**Title:**

**“Mental Health and The Mental Healthcare Act, 2017”**

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**Abstract:** The burden of mental health-related issues is enormous in India. In India it is estimated that 1 in 10 people have a mental health problem, and 0.8% have a “severe mental disorder**.** The Mental Healthcare Act, 2017 was implemented in India by replacing the Mental Health Act, 1987. The Mental Healthcare Act, 2017 more focused on ensuring the protection of rights of person with mental illness while delivering the mental health services. It include provisions of advance directives, nominative representative, different rights of person with mental illness, independent and supportive admission, discrimination of suicide etc. not these provisions helps the person with mental illness in protection of their rights also define mental illness as well as mental health professional who can provide different services to them.

**Key words:** Mental illness, The Mental Healthcare Act, 2017.

**Introduction**

The definition of health is defined by the World Health Organization in the constitution of the World Health Organization, which came into force on 7th April, 1948 as “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The authors of Constitution were clearly incline to see health as a state which clearly depend on absence of disease so they clearly mention that an individual only considered healthy if a person should not suffer from any illness.1 Nowadays, the health is defined in three ways one is the absence of disease or impairment, second is as state that enable the person to cope adequately with daily life needs and third is as state of equilibrium or balance of person between himself and social and physical environment.2

 The World Health Organization (WHO) defines mental health as “a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community”. Mental health is an important part of human health and well-being which provide support to individuals and collective abilities of individuals to make decisions, build relationships and shape the world in which they live. Mental health is a basic human right which is essential for personal, community and socio-economic development. The mental health exists on a complex continuum that is experienced differently for each person, with varying degrees of difficulty and suffering and different social and clinical outcomes. Mental health condition not only includes mental disorders but also the psychosocial disabilities as well as other conditions which are associated with significant distress and unable function or risk to self harm. In mental illness person with mental illness are more likely to experience lower levels of mental well-being, but this is not always or necessarily the case.3

The Mental Healthcare Act (MHCA), 2017 defines Mental illness as considerable disorder of perception, thinking, mood, memory or orientation which impairs the individual ability to judge, recognize the reality, behavior to meet demands of life. It also includes mental condition linked with drug or substance abuse however did not include mental retardation which is condition of incomplete development of mind or sub-normality of intelligence. The act clearly define the mental illness as disorder which impaired the individual capacity to meets the demands of life because impairment in perception, thinking, mood or memory. This definition also includes impairment or mental condition due drug or substance abuse as condition of mental illness. It clearly separate the mental retardation from mental illness as mental retardation as condition of incomplete development of mind or intelligence.4

As per the World Health Organization, one out of eight people in the world lives with a mental disorder. In 2019, about 40 million people in the world experienced bipolar disorder and 24 million suffer from schizophrenia.5 The burden of mental health-related issues is enormous in India. In India it is estimated that 1 in 10 people have a mental health problem, and 0.8% have a “severe mental disorder”.6

**The Mental Healthcare Act (MHCA), 20174**:

British India (before 1947) had several legislations related to mental health care i.e. The Lunacy Acts. The Indian Lunacy Act, of 1912 paid attention to protecting the general public from those considered to be dangerous to society (due to mental illness). After the freedom of India, the Government of India enacted The Mental Health Act, 1987 and it strengthens and made changes in provisions of care and treatment of persons with mental illness, protecting their property and issues related to or incidental thereto. However, this law had certain loopholes that did not effectively protect the rights of mentally ill persons. At that time, when the Mental Health Act of 1987 was enacted it provides services to mentally ill persons, however with the passage of time there is a need, and emphasis was given to protect the rights of mentally ill persons. This Act had not able to answer the questions being raised related to the rights of mentally ill persons. This Act was criticized for many reasons including inpatient procedures, neglect of community mental health services, and silence about rehabilitation and treatment of patients after discharge.7

The Government of India signed the United Nations Convention on the Rights of Persons with Disabilities [UNCRPD], in 2007.8 As per the convention, country requires the changes in the laws related to the rights of persons with disability. In consequence, The Rights of Persons with Disabilities (RPWD) Act, 2016 came into force which promotes and protects the rights and dignity of people with disability. After one year, the Mental Healthcare Act, 2017 was passed to empower the person with mental illness while providing them mental health treatment and services. It emphasizes the protection, promotion, and execute the rights of mentally ill people while providing mental healthcare treatment. At the same time, it was recognized and felt that there was a need for new mental health laws that suits the changing times.9

