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4 Mental Health Seeking Behaviour: Legal Perspective

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ABSTRACT

Amidst the on-going global pandemic of COVID-19 and high levels of stress and anxiety, the mental health seeking behaviour has been seen to have increased on a larger basis. Focus on mental health has become an important motive of individuals' life in today's world as mental pressure is increasing day by day. Mental health forms the basis of overall healthy living as general health is impossible to be attained without attaining mental health. For this purpose, Indian Legislature has enacted Mental Health Act in the year 2017. Compared to its predecessor the Mental Health Act of 1987, this act was purported to be more patient centric and rights based. The Mental Health Act, 2017 is a progressive legislation which is more 'patient- centric and rights-based in nature' as compared to its predecessor, the Mental Health Act, 1987. A whole chapter (i.e., Chapter V) of the Act has been dedicated to the rights of persons suffering from any kind of mental illness which is considered as the heart and soul of Mental Health Act, 2017. Considering the significant burden of child and adolescent mental health problems in the community, it is essential to understand what this new Act means for the mental healthcare of young people. This study provides the child and adolescent related provisions in Mental Health Act, 2017 and also discusses further the strengths and limitations of its provisions.

Keywords: Mental Health, legislation, child, adolescent, rights.

Introduction

According to a 2016 study conducted by the National Institute of Mental Health and Neuroscience in 12 different states, the current and lifetime prevalence of depression is 2.7% and 5.2%, respectively. One out of every 40 people and one out of every 20 people suffer from past and current episodes of depression across the country. The study found that the overall lifetime prevalence of mental disorders is 13.7%, meaning that at least 150 million Indians need urgent intervention.

Mental illness in vulnerable age groups such as children and adolescent accounts for more than half of the total burden.[1] Another report on the projected burden of mental illness shows that India will grow faster than any other country in the next decade, accounting for a third of the global burden of mental illness. Together.[2] Despite this heavy burden of mental health issues, unfortunately, there is still misunderstanding in developing countries like India.[3]

Another important aspect is the existing infrastructure and workforce of our country to deal with this health problem. There are about 40 psychiatric hospitals in this country of 150 billion people (only nine of which have facilities for children) with fewer than 26,000 beds.[4]

According to the WHO's Atlas of Mental Health report, India has only 3 psychiatrists per million population and even less than the federal standard of 5.6 psychiatrists per 100,000 population, 1 in 18 people.[5]

Given the huge health burden of mental illness in our country, the existing inadequate infrastructure/workforce, the resulting social stigma, and the obvious shortcomings of the Mental Health Act 1987, it will be imperative for government and various stakeholders to address these issues. In addition, the international obligations of countries towards persons with intellectual disabilities should be addressed in accordance with the Convention on the Rights of Persons with Disabilities (2007) and its most appropriate protocol.[6] Thus, a patient-centred Bill that protects rights and is accessible, affordable, and accessible mental health services has long been due in India.[7]

Health-Seeking Behaiour: Meaning

Health-seeking behaviour is any activity performed by a person with a health-related problem in order to seek appropriate treatment. It involves decision-making that is not the same for everyone, as it is determined by various demographic factors such as individual and family behaviour, community norms and expectations, and provider-related characteristics and behaviours. Self-medication and alternative

medicine are also choices made by people seeking health care. It is not uniform because it is determined by knowledge, awareness, socio-cultural factors and economic factors. The interaction of these factors plays an important role in individual decision-making.

Thus, one can say that health seeking behaviour is a term which is used to explain the pattern of health care utilization among any population group and the sequence of remedial actions that individuals take in order to rectify perceived ill health.[8]

Enactment of Mental Healthcare Act, 2017

With increasing rates of mental disorders and illnesses due to various causes such as lifestyle depression, stress and hopelessness, the National Mental Health Survey is a large multicentre survey of various aspects and characteristics of mental health problems. National Survey From 2014 to 2016, surveyed people aged 18 and above in 12 Indian states. This study showed that the overall weighted prevalence of mental illness was 13.7% lifetime prevalence and 10.6% current prevalence. In this regard, the Government of India has initiated efforts to improve mental health services through the formulation of the National Mental Health Policy (NMHP), 2014 and the Mental Healthcare Act (MHCA), 2017. All political parties in both Houses of Parliament (published in the Official Gazette on May 29, 2018).

