

# A Brief Overview of Safeguarding the Human Rights of People with Mental Illness During Admission to Mental Health Facilities

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## A Brief Overview of Safeguarding the Human Rights of People with Mental Illness During Admission to Mental Health Facilities

### Introduction

Protecting fundamental human rights is crucial for those who experience disadvantages in a civilized community. Treating all individuals fairly and respectfully, regardless of differences, ensures dignity and security. India regularly neglects mental health treatment, highlighting the need for compassionate care, infrastructure and laws. Patients with mental disorders frequently have their privileges and freedoms restricted as part of their treatment.

After the 1980s, there were changes in favour of passing legislations that prioritised rights and liberties. This change in the statutes highlighted how crucial it is to safeguard people against injustice, exploitation, and prejudice. New legal instruments and processes were devised to guarantee the observance of rights and the effectiveness of remedies in situations of infringement.<sup>1</sup>

There has been a significant change away from the notion that mentally ill people must be institutionalised in order to protect others in the present-day welfare system. Despite stigma and misunderstandings about its danger, most industrialised nations contemplate mental hospitalisations when other methods fail. However, a sizable percentage of those with mental illnesses need institutional care.

Hospitalisation is necessary for patients with complex diagnoses, medical treatment, and risk of damage, major illnesses, treatment refusal, and lack of supportive social networks. The primary objective is to safeguard society's and mentally ill people's well-being.<sup>2</sup>

The Indian Constitution<sup>3</sup> ensures everyone's right to life, dignity, and health. The new Mental Health Act is now in compliance with India's responsibilities under the 2006 Convention<sup>4</sup> on the Rights of Persons with Disabilities, according to the Delhi High Court's 2018 ruling<sup>5</sup>.

<sup>1</sup>Mental Health Act 1987, No. 14, Acts of Parliament, 1987 (India), Mental Health Care Act 2017, No.10, A 25 of Parliament, 2017 (India), The Rights of Persons with Disabilities Act, 2016. Act No. 49 of 2016

<sup>2</sup> Choudhary Laxmi Narayan&Deep Shikha, Indian Legal System and Mental Health, 2013 Indian Journal of Psychiatry (Suppl. 2), 165, 179.<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705679/>

<sup>3</sup> INDIA CONST. art. 21, Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law. <https://indiankanoon.org/doc/1199182/> (accessed on 22/06/2023 at 09:56 pm)

<sup>4</sup>United Nations, Convention on the Rights of Persons with Disabilities, 13 December 2006- Sixty-first session of the General Assembly by resolution/RES/61/106, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons->

The following paper examines fundamental concerns regarding the admission of mentally ill people to mental health facilities.

### **Laws Related to Admission of Persons with Mental Illness**

In 1858, the British founded the first asylum for insane people in India. The first Lunacy Act of 1858<sup>6</sup> established rules for constructing mental hospitals and admitting people with mental illnesses. British India implemented many laws regulating mental health care provision during hospitalisation.<sup>7</sup> In the early 20th century, people were more aware of facilities providing mental health care. The Indian Lunacy Act of 1912<sup>8</sup> had a profound influence on Indian psychiatry. Full-time psychiatrists were appointed, and voluntary admission was introduced. The focus was to protect society from mental illness and ensure proper admission to asylums.

In 1922, mental hospitals were renamed lunatic asylums<sup>9</sup>. The Indian Psychiatric Society contributed to drafting a new Act<sup>10</sup> to prioritise human rights over custodial treatment. A new Act was passed in 1987<sup>11</sup> to redefine mental illness and emphasise modern care and treatment instead of confinement. It also provided detailed procedures for hospital admission under exceptional circumstances.

The 1987 Act<sup>12</sup> has also come under fire for its disdain for human rights and its limited focus on legal admissions and licensing<sup>13</sup>. Its execution has drawn criticism for limiting personal freedom without enough judicial scrutiny and has proved complicated.<sup>14</sup> In addition, the Act

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<sup>4</sup> Disabilities. The UN Convention on the Rights of Persons with Disabilities is an international human rights treaty dealing with the rights of disabled people entry into force on 3 May 2008, in accordance with article 45(1). India ratified the UNCPRD in October 2007.

<sup>5</sup> Ravinder v. Govt. of NCT of Delhi & Others CDJ2018DHC 375

<sup>6</sup> Lunacy Act 1858, Act No. 36

<sup>7</sup> 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 Acts, 1877.

