

A study on the issues related to mental health with special reference to the Mental Health Care Act 2017 in India

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Abstract

This paper discusses about the issues relating to the mental health care and the law. The central theme of this paper is to focus on the protection and care of the persons suffering from mental illness. This study is an analysis of the main provisions, objectives and important definitions relating to the mental Healthcare Act, 2017. Some comparative study has been made wherever required. The legislation has been done in various countries to protect the rights of the people facing mental illness and severe treatments. More expertise is needed to take proper care of these types of patients. There is always a requirement for effective treatment, due care and sound knowledge of this subject matter with developed and quality research method to be applied for recovery of mental illness. The present legislation aims to provide social justice and maximum possible protection to these persons. The very important method is to identify, make diagnosis and give proper treatment with care.

Keywords: mental health, mental illness, protection and care, treatment, mental law

Introduction

A healthy person can achieve success in all spheres. A sound health means not only the physical fitness but it also includes mental fitness. It is true that people create some social atmosphere and it is necessary that a good environment can be created by good thought, creativity, activeness, sincere efforts and discipline. But there are some challenges regarding the mental health issues in the society. The most important definition regarding health is given by World Health Organisation as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The United Nations General Assembly adopted the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care in the year 1991 where it is defined that mental healthcare “includes analysis and diagnosis of a person’s mental condition, and treatment, care and rehabilitation for a mental illness or suspected mental illness.” But it has been criticised that it did not provide for strong protection in some areas. In the United Kingdom recent legislations done in this area are Mental Capacity Act 2005 Mental Health Act 2007, Mental Health (Discrimination) Act 2013. The object of this Mental Health (Discrimination) Act 2013 is to make provisions regarding discrimination against persons on the basis of their mental health condition. Therefore, some discrimination existing in the Mental Health Act 1983 in UK, was abolished by this recent legislation of 2013. In Australia, the Mental Health Review Tribunal is established in Northern Territory and in this territory the Tribunal has exclusive jurisdiction in the issues related to mental health.

The mental health care act 2017 known as ‘mental law’ has come into force on 7 April 2017 in India. The mental law has been brought into focus for the purpose of taking care of mentally ill persons who are suffering from mental disorder

and unable to take wise decision or reasonable decision. Therefore, the mental law is significant in order to provide mental health care services to persons suffering from mental illness. The mental law also provides scope for protection of the rights of the persons suffering with mental illness and such a right can be protected and promoted during the time of receiving mental health care services from the mental health care centres. It is well-known fact at the international level that on third of May 2008 the convention on right of persons with disabilities and its optional protocol came into force which was adapted on 13th of December 2006 in New York at the United Nations headquarters¹. As an author I would like to emphasise on various important provisions of this mental health care act of 2017.

Important definitions

There are many significant expressions which have been defined for the purpose of proper understanding of the nitty-gritty of the mental law. Firstly I would like to explain the expression ‘care giver’, it means that when a person suffering with mental illness is taken care by another person, which may or may not be the relative of the mentally ill person, the service may be rendered either free of cost or with certain

¹ An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto. WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008; AND WHEREAS India has signed and ratified the said Convention on the 1st day of October, 2007; AND WHEREAS it is necessary to align and harmonise the existing laws with the said Convention. Text of the preamble from the original mental health care act 2017.

payment of money^[2]. Another interesting expression ‘clinical psychologist’^[3] has also been defined very well under the mental law who must be qualified in clinical psychology from a duly recognised institute. The mental law also gives an ample opportunity to understand what is meant by the expression ‘informed consent’. It is basically referred as a consent or willingness which is free from any sort of pressure and also to prevent the occurrence of the events such as, undue influence, mistake or misrepresentation^[4]. The mental law also discusses the scope of expression such as ‘least restrictive alternative’^[5], ‘mental health care’^[6] and ‘mental health establishment’^[7] to give a clear picture and analyses of the mental health Law.

The mental law explains comprehensively the ambit of the expression ‘mental illness.’ It means that a person who suffers with excessive disorder of thinking, perception, orientation or memory because of which the person concerned cannot take proper judgement with regard to his own behaviour or inability to meet a normal human capacity^[8]. The mental law also discusses in detail the expression ‘psychiatric social

worker’^[9] and encourages the persons to join the service and provide benefit to mentally ill person.

Determination of mental illness

Section 3 of the mental law specifically discusses the mode of determining the mental illness of a person. For example, nationally or internationally accepted medical standards should be followed for the purpose of such determination which may include the latest edition of the International classification of diseases of the World Health Organisation. Similarly, there will be prohibition of determining the mental illness based on political, economic or social status of a person including nonconformity with more social cultural work or political value^[10].

