

## **Right to Mental Health Care :**

### **Implementation and Challenges of Mental Health care Act 2017**

#### **ABSTRACT**

Every person has a right to mental health care and treatment. Right to Mental Healthcare in India is one of the important statutory rights granted by the Mental Healthcare Act of 2017. The Mental Healthcare Act of 2017 aims at providing mental health care and services to the victims of mental illness and developing and protecting the rights of the patients. This paper explores the important provisions of the Mental Healthcare Act of 2017 , promotes a significant change in the approach to mental health in the life of individuals. It addresses dignity for patients, easy access to care, and decriminalization of suicide. However, despite the progressive framework of the Act, its implementation is faced with several difficulties, such as inadequate mental health infrastructure, a shortage of trained professionals, lack of awareness, social stigma, and insufficient budgetary allocations. This paper conducts a critical analysis of the provisions of the act and explores the challenges that bar its effective realization. By analyzing case studies, legal frameworks, and policy implementations, this research highlights the pressing need for the operational implementation of the MHA 2017, thus making sure that its potential becomes a reality for people who require mental health support. Further, it elaborates on measures that can be adopted to ensure that mental health care is genuinely accessible to all.

**Key words :** Mental healthcare Act 2017 , Implementation, Challenges, mental illness

## INTRODUCTION :

Mental Healthcare Act 2017 is a critical aspect of public health care. The aspect of mental healthcare is historically neglected specially in countries like India. Individuals who are suffering from mental illness were either marginalized or subjected to discrimination and inhuman treatment.

The mental health care act derived from Indian lunacy act 1912. This act is the initial law which is concerned with mental health care but this act primarily focuses on protecting society from mentally ill individuals. They are considered dangerous. Later, Mental Health Act, 1987 came into existence. In 1993, this act introduced beneficial provisions for mentally challenged individuals. After UN convention on Rights of Persons with Disabilities, India realized that the Mental Health Act, 1987 was not in resemblance with the UNCRPD and replaced it with a new law. It finally came up with the Mental Healthcare Act, 2017.

The mental health care act 2017 is introduced as the mental health act, 1987 was criticized for being outdated and not adequate to present circumstances and failing to protect mentally ill individuals. Being institutional centric and also for aligning the Indian laws with international obligations emphasizing the rights based approach to mental health care, committing to secure the dignity, rights and wellbeing of persons with mental illness.

The act recognizes the gradual growing of mental illness burden in India. Nearly 14% of the population requiring medical assistance according to **National Mental Health Survey (2015-16)**. And to bridge the gap by ensuring adequate affordable and equitable access to quality mental health service. The Act recognizes that mental healthcare is to be treated as a basic human right and ensure right to mental healthcare is enforceable and provide adequate access to mental health services and safeguard individuals from discrimination, inhumane treatment and protect their rights. Promote reasonable representation.

This act recognized the need of transparency and accountability in services emphasizing the integration of mental health care into general health care services.

## **RESEARCH METHODOLOGY :**

This research paper is descriptive in nature employs a qualitative research methodology to analyze the Mental Health Care Act, 2017 research draws on primary and secondary data sources to explore the implementation and challenges of the Act primary sources include act itself and secondary sources include academic journals, articles, and research reports from organizations

## **LITERATURE REVIEW :**

According to **section 2(s)**<sup>1</sup> of mental healthcare act 2017 "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence;

## **KEY ASPECTS OF THE ACT**

### **❖ Rights of Persons with mental illness**

The act clearly defines the rights of the individual with mental illness . provides certain rights including right to access mental health services every individual is entitled to access affordable and quality mental care services without any discrimination in any aspect and services provided is acceptable by the ill individual and their family ; right to live with dignity protection against inhuman treatment and neglect; right to privacy maintaining the confidentiality of mental health and treatment records ; the act provides right to informed consent without consent of patient's

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<sup>1</sup>Section 2 (c)mental healthcare act 2017 [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_12\\_13\\_00024\\_201710\\_1517807327874&ionId=6208&ionno=2&orderno=2](https://www.indiacode.nic.in/show-data?actid=AC_CEN_12_13_00024_201710_1517807327874&ionId=6208&ionno=2&orderno=2).

except in certain circumstances no treatment or medical intervention is done ; right to legal aid legal aid services should be accessible for mentally ill individuals <sup>2</sup>

#### ❖ **Advance Directives AD**

Advance Directives represent the rights of a person who is not a minor and can decide at the time the preparation of such directives is taken, regardless of his past medical history. In Advance Directives, an individual can, in writing, refuse or give the right to a chosen person, making decisions on behalf of the individual if he is unable to decide himself. ADs authorize a person who has written the same to take decisions but may be revoked or altered by the author.<sup>3</sup>

#### ❖ **Establishment of Mental Health Authorities**

This act provides for the establishment of Central Mental Health Authority (CMHA) and State Mental Health Authorities (SMHA). These Mental Health Authorities would focus on Registering and maintaining a national database of mental health establishments. Develop quality norms supervise establishments address complaints. Establishments registered under previous laws are entitled to registered under this Act, and registration procedures, including fees, are prescribed by the government. Register mental health professionals, clinical psychologists, nurses, and psychiatric social workers, keep updating their directory, and make it public, according to rules. They both, at the central and at the state level, perform above mentioned functions.

#### ❖ **Decriminalization of suicide**

The Mental Healthcare Act has contributed to the de-criminalization of suicide in India. Particularly, Section 115 of the law holds that suicide occurs mainly as a result of extreme psychological distress and that it should not be considered as a criminal offense. Treatment and rehabilitation for those who attempted suicide should be given precedence over punitive measures.

