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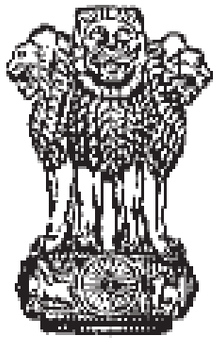

भारत का राजपत्र
The Gazette of India

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PART II — Section 1
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 7th April, 2017/*Chaitra* 17, 1939 (*Saka*)

PREAMBLE: MENTAL HEALTH CARE ACT 2017

- ✓ An Act to provide for mental healthcare and services for persons with mental illness.
  - To protect, promote and fulfill 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 harmonize the existing laws with the said Convention.
- ➢ BE it enacted

Features to remember

- Passed by the Rajya Sabha August 2016
- Passed by the Lok Sabha March 28, 2017
- President signed the act on April 07, 2017
- Notification - not yet.
- Await notification before implementation
- Rules for implementation: in process

1. Definition of apprehension:

   Doubt, Dread, Alarm, Concern, Disquiet, Mistrust, Premonition, Suspicion, Worry……

2. Focus of the MHCA.

3. How does it affect:

   a. Patients

   b. Practitioners

   c. Pattern of mental health care delivery

      1) Core psychiatric practice

      2) Consultation-liaison psychiatry

      3) Forensic psychiatry

4. Private and public sector centers for mental health care delivery

5. ……

The Mental Health Care Act 2017

Focus:

NO. 10 OF 2017

- An Act to provide for mental healthcare and services for persons with mental illness and
- to protect, promote and fulfill 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 harmonize the existing laws with the said Convention.
- BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—
  - Chapters: XVI
  - Clauses: 126

Apprehension:

Mental Health Care Delivery:

Components:

1. Recipient - to be protected

2. Provider - ????

Advance Directive:

Any one can make an advance directive, in writing specifying:

a. How a person wishes to be cared for and treated for a mental illness,

b. How a person wishes not to be cared for and treated for a mental illness,

c. Irrespective of past h/o mental illness or treatment,

d. May choose to appoint a nominated representative,

e. The directive will be invoked only when the person ceases to have capacity to take health care decisions,

f. Currently preserved capability of making mental health care decisions overrides the advance directive,

g. Advance directive does not apply to emergency treatment given under section 103.

Emergency treatment : Section **94**

Definitions

1. “Advance directive”: an advance directive made by a person under sec 5
2. "Authority" means the Central Mental Health Authority or State Mental Health Authority,
3. “Board” means the Mental Health Review Board constituted by the State Authority
4. “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.
5. “family” means a group of persons related by blood, adoption or marriage.
6. “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;
7. “medical officer in charge” in relation to any mental health establishment (psychiatrist / medical practitioner“ (Allopathy / Ayush)

Definitions

8. “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;
9. “ mental health establishment “mental health means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness (public or private sector), where persons with mental illness are admitted includes any general hospital or general nursing home but does not include a family residential place where a person with mental illness resides with his relatives or friends
10. “Mental health professional” means —
    1. A psychiatrist as defined in clause (x); or (y): D.P.M., M.D., D.N.B.
    2. A professional registered with the concerned State Authority under section 55; **or**
    3. A professional a post-graduate degree (Ayurveda) in Mano Vigyan Avum Manas Roga or
    4. A post-graduate degree (Homoeopathy) in Psychiatry or
    5. A post-graduate degree (Unani) in Moalijat (Nafasiyatt) or
    6. A post-graduate degree (Siddha) in Sirappu Maruthuvam;

Section 55

- Registered clinical psychologists,
- Mental health nurses and
- Psychiatric social workers in the State
- To work as mental health professionals,

Definitions

✓ Mental Illness (Chapter I, Section 2, s):

✴ "Mental Illness Means

1. Substantial Disorder of thinking, mood, perception, orientation or memory that
2. Grossly impairs judgement, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life,
3. Mental conditions associated with abuse of alcohol and drugs BUT
4. Does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by subnormality of intelligence."

Interpretation ???

1. Person without 'substantial' disorder of thinking, mood, perception, orientation or memory could be beyond the purview of this act.- - -????
2. Clinically, persons presenting with anxiety, anxiety spectrum disorders like OCD or phobia, Panic disorder, PTSD, depression, or impulse control disorders ought to be considered as beyond the purview of this act.