<sup>8</sup> Indian Lunacy Act, 1912, Act No IV of 1912.

<sup>9</sup> Bandyopadhyay, Gautam Kumar et al. "History of psychiatry in Bengal." *Indian journal of psychiatry* vol. 60, Suppl 2 (2018): S192-S197. doi:10.4103/0019-5545.224323. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5836337/>

<sup>10</sup> Mental Health Act 1987, No. 14, Acts of Parliament

<sup>11</sup> Supra. 10

<sup>12</sup> Supra. 10

<sup>13</sup> Narayan CL, Shikha D. Indian legal system and mental health. *Indian J Psychiatry*. 2013 Jan; 55(Suppl 2):S177-81. doi: 10.4103/0019-5545.105521. PMID: 23858251; PMCID: PMC3705679.

<sup>14</sup> Dhanda, A., 2010. Status Paper on Rights of Persons living with Mental Illness in the light of the UNCPRD. Harmonizing Laws with UNCPRD, Report prepared by the Centre for Disability Studies, NALSAR, Human Right Law Network, New Delhi.

required updating to be in compliance with the UNCRPD<sup>15</sup>, adopted in 2006 and entered into force in 2008. The first domestic legislation in India to address this issue was the Persons with Disabilities Act 1995<sup>16</sup>. People with disabilities were supposed to be protected from exploitation and mistreatment under the Act. This legislation was replaced by the Rights of Persons with Disabilities Act, 2016<sup>17</sup> and enforced in 2017<sup>18</sup>.

In order to update the 1987<sup>19</sup> legislation and bring it into compliance with UN-CRPD 2006<sup>20</sup>, the Mental Healthcare Act 2017<sup>21</sup>, was introduced, which focuses on offering medical care to people with mental illnesses while upholding their legal rights. The rights of hospitalised patients are described in the fifth chapter.

According to the Act<sup>22</sup>, mental illness must be diagnosed according to internationally recognized medical standards, such as the World Health Organization's International Classification of Diseases<sup>23</sup>. A person's political, economic, social, or ethnic standing cannot be used to assess mental illness<sup>24</sup>, nor can their failure to adhere to moral, social, cultural, political, or religious ideals be used to diagnose it<sup>25</sup>.

## Types of Admissions

### Independent Admission

If a mentally ill adult can make decisions on their own or only needs little assistance<sup>26</sup>, they can apply for independent patient admission to a mental health facility<sup>27</sup>. If all requirements, including the patient's level of mental illness, likelihood of benefiting from admission, and

<sup>12</sup>United Nations, Convention on the Rights of Persons with Disabilities, 13 December 2006- Sixty-first session of the General Assembly by resolution/RES/61/106, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>. The UN Convention on the Rights of Persons with Disabilities is an international human rights treaty dealing with the rights of disabled people entry into force on 3 May 2008, in accordance with article 45(1). India ratified the UNCRPD in October 2007

<sup>56</sup>The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" has come into enforcement on February 7, 1996.

<https://thenationaltrust.gov.in/upload/uploadfiles/files/Persons%20with%20Disability%20Act%201995.pdf>"The Rights of Persons with Disabilities Act, 2016. Act No. 49 of 2016

<sup>18</sup>19th April, 2017 vide notification no.S.O. 1215 (E) dated 19th April, 2017 see Gazette of India, Extraordinary, Part II, Section 3 (ii).

<sup>19</sup>Supra.10

<sup>20</sup>Supra.5

<sup>21</sup>Mental Health Care Act 2017, No.10, Acts of Parliament, 2017 (India),

<sup>22</sup>Supra.21

<sup>23</sup>Id., at Sec.3 (1)

<sup>24</sup>Id., at Sec.3 (3) (a)

<sup>25</sup>Id., at Sec.3 (3) (b)

<sup>26</sup>Mental Health Care Act 2017, Sec.85 (1), No.10, Acts of Parliament, 2017 (India).

<sup>27</sup>Id., at Sec.86 (1)

competence to make decisions about admission and treatment, are satisfied, independent admissions may be made. Independent patients can discharge<sup>28</sup> themselves without the Medical Officer's approval, but they must give informed consent before receiving treatment<sup>29</sup>. Except where circumstances make a facilitated admission impossible, all admissions are made as independently as possible<sup>30</sup>.