The Mental Healthcare Act, 2017 was first introduced in the Rajya Sabha as The Mental Health Care Bill, 2013 on 19 August 2013 and was passed by the conference committee on 20th November 2013, and was enacted and passed by the Rajya Sabha on 30th March 2013. Thereafter this Act was enacted and passed by the Lok Sabha on 27th March 2017 and commenced on 07th July 2018.

The Mental Healthcare Act, 20174 has sixteen different chapters as discussed below:

Chapter I: the first chapter of the Act comprises the definitions and terms asserted in the Act. It defines Mental illness as considerable disorder of perception, thinking, mood, memory or orientation which impairs the individual ability to judge, recognize the reality, behavior to meet demands of life. It also include mental condition linked with drug or substance abuse however did not include mental retardation which is condition of incomplete development of mind or sub-normality of intelligence.

“Care-giver” (MHCA, 2017) means any individual who is residing with a mentally ill person and the individual is responsible for taking care of that mentally ill person, which included any relative or any significant other who do this function either with compensation or free.

It defines mental health professionals as Psychiatrists (a Post-Graduation (PG) Degree or Diploma in Psychiatry), Psychiatric Social Workers (PG Degree in Social Work and M. Phil. in Psychiatric Social Work), Clinical Psychologists (PG Degree in Psychology with M. Phil in Clinical Psychology or Medical and Social Psychology), Mental Health Nurse (Diploma or Degree in Psychiatric Nursing), and Professionals {having Post-Graduation Degree in Mano Vigyan AvumMans Roga (Ayurveda), in Moalijat (Unani), in SirappuMaruthuvam (Sidha)} (MHCA, 2017).

Chapter II: The second chapter covers mental illness and capacity assessment. Capacity assessment is a person ability to make mental health treatment and care related decisions without any biasness, which means every individual including persons with mental illness deemed to have the capacity to make decisions regarding mental healthcare or treatment. For the capacity assessment If an individual (including Person with Mental Illness) is able to understand the information given to them for the decisions regarding their admission, treatment, or personal assistance and able to appreciate reasonably foreseeable consequences of a decision they have taken and able to communicate the decision by any means then he is deemed to have the capacity to make the decision regarding MHC treatment. Only mental health professionals can assess the “Capacity” as per the Mental Healthcare Act, 2017. The capacity assessment tool is developed by (the Government of India, Ministry of Health and Family Welfare Capacity Assessment) Government of India which is a guidance tool for capacity assessment. Mental health professionals can assess capacity assessment by using this tool.

Chapter III: the third chapter deals with the Advance directives. 'Advance directives' is a written document that specifies the way or directs future care in the manner the individual wishes to be cared for and treated for his or her mental illness. It is the responsibility of all medical officers working in mental health or the psychiatrist in charge of mental health establishments that a person should be given the treatment proposed by a person with mental illness while following his valid advance directive.

Chapter IV: this chapter lays down the guidelines for determining a nominated representative. 'Nominated representative' is a person who provides support in need of high support to persons with mental illness in making treatment decisions under Section 89 or 90 of the MHCA, 2017 during the delivery of the treatment, it may be a family member or a relative already nominated by a person with mental illness.

Chapter V: includes various rights for mentally ill persons which include the right to access mental healthcare for all mentally ill persons, the right to equality and non-discrimination, every person with mental illness has the right to community living, protection from cruel, inhuman, and degrading treatment to mentally ill individual, the right to personal contacts and communication, the right to information that they access their records related to their treatment, right to confidentiality, restriction on the release of information with respect person with mental illness, right to legal aid, etc.

Chapter VI: this chapter deals with the duties of appropriate government which includes promotion of mental health services and preventive programs. It is the duty of the government to create awareness about mental health and reduce the stigma associated with mental illness, measures to develop and provide training to human resources, etc.

Chapter VII: This chapter gives provisions for creating the Central Mental Health Authority (CMHA). This chapter includes all the provisions related to the establishment, composition & duties of CMHA.