General Medical Council UK

Mild-to-moderate mental health conditions

1. (23). Mild-to-moderate mental health conditions:
   - are common and can affect 15–25% of the general population at any one time.
   - They include:
     1. depression
     2. generalised anxiety disorder
     3. panic disorder
     4. social anxiety disorder
     5. obsessive compulsive disorder
     6. post-traumatic stress disorder.
2. (24). Common mental health conditions can:
   1. Usually be treated in primary care rather than secondary care settings.
   2. In general, these common conditions carry less stigma than severe conditions
   3. So less likely to face discrimination.
   4. However, medical students have a higher prevalence of depression / anxiety
   5. It is important for medical schools to identify these students and support them
   6. They must not treat students themselves.
   7. Some students may need adjustments to their training to support them .

http://www.gmc-uk.org/education/undergraduate/26592.asp

General Medical Council UK

Severe mental illnesses

3. (25) Severe mental illnesses include:

    1. Schizophrenia
    2. Severe depression
    3. Bipolar affective disorder (manic depression).

4. These conditions are:

    1. Relatively uncommon.

    2.Treating them will usually involve local:

        1. Community mental health services

        2. As well as primary care services.

http://www.gmc-uk.org/education/undergraduate/26592.asp

Mental Health Legislations

The Legislations	The Mental Health Act 1987	The Mental Health Care • **Bill 2013** ✓ **ACT 2017**
Features	Chapters: VII Sections: 100	Chapters: XVI Sections: 136
Applicable to	Applicable to Psychiatric Nursing Homes and Private Sector Hospitals	Applicable to ALL: • Government and Local Authority Hospitals / Establishments • Halfway homes, De-addiction Centers, Day-Care Centers, Rehabilitation Centers for the MI
Mental Health Professionals	1.Psychiatrists 2.Medical Practitioners 3.Gazetted medical officers 4.Experience of Mental Health	1.Psychiatrists: DPM, MD, DNB. 2.Mental Health Professionals: a. PhD / MD … - Psychiatry, b. MSW, Psychologist, Psy Nurse c. PG Psych. in Ayurveda, Unani, Homeopathy & Siddha

Interpretation

- The perceived bias against private sector is duly addressed.
- All Hospitals, whether in Private Sector or Teaching Medical College affiliated or whether in Government or Local Self Government, will have to apply for License to treat the mentally ill as defined in the act (Substantial Substantial Disorder, Impaired judgement, Inability to meet ordinary demands of life, Associated with substance use)

Apprehension:

- Private Hospitals may opt to discontinue Psychiatry OPDs and admissions. even though anxiety and affective disorders are not defined as 'mental illness' in this bill
- Clandestine admissions under the garb of a systemic illness may be considered illegal.
- NO CLARITY on a k/c/o Serious mental illness who may necessitate admission for medial / surgical illness while under Psychiatric Care.
- NO CLARITY on a k/c/o Physical illness who may necessitate Mental Health Care while being treated for a physical illness.

(eg: Post OP delirium -> shift to a mental hospital?)

Mental Health Legislations

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Definition of a Mental Health Professional

Mental Health Act 1987:

- Psychiatrist (D.P.M.,M.D.,MNAMS, FNAMS [D.N.B.])…,duly registered with the MCI or State Medical Council.

Mental Health Care Acl (2017)

1. Psychiatrist (D.P.M.,M.D., D.N.B.)…,duly registered with the MCI or State Medical Council.
2. Mental Health Professionals: Psych. Nurse, PSW, Psychologists and other paramedical professional, duly registered with the respective Central or State Councils.
3. PhD / MD Psychiatry in Aurveda, Homeopathy,

A Post graduate degree Schools of Medicine, other than Allopathy, duly registered with the respective Central or State Councils.

Interpretation & Apprehension

- Traditionally, Allopathic Graduates are duly trained to:
  - Elicit appropriate information and make a diagnosis as envisaged in the ICD / DSM
  - Administer:
    - Drug therapies as authenticated iby the IPS and other guidelines
    - Physical Therapies and
    - Non-drug therapies,
- Paramedical Personnel:
  - ✴ Trained Psychiatric Nurse: Introductory training in Psychiatric therapies.
  - ✴ PSW / Psychologists / Counsellors: Trained to supervise progress of the disorder and administer non-drug therapies.

➡ Physicians from Schools of Medicine other than Allopathic Medicine:

Details of their training ?

✓ **Recommendation**: ***Assured caution against Cross Therapies***

Advance Directives:
Nominated Representative

- Need to obtain clarification about:

  1. Whether or not to treat a suicidal or a homicidal or a deluded, demented person, even if the person may have signed an advance directive against Any Mental Health Care interventions or against specified procedures like ECTs / psychosurgery.

