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RESEARCH ARTICLE

GENDER DISPARITIES IN THE TREATMENT AND CARE OF MENTALLY ILL WOMEN-A LEGAL PERSPECTIVE

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Abstract

The Indian Constitution guarantees all fundamental rights to mentally ill people. Gender is a significant factor; when a woman develops a mental illness, the necessary assistance is sometimes tardily sought. Although laws exist to safeguard the rights of mentally ill women receiving institutionalised care in India, execution is still a pipe dream. Women who are institutionalised with mental illnesses might experience change in their life and see improvements in their mental health with coordinated efforts at the social, political, economic, and legal levels. This research focuses on the issues mentally ill women encounter when receiving treatment and care within a Mental Health Care Centre.

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Introduction:-

The poorest in the world are people with disabilities, and most are women. World Health Organization and the World Psychiatric Association have recognised the problems of mentally ill people as an essential public health and human rights problem. Mental illness is often considered untreatable, and mentally ill individuals are more or less generally labelled as dangerous¹. Treatment for mental illness in India is often in the hands of superstitions.

The world is awash with violations of women's human rights. There is a greater burden on women with mental illnesses. In general, the condition of mentally ill women in India is much more pathetic and complicated than that of mentally ill men. Studies from India show that stress in women is exacerbated by poverty and hardship, which are also independently linked to mental problems in women².

First, being the rights of every human being, women's rights are rooted in the 1948 Universal Declaration of Human Rights (UDHR), to which India is a signatory.³ The most important human rights instrument pertaining to women's rights is this convention, which is primarily concerned with giving women the same position as men in terms of

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¹ World Health Ministers, World Health Organization Geneva p.18 (accessed on 22/03/2020 at 15.00 hours) https://www.who.int/mental_health/advocacy/en/Call_for_Action_MoH_Intro.pdf

² Patel V et al., *Risk Factors for Common Mental Disorders in Women. Population-Based Longitudinal Study*, 189 British Journal of Psychiatry. 2006 Dec;189. doi: 10.1192/bjp.bp.106.022558. PMID: 17139040.(accessed on Jan 26 2023 08.50 pm) 547-55 (2006).

³ Universal Declaration of Human Rights 1948 (UDHR), United Nations, 2015. https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.(accessed on Jan 26 2023 09.05 pm)

human rights. The CEDAW Convention⁴ and the Declaration on the Elimination of Violence Against Women⁵ are only a couple of the international agreements India has accepted that expressly forbid discrimination against women. The Fourth World Conference on Women⁶, held at Beijing in 1995, reaffirmed that women's rights are human rights. Additionally, India's legal framework⁷ in this regard ensures that women with mental illness receive treatment, are protected from human rights breaches, and have equal access to opportunities.

Gender Disparities Towards Mentally Ill Women

Constitutional guarantees and the Rights of Persons with Disabilities Act 2016 mandate that women and children with disabilities are also entitled to enjoy all human rights, with the support of the state for the livelihood, childcare, sexual and reproductive health care, land, housing and the like.⁸

Society is a factor that plays a crucial role in mental health care. Their mental health, social status, and even treatment are affected based on social conditions and economic factors. The gender roles that society assigns to individuals often point to an imbalance of power between men and women in society. Some pressures provided by society expose women more to specific mental health risks.⁹ This article discusses the gender-specific issues on the mental health of mentally ill women.

⁴ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979, United Nations General Assembly, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.(accessed on Jan 26 2023 09.20 pm)

⁵ Vienna Declaration on the Elimination of Violence against Women, 20 December 1993, General Assembly resolution 48/104, Article 1-6, by the World Conference on Human Rights, which called for the elimination of violence against women in public and private life <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>
#:~:text=For%20the%20purposes%20of%20this,of%20liberty%2C%20whether%20occurring%20in,.(accessed on Jan 26 2023 09.28 pm)

⁶ Fourth World Conference on Women Beijing, China - September 1995 Action for Equality, Development and Peace, UN WOMEN, <https://www.un.org/womenwatch/daw/beijing/>

⁷ https://www.ijpn.in/temp/IndianJPsyNsg5147-5819534_160955.pdf, In India, the legal framework against gender disparities in the treatment and care of mentally ill women during hospitalization includes several laws and regulations. The following are some of the key provisions that protect women's rights in mental health care:

The Mental Healthcare Act, 2017: This law mandates that all patients have the right to access mental health care services without discrimination, and that mental health care providers must respect the patient's privacy and dignity. The act also establishes a Mental Health Review Commission to oversee the implementation of mental health care laws.

The Protection of Women from Domestic Violence Act, 2005: This law provides protection to women who are victims of domestic violence, including mental abuse. It includes provisions for restraining orders, residence orders, and monetary relief.

The Indian Penal Code, 1860: This code includes several provisions that protect women from abuse and discrimination, including sections on rape, sexual harassment, and cruelty to women.

The National Mental Health Policy, 2014: This policy recognizes the specific needs of women in mental health care and calls for the development of gender-sensitive mental health services.

The Medical Council of India's Code of Ethics Regulations, 2002: This code of ethics requires that all medical practitioners respect the dignity of their patients and provide care without discrimination based on gender or any other factor.

In addition to these laws and regulations, India also has several government initiatives and programs aimed at improving mental health care for women, such as the National Mental Health Programme and the National Rural Health Mission. However, despite these legal protections and initiatives, gender disparities in mental health care remain a significant issue in India, and more needs to be done to ensure that women receive equal and appropriate care.