The preamble of MHCA, 2017 promises to provide mental healthcare and services for persons with mental illness (PMI) and to protect, promote, and fulfil the rights of such persons during delivery of mental healthcare and services.[9] Every person will have the right to access mental healthcare services. Such services should be of good quality, convenient, affordable, and accessible. This Act further seeks to protect such persons from inhuman treatment, to gain access to free legal services and their medical records, and have the right to complain in the event of deficiencies in provisions

Rights Available Under Mentalhealthcare Act, 2017

Right to make an Advance Directive

A person shall have the right to make an advance directive (which is not violative of any law of the land) stating how to be treated and how not to be treated for the illness during a mental health situation.[10]

Right to appoint a Nominated Representative

A person shall have the right to appoint a nominated representative to take on his/her behalf all health-related decisions.[11]

Right to access mental health care

A person shall have the right to access to mental health care, treatment and services run or funded by the Government which are affordable, of good quality, in sufficient quantity, available nearby and without any discrimination[12]

Right to free services

A person with mental illness (PMI) living below poverty line, a destitute or a homeless shall get free treatment at state run or funded health establishments.[13]

Right to get quality services

The mental health services made available to PMI by the state shall be of the same quality as of general health services.[14]

Right to get free medicines

All medicines on the essential drug list shall be made available to PMIs free of cost at all times at the establishments run or funded by the government.

Right to community living

A PMI shall have the right to live in community and be part of and not segregated from society.[15]

Right to protection from cruel, inhuman and degrading treatment

Every PMI shall be protected from cruel, inhuman or degrading treatment in any mental health establishment (MHE).[16]

Right to live in an environment which is safe and hygienic and has other basic amenities

Every PMI admitted in an MHE shall have a right to safe and hygienic living environment, proper sanitation and facilities for leisure, recreation, education, religious practices and privacy.

Right to clothing

Every PMI living in a MHE shall have a right to proper and dignified clothing so as to prevent exposure[17]

Right to refuse work and get paid for the work done

No PMI shall be forced to work in a MHE and those who agree to work shall be paid appropriate remuneration for the work done.[18]

Right to protection

Protection from all forms of physical, verbal, emotional and sexual abuse.[19]

Right to legal aid

A PMI shall be entitled to receive free legal services to exercise his/her rights available under the Act.[20]

Right to access medical records

All persons with mental illness shall have the right to access their basic medical records as may be prescribed.[21]

Right to personal contacts and communication

A person with mental illness admitted to a mental health establishment shall have the right to refuse or receive visitors and to refuse or receive and make telephone or mobile phone calls at reasonable times subject to the norms of such mental health establishment.[22]

A person with mental illness admitted in a mental health establishment may send and receive mail through electronic mode including through e-mail.[23]

Right to legal aid

A person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under this Act.[24]

It shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.[25]

Right to make complaints about deficiencies in provision of services

Any person with mental illness or his nominated representative, shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to:

(a) the medical officer or mental health professional in charge of the establishment and if not satisfied with the response;

(b) the concerned Board and if not satisfied with the response;

(c) the State Authority.[26]

Provisions for Children and Adolescents in Mental Healthcare Act 2017

In keeping with the United Nations Convention on the Rights of the

Child, MHCA considers all individuals below the age of 18 years as minors, like its predecessor, MHA 1987.

