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Research Paper

Evaluating India's Mental Health Laws: Implementation, Benefits, and Challenges

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ABSTRACT

Since the mid-19th century, mental health legislation has existed in India to guarantee that people with mental health disorders receive quality care and that healthcare professionals will be held responsible for the patient's treatment results and experiences. Mental healthcare in India is governed by the Mental Healthcare Act 2017, which replaced the Mental Healthcare Act 1987 and was enacted after the sanction of the United Nations Convention on the Rights of Persons with Disabilities, 2006. Unlike the earlier legislation (the Mental Healthcare Act 1987), which was primarily concerned with custodial aspects of persons with mental illness, the Mental Healthcare Act 2017 ushers in a new era, allowing people with mental disorders to receive proper care and lead a dignified life. The implementation of the Mental Healthcare Act 2017, which included establishing authorities to ensure regulation, providing legal help for patients, forming mental health review boards to protect patient rights, registering mental health establishments, and providing free treatment to families below the poverty line, laid a strong foundation for improving mental healthcare in India. However, several challenges, such as insufficient infrastructural and financial resources, stigma, and discrimination against mental illness, still hinder its full realization. The Mental Healthcare Act 2017 is pivotal for mental healthcare in India, offering numerous benefits, including access to care, stigma reduction, patient autonomy, and rights protection, that would improve the overall mental health framework. The present study aims to perform an in-depth analysis of the mental healthcare laws in India, focusing on their impact and implementation.

Keywords: *Mental Health Laws, India, Policy, Implementation, Mental Healthcare Act 2017, Law*

Mental health comprises of psychological, emotional, and social well-being which enables an individual to handle stress, maintain relationships with others, and making healthy choices. India is a country with a vast population and diverse demographics. The overall prevalence of mental health disorders in India was about 5.1% in 2016 National Mental Health Survey (Jayasankar et al., 2022). Irrespective of the severe impacts of mental health on people's social, personal, professional, and familial life, India has a significantly low availability of human resource in the field of mental health (Duffy, Kelly, & Brendan, 2020).

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Mental health problems have long been recognized in our society (Agarwal, 2004). According to the Global Burden of Disease Study (1990–2017), one in seven Indians is affected by a mental disorder (India State-Level Disease Burden Initiative Mental Disorders Collaborators, 2020). The growing understanding of mind and behavior has revolutionized how these problems are managed. Mental health services to improve an individual's symptoms have moved from a crude and primitive method to a more sophisticated method wherein a combination of pharmacological and non-pharmacological methods is used for effective treatment (Sayers, 2001). As per the most recent review of neurological and psychiatric disorders by NIMHANS, Bangalore, nearly 100 million people are suffering from mental and neurological problems requiring professional help at any point in time (Gururaj & Gourie, 1999).

India is facing an increasing number of mental health problems primarily including anxiety, mood (depression and bipolar), and substance use disorders (Choudhary & Gautam., 2023). The National Mental Health Survey (2015–2016) indicated that although nearly 150 million Indians need mental health services, less than 30 million are seeking care (Murthy, 2017). This could be the result of poor access to mental healthcare, inadequate quality of treatment, limited availability of mental health professionals, etc. (Choudhary & Gautam, 2023).

With the increasing number of mental health cases, having a regulatory framework has become essential to protect the rights of those with mental health problems and to provide high-quality care. The main objective of mental health legislation is to protect, promote, and improve citizens' lives and mental health (Math, Murthy, & Chandrashekar, 1987). Legislation allows for the integration of mental health into public health policy, leading to easier access to care, an improved likelihood of diagnosis and treatment of mental health problems, and a reduction in poor mental health (Patel, Flisher, Hetrick, McGorry, 2007). From the Lunatic Asylums Act 1858 of the pre-independence era to the latest mental health legislation, i.e., the Mental Healthcare Act 2017, Indian laws surrounding mental health have come a long way. The Mental Healthcare Act 2017 is unlike its predecessors, which disregarded the rights of people with mental health problems and emphasized compulsory hospitalization (Duffy & Kelly, 2019). The Mental Healthcare Act 2017 focuses on establishing legal and moral standards for mental healthcare (Pathare & Sagade, 2018).