⁸ National CRPD Coalition-India, towards Parallel report, 2019, CRPD Alternate Report for India, Submitted to the Committee on the Rights of Persons with Disabilities, 11th February, 2019
<http://accessability.co.in/wp-content/uploads/2019/02/CRPD-Alternate-Report-for-India-1.pdf>

⁹ MINISTERIAL ROUND TABLES 2001, 54TH WORLD HEALTH ASSEMBLY, 'MENTAL HEALTH A Call for Action' by World Health Ministers, World Health Organization Geneva p.20 (accessed on 22/03/2020 at 15.00 hours) https://www.who.int/mental_health/advocacy/en/Call_for_Action_MoH_Intro.pdf

Economic and social policies that cause uncontrollable or unavoidable but rapid, severe and devastating changes significantly increase the prevalence of inequality between men and women and the majority of common mental disorders.¹⁰

It is a fact that throughout world culture, male virtues are considered one step ahead and valued higher than female virtues. Gender differences have been found to play an essential role in the prevalence of common mental disorders like depression, anxiety etc. These mental diseases, prevalent in women, represent the most common diagnoses in the primary health care system and cause serious public health problems. Women are twice more likely to suffer from depression than men in most societies and social contexts, making it the second leading cause of global disability burden.¹¹ Beginning with puberty and into young adulthood, the incidence of depressive disorders rises sharply in females compared to males.¹²

Gender plays a vital role in treating and managing mentally ill women in a country like India, and gender is one of the causes of certain mental illnesses in India. The routine of women's lives in India makes them experience more stress than men. Women are often burdened with several responsibilities that are beyond their capacity at times. Indian women are forced to take up the roles of wife, mother, grandmother and caretaker even if they are not physically and mentally mature to do all these roles. Sometimes, in addition to the roles mentioned above, some women even have to be the sole breadwinner of the family. Women experience and react to stress quite differently than men. Women often have a tendency towards exaggerated feelings of inadequacy and self-blame. They condemn themselves for all that goes wrong in their lives and in the lives of their family members too. It is the expectation of society which produces such tendencies. All other societal institutions also reinforce this.¹³ All this leads her to doom.

Excessive alcohol use by a partner increases the risk for common mental disorders among female partners¹⁴. In a household survey¹⁵ of rural, urban non-slum and urban slum areas from seven sites in India, women surveyed, 40% reported poor mental health.

The mental health issues faced by gender violence victims who usually do not seek psychiatric help constitute a significant cause of concern in the mental health system. Unfortunately, women who are victims of sexual abuse are often viewed as sexually promiscuous and lustful. Like any other system around the world, controlled by a male-dominated healthcare system, India also seems to be less responsive to the mentally ill women victims of gender violence. When a woman seeks medical attention for physical injuries or pain, she should be treated symptomatically over a while. Instead of investigating the possibility of domestic violence, she would be regarded as a "problem patient" in our country.¹⁶ A study conducted in Orissa by Human Development Unit, South Asia Region¹⁷, revealed that women with psycho-social handicaps are reluctant to approach mental health providers and mental health services because of their ignorance and bad experiences in the past.

¹⁰Id. at p.21

¹¹Supra n.1

¹² Tara A. Le Gates et al., *Sex Differences in Antidepressant Efficacy*, 44 *Neuro psychopharmacology* 140–154 (2019).; <https://doi.org/10.1038/s41386-018-0156-z> (accessed on 06/04/2020 11.05 am)

¹³Mathew S, *Gender Issues in Psychosocial Rehabilitation*, 32(1) *Indian Journal of Social Psychiatry* 63 (2016). <http://www.indjsp.org> on Monday, February 3, 2020, IP: 137.97.84.0]

¹⁴ Nayak M B et al., *Partner Alcohol Use, Violence and Women's Mental Health: Population-Based Survey in India*, *The British Journal of Psychiatry: the Journal of Mental Science*, 196(3), 192–199. (2010).

¹⁵ Shuba Kumar et al., *Domestic violence and its mental health correlates in Indian women*, 187 *The British Journal of Psychiatry*, 62–67 (2005) Published online by Cambridge University Press: 02 January 2018.

¹⁶ Shai Venkatraman, *Dumped, Abandoned, Abused: Women in India's Mental Health Institutions, Women's Health*, Inter Press Service (IPS), News Agency, Mumbai, Jan 30 2015 (accessed on Tuesday, April 7, 2020 at 10.00 pm) <http://www.ipsnews.net/2015/01/dumped-abandoned-abused-women-in-indias-mental-health-institutions/>

¹⁷Human Development Unit, South Asia Region, The World Bank, "People with Disabilities in India: From Commitments to Outcomes," July 2009, <http://documents.worldbank.org/curated/en/577801468259486686/pdf/502090WP0Peopl1Box0342042B01PUBLIC1.pdf>-(accessed on 23/03/2020 at 22.40 pm)

In over 25 cases¹⁸, the human rights group Human Rights Watch documented families abandoning or shrouding women suffering from mental illness, despite the legal framework existing in India to protect the interest of mentally ill persons. Everyone, including those with higher education levels and those working in the medical sector, has a stigma against mental illness.¹⁹

Treatment and Care During Hospitalisation

Now, coming to the area of women, those who have got the opportunity to receive treatment and care under India's mental health care system, we can see that their condition is deplorable compared to that of men. Mentally ill or intellectually disabled women are usually placed in three types of homes or institutions for care, shelter, or protection:

1. Mental health Care Centers;
2. Government or NGO-run residential care facilities; and
3. Short-term rehabilitation facilities.

In these facilities, stigmatising and discriminating against women with mental problems is widespread. For gender-related reasons, women are institutionalised quite frequently. Since the likelihood of sexual abuse at home is higher for mentally ill women and girls than for men, the families of these women support the institutionalisation. Moreover, in many instances, they never come out of such institutions. The Human Rights Watch report reveals such incidents.²⁰ Women with mental or psychological disability have been admitted to such institutions without their consent. In a 2012 study²¹, Rashida Manjoo, the UN special rapporteur on violence against women, denounced forced institutionalisation as a form of violence against women with disabilities.

In 1988 Shukri, son of the deceased woman in Yervada Mental Hospital, petitioned the Bombay High Court in a writ.²² alleging that the staff of Yeravada Mental Hospital had committed a severe lapse in their duties and did not

¹⁸“Treated Worse than Animals” Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India, <https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual>(accessed march 24,2022,09.50 am) December 3, 2014

¹⁹ Human Rights Watch documented over 25 cases where families hid or abandoned female members with psychosocial or intellectual disabilities. A mother of a 32-year-old woman with an intellectual disability told Human Rights Watch how she has not told her extended family about her daughter's disability, “In our family, no one knows about her.” In one extreme case, the mother of a woman with schizophrenia even published a notice in a newspaper stating she had cut off all ties with her daughter in order to avoid taking custody of her daughter whom she left in an institution “.

