

# Mental Health Care Act, 2017: Challenges and the Way Ahead

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## Abstract

After the Covid-19 pandemic hit us, we truly understood that without mental health there is no health. The National Mental Health survey conducted in 2014-16 stated that 13.7 % lifetime and 10.6% current mental morbidity is prevalent in India. This along with the adoption of United Nations Conventions on the rights of persons with disabilities by Government of India lead to enactment of the new Mental Health Care Act, 2017. But the Act came with its own challenges as it was based on Legislations of the western world and its implementation in peculiar conditions of India is facing hurdles. The role of family and caregiver is undermined especially in Indian context where family members are the first level of contact for persons with mental health issues and when facing challenges and hardships in life. This paper focuses on shortcomings of the act as even after 4 years of coming into force, the act fails to achieve what it intended to. This calls for various amendments in the law as per the resources available and the peculiar requirements of our society.

**Keywords:** Law, Psychiatry, Mental Health Act, Mental care, Mental Illness

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## Introduction

The World Health Organization defines Health as “a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity”. The importance of mental health is well recognized as in current times of COVID-19 pandemic mental illnesses have increased multiple folds. What differentiates mental health from physical health is the inability to recognize the presence of a disease and seek treatment in certain persons with mental illness. The family members of such patients also try to ignore /hide the condition due to associated stigma with mental illness and this hampers timely intervention and access to appropriate treatment leading to marginalization and discrimination of such patients.

This calls for specific laws to protect such patients and to allow them easy access to appropriate mental health facilities and services. The new Mental Health Care Act, 2017 which has replaced its predecessor the Mental Health Act ,1987 is more patient centric and purports to protect the rights of persons with mental illness.

## Need for the new law

Success of a democracy depends on equal opportunities and participation of all its members. The Government of India approved the U. N. Conventions on the Rights of Persons with Disabilities in the year 2007.[1] This needed certain reforms and changes in the mental health legislation in the country so as to keep up with the changing times which also needed to be in line with the United Nations Conventions on the Rights of Persons with Disabilities.

A Survey if National Mental Health which was conducted across 12 states between 2014-2016 reported that 13.7% lifetime morbidity and 10.6 % current morbidity are prevalent for any mental illness. [2] This lead the Indian Government to begin improving mental health services across the country. One important step in this regard was formulation of Mental Health Care Act,2017 which repealed the Mental Health Act,1987.

The Mental Health Act 1987 did address certain issues with respect to mental health delivery system in India when it came into action and superseded its predecessor –Indian lunacy Act 1912 but had certain shortfalls as follows:

1. Certain provisions of the act lead to abridgement of personal freedom of mentally ill.
2. Research on persons with mental illness could be conducted with the consent of caregiver which is a violation of human rights of the patient.
3. The act focussed on treatment of patients in mental hospital where they were usually kept against their will.
4. No provision of review and redressal of issues by judiciary.

To address these issue and to align the law with the conventions of UNCRPD, the Government of India drafted the Mental Health Care Bill which was passed on 7th April, 2017 and came into force on 29th May, 2018.

### **Mental Health Care Act, 2017**

The act defines mental illness “as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgement, behaviour, capacity to recognize 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, especially characterized by sub normality of intelligence.” [3] The act is a milestone in changing the way the mental health services are delivered in the country and in the way a mentally ill is viewed in the society. It intends to destigmatise mental illness and those suffering from the same. The new term ‘ persons with mental illness’ (PMI) is preferred over the previously used term ‘mentally ill patient’ as the disease does not define them.

Important provisions of the Act and changes with positive impact

#### 1. Rights of persons with mental illness

The persons with mental illness have the right to choose the type of treatment, the duration of treatment and the place where they want to be treated. Also they have the right to be treated in the community instead of being confined to mental health institution. Right to have free legal aids and access to their medical records have also been added. They also have the right to complain in case of inadequacies in provision of services and a grievance redressal system needs to be set up for every mental health establishment as per the new Act. They have the right to have health insurance and to live a life of dignity.

#### 2. Decriminalization of Suicide

The Mental Health Care Act decriminalizes suicides and states that any person who attempts suicide will be presumed to have been suffering from mental stress or a mental illness at the time which he commits such an act and is not punishable under section 309 IPC. This would provide an opportunity for treatment and rehabilitation of such patients.

#### 3. Advance directives

Persons have been given the right to make an advance directive regarding how they wish to be treated when suffering from mental illness and they can choose their nominated representative who will take the decision for treatment in case they lose the mental capacity to do so.

#### 4. Prohibition of Chaining and solitary confinement, limited use of physical restraints.

The act prohibits inhumane treatment of persons with mental illness by restriction on the use of chains for tying those with illness and prohibition of solitary confinement. Also physical restraints could only be used as a last resort with proper documentation of the reason for restraining and the duration of it. Also, restraints could only be used in presence of a medical officer or a Psychiatrist with their approval.

#### 5. Prohibition on Electroconvulsive therapy

The act prohibits the use of Electroconvulsive therapy without the use of muscle relaxants and for those below the age of 18 years.

#### 6. Mental Health Insurance

The MHCA,2017 permits the persons with mental illness to insure themselves against mental illnesses just like physical illness.[4]

#### 7. Role of Police Officials

It is the responsibility of the police officer who is in-charge of a police station to report to a magistrate upon having a reason to believe that a particular person with mental illness is neglected or is not being treated well. Also, any destitute or wandering person must be taken for a medical examination to a medical officer on the basis on which, he/she can either be admitted to the mental health establishment or taken to an establishment for such homeless persons.

#### 8. Prohibited Procedures

The Act prohibits psychosurgery as a treatment for mental illnesses. It also prohibits sterilization procedure as a treatment to cure mental illness.