- Definition of 'minor' under the Act, includes any person who has not completed 18 years of age.[27]
- Section 11(4) of MHCA, 2017 lays down that the legal guardian shall have right to make an AD in writing in respect of a minor and all the provisions relating to AD, '*mutatis mutandis*', shall apply to such minor till such time he attains majority.
- According to Section 15(1) of the Act, minor's legal guardian shall be their NR, unless the concerned Board orders otherwise under sub-section (2).
- Under Section 15(2), where on an application made to the concerned Board, by a MHP or any other person acting in the best interest of the minor, and on the evidence presented before it, the concerned Board is of the opinion that:
  (a) the legal guardian is not acting in the best interests of the minor, or
  (b) the legal guardian is otherwise not fit to act as the NR of the minor, it may appoint, any suitable individual who is willing to act as such, the NR of the minor with mental illness: Provided that in case no individual is available for appointment as a NR, the Board shall appoint the Director in the Department of Social Welfare of the State in which such Board is located, or his nominee, as the NR of the minor with mental illness.
- Section 21(2) provides that a child under the age of 3 years of a woman receiving care, treatment or rehabilitation at a MHE shall ordinarily not be separated from her during her stay in such establishment:
- The decision to separate the woman from her child shall be reviewed every 15 days during the woman's stay in the MHE and separation shall be terminated as soon as conditions which required the separation no longer exist: Provided that any separation permitted as per the assessment of a MHP, if it exceeds 30 days at a stretch, shall be required to be approved by the respective Authority[28]
- Section 87(1) further lays down that a minor may be admitted to a MHE only after following the procedure laid down in this section i.e., only after the NR of the minor applies to the medical

officer in charge of a MHE for admission of the minor to the establishment and upon receipt of such an application, the medical officer or MHP in charge of the MHE may admit such a minor to the establishment, if two psychiatrists, or one psychiatrist and one MHP or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding 7 days and both independently conclude based on the examination and, if appropriate, on information provided by others, that:

(a) the minor has a mental illness of a severity requiring admission to a MHE;

(b) admission shall be in the best interests of the minor, with regard to his health, well-being or safety, taking into account the wishes of the minor if ascertainable and the reasons for reaching this decision;

(c) the mental healthcare needs of the minor cannot be fulfilled unless he is admitted; and

(d) all community-based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor

- A minor so admitted shall be accommodated separately from adults, in an environment that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments[29]
- The NR or an attendant appointed by the NR shall under all circumstances stay with the minor in the MHE for the entire duration of the admission of the minor to the MHE[30]
- In the case of minor girls, where the NR is male, a female attendant shall be appointed by the NR and under all circumstances shall stay with the minor girl in the MHE for the entire duration of her admission[31]
- A minor shall be given treatment with the informed consent of his NR[32]
- If the NR no longer supports admission of the minor under this section or requests discharge of the minor from the MHE, the minor shall be discharged by the MHE[33]
- Any admission of a minor to a MHE shall be informed by the medical officer or MHP in charge of the MHE to the concerned Board within 72 hours[34]

- The concerned Board shall have the right to visit and interview the minor or review the medical records if the Board desires to do so[35]
- Any admission of a minor which continues for 30 days shall be immediately informed to the concerned Board[36]
- The concerned Board shall carry out a mandatory review within 7 days of being informed, of all admissions of minors continuing beyond 30 days and every subsequent 30 days[37]
- The concerned Board shall at the minimum, review the clinical records of the minor and may interview the minor if necessary[38]
- Section 88 of the MHCA, 2017 provides for discharge of independent patients and lays down that where a minor has been admitted to a MHE under Section 87 and attains the age of 18 years during his stay in the MHE, the medical officer in charge of the MHE shall classify him as an independent patient under section 86 and all provisions of this Act as applicable to independent patient who is not minor, shall apply to such person[39]
- Under Section 89 provisions have been made for admission and treatment of persons with mental illness, with high support needs, in MHE, up to 30 days (supported admission)
- The medical officer or MHP in charge of the MHE shall report the concerned Board,
  (a) within 3 days the admissions of a woman or a minor;
  (b) within 7 days the admission of any person not being a woman or minor[40]
- Section 95 lays down that notwithstanding anything contained in this Act, the following treatments shall not be performed on any person with mental illness
  (a) ECT without the use of muscle relaxants and anesthesia;
  (b) ECT for minors;
  (c) sterilization of men or women, when such sterilization is intended as a treatment for mental illness;
  (d) chained in any manner or form whatsoever
- It further provides that notwithstanding anything contained in sub-section (1), if, in the opinion of the psychiatrist in charge of a minor's treatment, ECT is required, then, such treatment shall

be done with the informed consent of the guardian and prior permission of the concerned Board.[41]