The implementation of the Mental Healthcare Act 2017 is a positive step that intends to protect the rights of those with mental health problems as well as improve access to mental healthcare services. This study aims to provide an in-depth analysis of the mental healthcare laws in India while focusing on their implementation, benefits, and challenges.

Overview of Mental Health Laws in India

During the pre-independence era, mental health legislation in India was predominantly shaped by the British. The Lunatic Asylums Act 1858 was an attempt at aligning the legal situation in India with that of Britain and was modeled on the English Lunacy Act, 1853. The Lunatics Removal Act aimed to facilitate the extradition of British offenders with mental health problems (Duffy & Kelly, 2020). Next came the Indian Lunacy Act, 1912, which drew heavily from the English Lunacy Act, 1890. The Indian Lunacy Act, 1912, defined terms such as asylum, medical practitioner, and lunatic. It aimed to provide a legal framework for the care and treatment of those with mental health problems in British India (Mishra, Mathai, & Ram, 2018). These acts provided guidance for the establishment of mental asylums and the admission of mental health patients.

During the post-independence era, the Mental Health Act was passed in 1987 after almost three decades of legislation. Shortly after coming into force in 1993, the various changes in mental health services that occurred during those thirty years raised concerns about the content of the legislation (Somasundaram, 1987). The Mental Health Act of 1987 was a step towards improving the condition of those with mental health problems by recognizing the crucial role of judicially safeguarding patients' rights and introducing humanitarian considerations to prevent cruelty (Jiloha, 2015).

Key provisions of the Mental Healthcare Act of 2017

1. **Rights of people with mental illness:** The Mental Healthcare Act of 2017 ensures that people have access to mental healthcare that is of good quality, readily available, and affordable. It upholds the dignity, autonomy, and rights of those with mental health problems. Of the many mental health legislations in India since the pre-independence era, the Mental Healthcare Act of 2017 is the first act that described access to healthcare run or funded by the appropriate government as a right of every citizen (Vasudevan, Sanju, & Swaran, 2019). The range of services that should be available to people with mental health problems includes inpatient and outpatient services, hospital and community-based rehabilitation establishments, child and old-age mental health services, half-way homes, sheltered accommodation, etc. The Mental Healthcare Act of 2017 also states that people with mental health problems have a right to live a dignified life and that such people should be protected from cruelty and/or any degrading treatment in any mental health establishment. Some other rights of people with mental health problems that are included in the Mental Healthcare Act of 2017 are the right to personal contacts and communication, the right to legal aid, the right to make complaints about deficiencies in the provision of services, the right to access medical records, the right to confidentiality, the right to equality and non-discrimination, the right to community living, and the right to information (Government of India, Ministry of Law and Justice, 2017).

2. **Nominated Representative:** The Mental Healthcare Act, 2017 states that people, those with and without mental health problems, shall be deemed to have capacity to make decisions regarding their mental healthcare as long as the individual has the ability to understand the information relevant to making a decision regarding one's admission or treatment (Government of India, Ministry of Law and Justice, 2017). However, there are cases when an individual may refuse treatment due to severe symptoms and/or absent insight. For such cases, the Mental Healthcare Act of 2017 allows people with mental health problems to appoint any individual as their nominated representative (Mahomed, Stein, Sunkel, Restivo, & Patel, 2022). The nominated representative holds the responsibility to provide support and take decisions on behalf of the person with mental health problems when they do not have the capacity (Rao, Varshney, Singh, Agrawal, & Ambekar, 2019).

