



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## MENTAL HEALTH LAWS

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Mental health reflects the emotional, social, and psychological well-being of people affecting the thinking, action, and feeling of every individual. Mental health affects abilities like handling stress and making healthy choices by relating to others. Mental health is important in all stages of life wheatear it may be childhood, adolescence and adulthood. People with mental health are more likely to be prone to abuse, abuse can even come from family, friends, spouse and caregivers. When people who are supposed to be our safe place are probable to abuse then legislation plays an important role to ensure adequate mechanism for mental health laws. In India mental health is not perceived as important part of public health care. As per the estimation of World Health Organization (WHO), In India, the burden of mental health problems is quite high with the average 2443 disability-adjusted life per 1000 population every year. At the same time, the rate of suicide per 100000 population is 21.1 as per age-adjusted perspective. More than 70 million reported cases of people with mental illnesses have been identified, as of 2021.

Before the arrival of British there were no special institutions for mental health care, they brought this concept in our country. In India the mental asylums were entirely of British conception, "except for some ancient collections of curious humanity such as that of Shahdaula's Chauhas at Gujarat and in the Punjab (bhaw, 1932). However, earlier than this there is a reference of some asylums in the period of Mohammad Khilji (1436-1469) during the fifteenth century. There is evidence of the presence of a mental hospital at Dhar near Mandu, Madhya Pradesh where the physician was Maulana Fazulur Hakim. Primarily their institutions were established by east India Company for European soldiers. These institutions did not intend to protect the insane from society but to protect society from the insane, resulting in these being constructed away from cities with high enclosures.

In 1784 Pitts India Bill was introduced for India according to which the activities of the Government of the East India Company came under the direction of a "Board of Control" so that systematic reforms and welfare actions could be taken during Lord Cornwallis rule. During this time first mental hospital was put in force at Calcutta. Credit for forming this asylum goes to Surgeon Dr. George M. Kenderline, but it could not be recognised by medical board. Another private asylum was later on constructed which was under charge of Surgeon William Dick got recognised by medical board. Further initiations were taken in Bihar, Bombay and Madras for construction of asylums. Except of major cities there was no growth of mental asylum in any other region other region the country. In the year 1858 first lunacy act (act no. 36) was established, it gave procedure to admit patient and guideline to establish asylum. From early part of 20<sup>th</sup> century efforts were made for betterment of the conditions of these institutions. Under a new legislation (Indian Lunacy Act 1912) a Central lunatic asylum was established in Berhampur for European patients which was later closed after the establishment of Central European Hospital at Ranchi on 17th May 1918. Berkeley Hill had made great contribution to improve the standard of treatment at hospital at Ranchi. In 1946 Bhore committee made a survey on mental hospitals in India. According to their report majority of mental hospitals in India were quite out of date and are designed for detention in safe custody without regard for curative treatments. Post-independence there is substantial progress in field of mental health care though it is not satisfactory.

Some of prominent legislations passed by our government in regard to mental health are The Lunacy (District and Supreme Courts) Act, 1858; The Indian Lunatic Asylum Act, 1858; The Military Lunatic Act, 1877; The Indian Lunacy Act, 1912. In later phases other legislations passed were Mental Health act, 1987; Persons with Disability (Equal opportunities, protection of rights, full participation) Act, 1955; Convention on the rights of persons with disabilities, 2006 (CRPD), Mental Healthcare Act, 2017. The Mental health care bill, 2013 is one of the prominent bills responsible for shaping the Mental Health Care Act, 2017. First ever act which was passed to promote mental health in India was the Indian Lunacy Act, 1912. The credit of replacing term asylum to mental hospital goes to this act. Though this act focused less on mentally ill rather had its focus on protecting the society from the patient. Institutions were set up for sole purpose of detaining patients thus protecting the public from them by promoting custodial sentences. They were denied basic human rights, and their personal liberty was curtailed. This led to the outcome of violation of basic human rights.

Post-independence mental health act, 1987 was enacted with its motive to amend the procedures involved in the care and treatment of the mentally ill, by focusing more on the area of Psychiatry. This enactment laid down detailed procedures for hospital admission, protection of rights, guardianship and management of property belonging of people with disability. Apart from this beneficiary aspects the has its drawbacks. on January 1, 1996, Persons with Disability (Equal Opportunities, Protection of Rights, Full Participation) Act, 1995 Came into force. This act aimed to provide safe environment to people with disability and protect them against abuse and exploitation. According to this act the PMI person with mental illness) are entitled to benefits available to PWD (person with disability) as provided under the Act. Amongst other legislations is Mental Health Care Act, 2001. It provides guidelines pertaining to the admission of psychiatric patients in the psychiatric hospitals. The rights that were provided to the patients were almost the same as that of the UN's Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991. UN's Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991 has 25 principles which are against discrimination applicable to anyone and everyone irrespective of anything. United Nations convention for rights of persons with disabilities was adopted in December 2006. It was ratified by the Parliament of India in May 2008. India being signatory to this convention it was mandatory to curb all discriminatory laws towards people with disability. This convention has viewpoint to safeguard human rights as a whole, altering the attitudes and approaches pertaining to people. The Ministry of Health and Family Welfare initiated the process of amendment of the MHA-1987 with technical help from Indian Law Society, Pune resulting in formulation of Mental Health Care Bill, 2013.

Mental Health Care Bill, 2013 secured affordable and qualitative mental health care is accessible to all. Instead of having separate institutions for mental health care it was incorporated in general hospitals. Government is provided with duty to spread awareness about mental health and work on stigma relating to getting treatment for the same. Various programs and campaigns can be held for this because which will be properly funded by the government. In addition to this government can spread awareness about human resource needed for mental health services. PMI under this enactment is not liable to be prosecuted under section 309 of Indian Penal Code Thereby Decriminalisation of suicide. Special emphasis is made towards the human rights of PMI. They are not to be removed from the society to ensure safety, but they have integral right to live in, be part of and not segregated from society. There should be full disclosure of information regarding admission, nature of their illness and treatment plan

after their admissions. In addition to this their privacy should be maintained by not releasing their illness and treatment.

Mental Healthcare Act, 2017 is most advanced and recent legislation in respect of mental health. The act defines “Mental Illness” as “a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, especially characterized by sub normality of intelligence.” With the definition it provides that mental health should be resolved at the earliest. Age for consent to mental health is flawed as it does not provides with specific number but the capacity in relation to the ability of the patient to comprehend the information or assess risk or communicate his/her decision. According to section 98 psychiatrist is expected to be responsible for patient care and treatment after discharge. This clause is idealistic but may not be possible in custodial care. The act is certainly based on rights-based ideology, it is idealistic in its approach however it does not see real picture. This act has taken inspiration from western countries despite the lack of infrastructure that is like a western country.

India has come a long way to ensure the rights of people with mental illness, as a means of promoting equality. As our journey of mental health started from laws made by colonisers, they made enactment based on their principles and belief. With time as need arose old ways were discarded. Mental health services must become more relevant for Indian cultural needs. In present time there is a need to acknowledge the problem of mental distress like any other bodily disease. With expansion in medical health care there is acceptance of mental illness though not at par at the rate it is needed.

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