¹⁹ Supra n.18,(accessed on March 29,2022,10.12 am), For example, one psychiatric nurse with nine years' experience working in a mental hospital in Pune told Human Rights Watch: My job here makes my family tense; they worry about me. If I talk too loudly or I crack a joke that my family doesn't understand, they look at each other and say I have lost my mind working at a mental hospital. Even the bus driver looks at me strangely when I ask him to drop me off at the hospital every morning.

²⁰Supra n.18(accessed on 29th march 10.44 am), ‘Staff at a night shelter in Kolkata city said families often prefer to leave their daughters with psychosocial or intellectual disabilities in the custody of an institution where they feel they are safe, out of fear that women with such disabilities may become easy targets for sexual violence if at home Asha, a woman living with schizophrenia, told Human Rights Watch how she was first admitted to a mental hospital in 1981 when she was 18 years old: “Neighbourhood people told my brother: ‘She's young, wrong things will happen, so admit her in an institution.’”

Human Rights Watch also found that, in some cases where girls or women with psychosocial or intellectual disabilities had sexual relationships out of wedlock, eloped, or were raped, their families chose to institutionalize the girl or woman for fear of shame and dishonour. For example, a social worker recounted the case of an 18-year-old woman living with a psychosocial disability, who was admitted to a mental hospital by her parents and brother “because of her behaviour.” She had run away from home two or three times, and eventually stayed with a male friend for a month. After she was found, her family refused to take her home for fear of shame and instead admitted her to a state-run mental hospital.

²¹ UN Commission on Human Rights, Report of the Special Rapporteur on Violence against Women, Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences, A/67/227, August 3, 2012, <http://www.ohchr.org/Documents/Issues/Women/A.67.227.pdf> (accessed April 1, 2020), para. 38.

²²Petition (No. 7560) in Bombay High Court in 1988.

pay attention to patients, resulting in his mother's death due to dehydration. Relatives feared raising a voice against staff, fearing worse treatment towards their relatives. High Court appointed Mahajan Committee to look into the affairs at the Hospital. The Committee submitted its report on eight specific aspects of the Hospital on August 5, 1989²³.

Although the Indian Lunacy Act²⁴ and the Mental Health Act²⁵, were passed, they have not been able to make a substantial impact, specifically on the care of mentally ill women. Provisions of the Mental Health Care Act 2017²⁶ significantly contribute to defending and respecting the human rights of mentally ill women during hospitalisation.

The rights of mentally ill women are specified separately in the Act.²⁷ The Act allows people suffering from mental illnesses to declare how they can (or cannot) be treated while suffering from mental illness²⁸. The Advance Directive would be used only if the person lost the ability to make decisions about their own mental health care. Furthermore, the Act allows mentally ill people to appoint someone to make treatment decisions for patients when they cannot do so due to their mental illness.²⁹

Role of Relatives

The Act³⁰ enhances the involvement of relatives and caregivers. Patients can decide on nominated representatives (NR) to act on their behalf. A statement can be sufficient to qualify for a nomination. There is no reliable way to determine whether the nomination was made voluntarily or if the patient can make it unless it is part of an Advance Directive. In a country like India, crooked relatives can misuse these legal provisions to easily dump a lady behind the walls of mental health establishment even though she is not mentally ill.

The Medical Officer may apply to remove the legal guardian as the nominated representative of a minor³¹. The legislation does not provide for removing a validly nominated representative appointed by an adult patient. The Mental Health Review Board may remove a nominated representative appointed by it³². All facets of the mentally ill patient's care are open to participation by the Nominated Representative, including that of female patients. Participation in such schemes by the relatives to lock the lady up in a mental health care institution would not be advantageous for women.

The term 'relative' has also been given a broad meaning, including any person related to the mentally ill by blood, marriage, or adoption.³³ This clause in the new Act also contains provisions similar to the Indian Lunacy Act 1912³⁴ and The Mental Health Act, 1987³⁵.

²³ Archives: 1999: The Mahajan Committee Report', April 24, 2012 CAMH News and Resources

<https://camhjournal.wordpress.com/2012/04/24/1999-the-mahajan-committee-report/>

The committee submitted its report on eight specific aspects; (a) environment, (b) patient, (c) a staff for the care of the patient, (d) method of treatment (e) condition at the hospital, (f) internal control, (g) orientation and (h) arrangement of specialized treatment. According to the report environment of the hospital was very poor. Building was in depletive condition. Bathroom and lavatories were neither clean nor provided with water. The patients made to do menial work and were also subjected to cruelty. Medical officers were not available in the duty room and no proper duty record of the staff was maintained. Serious and normal patients were treated together and only treatment was given to them was shock therapy (ECT) i.e. Electro Convulsive Therapy.

²⁴ Indian Lunacy Act 1912, Act No IV of 1912.

²⁵ Mental Health Act 1987, No. 14, Acts of Parliament, 1987 (India).

²⁶ Mental Health Care Act, 2017, Sec.18 -28, Chapter V, No.10, Acts of Parliament, 2017 (India).

²⁷ Mental Health Care Act, 2017, Sec.21(h) ,No.10, Acts of Parliament, 2017 (India), " to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;"

²⁸ Mental Health Care Act, 2017, Chapter III, Secs.5-13, No.10, Acts of Parliament, 2017 (India).

²⁹ Mental Health Care Act, 2017, Chapter IV, Secs.14-17, No.10, Acts of Parliament, 2017 (India).

³⁰ Supra n.29

³¹ Id., at Sec.15(2)

³² Id., at Sec.16

³³ . Mental Health Care Act 2017, Sec.2 (za), No.10, Acts of Parliament, 2017 (India).

In general, it is not documented anywhere in our mental health facilities that a woman or a girl was told of her right to appeal or given the chance or support to do so. According to the Indian Constitution³⁶, she has the fundamental right to seek free legal representation. Under the 1987 Act³⁷, confined mentally ill women have sixty days to file an appeal to the District Court against any such order imposed by a magistrate. Women who are placed in institutions by court order at the request of the police are frequently viewed as being unable to make decisions and do not receive free legal representation. Many mental health facilities forbid women from even seeing a lawyer.

