

Indic Legal Law Journal

Volume No. 1

Issue No. 3

August - September 2022

Pages: 1 - 6

Author Name: Dhivyansha Saluja

ARE THERE ANY LAWS IN INDIA RELATED TO METAL HEALTH

INTRODUCTION

Mental health is an integral part of health and, like other aspects of health, can be affected by a number of socio-economic factors that need to be addressed through comprehensive strategies and policies. A study published by the WHO, conducted for NCMH (National Care Of Medical Health), states that at least 6.5% of India's population suffers from some form of severe mental illness.

In addition, during the Covid-19 epidemic, it is clear from a survey conducted by the Indian Psychiatry Society that within a week of the implementation of lockdown, cases of mental illness increased by 20% in India. The lockdown may end now, but now a new epidemic is emerging around the world. Comprehensive laws and policies are therefore of paramount importance for promotion, prevention, treatment, and recovery in a government-specific approach. Although mental health legislation has existed in India since the mid-19th century, it has undergone several challenges over the years.

The current legislation is the Mental Health Act, 2017 which stigmatized mental health and infantilized those suffering from mental illness.

BACKGROUND

1) The Lunatic Removal Act 1851

The first law on mental illness in British India was the Lunatic Removal Act of 1851, which ceased in 1891. This law was enacted primarily to regulate the transfer of British patients to

Indic Legal Law Journal

England. After the acquisition of the Indian administration by the British crown in 1858, many laws were introduced for the care of people with a mental illness, including:

- the Lunacy (Supreme Courts) Act 1858
- the Lunacy (District Courts) Act 1858
- the Indian Lunatic Asylum Act 1858 (with amendments passed in 1886 and 1889)
- The Military Lunatic Act 1877.

Based on these acts, patients were held indefinitely in poor living conditions, with little chance of recovery or discharge. This led to the introduction of a bill in 1911 that combined the pre-existing legislation and led to the Indian Lunacy Act of 1912.

2) The Indian Lunacy Act, 1912

The Indian Lunacy Act of 1912 was essentially the first law introduced by the British to govern the mental health in India. It has brought many fundamental changes. The advantage of this act was that it gradually eliminated mental illness progressively, emphasizing care and treatment rather than custody. It focused more on eliminating the mental illness from society instead of their treatment or cure, so it neglected human rights, providing mental health care, protecting and managing the property of people with mental illness, but only by facing prison sentences and reducing personal freedom. Therefore, this outdated act needed to go, and in 1950, members of the Indian Psychiatric Society (IPS) came together to draft a bill to replace it.

3) Section 309 of the Indian Penal Code (IPC)

When India's constitution came into effect, mental health in the country was still governed by the Lunacy Act of 1912. Section 309 of the IPC further stigmatised people in India with mental illness by penalising anyone who attempted suicide with a prison sentence of up to a year, fines, or both. This law has contributed significantly to the already severe stigma surrounding mental illness in India, which has led to the isolation and discrimination of people with mental illness, as well as their caregivers. In 1971, and again in 2008, the Indian Law Commission suggested the abolition of Section 309, but the discourse on suicide remained dominated by pity rather than an understanding of mental health.

Indic Legal Law Journal

4) Mental Health Act, 1987

The Indian Psychiatric Society (IPS) presented its mental health bill to the government, but the bill took several years to implement in 1987 and came into force in 1993. The law laid the groundwork for establishing central and state mental health care authorities and services in the country, as well as safeguarding the rights of people with mental health problems. The act, however, had some shortcomings. Not only has it failed to classify mental health care at the same level as basic health care, but it has not taken steps to spread awareness in society.

5) Mental Health Care Bill 2013

The Mental Health Care Bill (MHC) was first introduced at the Rajya Sabha in 2013. Under this bill, everyone has the right to access mental health care and care from government-run or funded services. It also ensures that treatment and rehabilitation are available in the least restrictive environment and will respect the rights and dignity of patients, including those in disadvantaged socio-economic settings. The result of these recommendations is that the financial burden, as well as the psychosocial burden on caregivers, will be greatly reduced.

6) Mental Healthcare Bill (MHC), 2016

The bill marked a significant deviation from previous legislation because, for the first time, political discourse on suicide ventured into understanding mental illness and people's rights to mental illness. This bill was reintroduced in 2016 with several amendments and subsequently passed in 2017.