Positive Initiatives for Child and Adolescent Mental Healthcare

Admission and discharge procedures for minors

The MHCA is an improvement over its predecessor Act as it brings greater clarity to the various issues surrounding mental health care for children and young people. Learn more about admission procedures for inpatients and treatments such as the use of electroconvulsive therapy. The Act clarifies the role of the Nominated Representative (NR) (usually a parent/guardian or a government appointee) in all aspects of mental health care decision- making for minors. NRs can also issue advance directives to minors. NRs must accompany hospitalized minors. One of the new aspects of the law is that babies must not be kept from mothers who are receiving treatment for mental illness, unless the child is at risk. This is a welcome move, because separation at this young age can interfere with a child's nutritional needs, growth and attachment, and have long-term effects on his physical and mental development. One of the positive measures is the decriminalization of suicidal behaviour. This is especially important for adolescents who have high rates of self-harm and suicidal behaviour, which indicates severe psychological distress that requires immediate medical intervention, including psychiatric intervention. Until recently, criminal views of such acts and their legal implications have been barriers to seeking help.

Separate inpatient facilities for minors

Section 5 of Chapter III of MHA 1987 proposed the establishment of mental hospitals and separate mental hospitals for persons below 16 years of age by the Central Government of India. The MHCA goes a step further and says that all minors, meaning all under 18s, not under 16s, require separate facilities. It has not been determined whether these separate facilities can be located in the same locations as the adult facilities but with separate enclosures. Or they should be separate hospitals. MHCA also states that institutions for young people must respond to their developmental needs. However, there is no clear definition of the minimum standards required for such facilities.[42]

Shortcomings of the Act

Mental health care laws have been put in place to help those seeking mental health care measures, but the reality is far from what one would imagine for a civilized democracy. More invisible psychological problems, as well as increasing divorce rates, emphasize the strategy and the

need for a paradigm shift and provide appropriate mental health services in the community for these invisible or mild illnesses.

MHCA 2017 is heavily influenced by the western legislative model. It is rights-based, patient-centred, and gives individuals complete autonomy to intervene in treatment unless the patient gives informed consent. And their families are the main violators of PMI's rights, which is unfortunate. On the one hand, the Act does not take into account the burden on caregivers and the isolation and frustration of families due to PMI. This practice does not recognize or encourage the contribution of family support and will in providing care. Therefore, patients, doctors and medical managers need adequate support from the family.

Conclusion and Key Recommendations

The Act defines 'mental illness as a condition that substantially impairs judgment, behaviour, ability to perceive reality, or to meet the needs of daily life, thinking, mood, perception, orientation, or memory which significantly disrupts the mental state associated with it. However, mental retardation is a state of arrested or incomplete development of a person's mind, characterized especially by abnormal intelligence. In simple terms, Act applies to people with severe mental disorders. Section 3, which further complicates matters, states that mental illness must be defined according to nationally or internationally accepted medical standards. Thus, the dilemma of whether to follow section 2 or section 3 to define mental illness should be resolved as soon as possible. In addition, the MHCA , 2017 does not discuss whether it covers personality disorders or not and the above should be clarified as soon as possible.

This legislation ignores the existence of national mental health programs. The law should require every state to implement a National Mental Health Program (NMHP) and state mental health officials should have the same responsibility. The only way this law can enforce the right to mental health is through all state NMHPs.

Under the Act, psychiatrists are expected to assume responsibility for the care and treatment of their patients after discharge. Unfortunately, the law is silent on the much-needed Community Treatment Order (CTO). The inclusion of a mandatory CTO can play an important role in providing care for the chronically ill, as well as improving the lives of families and caregivers. There is a great need for family involvement in providing care.

This law has a strong rights-based ideology and is similar to many Western mental health laws. However, the resources of these countries

are many times than that of India. Implementation of MHCA 2017 will face challenges due to lack of resources. There is also need thus to provide ample resources for the implementation of MHCA, 2017 successfully.

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