Human Rights Watch report³⁸ published in 2014 highlighted the plight of women inmates of our mental health care centres in India with mental illness. This report also reveals that mental hospitals and other healthcare facilities all over India practise arbitrary detention and involuntary admission. In mental hospitals, women inmates experience forced treatment, overcrowding, filthy living conditions, a lack of access to healthcare, and physical, verbal, and sexual abuse. UNCRPD provisions³⁹ states that arbitrary or illegal detention is forbidden. This is not a valid defence for taking away someone's freedom because they have a disability. The law in India is based on the premise that mentally ill people can be detained by relatives only if necessary, and that mentally ill people who do not need detention will soon be taken back by relatives from mental health facilities. But many cases show that relatives are abusing this provision⁴⁰.

This issue remains controversial, as no effective check is available in India to stop the malpractices of the 'relatives'. Still, the lawmakers give extreme reliance on the relatives even in the new Mental Health Care Act, 2017⁴¹.

As a result of the Human Rights Watch Report⁴², the problem was recognised, and it was addressed in the 2016 report under the auspices of the National Institute of Mental Health and Neuro Sciences, Bangalore and National

³⁴ Indian Lunacy Act 1912, Sec. 3(11) "relative" includes any person related by blood, marriage or adoption. Act No IV of 1912

³⁵ Mental Health Act 1987, Sec. 2 (t) "relative" includes any person related to the mentally ill person by blood, marriage or adoption, No. 14, Acts of Parliament, 1987 (India).

³⁶ INDIA CONST. art. 39A, 21.

³⁷ Mental Health Act 1987, Sec. 49, No. 14, Acts of Parliament, 1987 (India).

³⁸ "Treated Worse than Animals" Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India, Human Rights Watch Report, December 3, 2014.

<https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual> (accessed march 22, 2022, 09.00 am)

These mental health facilities and residential care facilities openly disclosed to Human Rights Watch that women and girls with mental illness are often forced to take medicines and force-fed food and drinks laced with medicines, often without their knowledge.

³⁹ The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly on 13 December 2006, Article 14

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-14-liberty-and-security-of-person.html>

Article 14 – Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

a) Enjoy the right to liberty and security of person;

b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

⁴⁰ Bipin Chandra Shantilal Bhatt v. Madhuriben Bhatt AIR 1963 Guj.250, Meena eshpandey v. Prakash Deshpandey AIR 1983 Bombay. 407, Dr. Sangamitra Acharya & Another v. State (NCT of Delhi) & Others, CDJ 2018 DHC 319.

⁴¹ Supra n.29

⁴² Supra n.38

Commission for Women.⁴³ The NCW and NIMHANS team visited ten government mental hospitals to assess the treatment and care given to women with mental illnesses. The report highlighted the vulnerability of women with mental illnesses and made recommendations to improve the current situation. It highlighted the need for better care for women with mental illnesses.

In a case filed before Delhi High Court⁴⁴, such an unfortunate incident was presented before the court, which revealed a gross human rights violation towards a girl who attained majority but was not ready to obey her parents. A writ petition was filed under Article 226 of the Constitution to release a girl from her parents' detention, which violated her right to life, liberty, dignity, right to privacy, and autonomy.

In 2014, Z's parents asserted their daughter had a severe mental disorder and filed a criminal complaint citing Section 25 of the Mental Health Act, 1987. The said complaint filed by her parents came to be dismissed by the Metropolitan Magistrate on 29th April 2015 as there was no merit. After two years, Z's parents were forcibly taken her from her music teacher's residence, assisted by the local police and ambulance service at around 5 pm on 11th June 2017. She was taken to a private mental health care centre and kept there without her consent till the morning of 13th June 2017, and as per the court order, she was released. The Delhi High Court ruled that the actions of the respondents violated the victim's fundamental rights to life, liberty and dignity. The procedure for involuntary admission under Section 19 of the 1987 Act is only applicable when a person is mentally ill and satisfaction has been reached to that end. To identify mental health issues, psychiatrists must speak with patients directly. Just talking on the phone with their colleagues won't be enough to satisfy Section 19 of the Mental Health Act of 1987.

The court rejected the plea of Z's parents that they acted in the best interests of their daughter. The court awarded compensation of Rs/-8 lakhs to Z as follows: Rs. Three lakhs by CIMBS ; Rs.one lakh each by Almas and the State, and Rs. three lakhs by her parents. The court added that Z's parents and brother were obliged to abide by the affidavit given in the Court that Z's peaceful life would not be intervened.

In *Mrs. MeeraNireshwalia v. State of Tamil Nadu*⁴⁵, the petitioner was involved in a Property dispute between herself and her husband. Later she was forcibly taken by the police officers to Kilpauk Mental Hospital, admitted to a general ward, and was forcibly given anaesthesia. When her son asked about his mother's release, he was informed that she could not be released without permission from the police. After ten days, she was discharged from the hospital with her son's effort. She filed a petition before the Magistrate Court against her illegal detention and filed a compensation suit. Respondents approached the High Court to quash the complaint. As her right to life and personal liberty had been curtailed by confinement, relied on the Rudul Shah decision⁴⁶, the court ordered to give her a compensation of Rs.50,000. It was held that to arrest a person under the Indian Lunacy Act, 1912, she should be dangerous because of lunacy, and such reason must be based on hard facts and objective conclusions. Under the Indian Lunacy Act, 1912, no Deputy Police Commissioner has the authority to make an order for detention, as it happened in this case, and also, a delegation of such powers is beyond his jurisdiction.

Concerned provisions under the new Mental Health Care Act 2017 stipulate that without an application from the nominated representative, a patient cannot be admitted to the hospital against their wish except in the case of independent patients⁴⁷. Making such a decision, i.e., to apply and be responsible for compulsory admission to the hospital against the patients' stated wish, opens opportunities for misuse even in the case of fair incidents, and this provision in the law gives options to the relatives to detain a lady in a mental health establishment. The role of family members has changed as enforcers of law rather than supporters and caregivers to patients. The Act provides that the medical officer or mental health professional in charge of the mental health establishment shall report to the

⁴³ Murthy P et al., *Addressing Concerns of Women Admitted to Mental Hospital in India: An in-Depth Analysis*, (2016), National Institute of Mental Health and Neuro Sciences, Bangalore and National Commission for Women, New Delhi, 2016.

http://ncw.nic.in/sites/default/files/Addressing_concerns_of_women_admitted_to_psychiatric_institutions_in_INDIA_An_in-depth_analysis.pdf (Accessed on April 26,2023)

⁴⁴ Dr.Sangamitra Acharya &Another v. State (NCT of Delhi) & Others, CDJ 2018 DHC 319

⁴⁵ [1991] Criminal Law Journal 2395 (Mad.)

