural facilities and living conditions improved, budgets improved, voluntary admissions became more frequent than court admissions, there was greater community participation, and the need for rehabilitation of persons with mental illness received greater focus. However, these reports have also highlighted the negative aspects in terms of inadequate human resources and poor psychosocial interventions, among others.

Meantime, the need to provide the least restrictive care for persons with mental illness and by extension to develop adequate community care facilities for persons with mental illness has been the driving philosophy of the National Mental Health Policy. However, a recent report compiling state and union territory reports of the status of mental health care reveals extremely low coverage of primary mental health care in the country (Murthy, et al. 2016) The recently published Mental Health Survey Report (Gururaj et al., 2016) carried out in 12 states of the country estimates the prevalence of mental disorders at 10.6%, and the mental health care gap that has been calculated in these states as varying between 70.4% and 86.3%. In reality, given the huge inequity of mental health care resources across different states, and local ecologies that may aggravate mental distress, the mental health care treatment gap may be much higher. Mental health care, like other health care, requires human resources, facilities, and protected budgets. Whether the new Act will ensure equitable care to persons with mental illness remains to be seen. However, one stark truth is that there needs to be a concerted drive to improve human resources in mental health care, and that will be the biggest challenge in the decades ahead (Murthy & Sekar, 2008). While there is a need to train all health providers in issues related to mental health, it is also important to develop specialists in different aspects of mental health care. In addition, strengthening undergraduate psychiatry training as well as postgraduate training in psychiatry is of primary importance.

People with mental illnesses are more likely to be abused and have their basic rights violated. Institutions, family members, caretakers, professionals, friends, unrelated members of the community, and law enforcement authorities are all potential sources of abuse or violation. This necessitates the creation of a safeguard to ensure that sufficient, adequate, timely, and humane health care services are provided. Legislative provisions and policies are examples of such protective mechanisms that ensure that the rights of this vulnerable group are respected. Mental health care is one such vital sector that requires suitable regulation in the indisputable premise that every society requires laws in many areas to ensure the well-being of its people.

### **Acts Governing Mental Health in India:**

- **The Protection of Human Rights Act, 1933:**

This Act provides equal opportunities and prevents unfair treatment on the basis of personal characteristics. Mental illness is a personal characteristic that also comes under this Act.

- **Persons with Disabilities Act, 1955:**

Under this Act, mental illness is considered a disability, and persons with mental retardation or mental illness can gain benefits from this Act.

- **Mental Health Act 1987:**

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- **National Trust Act, 1999**

This Act was ratified for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities to enable and empower them to live as independently. The trust aims to create equal opportunities in the society and protect persons with disabilities after the death of their parents by evolving procedures for the appointment of guardians and trustees.

- **Indian Lunacy Act, 1912**

It was the first law that governed mental health in India. It brought changes in the facilities provided by the asylums. It considered mental health patients as dangerous and violative of human rights. Given the criticism the need for a new health bill was put forward. It was repealed by the Mental Health Act of 1987.

- **National Mental Health Policy, 2014:**

The Government formulated this policy with the intention of promoting mental health and helping people recover from illness. The main aim of this policy is to de-stigmatize mental illness and ensure that everyone has access to healthcare.

- **The Rights of Persons with Disabilities Act, 2016**

It was brought into force after India became a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). It promotes and protects the rights and dignity of people with disabilities in various aspects of life such as social, legal, economic, educational, safety, cultural and political.

- **Mental Healthcare Act, 2017**

Patients have the right to access a variety of mental healthcare facilities under the Act. 3 A PMI is entitled to reimbursement from the state if certain services are not accessible. The law protects a variety of rights, including the right to the communal life, confidentiality, access to medical data, protection from cruelty and inhumane treatment, and equality and non-discrimination. It makes no discrimination between PMIs based on their financial circumstances, yet all indigent and homeless PMIs are eligible to free mental health therapy. It prohibits children from receiving electroconvulsive therapy (ECT) without anesthetic or any other sort of ECT, as well as psychosurgery.