#### **Supported admission:**

A Nominated Representative can apply for hospital admission for someone with mental illness<sup>31</sup>. A severe mental illness diagnosis from a psychiatrist and other professionals independently is required within the past week, and the patient must have attempted harm, caused fear, or been at risk of harm<sup>32</sup>. Admission must be the least restrictive option<sup>33</sup> and the patient's decision-making ability is impaired<sup>34</sup>. Patients under Section 89 can stay for 30 days, and if they need more care, they must agree to voluntary admission or be transferred to a facility with continued support<sup>35</sup>.

The Nominated Representative can give temporary consent, but the Medical Officer must evaluate capacity weekly and re-obtain consent as needed<sup>36</sup>. For women and minors, admissions to mental health establishments must be reported to the Mental Health Review Board within three days, and for everyone else, within seven days by the medical officer or mental health professional in charge of the mental health establishment<sup>37</sup>. In accordance with this section<sup>38</sup>, the Mental Health Review Board can review an admission decision within seven days, and its decision is binding on all parties<sup>39</sup>. The patient cannot be re-admitted after being discharged from supported admission within seven days<sup>40</sup>. If re-admission is required

<sup>28</sup>Id., at Sec. 86 (7)

<sup>29</sup>Id., at Sec. 86 (5)

<sup>30</sup>Id., at Sec. 85 (2)

<sup>31</sup>Id., at Sec. 89 (1)

<sup>32</sup>Id., at Sec. 89 (1) (a)

<sup>33</sup>Id., at Sec. 89 (1) (b)

<sup>34</sup>Id., at Sec. 89 (1) (c)

<sup>35</sup>Id., at Sec. 89 (4) - On the expiry of the period of thirty days referred to in sub-section

(2), the person may continue to remain admitted in the mental health establishment in accordance with the Provisions of section 90.

<sup>36</sup>Id., at Sec. 89 (8)

<sup>37</sup>Id., at Sec. 89 (9)

<sup>38</sup>Id., at Sec. 89 (10)

<sup>39</sup>Id., at Sec. 89 (11)

<sup>40</sup>Id., at Sec. 89 (15)

within seven days<sup>41</sup>, it must be under the provisions of supported admission beyond thirty days<sup>42</sup>.

#### **Supported Admission Beyond Thirty Days:**

Mentally ill patients who require hospitalisation beyond thirty days must be evaluated by two psychiatrists within seven days of admission<sup>43</sup>. If the severity criteria are met, or the patient is incapable of making decisions<sup>44</sup> the admission may continue. Initially, admissions beyond thirty days are for 90 days<sup>45</sup>. Renewals after 120 days and 180<sup>46</sup> days will be available after being informed of the Mental Health Review Board<sup>47</sup>. Patients who do not meet the criteria will be discharged<sup>48</sup> but can remain in the hospital as an independent patient<sup>49</sup>.

#### **Admission of Mentally Disordered Offenders**

As a signatory to the International Covenant on Civil and Political Rights<sup>50</sup>, India recognizes the dignity of every human being, even if they have been deprived of their freedom. Following the Universal Declaration of Human Rights<sup>51</sup>, no person shall be tortured, inhumanely treated or degradingly punished.

It is troubling that many people who suffer from mental problems only get treatment after committing a crime. This calls into question the efficacy of present management techniques and the selection of treatments provided by mental health authorities.

"Prisoner with mental illness" refers to a person with a mental illness who is being held in a jail or prison after being found guilty of an offence or being tried for it<sup>52</sup>. There are two types: those charged with a crime and those admitted under the Mental Health Care 2017 Act<sup>53</sup>. A magistrate may order a medical evaluation and postpone further proceedings if they are

<sup>41</sup>Id., at Sec. 89 (16)

<sup>42</sup>Id., at Sec. 90

<sup>43</sup>Id., at Sec. 90 (1)

<sup>44</sup>Id., at Sec. 90 (2)

<sup>45</sup>Id., at Sec. 90 (8)

<sup>46</sup>Id., at Sec. 90 (8)

<sup>47</sup>Id., at Sec. 90 (5)

<sup>48</sup>Id., at Sec. 90 (15)

<sup>49</sup>Id., at Sec. 90 (16)

<sup>50</sup>International Covenant on Civil and Political Rights Article 10.1

General Assembly resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March

1976. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>51</sup> Universal Declaration of Human Rights, Article 5-No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>52</sup>Mental Health Care Act, 2017. Sec. 2 (w)

<sup>53</sup>Supra n.21

Suspected of a mental disorder<sup>54</sup>. When suspected of a mental condition, a court may send someone to a psychiatric institution for observation for 10 to 30 days. This is to protect their best interests and not considered imprisonment<sup>55</sup>. It must be kept in mind, however, that the scenario mentioned above may not always hold.