3. **Advance Directives:** Individuals seeking mental healthcare services have the right to make an advance directive, which includes deciding the way they wish to be cared for and treated for their mental illness (Government of India, Ministry of Law and Justice, 2017). Advance directives are legal documents that allow mental health patients to convey their decisions in writing about their future mental healthcare (Math et al., 2019b).

4. **Duties of Appropriate Government:** The Mental Healthcare Act of 2017 promotes planning, designing, and implementing programs for the promotion of mental health and the prevention of mental illness (Government of India, Ministry of Law and Justice, 2017). This act also ensures that the government creates awareness about mental health while also reducing the stigma associated with mental illness. Furthermore, the Mental Healthcare Act of 2017 also makes sure that the government takes necessary actions to address the human resource requirements of mental health services by planning, developing, and training to better address the needs of those with mental health problems.

5. **Procedures for Admission, Treatment, and Discharge:** As per the Mental Healthcare Act of 2017, there are four types of admissions, including independent (voluntary) admission, admission of minors, supported (admission and treatment without patient consent) admission, and supported admission beyond 30 days (Sharma, Singh, & Bhattacharjee, 2018). Treatment can be given to an individual after obtaining informed consent. In cases where the patient cannot make the decision for themselves, informed consent is obtained from the nominated representative. Furthermore, the Mental Healthcare Act of 2017 prohibits the use of electro-convulsive therapy, solitary confinement, the use of muscle relaxants, chaining in any manner, etc. (Sharma, Singh, & Bhattacharjee, 2018).

6. **Establishment of Mental Health Review Boards:** The Mental Healthcare Act, 2017 states that state authorities shall form a mental health review board wherein each board comprises a district judge, a representative of the district collector, district magistrate, or Deputy Commissioner, two members of whom one shall be a psychiatrist and the other shall be a medical practitioner, two members of whom one shall be persons with mental illness or care-givers, or persons representing organizations of persons with mental illness or care-givers or non-governmental organizations working in the field (Sharma, Singh, & Bhattacharjee, 2018). The responsibilities of this board included taking decisions regarding the appointment of nominated representatives, reviewing advance directives, and addressing complaints about deficiency of services and violations of rights (Duffy & Kelly, 2020).

Implementation of Mental Health Laws

1. **Analysis of how the Mental Healthcare Act of 2017 has been implemented:** The Mental Healthcare Act of 2017 intends to remodel the existing system to give importance to protecting the rights of those with mental health problems, autonomy, and holding the state responsible for their care (Math et al., 2019a). This act was sanctioned with the support of both the House of the People (Lok Sabha) and the Council of States (Rajya Sabha) (Rao et al., 2016) and has impacted the setting up of new mental health establishments and providing mental healthcare services in India (Math, Gowda, Sagar, Desai, & Jain, 2022). This act also makes it mandatory for mental health establishments to display the helpline numbers of MHRB and free legal aid clinics, along with grievance redressal systems for patients and caregivers (Gowda et al., 2019).

   Furthermore, various workshops and training programs have been conducted for the mental health establishment staff by experts in mental health and law in order to better learn the different case scenarios and comply with the Mental Healthcare Act of 2017 (Math et al., 2022).

The implementation of the Mental Healthcare Act of 2017 has enabled the citizens of India to (a) outline their preferred treatment methods in advance, also known as advance directives; (b) receive free mental health services in public health establishments for those living below the poverty line; and (c) appoint a nominated representative to make decisions on their behalf in situations where they are not in a position to make them.

2. **Role of NGOs and community-based organizations in supporting implementation:** Mental health non-governmental organizations (MHNGOs) have played a very prominent role in providing treatment (care and rehabilitation), conducting research, and providing training in diverse settings and for diverse clinical populations (Thara & Patel, 2010). Compared to its predecessor, the Mental Healthcare Act of 2017 gave more weight to the role of MHNGOs by giving a wider meaning to the term "mental health establishment" and mentioning clear criteria for establishing the same. MHNGOs can play a very vital role in providing mental healthcare services to people with mental illnesses, special populations, and those in high-risk groups, therefore helping in the implementation of the Mental Healthcare Act of 2017 (Visalakshi et al., 2023).