Sterilization (of men or women when used as a mental disease therapy), unmodified ECT, confinement, and chaining are also prohibited under the MHCA of 2017. The Act also governs PMI research, restraint use, and neurosurgical treatment. “Whoever attempts to commit suicide and undertakes any act towards the execution of such offense shall be punished with simple imprisonment for a term not exceeding one year, or with fine, or with both,” states Section 309 of the Indian Penal Code, 1860. A person suffering from extreme stress who attempts suicide has a legal obligation to get care, therapy, and rehabilitation from the government in order to limit the risk of recurrence. The Act’s penalties are excessively high, and there is no mechanism in place to determine whether a violation is unintentional, owing to practical obstacles, or intentional.

The Consumer Protection Act of 1986, the Medical Council of India, State Medical Councils, the National Human Rights Commission, and civil and criminal statutes against medical negligence already include medical workers.

## **National Mental Health Programme**

The Government of India launched the National Mental Health Programme (NMHP) which was initiated in 1982 for treatment of persons with mental health conditions, prevention and promotion of positive mental health and rehabilitation. It also launched the District Mental Health Program which provides basic mental health care services at the community level. The NHRC has also taken measures to research the facilities provided by the mental health institutions and recommend changes to the government. The Indian Psychiatry Society (IPS) has since its inception contributed significantly towards mental health by way of active research. A number of models of close collaboration between government organisations and NGOs have been instituted for providing rehabilitation and reintegration of persons with mental health conditions such as Medico Pastoral Association and the Institute of Human Behaviour and Allied Sciences (IHBAS). NGOs have also initiated various

community programs to increase mental health awareness by providing research and training at universities and initiating community based mental health boot camps in rural and urban areas.

### Forensic Psychiatry as A Subspecialty of Psychiatry

Pollack defined Forensic Psychiatry as a “broad general field in which psychiatric theories, concepts, principles and practices are applied to any and all legal issues.” The American Academy of Psychiatry and the Law endorses the definition of Forensic Psychiatry adopted by the American Board of Forensic Psychiatry. “Forensic Psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal, and correctional or legislative matters; forensic psychiatry should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry.” (Prentice, 1995)

The origin of Forensic Psychiatry in India dates back to the drafting of the Indian Penal Code (IPC) by Thomas Babington Macaulay during the mid-19th century. During the same time, the Mc Naughten's rules were incorporated into the IPC, Section 84, and are the basis for the insanity defense. This has not changed till date. However, there have been many landmark judgments with regard to Section 84, IPC. (Math & Kumar, 2015).

Regarding civil responsibilities, mental illness is relevant across diverse areas. For example, issues such as marriage, divorce, testamentary capacity, contract, voting, consent, fitness for holding and continuing jobs, succession of property rights, guardianship, and social welfare benefits have reference to mental health and illness either directly or indirectly. The new provisions in the Mental Healthcare Bill, 2016, and the Rights of Persons with Disabilities are expected to bring a paradigm shift in the conceptualization of care of those with psychiatric disorders.

### Current Status of Training in Forensic Psychiatry in India

In India, there is very little infrastructure and organized training in forensic psychiatry. Most psychiatric units do not have a dedicated forensic psychiatry ward/unit. Most forensic evaluations are done by the treating psychiatrist who has had little or no formal training in forensic psychiatry. Thus, in many cases, decisions occur by trial and error or in good faith, rather than being based in skill and competence.

There are no specialized training programs in forensic psychiatry in India. Countries like UK offer a 3-year advanced structured training program in forensic psychiatry, which can be taken after 3 years of core psychiatry training. There are a few centers in the country where training in Forensic Psychology has been initiated.

The programs in developing competencies in forensic psychiatry need to concentrate on multiple areas and contexts.

### Skills and competencies required in forensic psychiatry training

Clinical skills	Contexts	Other domains
<ul style="list-style-type: none"> <li>• Case formulation (clinical, risk and legal evaluation)</li> <li>• Decision-making about appropriate pharmacotherapy and psychotherapy</li> <li>• Decision-making about seclusion, restraint, tranquilization</li> <li>• Decision-making in other areas (balancing</li> <li>• History taking (understanding links between psychopathology, victimization, mental disorder, behavior and crime, assessment of violence, self-harm, harm to others.</li> <li>• Mental status and physical examination.</li> </ul>	<ul style="list-style-type: none"> <li>• Community settings.</li> <li>• Emergency settings.</li> <li>• Inpatient settings.</li> <li>• Institutional settings like prisons, remand homes, old age homes, children's homes etc.</li> <li>• Outpatient settings.</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrate practical knowledge of the relevant civil and criminal mental health legislation, guidelines, local policies, procedures, codes of practice and guidance relating to: Mental health, capacity, confidentiality, disability and discrimination, consent, bullying and</li> <li>• Develop understanding of research methodology.</li> <li>• Forensic psychiatric administration.</li> <li>• Forensic report writing.</li> <li>• harassment, human rights, public protection.</li> <li>• Liaison with lawyers, police, court and correctional systems.</li> </ul>



