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MENTAL HEALTH AND LEGAL PROTECTION IN INDIA: A GENDER-NEUTRAL APPROACH TO MODERN CHALLENGES

By Tripti Pandey

ABSTRACT :

Mental health is an essential but often overlooked aspect of human well-being, especially within the legal and policy landscape. In India, despite increasing public dialogue, the legal recognition and protection of mental health rights remain inadequate. This paper explores the relationship between mental health and the law, emphasizing the need for inclusive and accessible mental healthcare that respects the dignity of all individuals, including those who do not conform to traditional gender identities.

By focusing on the Mental Healthcare Act, 2017, this study evaluates the legal provisions governing mental health and assesses their real-world effectiveness. It further investigates whether the existing legal structure adequately addresses the unique mental health needs of diverse gender groups and marginalized communities.

The paper also reflects on recent legal developments, including progressive directions issued by the Punjab & Haryana High Court, to highlight the existing implementation gaps. In doing so, it advocates for a more compassionate and comprehensive legal approach that truly supports mental health as a fundamental human right in India.

INTRODCUTION:

"Some of the hardest struggles are never seen — they happen quietly, not in wars, but in the corners of the mind."

Mental health is one of the most important parts of a person's overall well-being, but it is also one of the most ignored. Unlike physical problems that are often visible and easy to talk about, mental health issues remain hidden. A person might look perfectly fine on the outside while quietly dealing with anxiety, depression, stress, or emotional pain—struggles that may not leave marks on the body but deeply affect the mind.

In India, only in recent years has mental health started becoming a topic of public discussion. Even today, many people still see it as a personal weakness or something to be ashamed of. This misunderstanding leads to a lack of proper support, both from society and from the legal system. Emotional problems are often taken lightly, pushed aside, or not treated as serious health concerns.

Mental health affects everyone regardless of gender. While it's good that there is growing attention to women's mental health, it's just as important to remember that men, transgender persons, and non-binary

individuals also face mental health issues. Sadly, they often do not have enough support, safe spaces, or understanding from society.

This brings us to an important question: Are our laws and support systems truly ready to understand and meet the mental health needs of **all** individuals?

UNDERSTANDING MENTAL HEALTH AS A LEGAL CONCERN:

Mental health is no longer viewed solely as a personal or medical matter it is increasingly being acknowledged as a critical legal and constitutional issue. In India, **Article 21** of the Constitution, which guarantees the right to life and personal liberty, has been interpreted by the judiciary to include the right to health and dignity. This interpretation extends the scope of fundamental rights to cover mental well-being, placing a duty on the state to safeguard and promote it.

Unlike physical ailments, mental health conditions are often invisible, and those affected may silently endure their struggles due to fear of stigma, societal rejection, or lack of support. Alarming, over 75% of individuals in India who require mental health care do not receive it, particularly in rural and underserved regions. The situation is further worsened by the prevalence of misinformation, limited awareness, and inadequate mental health infrastructure.

While the legal system does offer some support, its approach has been inconsistent. Courts have occasionally taken proactive steps, such as directing the state to provide mental healthcare for prisoners or undertrial detainees. However, these measures vary widely across jurisdictions and lack uniform implementation.

On the international front, India is a party to the **United Nations Convention on the Rights of Persons with Disabilities (UN-CRPD)**, which upholds the rights and freedoms of persons with mental health conditions. This international commitment has encouraged Indian legislators to adopt a rights-based approach. In line with this, the Mental Healthcare Act, 2017 was enacted to align national laws with global human rights standards, emphasizing dignity, equality, and autonomy¹.

Recognizing mental health as a legal issue underscores that psychological well-being is not merely an individual concern but a collective responsibility. It demands comprehensive legal safeguards, effective policy implementation, and systemic reforms. Laws must go beyond mere legislation; they must be enforced in ways that ensure meaningful access to mental healthcare and uphold the principles of justice and human dignity.

THE MENTAL HEALTHCARE ACT, 2017: A RIGHTS BASED FRAMEWORK

The Mental Healthcare Act, 2017 (MHA) marked a significant turning point in India's mental health laws, shifting the focus from custodial and institutional care to a rights-based, person-centric approach. Enacted in line with India's commitments under the UN Convention on the Rights of Persons with Disabilities (UN-CRPD), the Act aims to ensure dignity, autonomy, and non-discrimination for individuals with mental illness.