Capacity to make mental health care and treatment decisions

The mental law through its section 4 clearly prescribes that if the mentally ill person is able to understand about his treatment method etc. then can give decision for his treatment provided that he should be made aware about his way of treatment. Therefore, the mentally ill person should understand that what kind of treatment shall be provided to him and also the kind of benefit he shall be getting by going through this kind of treatment^[11]. So it is clear from the provisions of the act that without consent and no blind

² “care-giver” means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration Sec 2(1)e;

³ (g) “clinical psychologist” means a person—

(i) having a recognised qualification in Clinical Psychology from an institution approved and recognised, by the Rehabilitation Council of India, constituted under section 3 of the Rehabilitation Council of India Act, 1992; or

(ii) having a Post-Graduate degree in Psychology or Clinical Psychology or Applied Psychology and a Master of Philosophy in Clinical Psychology or Medical and Social Psychology obtained after completion of a full time course of two years which includes supervised clinical training from any University recognised by the University Grants Commission established under the University Grants Commission Act, 1956 and approved and recognised by the Rehabilitation Council of India Act, 1992 or such recognised qualifications as may be prescribed;

⁴ “informed consent” means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person S 2(1) i;

⁵ “least restrictive alternative” or “least restrictive environment” or “less restrictive option” means offering an option for treatment or are sitting for treatment which-I meets the person’s treatment needs; and II imposes the least restriction on the person's rights S 2(1) j;

⁶ “Mental healthcare” includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness S 2(1) o;

⁷ “mental health establishment” means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends S2(1) p;

⁸ “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise 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, specially characterised by subnormality of intelligence S 2(1) s;

⁹ “psychiatric social worker” means a person having a post-graduate degree in Social Work and a Master of Philosophy in Psychiatric Social Work obtained after completion of a full time course of two years which includes supervised clinical training from any University recognised by the University Grants Commission established under the University Grants Commission Act, 1956 or such recognised qualifications, as may be prescribed S 2(1) x;

¹⁰ (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,— political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person; non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person’s community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person’s mental illness.

(5) The determination of a person’s mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

¹¹ (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if such person has ability to—

understand the information that is relevant to take a decision on the treatment or admission or personal assistance; or appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance; or communicate the decision under sub-clause (a) by means of speech, expression, gesture or any other means.

The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

Where a person makes a decision regarding his mental healthcare or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental healthcare or treatment decision, so long as the person has the capacity to make mental healthcare or treatment decision under sub-section (1).

treatment can be given to mentally ill persons. This act is a social welfare legislation and tries to give maximum protection to the mental patients.

Advance Directive

Section 5 of the mental health care act 2017 authorises the person in case if he is not a minor will have the right to provide directions in advance the way in which he shall be treated and if he does not agree then he can specify in writing not to be treated in such ways for the purpose of curing mental illness^[12].

The mental law describes, efficiently, rights of persons with mental illness, for example, right to access mental health care under section 18^[13], right to community living under section 19^[14], etc.

Conclusion

Hence, for the benefit and proper care of the mentally ill persons this act provided many important provisions. After this study it is found that the mental health care act of 2017 is comprehensive enough to take care of such persons who are seriously suffering from mental illness. The act is designed in a scientific manner under which the mentally ill persons not only will get the best services as per the international medical standards, but also shall be able to exercise their rights as prescribed and protected under this act. Therefore, this current piece of legislation is a welcoming step and is also one of the social welfare legislation for the protection, care and the improvement of mental health condition of the human being in the society. But still there remain many areas for further research and development in this field of mental health. To

make this legislation a successful one there should be proper implementation of this law in the country so that it can reach to those who are in actual need.

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¹² (1) Every person, who is not a minor, shall have a right to make an advance directive in writing, specifying any or all of the following, namely:—
the way the person wishes to be cared for and treated for a mental illness;
(b) the way the person wishes not to be cared for and treated for a mental (b) the way the person wishes not to be cared for and treated for a mental illness; (c) the individual or individuals, in order of precedence, he wants to appoint as his nominated representative as provided under section 14

¹³ (1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

(3) The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

(4) Without prejudice to the generality of range of services under sub-section (3), such services shall include—

provision of acute mental healthcare services such as outpatient and inpatient services;

provision of half-way homes, sheltered accommodation, supported accommodation as may be prescribed;

provision for mental health services to support family of person with mental illness or home based rehabilitation;

hospital and community based rehabilitation establishments and services as may be prescribed;

provision for child mental health services and old age mental health services.

¹⁴ (1) Every person with mental illness shall,—

have a right to live in, be part of and not be segregated from society; and not continue to remain in a mental health establishment merely because he does not have a family or is not accepted by his family or is homeless or due to absence of community based facilities.