⁴⁶ Rudul Shah v. State of Bihar, A.I.R. 1983 S.C. 1056

⁴⁷ Mental Health Care Act, 2017, Sec.89(1), No.10, Acts of Parliament, 2017 (India).

Board within three days of the admission of a woman or minor⁴⁸. Seven days can take to report the admission of another person, not being a woman or minor. This is a precaution to protect the right of women and children.

But the question is who will ensure that these conditions are appropriately enforced. The recent detention and torture of a BDS student from Malappuram at a psychiatric hospital near Idukki for one and a half months is a clear example of how the Mental Health Care Act 2017 can be abused. In a writ petition filed by her lover in the case, the Kerala High Court ordered an inquiry into whether even the state machinery had facilitated the unjust detention of the girl⁴⁹.

Experts, particularly highly qualified social workers who operate independently and may submit applications for mandatory admissions, carry out proxy decision-making in nations like the UK⁵⁰. In India a proxy psychiatric advance directive is what the Act's designation of a nominated representative resembles. By designating a designated representative in an advance directive⁵¹, the patient has the right to guarantee that his or her rights will be upheld and that the appropriate medical treatment will be provided. Thus indirectly, Mental Health Care Act of 2017 places a significant load on family members, particularly in the case of female patients, by refusing to take on these duties.

Violence -Physical, Sexual, and Verbal

Many restrictions have been placed on women with impairments under the pretence of preventing sexual abuse. Access to remedies for mentally ill women who experience sexual violence inside such institutions worldwide is hampered by the lack of reporting hurdles. Guidelines and Protocols 2014⁵² issued by the Ministry of Health and Family Welfare shows that mentally ill women face specific barriers in reporting cases of sexual abuse in India also.

In institutionalised settings, In addition to sexual abuse, women who are mentally ill frequently experience verbal and physical violence. Physical and verbal abuse is widespread in many mental health care facilities, and sexual assault goes unreported. In most cases, a victim's incompetence prevents them from revealing who the perpetrator is. Because they are labelled mentally ill, no one believes what the victim says, even if they disclose it appropriately.

Furthermore, male staff working night shifts on female wards increase the chances of sexual violence against mentally ill women. If sound minded male staff cannot control their sexual urges, why can we blame the sexual urge of mentally ill women who have no control over their minds and body. In some institutions, authorities worry about their male staff and not the mentally ill women patients.⁵³

In a 2010 Supreme Court decision⁵⁴, The Chandigarh Administration had approached the Punjab and Haryana High Court to terminate the pregnancy of a mentally retarded girl who had been raped by a security guard at Nari Niketan

⁴⁸ Mental Health Care Act, 2017, Sec. 89(9)(a), No.10, Acts of Parliament, 2017 (India).

⁴⁹ Express News Service, "High Court orders SIT investigation into girl's torture at mental health centre", The New Indian Express (Dec. 10, 2019), <https://www.newindianexpress.com/states/kerala/2019/dec/10/high-court-orders-sit-investigation-into-girls-torture-at-mental-health-centre-2073877.htm>.

⁵⁰ Mental Health Act 1983, Sec.13, No. 14, Acts of Parliament, 1987 (India).

⁵¹ Mental Health Care Act 2017, Sec.5, Mental Health Care Act, 2017, No.10, Acts of Parliament, 2017 (India).

⁵² Department of Health & Family Welfare, issued by the Ministry of Health and Family Welfare, Government of India, *Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence*, 2014. <https://main.mohfw.gov.in/reports/guidelines-and-protocols-medico-legal-care-survivors-victims-sexual-violence>

⁵³ Ashwaq Masoodi, *Sexual Rights of Disabled Women*, LIVE MINT (December 3, 2014), Available at <https://www.livemint.com/Politics/FDPpo4IJOpx037spUU1kL/Sexual-rights-of-disabled-women.html> (Last visited on April 26, 2023)

In 2012, a 30-year-old mentally challenged woman was molested by a cook in a government mental hospital in Kolkata. When the news spread and a first information report was filed, a group of women's rights activists approached the hospital's medical superintendent. His response was, "This girl used to run after all the male workers of this hospital. Mentally ill women usually cannot control their sexual urge. I am worried about my male staff."

⁵⁴ Suchita Srivastava and Another v. Chandigarh Administration, AIR 2010 SC 235

New Delhi. The High Court⁵⁵ issued directions for the effective functioning of such institutions, including a Medical Board to visit fortnightly the Nari Niketan, New Delhi, and periodic examinations to track any sexual or physical abuse. The Court directed the Chandigarh Administration to provide the best medical treatment to all inmates. When Supreme Court interfered in this matter, the Court further ordered the Chandigarh Administration not to employ male staff members if female inmates were in the institution. Respecting the woman's right to privacy, dignity, and bodily integrity includes allowing her to continue the pregnancy if she chooses to do so.

A petition⁵⁶ was filed in 2018 before the Uttarakhand High Court to draw attention to the plight of mentally ill children who are sexually abused and denied their legal and fundamental rights. There is sexual exploitation of mentally unstable children, especially females, at Mental Hospital, Selaqui, Vikasnagar. Due to their disability, these children cannot voice their complaints about being sexually or physically abused. To improve the circumstances of children with disabilities, the petitioner has requested that the State take corrective action.

The State Government was tasked with establishing the Centre for Human Rights, Ethics, Law and Mental Health, creating the State Authority and Mental Health Review Board, and formulating a comprehensive strategy for rehabilitating children and patients with mental disease. If an inmate is diagnosed with mental illness, they must be transported immediately to the nearest mental health facility. Without a proper government licence, no organisation or individual should be authorised to provide mental health services to the public.

The Human Rights Watch report⁵⁷ 2014 reveals that mentally ill women and children trying to escape from the institution are caught and severely beaten. The torture was carried out in front of other inmates so that other inmates could see it as a warning.