  2. When a Mentally Ill that may have appointed a representative:

     a) If the representative refuses to take decision

     b) If the representative is not available to consent or refuse consent

Health Insurance

- Obtain Clarification about:

  1.Status of a pre-existing mental illness

  2.Long term hospitalization

  3.Wandering mentally ill

  4.Socially neglected mentally ill

Health Care Delivery Supervision

- The MHCA 2017:

  1.Does not provide for Health Visitors to the Mental / Psychiatric Hospitals

  2.The MHCB provides for a Board

  3.The Mentally Ill can now directly send mails to the Mental Health Boards

- State and Central Mental Health Boards:
  - Two psychiatrists only
  - Representatives: Patients and their relatives
  - Bureaucrats

Health Care Delivery Supervision

- **Role for the IPS:**
  - Be pragmatic about the quality or quantity of the staff
  - Ideal is not necessarily practical
  - Consider availability of personnel and their pay scales
  - If not, the mental health care will be unavailable to unaffordable
  - Obtain clarification on compliance with the rules that have to be followed prior to registration.

Health Care Delivery Hospitalization

MHCA 2017

A.Hospitalization:

1. Independent (Voluntary)
2. Supportive (Involuntary)
3. Emergency

B. Intimation to the Authority: (Supportive / Emergency)

1. Women and Children: within three days
2. Other instances: Within 7 days

C. Authorizing involuntary admission.

- Any two:
    1. Psychiatrist
    2. Paramedical mental health personnel
    3. A medical practitioner

Health Care Delivery
Role for the IPS

1. Administration of medication without patient's knowledge or consent:

1. Administration of drops, soluble tablets without patient's consent but authorized by the nominated representative.
2. In the absence of a nominated representative: Can the next of the kin authorize administration of injections, drops or tablets, against the patient's willingness to be treated.
3. Disruptive patient / Wandering Lunatic: Clarify the authority of the Mental Health Professionals for admission without Magistrate's orders.
4. In the event of a Neglected Mentally Ill: Specify the role of a Good Samaritan
5. In the event of Emergency, treatment without consent and its duration. (Without hospitalizing).....How Long?, How far (ECTs / Depot / Drops)
6. Suicidal / disruptive patient, no representative / next of kin: Drops without patient's consent / knowledge: How long.....72 hrs or as required?

Health Care Delivery
Role for the IPS

2. Punishment for infringement:

1. Penalty for Nursing Homes without a license.

2. Psychiatrist working in a non-registered establishment: eg: Psychiatrist working in a General Hospital, conducting OPDs but not hospitalizing patients for a mental illness, but providing mental health care for patients admitted to the hospital of a Physical illness.

3. Admitting a mentally ill to a non-registered establishment in emergencies like suicidal / homicidal / disruptive behaviour

Health Care Delivery Hospitalization

3. Categories of Mental Health Establishment:

1. Specify the categories and their requirements:
   1) Mental Hospitals / Institutes
   2) Psychiatric convalescent homes for long term care
   3) Rehab centers for recovered cases of substance abuse, psychosis, suicide prone / risk patients, destitute, poor-social support
   4) General Hospitals:
      1) OPDs only
      2) OPDs and Voluntary Admissions only
      3) OPDs and Involuntary Admissions
      4) Drug de-addiction and rehabilitation centers
      5) Long term stay facility + Acute Care
      6) Long term stay facility without acute care

Health Care Delivery

Role for the IPS

4. Clarification of Attempt to commit suicide

1. Paragraph 124, specifies that ‘Any person who attempts suicide shall be presumed, unless proved otherwise, to be suffering from mental illness at the time of attempting suicide and shall not be liable to punishment under the Section 309 of IPC.

   a. How does one define ‘manipulative suicide’.

   b. DSH without wish to die.

   c. OD to escape the law, imprisonment….

   d. Under acute intoxication.

2. Status of Section 309 of the IPC

3. Admission of a case of attempted suicide: Voluntary or Supportive!

Speaker's Perception

Positive:

1. Now a realization that the Mental Illness, Mentally Ill and their care merits special attention.
2. Multiple lacunae of managing the mentally ill without supervision are plugged.
3. Bias against the Private Sector is now resolved.

Apprehension:

1. Paradox: The professed advocacy for prompt and effective treatment of the mentally ill is wrapped in extensive procedural details.
2. Mental Health Care delivery will be determined by a board with two psychiatrists, patient and their relatives and bureaucrats.
3. The mental health care delivery will have a larger procedural component.
4. Relevance of trained mental health personnel is trivialized.
5. Over-zealous implementation could invite punitive action for procedural lapses.
6. Clinicians will have to be concerned and devote more time to being procedurally correct rather than be clinically vigilant or strive for academic excellence.
7. The Act, intended for welfare could invite procedural correctness instead of enhancing quality of patient care.
8. This somehow conveys an aura of undermining psychiatrists and encourage other mental health professionals