Key Features

Right to Access and Non-Discrimination

The Act guarantees every person the right to access affordable, quality mental healthcare services without discrimination. It upholds the principles of dignity, equality, and fairness, regardless of gender, caste,

¹ The Mental Healthcare Act, 2017: A Rights-Based Framework

<https://pmc.ncbi.nlm.nih.gov/articles/PMC3705679/#:~:text=Sec%2089%2C%20IPC%20provides%20protection,lawful%20char%20of%20that%20person.> (last visited on July 24 2025)

religion, socioeconomic status, or other identities. Special emphasis is placed on making services available in government and community-run establishments, particularly in underserved areas.

Autonomy and Patient Choice

A major highlight of the Act is its respect for individual autonomy. Persons with mental illness have the right to make an *Advance Directive* a legal document stating their treatment preferences in case they are unable to decide in the future. They may also appoint a *Nominated Representative* to take decisions on their behalf. These provisions strengthen patient agency and protect their choices, even during periods of incapacity.

Review and Accountability Mechanisms

The Act mandates the establishment of *Mental Health Review Boards*—quasi-judicial bodies responsible for protecting patient rights, especially in cases involving involuntary admission or treatment. These boards are empowered to hear complaints, review decisions, and ensure that no one is subjected to unlawful or unethical practices.

Inclusive and Gender-Neutral Language

The Act is drafted in a gender-neutral and inclusive manner, applying equally to all individuals—whether male, female, transgender, or non-binary. While this inclusivity is commendable, challenges in real-world access and awareness persist, particularly among marginalized communities.

Provisions for Prisoners and Persons in Custody

Importantly, the Act extends its protections to individuals with mental illness who are in custodial settings, including prisons. It mandates that prisoners must be provided with the same standard of mental healthcare as any other citizen. This includes timely assessment, treatment, and regular review. The Act also requires coordination between prison authorities and mental health professionals to ensure that the rights and dignity of inmates with mental illness are not compromised.

A Gender-Neutral Approach to Mental Health: What It Means and Why It Matters

What “Gender-Neutral” Means in the MHA, 2017

The Mental Healthcare Act, 2017, uses inclusive and neutral language to make sure that mental health rights apply to **everyone**, regardless of their gender or identity.

- **Section 18(2)** clearly says that mental health services should be available to all without discrimination. This includes protection from unfair treatment based on gender, sex, sexual orientation, caste, religion, and disability.
- **Section 21(1)(a)** adds that people with mental illness must receive the **same quality of care** as those with physical illness, and that no one should be treated unfairly due to their gender or any other identity².

Together, these sections show that the law supports equal treatment for everyone, no matter how they identify.

Why Gender-Neutrality Matters in Real Life

- **It Covers Everyone:** The law is meant for all people, not just one group. It protects men, women, transgender, and non-binary individuals equally.

²The Mental Healthcare Act, No. 10 of 2017 <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf?utm>
(last visited on July 25 2025)

- **It Encourages Fairness:** By clearly mentioning gender and sexual orientation, the Act shows that all identities deserve equal respect and care. This helps build a more inclusive healthcare environment.
- **It Supports Vulnerable Groups:** In many cases, people from gender and sexual minorities—or even men facing mental health challenges—may struggle to get help. These legal safeguards are meant to stop such neglect or denial of care.
- **It Matches Human Rights Goals:** The Act supports India's global commitment to human rights. It treats mental health as a basic right that everyone deserves, not just a medical issue.

Recent Judicial Intervention: Punjab & Haryana High Court (2025)

Despite the existence of the Mental Healthcare Act, 2017, its true impact depends heavily on implementation by states. In 2025, the **Punjab & Haryana High Court** took significant steps to address delays, discrimination, and systemic gaps that were blocking access to mental healthcare.

In this public interest litigation, **Pushpanjali Trust**, a welfare organization, filed a writ petition seeking enforcement of the MHA 2017. The petition argued that despite eight years since the Act came into force, the governments of **Punjab and Haryana had failed to frame and notify rules**, which are essential for its implementation. In **May 2025**, the Punjab & Haryana High Court pulled up both state governments for their failure to notify the rules under the Mental Healthcare Act, 2017 even after eight years of its enactment. Without these rules, key parts of the Act (like review boards and treatment protocols) could not be properly enforced. The Court, led by **Chief Justice Sheel Nagu** and **Justice Sumeet Goel**, directed both states to **finalise and notify the rules within 60 days** and submit a compliance report by **July 24, 2025**³. This judicial direction highlighted how the lack of timely action can delay the delivery of legally guaranteed right.