According to the Prisons Act<sup>56</sup>, jailers must inform a medical officer whenever a prisoner wishes to visit a doctor. It is required to record medical instructions and provide sick convicts with a suitable Place for their care in prisons.<sup>57</sup> They fall into a deadly trap with no chance of escaping when a court sends them to prison for a few custody due to the lack of records of their health. The 1987 Act<sup>58</sup> and the 2017 Act<sup>59</sup> in India both have provisions for the admission and incarceration of mentally ill prisoners to psychiatric institutions or nursing homes. To do this, additional legal criteria<sup>60</sup> are in place in addition to the laws already listed. It is common practice to keep mentally ill detainees in detention without providing them with access to appropriate care, which results in prolonged incarceration. Through case laws, the Indian courts have offered insight into this issue.<sup>61</sup>

<sup>54</sup> Code of Criminal Procedure, 1973, Sec. 329, Act No. 2 of 1974

<sup>55</sup> Chandrasekhar K. Involuntary Hospitalization: The Conflict Zone of Psychiatry and Law (Revisiting Section 19 of Mental Health Act 1987). *Indian J Psychol Med.* 2018 Jul-Aug; 40(4):301-304. doi: 10.4103/IJPSYM.244.18. PMID: 30093738; PMCID: PMC6065132. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6065132/>

<sup>56</sup> The Prisons Act, 1894, chapter VIII, (Act IX of 1894)

<sup>57</sup> Id., sec. 39

<sup>58</sup> The Mental Health Act 1987, Sec. 27, No. 8, Acts of Parliament, 1987 (India)

<sup>59</sup> The Mental Health Care Act 2017, S. 103, No. 10, Acts of Parliament, 2017 (India)

<sup>60</sup> The Prisoners Act, 1900, S. 30, The Air Force Act, 1950, s. 144, The Army Act, 1950, s. 145, The Navy Act, 1957, S. 143, The Code of Criminal Procedure, 1973, ss. 330 & 335, Act No. 2 of 1974

<sup>61</sup> *Veena Sethi v. State of Bihar* (A.I.R. 1983, S.C. 339)-Due to congestion in mental institutions, 16 convicts were held in Hazaribag Central Jail for 25 years. They mostly faced charges of breaking Section 302 of the Indian Penal Code and lacked access to vital medical care. The Supreme Court mandated care for mentally ill convicts but did not rule on improving prison conditions for otherwise sick inmates.

*Sheela Barse v. Union of India* ((1993) 4 S.S.C. 204) The Court found non-criminal mentally ill individuals wrongfully imprisoned, despite a Senior Advocate's appointment for monitoring.

*Ramamurthy v. State of Karnataka*, (1997) S.C.C. (Cri) 386-In 1984, Rama Murthy addressed a letter concerning mental health to the Chief Justice of the Supreme Court. The problem was acknowledged, and a district judge visited the facility and suggested treating mentally ill prisoners to NIMHANS. However, the Court did not include this suggestion in its ruling.

*Charanjit Singh and National Human Rights Commission v. State and Others*. (2005) ILR 1 Delhi 760

In 2005, the Human Rights Commission intervened in the Shri Charanjit Singh case, determining that holding him without a trial was illegal. The Court dropped his charge sheet and suggested modifying current procedure for handling situations like his.

*R.D Upadhyay v. State of U.P & Others* (2001) 1 S.C.C. 437 Ajay Ghosh, an under-trial prisoner with a mental disorder, was imprisoned for more than 30 years without medical attention. According to the findings of the Supreme Court, he was granted a compensatory amount of Rs. 2 Lakhs in addition to housing at a benevolent institution.

*Accused 'X' Vs State of Maharashtra* <https://indiankanoon.org/doc/155869274/>

In 2019, a Maharashtra case involved raping and murdering two girls. The trial court confirmed the conviction, and the High Court of Bombay upheld it. The Supreme Court upheld the conviction as "Rare to the Rare".