Benefits of Mental Health Laws

The Mental Healthcare Act of 2017 has had a grave impact on the ways in which mental health services are delivered as well as how a mentally ill person is viewed. This act has various positive impacts, including shedding light on the various rights of people with mental illness, such as being treated in a non-cruel and dignified manner, choosing the type and duration of treatment, etc.

Another pivotal contribution of the act has been the decriminalization of suicide by making it non-punishable under Section 309 of the Indian Penal Code (Math et al., 2019b). Furthermore, this act also prohibits inhumane treatment of those with mental illness. This has been achieved by restraining the use of chains, forbidding solitary confinement, prohibiting performing sterilization procedures as a treatment for mental illnesses, etc. (Digvijay, 2021).

The Mental Healthcare Act of 2017 also gives people with mental illnesses the right to make an advance directive and choose a nominated representative (Digvijay, 2021). In addition, the Mental Healthcare Act of 2017 regulates the establishment, management, and functioning of mental healthcare institutions by appointing mental health review boards.

Challenges in Implementation

The Mental Healthcare Act of 2017 aimed to promote and protect the rights of those with mental illnesses during the delivery of mental healthcare services. Irrespective of the objectives of the Mental Healthcare Act of 2017, there are a few areas of concern regarding its implementation.

Firstly, the Mental Healthcare Act of 2017 creates the refutable presumption that all people with mental illness have the capability to make decisions pertaining to their treatment. Section 4 of this act describes "capacity" as the ability of the patient to comprehend the information, assess risk, or communicate his/her decisions. If a patient has even one of these abilities, he/she can refuse treatment. Consequently, this has been a point of contention for many medical professionals due to its potential dangers (Math et al., 2019b).

Secondly, although the concepts of advance directives and nominated representatives appear very aspirational and idealistic, they do not apply well in the Indian content due to the likely educational, cultural, and socioeconomic background of the patients (Nayak, Panja, & Das, 2003).

Thirdly, this act also faces challenges with the availability of resources. In India, there are three psychiatrists and even fewer psychologists for every million people. The WHO data also indicates a severe lack of psychiatric beds (per 10,000 patients) in both psychiatric (1.490) and government (0.823) hospitals (World Health Organization, 2017). Furthermore, only 1.4% of the GDP is allocated by the Indian government for expenditure on health. It is important to note that the contribution by the private sector is more than double that of the public sector, i.e., about 5–6% of GDP. However, of this, mental health only receives about 1–2% (Bagchi, 2014).

Fourthly, the act is heavily based on the legislation of the western world. The Mental Healthcare Act of 2017 undermines the role of family members, even though in an Indian setting, family members act as the primary caregivers and support system. The lack of involvement of family members also indicates neglect of frustration and burden experienced by the family members of people with mental illnesses (Digvijay, 2021).

Lastly, the non-availability of an adequate workforce makes the mental health review board aspect of the Mental Healthcare Act of 2017 a shortcoming that, if not addressed, may cause a delay in the implementation of treatment, leading to an enormous amount of stress on the care providers (Math et al., 2019b).

CONCLUSION

The Mental Healthcare Act of 2017 is a significant step forward in the protection and promotion of mental health rights in India. By adhering to international human rights standards, the Act ensures that people with mental illnesses are treated with dignity, equality, and respect. Key provisions, such as the decriminalization of suicide, the right to mental health care, and the establishment of advance directives, empower and protect people's autonomy. However, the successful implementation of Mental Healthcare Act 2017 necessitates strong infrastructure, increased awareness, and a shared commitment from all stakeholders to bridge the gap between legislation and practice. With sustained efforts, the Act has the potential to transform India's mental healthcare system, fostering a more inclusive and compassionate society.

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Conflict of Interest

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