<p>primary duty of care with protecting public safety, understanding the philosophy of retribution, incapacity, deterrence)</p> <ul style="list-style-type: none"> <li>• Proper assessment and documentation including pre-trial assessments, presentencing assessments, dangerous</li> <li>• Selecting appropriate investigations (Including instruments relevant to forensic practice)</li> <li>• Specialized assessments (gender specific, persons with special needs, adolescents in conflict with the law</li> </ul>		<ul style="list-style-type: none"> <li>• Offer forensic psychiatric expertise to other practitioners.</li> <li>• Participation in training programs of law and medicine .</li> <li>• Providing expert testimony in court.</li> <li>• Skills in interacting with the medial on medico-legal issues in psychiatry.</li> <li>• Supervision and teaching of forensic psychiatry .</li> <li>• Training in ethics and human rights.</li> <li>• Working in a forensic psychiatry multidisciplinary team.</li> </ul>
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## Research in Forensic Psychiatry

Indian literature on forensic issues such as negligence, informed consent, confidentiality, certification, seclusion, suicide, homicide, and the complication of various therapies is very negligible (Nambi, 2010). In the last 50 years, there are hardly 50 articles published on forensic psychiatry in the Indian Journal of Psychiatry. These articles can be broadly arranged under the following three headings: (a) criminology related psychiatric aspects, (b) mental health legislation related, and (c) others. More recently, a survey conducted by NIMHANS in the Bengaluru Central Prison (Math, et al., 2011) showed that 79.6% prisoners had either mental illness or substance use disorder. After excluding substance use, 27.6% had diagnosable mental disorder. There were high rates of tobacco use within the prison and in fact a 4-time increase in tobacco consumption after getting into prison. On conducting a random urine drug screen, 61.3% of those screened anonymously tested positive for one or the other drug. About 12.7% has life time history of major depressive disorder and 9.1% had current episode of major depression. Nearly 2.2% of prisoners had psychosis with substantial of them being substance use related psychosis. Another study done by Chadda and Amarjeeth in Tihar jail of Delhi in 1998 (Chadda & Amarjeet, 1998) revealed that prevalence of psychiatric illness in prisoners was 3.4%. They also found that depression and schizophrenia were the most common diagnosis in patients involved in major crimes and majority of patients with schizophrenia were implicated in cases of homicide. These studies highlight the need for mental health care in prisons(Math, et al., 2011).

## Conclusion

Plans must be made to increase the tools and expertise of mental health workers and experts as well as to allocate adequate funding. The Mental Health Act of 1987, the prior law, lacked a definition of mental illness. "Any person who requires care for any mental disorder other than mental retardation" was defined as a "mentally sick individual." No other place made reference to substance use disorder (SUD) save Chapter III. SUD has been incorporated into the category of mental illness in the current law, the Mental Health Care Act of 2017. Section 89 of the MHCA, 2017, which permits a person with mental illness to be admitted and treated without his consent if a designated representative wants it, is a defect.

In India and other South-East Asian nations, forensic psychology is still an underserved field. Contrary to many industrialized environments, where it has developed into a specialism with an emphasis on clinical care, education, and research, this does not exist there. Academic institutions must take a proactive role in expanding this field. They need to design curriculum that meet the wide range of needs of the nation while also taking into account the rapidly expanding need for this specialization to be developed. The NIMHANS in Bengaluru, where such a facility has been envisaged, has started one such initiative, and a postdoctoral fellowship in forensic psychology was started there in 2016. The Act overlooks the fact that the family is the primary caregiver. Even clinicians are reliant on their patients' families. As a result, the patient, the practitioner, and the healthcare administrators all require proper family support. The Act also ignores the fact that the government has a mental

health program. The Act should have required all states to develop a National Mental Health Program and made the state mental health authority responsible for it.

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