More Mental health institutions should be established to address the issues of incarcerated mentally ill offenders. Separate prisons with well-trained, unarmed personnel are necessary. Establishing a limit on jail sentences and promptly releasing prisoners with irreversible conditions is crucial.

#### **Role of Nearest Relative in admission**

Families and carers are essential in meeting fundamental needs, including admitting and treating people with mental illnesses. In general, caregivers and family members support those with mental disorders, but there can be exceptions. The nearest relative of someone with a mental illness can request assessments, treatment information, and even release from a mental health facility.

Over the years, the definition of "relative" in Indian mental health legislation has changed. It began with blood relations in 1912<sup>62</sup>, was expanded to include marriage and adoption in 1987<sup>63</sup>, and now extends to caregivers<sup>64</sup>, as defined by the 2017 Act.

<sup>13</sup> The Mental Healthcare Act 2017 in India acknowledges the crucial role of caregivers in treating and recovering individuals with mental illness. Caregivers have the right to participate in treatment, learn about available treatments, and be heard in decision-making regarding care<sup>65</sup>. One must be of legal age<sup>66</sup>, competent, and agree to terms in writing<sup>67</sup> to serve as a nominated representative for a person with a mental illness. Priority is given to the person listed in the advance directive, a relative, a caregiver, or a suitable individual chosen by the Board<sup>68</sup>. <sup>18</sup> The Director of the Department of Social Welfare or his chosen representative may be appointed if none are suitable<sup>69</sup>. A change or termination of the appointment may be made at any time by the Board<sup>70</sup>.

<sup>6</sup> In India, the law has been framed on the premise that the relatives will move for the detention of mentally ill persons only if necessary, and they will take them back as soon as confinement

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After the accused pleaded to post-conviction mental illness, the Supreme Court reduced death sentences, emphasizing the importance of mental health. Even after their death sentence is overturned, the accused still has a right to dignity.

<sup>62</sup>Indian Lunacy Act of 1912, Sec (2), Act No IV of 1912

<sup>63</sup>The Mental Health Act of 1987, Sec (2), No.14, Acts of Parliament, 1987 (India)

<sup>64</sup>Mental Health Care Act 2017, Sec.2 (e), No.10, Acts of Parliament, 2017 (India).

<sup>65</sup>Id., at Sec.22

<sup>66</sup>Id., at Sec.14 (3)

<sup>67</sup>Supran.66

<sup>68</sup>Id., at Sec.14 (4)

<sup>69</sup>Supran.68

<sup>70</sup>Mental Health Care Act 2017, Sec.14 (7) No.10, Acts of Parliament, 2017(India).



is no longer required. However, several cases demonstrate how the relatives are abusing this clause<sup>71</sup>.

The Delhi High Court heard a case<sup>72</sup> in 2018 involving a lady, Z, whose parents had placed her in a mental health facility with the assistance of the government and other authorities, including police, as punishment for disobedience. Her music instructor petitioned for her release in a writ petition.

The court held that, as mentioned in the Act, the procedure for involuntary admission under Section 19 of the 1987 Act requires legal determination of mental illness and meeting necessary criteria. A psychiatrist must diagnose the patient after personal interaction. More than listening to colleagues on the phone is required. Admitting a person under Section 19 of the 1987 Act for observation cannot be permitted. The court further held that the misdeeds of her parents violated her fundamental rights to life, liberty, and dignity and ordered her release and granted her compensation. In addition, the court asked her parents to promise they would not disrupt her peace of mind in the future.

In another case<sup>73</sup>, Police forcibly removed Mrs. Meera Nireshwalia, who was involved in a property dispute with her husband and took her to a mental health care institution. With the assistance of her son, she was eventually released from the hospital. She brought a claim for damages and filed a petition against her wrongful incarceration before the Magistrate Court. Due to violating her right to life and personal liberty, the court ordered her to pay compensation of Rs. 50,000 relied on the Rudul Shah decision<sup>74</sup>. The court also stated that to justify an arrest under the Indian Lunacy Act of 1912; there must be concrete evidence and verifiable findings that she posed a threat due to insanity. The Indian Lunacy Act of 1912 states that a Deputy Police Commissioner cannot issue a detention order or delegate such authority.