7) The Mental HealthCare Act, 2017

The Mental Health Act was passed in 2017, but came into force in May 2018 and replaced the Mental Health Act of 1987. To the delight of most Indian doctors and mental health advocates, the act decriminalized suicide attempts in India. It also included WHO guidelines in the categorization of mental illness.

One of the most significant provisions of this act was the "advanced directives" and nominated representatives, which allowed people with mental illness to decide the course of their

Indic Legal Law Journal

treatment and also appoint someone as their representative to manage their affairs. It has also limited the use of electroconvulsive therapy (ECTs) as, only with the use of muscle relaxants and anesthesia, this therapy is prohibited for minors, eventually introducing measures to address stigma in Indian society. Suicide remains a crime in India, but this bill recommends its decriminalization. Decriminalization of suicide can lead to minimal stress due to social and legal causes, which will not only reduce the burden on patients and healthcare professionals but also reduce the impact on India's overburdened legal system.

RIGHTS OF PERSONS WITH MENTAL ILLNESS

1) Informed consent and power to take decisions

People who live with mental illness can now make decisions about their health and treatment, as long as they can understand the information related to treatment and its consequences, and are able to communicate it, so no one else can vigorously admit anyone in a hospital if they are lucid and understand what is happening to them. The new law also dictates that if you live with a mental illness, you have the right to know not only the nature of your disease but also the proposed treatment and possible side effects.

2) Affordable access to health care

The new law states that each person has the right to access mental health care and the treatment of mental health services administered or funded by the appropriate government. Therefore, anyone living with a mental illness in India now has the right to good quality and affordable health care in a place close to you. Doctors and staff of the facility should not discriminate against anyone on the property of sex, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability, etc. This right is considered a fundamental right of every Indian citizen.

3) Right to live in a community

People with mental illnesses have the right to live in a community and cannot be segregated from society. For those who cannot, the government must provide legal forms and other forms of support needed to help them live a regular life.

Indic Legal Law Journal

In addition, a woman in a mental health care institution cannot be separated from her child under the age of three unless doctors feel that the child may be harmed.

4) Right to confidentiality

Anyone should not disclose the details of their illness or treatment to anyone. The right to confidentiality also applies to doctors who treat it and also prohibits the media from publishing such information without the consent of the person.

5) Prohibited procedures

Electroconvulsive therapy (TCE), also known as shock treatment, cannot be performed in adults without the use of muscle relaxants and anesthesia. For children, therapy is completely prohibited. In addition, hospitals are prohibited from sterilizing, chaining, or abusing patients in any other cruel way.

Patients cannot be made to live in unsafe and unsealed environments, and should have access to healthy food, privacy and leisure facilities, recreation, etc. and adequate remuneration for the work they do in mental health institutions.

6) Advance Directive

A significant provision, the new law allows people with mental illness to give a "progress directive" on how they should be treated in the event of a mental health situation. The patient can also appoint a person as a representative to make decisions on their behalf if they are unable to do so.

The early directive is a very significant clause in the legislation in force because of the access to a designated representative and being able to implement the person's advanced directive and have control over how patient care should be planned in the event that it is not well at some stage.

7) Decriminalization of suicide

The most significant development of this legislation is that it decriminalise suicide. Therefore, suicide will no longer be treated as a crime. People who have attempted suicide will be

Indic Legal Law Journal

considered under severe stress by the law and will not be punished under Section 309 of the IPC for attempted suicide.

8) Punishment for those who violate the law

For first-time offenders, breaking the law can result in imprisonment of up to six months or a fine that can be extended to 10,000 rupees, or both. For subsequent violations, the person may be imprisoned for up to two years or maybe fined anywhere between Rs 50,000 and Rs 5 lakh or both.

CONCLUSION

The Mental Health Care Act 2017 is a step towards improving access to mental health services and law enforcement in accordance with international mental health legislation and human rights standards. In India, where 1 in 10 people are treated for mental illness, and an estimated 150 million need active medical intervention, it is very important to introduce laws dealing with people's mental illnesses.

The introduction of this legislation to improve mental health shows that our legal officials take this problem seriously. These acts also establish the role of government as a critical interested party in imposing the burden on the government to ensure the care, treatment, and rehabilitation of people facing mental health problems. It is important that the sick are properly informed of their rights so that they can access the support they need. The clauses that decriminalise suicides are a long-awaited measure and its impact will be far-reaching.

As legislation develops, we can see the move from health-based treatment to care based treatment. Therefore, if laws are properly implemented and funded, as well as improving access to mental health services, the human rights of people who are mentally ill may be better protected by the new act when it comes to power.