In another significant issue, the Court addressed a case related to the **Sector 31 Group Home in Chandigarh**, where the authorities were demanding a **₹20 lakh security deposit** from families seeking admission for individuals with mental illness. The High Court found this demand to be **excessive and discriminatory**, especially when the **Mental Healthcare Act guarantees equal and non-discriminatory access to services**.⁴

The Bench noted that this requirement was creating a financial barrier for many families and went against the principles of **Sections 18 to 21** of the Act, which focus on **dignity, affordability, and inclusion**. The Court also stated that since the Group Home was managed by a society funded and supported by the Union Territory, it qualifies as "State" under **Article 12 of the Constitution**.⁵ Therefore, its actions must respect the rights under **Article 14 (equality)** and **Article 21 (right to life with dignity)**.

After the Court's directions, the governing body of the group home held an emergency meeting and reduced the deposit based on room types:

- ₹20 lakh for suites
- ₹15 lakh for single rooms
- ₹10 lakh for twin-sharing rooms

³Live law https://www.livelaw.in/high-court/punjab-and-haryana-high-court/punjab-haryana-high-court-mental-health-act-2017-unfortunate-that-even-after-7-8-yrs-of-law-punjab-haryana-failed-to-notify-rules-292813?utm_ (last visited on July 25 2025)

⁴The Legal Affair https://thelegalaffair.com/news/punjab-and-haryana-high-court-questions-exorbitant-entry-fee-hindering-access-to-mental-health-facility/?utm_ (last visted on July 26 2025)

⁵Indian Express https://indianexpress.com/article/cities/chandigarh/punjab-haryana-high-court-slams-chandigarh-administration-over-high-fee-disabled-home-10015677/?utm_ (last visited on July 27 2025)

However, families and mental health advocates argued that these changes were only symbolic. Many pointed out that in most Indian cities, similar facilities charge between ₹1 to ₹6 lakh or only ask for a refundable deposit equivalent to one year's stay.

Several parents and NGOs submitted a **memorandum to the UT Chief Secretary**, requesting:

- Reasonable deposit amounts based on affordability
 - Special concessions for economically weaker sections
 - Simpler admission procedures
 - Appointment of trained staff and mental health professionals in homes
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The 2025 rulings by the Punjab & Haryana High Court show how judicial intervention can breathe life into written law. While the **Mental Healthcare Act, 2017** promises equality, access, and dignity, those ideals can only be achieved if governments follow through. These cases are a reminder that **mental health rights are not just theoretical they must be actively protected through clear rules, inclusive policies, and removal of financial hurdles.**

CHALLENGES IN IMPLEMENTING GENDER NEUTRAL MENTAL HEALTH LAW

1. Weak Institutional Frameworks

Despite the Act's clear mandates, many states have **not yet established key bodies like State Mental Health Authorities (SMHAs) or Mental Health Review Boards (MHRBs)**.⁶ These institutions are essential for protecting patient rights and overseeing complaints and treatment procedures.

Even in states where such bodies have been created, they often remain inactive, lack proper staff or authority, and fail to take action on violations. This weakens the accountability mechanisms built into the law.

2. Shortage of Resources and Professionals

India continues to face a major shortage of mental health professionals. The country has less than one psychiatrist per 100,000 people, which is far below the World Health Organization's recommendation of 3 per 100,000.

Additionally, public spending on mental health is alarmingly low only around 0.05% to 0.16% of the total health budget is allocated for mental healthcare. Estimates suggest that more than ₹94,000 crores are needed to fully implement the Act across the country, yet actual funding falls far short.

3. Unequal Access Across Regions

Mental health services in India are concentrated in urban and metro areas, leaving rural and remote populations without proper access to care. Infrastructural gaps like outdated hospitals, overcrowded psychiatric wards, and the absence of halfway homes or community-based rehabilitation centres further complicate access.⁷

4. Social Stigma and Legal Unawareness

⁶ Soumitra Pathare et al., Mental health care in India: restoring balance, 17 BMC Health Serv. Res. 1 (2017), https://ijmhs.biomedcentral.com/articles/10.1186/s13033-017-0155-1?utm_ (last visited on July 27 2025)

⁷ Indian Kanoon https://indiankanoon.org/doc/51895923/?utm_ (last visited on July 28 2025)

Stigma around mental illness is still widespread. Many individuals and families hesitate to seek help out of fear, shame, or societal rejection. Even when support exists, people are often unaware of their legal rights under the Mental Healthcare Act, especially those related to consent, dignity, and protection from discrimination.