### **Challenges**

MHCA,2017 aims to protect the rights of persons with mental illness and to ensure that they live life with dignity but it has certain pitfalls and shortcomings.

1. Firstly, the act is based on legislations of western world. It is patient centric and aims at total autonomy of the individual over his treatment which can sometimes hinder the treatment if the person is not willing to give consent. The role of family members is undermined in the new Act which can prove to be counter productive in Indian setting as the family members act as the primary caregivers. Unlike western countries, in India the family members are the first level of contact when individual faces difficulties and hardships in life and they are the primary support system as well. Excluding them from the treatment of persons with mental illness can do more harm than good in such situations. Also, the act neglects the caregiver burden and frustration in family members of the persons with mental illness.

2. Mental Health Establishment

As per the act, the government is responsible to setup a Central mental health authority which will function at national level and a State mental health authority which is to function at state level to register and supervise the functioning of all mental health establishments and advise the government on issues related to mental health. But the Ministry of Health and Family Welfare has stated that, out of 28 states only 19 states have formed these authorities. Also, even after 3 years of Mental Health Act coming into force, the various mental health establishments have not yet registered under State Mental Health Authority. On the other hand, the need for registration of mental health

establishment may actually be a hurdle in the provision of mental health services as many private Psychiatrists and hospitals may refuse to treat patients as inpatient due to lack of registration .

Also ,the act mandates formation of Mental Health Review Board (MHRB) in every state by state authority. "Each Board shall consist of -

- a) A District Judge, or an officer of the state judicial services who is qualified to be appointed as District Judge or a retired Judge who shall be chairperson of the Board.
- b) Representative of the District Collector or District Magistrate or Deputy Commissioner of the districts in which the Board is to be constituted
- c) Two members of whom one shall be a Psychiatrist and other shall be a medical practitioner.
- d) Two members who shall be persons with mental illness or care-givers or persons representing organisations of persons with mental illness or care-givers or non-governmental organisation working in the field of mental health." [5]

But MHRBs are yet to be constituted in the states despite repeated probes by court and government.

### 3. Advance directives and Nominated Representative

The concept of Advance Directive which gives the individual autonomy over his/her treatment is taken up from the west but its implementation in developed countries like India faces certain hurdles. Factors such as lack of mental health resources and limited knowledge about mental health issues and serious psychological stress among individuals and their relatives which hampers their ability to take a sound decision must be taken into consideration as in these situations the treating physician may be the best person to take the treatment decision.

Also, as Advance Directive acts as a kind of will where person can dictate the type of treatment he/she would want to take when suffering from mental illness, this may not always be in the best interest of the patient and may actually act as a hurdle in the treatment of such persons.

AD can be revoked multiples times even while the person is suffering from mental illness which defeats the overall person of making an Advance Directive.

Also, in a country like India where a large proportion of population is illiterate and may not have adequate knowledge of even their right about making advance directive, the implementation of the same would be quite difficult.

In the UK , "NR" stands for nearest relative whereas as per the Act, "NR" is Nominated representative and anyone who is assigned the role of taking treatment related decision by the patient can act as a nominated representative and this can sometimes pose a lot of challenges to the treating physician.

### 4. Financial burden

The Act is ambitious with respect to financial expenses and it does not make it mandatory for states to allocate budget for mental health services in the state. In financial year 2020-21, the allocated budget for mental health is 0.05% of the total health care budget whereas developed countries spend nearly 4-5% on mental health. The Act assures free and quality mental health services to all including homeless and those below poverty line and as the prevalence of mental illnesses is so high, it would pose a financial burden on the government.

## 5. Mental Capacity

The term 'mental health capacity' is ill defined and is somewhat vague as everyone is presumed to have the capacity and give consent and the onus to prove the otherwise relies on the treating Psychiatrist. No specific guidelines have been laid down to assess the mental capacity which might pose a challenge in treatment especially in case of supported admission (Section 89).

## 6. Lack of resources

Many of the provisions of MHCA, 2017 have been directly picked up from legislations of the western world however those countries have many fold higher resources than in India and therefore implementation of Mental Health Care Act, 2017 in India is bound to have challenges due to scarce availability of resources here. [6].

## The way ahead

The Mental Health Care Act, 2017 is an ambitious step in the way mental health services are delivered in the country. But for it to be fruitful, certain changes and amendments needs to made in the law . There is a need for more involvement of Patient's relative and caregiver in the treatment process. The formation of Mental Health Review Board should be taken up as a priority for better supervision of the mental health services at district level. Centres providing care and treatment for persons with mental illness like General hospitals, nursing homes, private units should be kept out of purview of registration so as to provide greater opportunity for inpatient treatment for those needing it. Increased allocation of finances/budget to mental health .

At the same time, efforts should be made to follow the provisions of the MHCA,2017 and strive to achieve international standard of mental health services in India as well. Informed consent needs to be taken whenever required and preferably be taken in writing in patient's own language. All efforts should be made to involve the patient in the treatment related decisions as much as possible . Also, Advance directives needs to be respected. Documentation needs to be done properly and at every step of treatment.

Awareness programs needs to be taken up by the government, NGOs and Mental Health Professionals so as to make people aware of their rights as per the new act.

## Conclusion

The Mental Health Care act, 2017 mainly focuses on rights of persons with mental illness and aims at providing autonomy and freedom in their treatment related decisions. It is a way forward in the direction of better mental health delivery system in the country but as with every law , this also comes with hurdles and challenges which needs to be faced and overcome so as to achieve international standards of mental health services. With certain amendments in the required areas, the act may prove to be a landmark in mental health care system.

## Conflict of Interest

The author has no conflict of interest to declare.

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