A prime example of the misuse of the Mental Health Care Act of 2017 is the one-and-a-half-month-long imprisonment and torture of a BDS student from Malappuram in 2019. She was subjected to physical and mental torture to prevent her from marrying a youth from a low-income family. Her brother and three guests injected her with drugs, leading to

<sup>71</sup> Bipin Chandra Shantilal Bhatt v. Madhuriben Bhatt AIR 1963 Guj.250; Meena Deshpandey v. Prakash Deshpandey AIR 1983 Bombay. 407; Dr. Sangamitra Acharya & Another v. State (NCT of Delhi) & Others, CDJ2018DHC 319.

<sup>72</sup> Dr. Sangamitra Acharya & Another v. State (NCT of Delhi) & Others, CDJ 2018 DHC 319

<sup>73</sup> [1991] Criminal Law Journal 2395 (Mad.)

<sup>74</sup> Rudul Shah v. State of Bihar, A.I.R. 1983 S.C. 1056

unconsciousness. Two days later, she was checked into a mental health institution near Idukki, where medical staff forcibly bound her wrists and legs and gave her medications. The Kerala High Court ordered an investigation into whether even the state machinery had enabled the girl's wrongful incarceration following her lover's filing of a writ petition.<sup>75</sup>

Admission is only possible with a request from the nominated representative, except for independent patients<sup>76</sup>. However, this might lead to abuse by allowing family members to misuse the legislation rather than, in many cases, supporting and caring for the sick.

### Issues Related to Admission of Persons with Mental Illness

When choosing whether or not to confine someone as a person with a mental illness, it is crucial to establish a precise understanding of what constitutes a mental illness. Since it is impossible to define mental illness<sup>77</sup> perfectly, the Act<sup>78</sup> limits the definition to severe mental conditions that comply with established medical standards. It also covers mental health issues linked to drug and alcohol abuse.

Independent admission for patients must meet specific criteria, such as having a substantial disorder with mental illness impairments. Patients who do not meet these criteria cannot be admitted<sup>79</sup>. As the criteria are clearly outlined in legislation<sup>80</sup>, the Mental Health Review Board lacks the power to review such admissions even though the patient is ready to be

<sup>75</sup> "High Court orders SIT investigation into girl's torture at mental health centre", 10<sup>th</sup> December 2019, Express News Service, <https://www.newindianexpress.com/states/kerala/2019/dec/10/high-court-orders-sit-investigation-into-girls-torture-at-mental-health-centre-2073877.html>

<sup>76</sup> Supra.31

<sup>77</sup> Mental Health Care Act, 2017, No.10, Acts of Parliament, 2017 (India), Sec.2(s) -a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, and capacity to recognise reality or ability to meet the ordinary demands of life. It also includes mental conditions associated with the abuse of alcohol and drugs.

<sup>78</sup> Id., at, Sec.3-Determination of mental illness (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,—

(a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person;

(b) Non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

<sup>79</sup> Supra.2

<sup>80</sup> Mental Health Care Act 2017, Sec.86, No.10, Acts of Parliament, 2017(India)

admitted and receive treatment<sup>81</sup>. This might go against a person's right to get care in the best setting possible.

The Act defines 'decision-making' capability as having the capacity to comprehend pertinent information, recognise the effects of decisions, or effectively conveys decisions<sup>82</sup>. It is essential to recognise that if a person is competent to make decisions, they cannot be forced to get inpatient treatment for mental health issues in India. Regardless of the hazards, preserving the patient's autonomy is important, even though incapacitated.

Mental health professionals admit individuals with severe mental illnesses if they believe they are likely to benefit, understand the purpose, and can make decisions independently.<sup>83</sup>

Psychiatrists must consider a patient's Advance Directives before admitting them. It is challenging if a valid directive says the patient does not want a particular treatment or admission to a mental health facility. A Nominated Representative cannot override a valid directive, but a mental health professional can appeal to the Mental Health Review Board under Section 11. Section 80(4) states that the Mental Health Review Board can decide within 90 days. This can make it tough to provide treatment on time.

Those affected by an admissions decision (patients, Nominated Representatives, and NGOs) have the right to appeal under the Act<sup>84</sup>. The Mental Health Review Board reviews and determines if continued admission is appropriate. Improper admission can result in illegal detention. The Board can approve or reject an admission in progress and may consider it illegal incarceration if unjustified. However, no cases are there to show that the Board held some admissions are illegal. How many appeals a person may make during a single admission term is unclear under the Act.