5. Institutional and Custodial Neglect

In many mental health institutions, care is still treated like confinement, rather than as a health service. Several reports have highlighted cases where patients were kept in facilities long after recovery, due to poor discharge planning or lack of community support. Courts have occasionally intervened to order releases, pointing to the need for stronger legal monitoring and humane treatment.

6. Policy Gaps and Budgetary Confusion

One major administrative issue is the lack of clear financial planning. The Act does not offer detailed guidance on how responsibilities and funds are to be shared between the central and state governments. This has led to delays in execution and poor coordination.

For example, while Punjab has established its State Mental Health Authority and adopted care guidelines, implementation has been inconsistent prompting warnings from the judiciary.

RECOMMENDATIONS:

To realise the full potential of the **Mental Healthcare Act, 2017**, India must address existing structural weaknesses and enhance implementation at every level. The following steps aim to make mental healthcare more accessible, affordable, and inclusive especially for individuals across the gender spectrum.

1. Ensure Consistent Implementation Across All States and UTs

The effectiveness of the MHA depends on uniform enforcement nationwide. All states and Union Territories should immediately notify the required rules and establish key bodies like Mental Health Review Boards (MHRBs) and State Mental Health Authorities (SMHAs). Consistent standards and functional institutions across regions will help bridge the gap between legal promises and practical outcomes.

2. Make Mental Healthcare Affordable and Strengthen Infrastructure

To make the system truly inclusive, public mental health services must receive higher budget allocations, particularly in rural and underserved areas. Financial hurdles such as high security deposits or out-of-pocket expenses should be removed. Free or subsidised treatment must be ensured for economically weaker sections, in both urban and rural settings.

3. Collect and Publish Gender-Sensitive Mental Health Data

Reliable data is essential for identifying inequality. There is a pressing need for disaggregated data that tracks mental health trends across different genders, ages, regions, and income levels. This will help policymakers and institutions better understand gaps in care and respond with more targeted interventions.

4. Integrate Mental Health Into Wider Social Welfare Policies

Mental health must be treated as a core component of welfare policy. This includes integrating mental health services into:

- School curricula and counselling programs

- Primary healthcare centres for early detection
- Employment and social security schemes, ensuring support is available before issues escalate

This preventive and community-based approach can reduce long-term mental health crises.

5. Regular Monitoring and Independent Review

Both the central and state governments must establish systems for periodic evaluation of how the Act is being implemented. Independent audits, civil society involvement, and public reporting can improve accountability and help highlight where improvements are needed—especially in neglected districts or marginalised communities.

6. Promote Inclusive Public Awareness Campaigns

Awareness efforts should include representative stories and voices from all gender identities men, women, transgender, non-binary, and intersex individuals. Campaigns must also address harmful stereotypes that discourage men and gender-diverse individuals from seeking help, promoting a culture where mental health is recognised as a shared human concern.

7. Strengthen Judicial and Administrative Remedies

The judiciary must continue to act where implementation lags or rights are violated. At the same time, governments should establish effective complaint and grievance mechanisms so individuals can seek quick remedies in cases of denial of services, discrimination, or mistreatment.

Conclusion

In today's shifting societal landscape, mental health must be recognised and protected with the same urgency and respect as physical health. The **Mental Healthcare Act, 2017** was a landmark step that positioned mental well-being as a **legal and constitutional right**, highlighting the importance of autonomy, dignity, and non-discrimination in mental healthcare delivery.

However, the journey from **law to lived reality** remains incomplete. Despite the Act's gender-neutral language and progressive framework, its implementation continues to face multiple challenges. **Delayed rule notifications, insufficient infrastructure, low public awareness, and economic and social barriers** still obstruct equitable access to mental health services particularly for men, boys, and gender-diverse individuals who often remain invisible in policy and practice.

Judicial interventions, such as those by the **Punjab & Haryana High Court in 2025**, have played a crucial role in pushing governments toward accountability. These interventions remind us that legal rights alone are not enough they must be matched by **effective governance, financial commitment and institutional sensitivity**.

For India to create a truly inclusive mental health ecosystem, it must **close the gap between legal intent and practical outcomes**. Mental health must be treated as a **universal right** one that is **free from stigma, accessible to all**, and responsive to the diverse experiences of individuals across the gender spectrum. Only then can we move toward a society where mental well-being is not just protected in law, but truly respected in life.