According to the founder of the NGO "Anjali"⁵⁸, "one in three women gets admitted into these facilities without justification. "The air and light are scarce. Women are herded together like animals"⁵⁹, unlike male patients, who are given considerable freedom within the facility. In many hospitals, women are not given undergarments or sanitary napkins. Sexual abuse occurs often. Such complaints are dismissed⁶⁰. as made by people who are "mad" because they happen outside of a public area and because there is a presumption that their claims lack credibility. Forced abortions and unintended pregnancies significantly impact their physical and mental health. They slumber for years within the confines of such institutions, neglected and uncared for. Similarly, the discharge rates for women appeared to be much lower. "One can't help but notice the stark contrast between the male and female wards," says the founder of Banyan⁶¹, an NGO. "You will find moms and wives visiting the male patients with food and fresh sets of clothes, but the women's wards are empty"⁶²."

In a 2015 High Court decision⁶³, The Himachal Pradesh High Court received a letter that raised concerns about the State Home for Destitute Women in Mashobra. The letter stated that no sweepers are available between 5 p.m. and 10

⁵⁵ Chandigarh Administration v. Unknown,(P& H.2009), In C.W.P. No. 8760 of 2009.Dated 7th July, 2009. <https://indiankanoon.org/doc/1067943/>

⁵⁶ Dr. Vijay Verma v. Union of India, (Uttarakhand High Court 2018), <https://indiankanoon.org/doc/80173720/>

⁵⁷ Supra n.38 (accessed on 07/04/2020 at 21.40)

⁵⁸ Ratnaboli Ray has been involved in mental health rights in West Bengal for nearly 20 years. She is the Founder of 'Anjali', Anjali is one of the leading non-governmental organizations in India, based in Kolkata, working to secure large-scale systemic changes in the mental health field by making mental health institutions, systems and communities intersectional and inclusive. <https://www.anjalimhro.org/about-us>

⁵⁹ Supra n.18

⁶⁰ Supra n.18

⁶¹ Vaishnavi Jaikumar, founder of The Banyan .It is an NGO that offers support services to the mentally ill in Chennai, capital of Tamil Nadu, <https://www.mhinnovation.net/organisations/banyan>

⁶² Human Rights Watch Report , "Invisible Victims of Sexual Violence" Access to Justice for Women and Girls with Disabilities in India, April 3,2018,. <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities#:~:text=Stigma%20and%20victim%20blaming%20against,in%20cases%20of%20sexual%20violence.>

⁶³ Court on its own motion Vs. State of Himachal Pradesh and others(2015 H.P), THE INDIAN LAW REPORTS HIMACHAL SERIES, 2015, JUNE, 2015 Vol. XLV (III) Pages: HC 878 TO 1427, Page 934 I L R 2015 (III) HP 1.

a.m. and no nurses to care for the mentally ill. Additionally, there is no boundary wall around the home, the aged inmates are not receiving an old age pension, and their families have not been informed. There are 30 women inmates in this home.

The Hon'ble High Court has issued directives to various Himachal Pradesh State Government agencies to provide mental healthcare and rehabilitation to those affected by mental illness. Instructions included increasing the rehabilitation grant for women with mental illness to Rs. 50,000/-, not admitting women with mental illness to Nari Niketan, and staffing all district hospitals with psychiatrists. Other measures included supplying the Himachal Pradesh Hospital for Mental Health and Rehabilitation patients with clothing and footwear four times a year. The police chiefs in the State have been instructed to comply with the law by presenting any person taken into protection and/or detained under Mental Health Act, 1987, Section 23, to a Magistrate within 24 hours.

Informed Consent

Informed consent is fundamental to medical ethics and international human rights law. In addition, forcing people to take medications without their consent or knowledge violates their rights⁶⁴. It is necessary to have a formal discussion between the doctor and the patient to obtain informed consent. The doctor should provide the patient or relative with all relevant information about the disease and treatment and the information specifically requested by the patient.

Informed consent must be voluntary and not affect the patient's autonomy. Make sure that there is no coercion, influence or force. Autonomy may be compromised in the case of institutionalised or detained patients unaware of their right to information from doctors or their right to refuse treatment. In general, the patient should be given sufficient information. What is 'sufficient information' is still in dispute⁶⁵. The World Health Organization (WHO) puts forward three general models for providing information; non-disclosure, full disclosure and individualised disclosure⁶⁶. The non-disclosure model gives false hope and denies the patient a chance to adapt to treatment. The full disclosure model is based on disclosing to patients all available information. The individualised disclosure model suggests that information should be tailored to patients' needs: how they will cope and the amount of information. Such a model may not provide complete information to the patient but will try to convey appropriate information to each individual. For this single reason, the individualised disclosure model is gaining more support.⁶⁷

In many institutions, mentally ill women and girls are forced to take drugs without consent. Since most such institutions are understaffed, the available staff adopts any means to complete the work on time. If it would not work, staff members forcibly add medicines to food and beverages such as bananas and tea, even without the knowledge of these patients. No one is even willing to listen to the complaints raised by the inmates against the medicines forcefully fed them.

⁶⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 7 & 17 (<https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>, at p.5 & 10 (accessed on april 2, 12.00pm)

International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 12; <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, at p.4 accessed on april 2, 12.00pm)

Beijing Declaration and Platform for Action, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995), art. 108(e); (accessed on April 2, 12.00pm)

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.177_20.pdf, at p.44

⁶⁵ Kalidas D Chavan & Rajendra S Bangal, *Informed Consent in Medical practice Principles and Conventions* page 12 (2019), Jaypee Brothers medical publishers (P) Ltd., New Delhi, 1st Edition, 2019, ISBN 978-93-5270-993-9.