Police may be called to bring back mentally ill prisoners<sup>85</sup> who leave the mental Health Facility without permission<sup>86</sup>. However, the Act is silent about forcefully bringing back

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<sup>81</sup>Id., at Sec.82

<sup>82</sup>Id., at Sec.4

<sup>83</sup>Id., at Sec.86 (2)

<sup>84</sup>Id., at Sec.89 (10)

<sup>85</sup>Id., at Sec.103

<sup>86</sup>Id., at Sec.92

patients who had been admitted under-supported admission for up to thirty days<sup>87</sup>, supported admission beyond thirty days, and left the facility without permission<sup>88</sup>.

### Conclusion and suggestions

Forced institutionalization is a potential threat in our country. Maintaining fairness and justice is crucial in divorce, property, and custody issues. Sadly, some people use illegal means to detain their kith and kin<sup>89</sup>. In some cases, family members have institutionalised someone against their will and misused the law to change even someone's sexuality, even though there is a law to protect them<sup>90</sup>.

In many instances, there is a lack of fairness in India's mental health care admission process. Human rights are violated by authorities that misuse their authority. There are still specific admissions and detention-related issues that need to be resolved.

It might be challenging to decide what is in the best interests of mentally ill people to admit them to a mental health facility. Only a threat to others or a paternalistic action can justify requiring admittance<sup>91</sup>. It is not easy to justify taking away someone's autonomy only for their benefit. Even though their sickness has eclipsed them, mentally ill patients' rights must be respected.

The next issue is the one related to the "protection of other persons". Professionals can help, but they might not always be given the freedom to do what they want. As persons with mental illness may find it challenging to stand out for themselves in these circumstances, it is crucial to balance rights and safety.

In a 2018 decision by the Delhi High Court<sup>92</sup>, the petitioner asked for a writ of habeas corpus to free his father, Mr. Ram Kumar @ Ram Kanwar, 71, from unjustified confinement at the Institute of Human Behaviour and Allied Sciences (IHBAS) Shahdara, Delhi. On November 25, 2017, the court ordered his father's immediate release after determining his incarceration was illegal and unconstitutional. Legal assistance was denied to him. The government was

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<sup>87</sup>Id., at Sec.89

<sup>88</sup>Id., at Sec.90

<sup>89</sup>Deepa Padmanaban, Committed Without Consent: The War against India's Mentally Ill, 12 Nov.2020, <https://article-14.com/post/committed-without-consent-the-war-against-india-s-mentally-ill>

<sup>90</sup>Supra n.21

<sup>91</sup>Mason & McCall Smith, Law & Medical Ethics, 394 (1991)

<sup>92</sup>Ravinder v. Govt. of NCT of Delhi & Others CDJ 2018 DHC 375

Compelled to provide compensation, demanding an assessment of Delhi's mental health facilities. Also suggested were orientation programmes on laws relating to mental health.

### Suggestions

- Provide online access to psychiatrists in remote places to prevent hospital admissions and early mental disorder detection<sup>93</sup>.
- Take the necessary precautions to avoid unreviewed unilateral admission and detention in mental health care facilities.
- There needs to be more trained personnel in India's mental health sector.
- Avoid prolonged mental health institution stays and seek abandoned individuals' families and homes to prevent overcrowding.
- Government should prioritize patient-friendly institutional environments and provide local languages and easy-to-read medical forms, especially consent forms.
- Ensure that mental health professionals, caregivers or family members cannot invalidate advance directives.
- Establish an independent grievance redressal mechanism for investigating and redressing complaints of ill-treatment in such institutions.
- National/State Human Rights, Women's, and Child's Rights Commission scan independently monitor the situations at mental health institutions <sup>3</sup>to ensure the rights of mentally ill persons.

Without exception, everyone has <sup>3</sup>the right to access mental healthcare services. The 2017 Act<sup>94</sup> specifies rules for admission and detention, guaranteeing respect and autonomy. Only authorised people may enter; a medical officer must examine them quickly. A <sup>3</sup>mental health review board must <sup>34</sup>approve detention when there is a danger of harm, and the subject must receive legal assistance. Article 21 of the Indian Constitution provides the right to life and personal freedom, including fair procedures to protect the rights of these less fortunate people.

<sup>93</sup>The National Health Policy, 2017, Available at [https://www.nhp.gov.in/nhpfiles/national\\_health\\_policy\\_2017.pdf](https://www.nhp.gov.in/nhpfiles/national_health_policy_2017.pdf) (Last visited on April 26, 2023)

<sup>94</sup>Supra n. 21



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