

# LEGALFOXES LAW TIMES

## MENTAL HEALTHCARE ACT, 2017: SINE QUA NON FOR MENTALLY ILL PEOPLE?

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### INTRODUCTION

It is often unnoticed that mentally challenged people are also human beings and they are also entitled to have a peaceful life on par with others. Not many mainstream society knew the human rights violations taken against them. The perpetrators take their mental illness as advantage and play in their lives. Seldom mentally challenged people can be called as witness and they are not even considered as competent in much circumstances. When they are facing with untold mental trauma they are left with no options such as Euthanasia or suicide. So taking into all these considerations, the Parliament of India thought to enact a contemporary legislation for mentally ill people.

### DEMAND FOR NEW LEGISLATION FOR MENTAL ILL PEOPLE

While tracing back to the history of legislations, the laws for mentally ill people dates back to the colonial days of British Empire. The first Act which was passed in this aspect was the Lunacy Act, 1912. However, the Act particularly dealt about lunatics, which brought the Act to be repealed after independence of India.

In 1987, India enacted a new law in the subject matter of mental illness named as the Mental Health Act, 1987. The Act was a welcoming one throughout year. Despite, the Act had certain loopholes which the lawmakers failed to notice. Some of the loopholes arose mainly due to not giving adequate importance to the mentally ill people which reflected in the lame penal provisions of the Act. Various terminologies were not defined properly which was another senior drawback. The terms like mental illness, mental retardation were not even differentiated.

Ultimately, the three decades old law was finally repealed by the Mental Healthcare Act in the year 2017 which was enacted as India being signatory to the United Nations Convention on the Rights of Persons with Disabilities, 2006.

#### GENERAL DESCRIPTION OF THE NEW LEGISLATION

- Unprecedented definition for the term ‘mental illness’

Mental illness has been defined for the first time exclusively by this Act. The term has been defined as a significant disorder in the thinking, mood, perception, orientation or memory of a person. Such a disorder will affect judgment, behavior, ability to recognize or capability to meet out the ordinary needs and requirements of the life. These disorders may arise due to the mental conditions which are associated because of the over usage of alcohol and other drugs<sup>1</sup>.

The Act clearly mentions that the term mental illness does not include the term mental retardation because the latter terminology denotes about the restrained or not completed development of a person’s mind which can be easily identified by the sub normality of a person’s intelligence. Therefore the word mental retardation is nowhere connected to mental illness and is out of the purview of the Act.

- Exhaustive list of rights

The new legislation lists out a wide list of rights which are to be enjoyed by the persons who are mentally ill. The rights are:

- a. Right to access mental healthcare and treatment. In addition, right to free treatment is available to persons who are having no home or destitute or belonging to the below poverty line. In this regard, below poverty line is not necessary requirement (S. 18)
- b. Right to community living (S. 19)
- c. Right to live a dignified life. They are also having right to be protected against inhuman, cruel or degrading treatment against them. (S. 20)
- d. Equality and non-discrimination of persons who are mentally ill (S. 21)
- e. Right to information (S. 22)

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<sup>1</sup>S. 2 (s) of the Mental Healthcare Act, 2017.

- f. Right to confidentiality (S. 23)
  - g. Photograph or any other information related to the person with mentally ill cannot be released in the media without the consent of such person (S. 24)
  - h. Right to have access to the basic medical records of the mentally ill person by them itself (S. 25)
  - i. Right to accept or receive visitors for them at hospitals along with the right to make phone calls or send and receive e-mails (S. 26)
  - j. Right to legal aid for the purpose of exercising any of the rights laid down under the Mental Healthcare Act, 2017 (S. 27)
  - k. Right of lodging of complaints in case of any deficiencies of services (S. 28)
- Interdiction on certain procedures of mental healthcare

Without any legal prescription of treatment of mentally ill people, the medical practitioners used extremely horrible procedures to treat them. To put an end to these terrible experiments and treatments on them, the Mental Healthcare Act, 2017 bans the use of certain medical procedures which are followed in the treatment of mental ill people. Such prohibited procedures are<sup>2</sup>:

a. Electro-convulsive therapy

Electro-convulsive therapy can be used but the exception is such a therapy should not be used with the help of muscle relaxants and anesthesia. Also electro-convulsive therapy is completely banned to be used in minor children.

b. Sterilization

Sterilization as a mode of treatment of mental illness is strictly prohibited by the Act.

c. Chaining

Chaining of mental ill persons in any manner is completely forbidden under this Act.

d. Psychosurgery<sup>3</sup>

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<sup>2</sup>S. 95 of the Mental Healthcare Act, 2017.

<sup>3</sup>S. 96 of the Mental Healthcare Act, 2017.

Psychosurgery is a kind of treatment for curing mental ill people for their betterment. But the Act puts a restriction while performing psychosurgery. These treatment cannot be done if it does not satisfy the conditions of getting the consent of the person on whom such psychosurgery is to be performed. Prior approval of the appropriate Board is also necessary to perform psychosurgery.

- Legalization of attempt to suicide of mentally ill people

Attempt to suicide and assistance towards the same are punishable under S. 309 of the Indian Penal Code. But the Mental Healthcare Act, 2017 is embedded with a provision which states that S. 309 of the IPC have no applicability to mental ill people. In addition, a presumption is also made in favour of mentally ill people which states that they would have attempted to commit suicide out of stress and therefore they are liable to be punished under S. 309 of the IPC. Once a mentally ill person who is recovered after committing suicide has to be provided with proper care and treatment to reduce the future chances of committing suicide by the appropriate Government<sup>4</sup>.

#### BENEFICIAL SEGMENT OF THE ACT

- The Mental Healthcare Act, 2017 has put efforts to meet out the expectations, necessities and rights of the persons who are mentally ill.
- The Act has been implemented with strict adherence to international standards. India being a signatory to the United Nations Convention on Rights of persons with Disabilities, 2006 it is the obligation on part of India to embed the municipal law on par with the Convention. The final outcome of the same is the Mental Healthcare Act, 2017.
- The new Act have provisions related to the legal rights which are available to the persons who are mentally ill which the earlier Act failed to explain.

#### DISBENEFICIAL SEGMENT OF THE ACT

- The Act remains silent on the ways of preventing mental illness. The Act only concentrated on the treatment being provided to the mentally ill persons. If the Act

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<sup>4</sup>S. 115 of the Mental Healthcare Act, 2017.

stipulated about prevention of mental illness, then there would be reduce in number of mental ill people in the nation.

- The Act is not having any provision on mental stability. If the people are taught with maintaining mental stability it would reduce the cases of people suffering with mental illness.
- The ratio of psychiatrists and mentally ill people is not proper. The psychiatrists to treat the mentally ill people is not in sufficient numbers.
- No allocation of expenditure on treatment of persons with mental illness in the budget of the union Government.

## CONCLUSION

The serious burden lies on the executive section of the country is to implement the Mental Healthcare Act, 2017 properly. People have to be educated with the subject matter of this law and the rights available to them. Further this will create some sort of deterrence on the persons who are violating the laws and are acting as a hindrance so that mental ill people are not availing their rights. The drawbacks of the Act has to be addressed in the Parliament and adequate modifications can be made in this regard which would definitely make the Mental Healthcare Act as a strong piece of legislation for the benefit and empowerment of persons with mental illness.