Chapter VIII: this chapter deals with provisions for creating the State Mental Health Authority (SMHA) and includes provisions of its establishment, composition & duties.

Chapter IX: this chapter included finance, accounts, and audit which include accounts, audits & annual reports by the Central & State Mental Health Authority.

Chapter X: This chapter deals with Mental Healthcare establishments and includes procedures for registration, inspection, and inquiry of mental health establishments.

Chapter XI: this discussed the development of Mental Health Review Boards which include registration, composition, audit, Inspection & inquiry of mental health, decisions, and authority of the board.

Chapter XII: this chapter deals with the admission, treatment, and discharge of the mentally ill. Independent admission which include a person who has not attained the age of eighteen years and believed himself to have any mental health issues and who has the capacity to make treatment and admission-related decisions cannot be admitted without his written informed consent or can request to in charge of the mental health establishment to admit as an independent admission under Section 86.

Section 87 deals with the admission of minors and Section 88 deals which the discharge of independent patients.

Supported Admission it deals with the treatment and admission of mentally ill persons, with high support needs through his nominated representative. 'Nominated representative' is a person who provides help in decisions related to treatment and admission to a person with mental illness under Section 89 or 90 of the MHCA, 2017 during the delivery of treatment.

Chapter XIII: this chapter deals with the responsibilities of other agencies. This chapter gives guidelines in terms of the duties of police officers with respect to persons with mental illness. It also gives guidelines to police in terms of prisoners with mental illness.

Chapter XIV: this chapter included restrictions to unauthorized duty and medication.

Chapter XV: It deals with penalties for not following the provisions of this Act in establishing or maintaining mental health establishments.

Chapter XVI: the last chapter of the Mental Healthcare Act 2017 is miscellaneous. It deals with the Power of the Central Government to issue regulations and Section 115 decriminalized suicide attempts.

The major implementation of the Mental Healthcare Act, 2017

The major provisions of the MHCA, 20174 included a new definition of mental illness, define Mental Health Professionals, Advance directives that gives rights to person with mental illness how they wish to choose treatment, various rights for persons with mental illness, nominated Representative who will provide support in the treatment of mentally ill person, suicide has been decriminalized, Mental Health Board to regulate the mental health treatment in the country, elimination of the barbarous treatments, etc. The Act is focused on protection of rights of person with mental illness while delivering the mental health services. The Act also provides for the first time the provisions of rehabilitation of persons with mental illness in the possible least restrictive environment, respecting dignity of persons with mental illness.10

The Mental Healthcare {Central Mental Health Authority (CMHA) and Mental Health Review Boards (MHRB)}11 Rules, 2018 passed on 29 May 2018, which provides the guidelines, composition, functioning, etc of these authorities. As per Times of India12 dated 04th December 2018 it made the CMHA to monitor and regulate all the mental health institutions in the country.

The Government of India, Ministry of Health and Family Welfare (Capacity Assessment)13 published a Guidance document for capacity assessment for mental health professionals on 16th August 2019. This helps mental health professionals to assess the capacity of a person with mental illness for decisions related to treatment and admissions related decisions.

The government of India, Ministry of Health & Family Welfare (Tele-MANAS)14 in lieu to access mental health services for all launched the Tele Mental Health Assistance and Networking Across States (Tele-MANAS) in October 2022 to provide free tele-mental health services for all over the country round the clock, particularly catering to people in remote or under-served areas. It provides free tele mental health services for persons with mental health needs all over the county round the clock. This service will be in two tiers. One will be Tele-MANAS and the second will comprise specialists at District Mental Health Programme (DMHP)/Medical College resources for physical consultation and/or e-Sanjeevani for audio-visual consultation.

After the implementation of the MHCA, 2017, the Government of India has developed the necessary rules and regulations, documents which are necessary under this Act. It has come in regular practice all over India to serve persons with mental health needs and care. This Act focuses on the protection of the rights of persons with mental illness and the delivery of mental health services. After the implementation of the MHCA, 2017 made paradigm shift in mental health treatment by focusing on protecting the rights of person with mental illness and giving patient right to choose the treatment how he/she wish to be treated.

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