⁶⁶ World Health Organization, Geneva, *Communicating Bad News*, Division of Mental Health . (1993). https://apps.who.int/iris/bitstream/handle/10665/58216/WHO_MNH_PSF_93.2.B.pdf (accessed on 06/04/2020 at 12.00 pm)

⁶⁷ Rajkumar A P et al., "Voices of people who have received ECT." *Indian Journal of Medical Ethics* 4(4), 157-164. (2007) <https://doi.org/10.20529/IJME.2007.064>

ECT as Treatment

Electroconvulsive therapy (ECT) is a safe and effective treatment method for people with severe depression and some other mental illnesses. Advances in Electroconvulsive therapy delivery, including anaesthesia and muscle relaxation during the brief treatment procedure, and carefully adjusted dosing schedules, ensure that treatment is well tolerated.⁶⁸

In the case of *SP Sathe v. State of Maharashtra*⁶⁹ the Bombay High Court regulated the administration of Electroconvulsive therapy (ECT) for the mentally ill persons after assessing the situation prevailing at the Institute of Psychiatry and Human Behaviour (IPBH) in Panaji, Goa. The court was informed that the patient in IPBH was given Electroconvulsive therapy without anaesthesia. This can lead to general discomfort, bone fractures and dislocations. In addition, IPBH did not obtain informed consent from patients before treatment.

In 2007, a study⁷⁰ was conducted by the department of psychiatry, Christian Medical College, Vellore. The study included 54 patients and their relatives. A total of 104 people were interviewed in person. This study revealed the true story of stakeholders of ECT. Even after completing the ECT treatment, more than half of the patients were not aware of their therapy.

All consent forms for ECT are signed by relatives and some by patients. Even the patients who signed the consent form could not remember the details of the consent process. Some patients succumbed to the threat and were forced to undergo ECT. The patients were surprised when they were asked to give suggestions on improving the treatment procedures by the surveyors. Patients commented that at least minimal information related to ECT should have been provided. Most women complained that their treatment was based on decisions made by their male relatives.⁷¹

A survey published in 2017⁷² showed that the number of ECT sessions required for a response from patients depends on the patient's condition and that there is no gender difference in treatment. This may be true because there is no difference between the use of ECT in the body of women and men and the reactions of the body in women and men. But the stark reality is that women were also forced to undergo this treatment without their consent or knowledge.

Human Rights Watch⁷³ addressed the case of 20 women and 11 girls between the ages of 14 and 17 who were treated with ECT at four psychiatric facilities at the time. The report found 31 incidents of electroconvulsive therapy administered "without consent." In many cases, the consent form is signed by the family members instead of the patient's consent⁷⁴. The two hospitals that Human Rights Watch visited did not even have a column for the patient's signature; instead, just a column for the signature of one guardian was permitted⁷⁵. The Report narrates some real examples also. Even now, ECT is employed to intimidate mentally ill patients into taking their prescribed medications or force them to comply with staff instructions. The UN's special rapporteur on torture has urged all nations to outlaw non-consensual medical interventions, including electroshock therapy and forced medication.⁷⁶

⁶⁸Electroconvulsive Therapy: ECT Minimum Standard of Practice in NSW, Policy Directive, 18 January 2011 www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2011_003.pdf.

⁶⁹Writ Petition No.1537 of 1984, Bombay H.C delivered on October 14, 1998(CEHAT)

⁷⁰Supra n.38

⁷¹Supra n.38

⁷²Manohar,H et al., *Does Gender Influence Electroconvulsive Therapy Sessions Required across Psychiatric Diagnoses? A 5-Year Experience from a Single Center*. Journal of Neurosciences in Rural Practice, 08(03), 427–430. (2017, July). https://doi.org/10.4103/jnrp.jnrp_482_16. (accessed on 06/04/2020 at 10.10 am) <https://pubmed.ncbi.nlm.nih.gov/28694625/>

⁷³Supra n. 38(accessed on 07/04/2020 at 14.00pm)

⁷⁴Nida Najar, *Group Cites Grim State of India's Mentally Ill*,The Newyork Times,Asia Pacific,Dec.3,2014(accessed on 07/04/2020 at 17.00)

<https://www.nytimes.com/2014/12/04/world/asia/india-mental-health-facilities-human-rights-watch.html>

⁷⁵.Supra n.38

⁷⁶Supra n.38 “Sara, a 25-year-old woman with schizophrenia, remembered with a shudder what happened to her:“Nobody told me what was happening...They took me to another room; I didn’t want to go but they still made me. There they gave me a nasha injection [anaesthesia] and suddenly my stomach lurched. I felt like vomiting but I didn’t”

Sterilisation as a Treatment

It is always a hot potato in the eyes of caregivers and the government regarding the sexual maturity of mentally ill women and their desire for sexual activity. Issues like menstrual hygiene, sexual abuse, pregnancy and raising of offspring are confusing questions. An effortless answer to the question is the sterilisation or hysterectomy.

United Nations Universal Declaration of Human Rights affirms that 'no one shall be subjected to torture, cruel or degrading treatment or punishment'⁷⁷ and that 'men and women of full age have the right to get married and to have a family'⁷⁸. These articles of the Universal Declaration of Human Rights are being violated when mentally ill women and girls are either unable to consent to sterilisation or undergo voluntary sterilisation. Despite numerous changes in various mental health laws over time, issues related to the treatment of women with mental illness remain to a great extent, unchanged.

The only incident that caught the attention of the authorities years ago was the removal of the uterus of sixteen mentally ill women in February 1994 at a government-run asylum in Pune.⁷⁹ The uterus was removed after obtaining parental consent for the woman. Institutional managers and doctors asserted that hysterectomy was necessary to promote hygiene and protect women from unwanted pregnancies.

The incident was reported by the media and sparked nationwide protests. Human rights activists have denounced the hysterectomy in the government-run institution as 'fascist'. Human rights activists argued that sterilization increases the risk of sexual exploitation of women and violates the fundamental right protected by Article 21⁸⁰ of the Indian Constitution. The National Commission for Women referred the matter to the Medical Council of India (MCI) for its opinion. The Medical Council of India (MCI) held that hysterectomy should not be seen as a measure of maintaining hygiene. The hospital authorities have adopted an immoral and inappropriate way to deal with this problem.

Whether or not sterilization is a treatment is an important question. The 2014 report by Human Rights Watch⁸¹ accurately describes the situation in India. According to this report, we can see that mentally ill women experience violence, including involuntary sterilisation.

Conclusion and Suggestions:-

Due to their gender alone, women who suffer from mental illness are frequently the targets of abuse. The rights of those with mental illnesses, particularly women, are frequently curtailed and infringed, disregarding India's international obligations under the Convention.⁸² It is the right of mentally ill women in India to access all the opportunities available to the general public. The Indian courts have consistently upheld the human rights of people with mental illnesses. In terms of financial difficulties, the government offers only minimal assistance.

⁷⁷ United Nations Universal Declaration of Human Rights, Article 5, <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%205,or%20degrading%20treatment%20or%20punishment.>, (accessed on 22/05/2022 at 09.30 pm)

⁷⁸ United Nations Universal Declaration of Human Rights, Article 16, <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%205,or%20degrading%20treatment%20or%20punishment.>, (accessed on 22/05/2022 at 09.36 pm)

⁷⁹ Amita Dhanda, "Minority and Mental Health: Problematic of an Unproblematic Approach", 36 J.I.L.I. 503 (1994)

⁸⁰ 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://indiankanon.org/doc/1199182/> (accessed on 22/05/2022 at 09.56 pm)

⁸¹ Human Rights Watch "World Report 2014: India" Events of 2013, page 6, "Even as India places a reform process to implement disability laws and mental health laws, activists remain concerned that these laws are not in tune with the Convention on the Rights of Persons with Disabilities, which India has ratified in 2007. Instances of violence against women and girls with mental or intellectual disabilities including voluntary confinement, physical and sexual abuse, inhumane or degrading treatment, and excessive electroshock therapy remained particularly high in state-run and private residential care facilities. Inside the family and society, they experience violence, including involuntary sterilisation".

<https://www.hrw.org/world-report/2014/country-chapters/india> (accessed on 21/03/2020 at 12.00 pm)

⁸² Convention on the Rights of Persons with Disabilities 2006(CRPD), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Even after enacting the new Mental Health Care Act-2017, government-run institutions for mentally ill women, private psychiatric hospitals, and residential care institutions often function under inadequate supervision. State Mental Health Authorities and Mental Health Review Boards can play a significant role in protecting institutionalised mentally ill women.

Independent bodies like the National/state Human Rights Commission, National/state commission for women, and National/State Commission for Protection of Child Rights can watch residential care institutions and community-based services like the District Mental Health Programme. Such measures by the authorities will help to ensure the quality of care received by the inmates and obtain the informed consent of the mentally ill women and children.

Suggestions:-

1. Under the Mental Health Care Act 2017, the Government could take steps to expand proper and reachable voluntary community-based mental health and support services to prevent and address violence against women and girls with mental illness in institutions. Prepare a complete plan exclusively for mentally ill women and girls to voluntarily switch to community-based services.
2. It is imperative that the situation in all mental hospitals and residential care institutions, including the private sector, be improved immediately to ensure the human rights of the mentally ill.
3. Efforts should be made to ensure hygiene, improve living conditions, completely prohibit all forms of involuntary treatment, including electroconvulsive therapy, without the free and informed consent of the individual.
4. Take appropriate measures to prevent unilateral detention without review.
5. With the help of the provisions of the 2017 Act, women with mental illness in a mental health institution should be guaranteed privacy and dignity.
6. In India, the number of trained women staff should be increased to work in the mental health field.
7. To avoid hospitalisation and early detection of mental illness, provide frequent online access to psychiatrists in remote areas⁸³.
8. Once every six months, gender-sensitive training on specific needs and healthcare for women with mental illness should be given to healthcare professionals, law enforcement, the courts, educators, and government officials.
9. Legislators should never forget to answer the "woman question"⁸⁴ while developing or improving mental healthcare measures.
10. It should be standard practice to undertake inspections similar to the one NCW and NIMHANS undertook to produce their 2016 Report once every three years⁸⁵.
11. Establishing sexual harassment Internal committees in all mental health facilities.
12. Keeping patients in mental health institutions for an extended period should be avoided. Every attempt has to be made to find the family and home of abandoned women with mental illnesses.
13. Institutional abuse and violence of any type should be handled with zero tolerance, and mental healthcare institutions must be designed to reach out to women with disabilities. This calls on the police and other authorities to adopt a proactive, attentive stance.⁸⁶
14. The Government should take prompt steps to make the institutional environment more patient-friendly and make medical forms, especially consent forms, available in local languages and easy-to-read formats.

⁸³ The National Health Policy, 2017, Available at https://www.nhp.gov.in/nhpfiles/national_health_policy_2017.pdf (Last visited on April 26, 2023)

⁸⁴ Katharine T. Bartlett, *Feminist Legal Methods*, Harvard Law Review, Feb., 1990, Vol. 103, No. 4 (Feb., 1990), pp. 829-888, 831, Published by: The Harvard Law Review Association, <https://www.jstor.org/stable/1341478>

Woman question -A term used during the Victorian era to describe how women's responsibilities would evolve due to societal development and their increasing political influence. In the 1860s, British lawmakers introduced reform legislation to address the question. *Women Questions* can be defined as questions "designed to identify the gender implications of rules and practices which might otherwise appear to be neutral and objective," and would include questions like, "have the women been left out of consideration? If so, in what way; how might that omission be corrected? What difference would it make to do so?"

⁸⁵ Mental Health Care Act, 2017, Sec.67(1) No.10, Acts of Parliament, 2017 (India).

⁸⁶ Report of the High Level Committee on the Status of Women in India, Government of India, Ministry of Women and Child Development New Delhi June, 2015, <https://wcd.nic.in/sites/default/files/Vol%20I.compressed.pdf>

15. Ensure the Mental Health Authority has enough resources and personnel. Then authority can successfully oversee the system, including community mental health services and district mental health programmes.
16. Ensure that advance directives cannot be invalidated by mental health professionals, caregivers or family members.
17. Create an independent grievance redressal mechanism that can secretly receive and investigate complaints of ill-treatment of persons with mental illness in institutions
18. The National / State Human Rights Commissions, the National / State Women's Commissions and the National / State Commissions for the Protection of the Child's Rights can independently monitor the situation in institutions run for women and girls with mental illness.
19. Women should be empowered to make their own decisions, regardless of their mental illness, to ensure their rights are respected.

If having a mental illness is a curse, having a mental illness as a woman is a double curse. Although there have been significant societal changes in India, the situation for women, particularly those who are mentally ill, is appalling. A long-term remedy for this illness can only be found via communal effort.