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<sup>2</sup>*mhca2017v:rightsofpersonswithmentalillness*.<https://mhca2017.com/index.php/act/chater-v-rights-of-persons-with-mental-illness>

<sup>3</sup>Quazi,Dr.S.(n.d.).AReviewofAdvanceDirectivesAsPerMentalHealthCareAct2017.<https://medicopublica>

[tion.com/index.php/ijfnt/article/download/](http://www.ijfnt.com/index.php/ijfnt/article/download/)

The law is associated with de-stigmatization, which has made individuals more willing to seek help for mental conditions without fear of punishment.<sup>4</sup>

### ❖ **Treatment guidelines**

The Mental Healthcare Act would ensure that there is clear guidance to the prompt and patient-centered mental health care through such measures as informed consent before treatment initiation. It is ensured that patients should be informed in full detail of the treatment including its risk, benefit, and alternative. Furthermore, the least restrictive environment must be applied when giving the treatment so as not to undermine the person's autonomy and dignity. The act further gives the rights of refusal of treatment except in specific situations where intervention would be considered necessary for either their own safety or for the safety of others.

### ❖ **Establishment of Mental Health Review Boards**

Mental Health Review Boards are statutory bodies charged with the responsibility of reviewing cases of people who are admitted involuntarily into mental health facilities under the mental health laws. The main role of the boards is to protect the rights of the individuals, ensuring that admissions and treatments meet the legal and ethical requirements. The boards review the circumstances of admission, consider the mental state of the person, and determine whether further treatment is required. They can also listen to appeals by patients or their agents. If the board feels that the person is no longer in need of compulsory treatment, then it has the authority to make them free, hence ensuring there is fair and responsible mental care.

### ❖ **duties of appropriate government**

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<sup>4</sup> *Decriminalizing attempted suicide in India: the new penal code* | Centre for Mental Health Law &

Policy. (2024, April 3). Centre for Mental Health Law

&Policy. <https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal->

This act defines the duties of appropriate government the government is responsible to plan implement programs to promote mental health and prevent mental illness focusing in creating awareness reduce social stigma and myths . the government is responsible to address needs for human resource and promote training programs healthcare camps appointing adequate medical officers meet the guidelines

## **CHALLENGES IN IMPLEMENTATION OF ACT**

### **□ Systematic challenges**

#### **Insufficient infrastructure**

The primary setback for implementation of this act is lack of adequate infrastructural facilities for mental health care services most of the Many government-run institutions suffer from poor conditions, with insufficient resources, outdated equipment, inadequate staff and lacking in basic facilities mental health services are minimal or non-existent resources. This leaves the vulnerable population underserved because of a lack of basic facilities such as trained professionals, medication, and rehabilitation centers to deliver effective mental health care. this problem majorly seen in rural areas

#### **Shortage of professionals**

The number of available mental health professionals, psychiatrists, psychologists, and psychiatric nurses, is insufficient to satisfy the increasing demand for mental healthcare in India . In India there is a significant shortage in mental healthcare professionals there are only few medical officers are available in the field of mental health care due to few medical officers and mental health specialists lack of proper knowledge make the situation worse, resulting in many individuals not receiving treatment on time or at all, thereby widening the mental health care gap in the country..<sup>5</sup>

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<sup>5</sup> Megh Rajani, V. R., Marathe, M., Sharma, R., Petauke, A., Wangari, M. B., & Katsande, A. B. (2023). A Comprehensive Analysis of Mental Health Problems in India and the Role of Mental Asylums. *Cures*. <https://doi.org/10.7759/cureus.42559>

## **Lack of Funding**

The major challenge to the effective implementation of this act is the shortage of funding. In this act, there is a chronic shortage and utilization of the funds in spite of receiving an adequate budget in health care, but the allocation of budget for mental health care is gradually decreasing throughout the years. This creates a long-term problem for posing adequate services. The insufficient financial support deters the development of infrastructure, recruitment of professionals, and access to treatment, with the result being a substantial gap in the development needed to address the increasing population mental health needs.<sup>6</sup>

## **□ Societal challenges**

### **Discrimination and Stigma**

Social stigma and discrimination are significant barriers for mentally ill individuals for utilization of mental health care services. These are majorly influenced by cultural beliefs, misinformation, mental illness is majorly misunderstood and seen as stigma in society, creating hindrances in effective implementation of the act. This contributes to interruptions in seeking health services, discrimination of gender, sex, sexual orientation, religion, culture, caste, and other societal aspects creates a gap to individuals to access health care services.<sup>7</sup>

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<sup>6</sup> Ahmed, T., Dumka, N., Hannah, E., Chauhan, V., & Kotwal, A. (2022). Understanding India's response to mental health care: a systematic review of the literature and overview of the National Mental Health Programme. *Journal of Global Health Neurology and Psychiatry*.

<https://doi.org/10.52872/001c.36128>

<sup>7</sup>Rahul Shishya, Michelle Kermode Stigma and discrimination as a barrier to mental health service utilization in India *International Health*, Volume 5, Issue 1, March 2013, Pages 6–8, <https://doi.org/10.1093/inthealth/ihs011>



## **Lack of awareness**

Lack of awareness about mental healthcare act is a major challenge in implementation. Individuals due to lack of awareness are not aware of the act and the beneficial provisions, leading to facing misconceptions, difficulties in accessing care and treatment. Individuals often lack knowledge about their rights and the protections provided by the act, leading to a limited use of its features and resources. In the absence of effective awareness campaigns and educational initiatives, the act's ability to empower people and enhance mental healthcare services is not fully achieved.

### **□ Administrative**

## **challenges Delayed formation of**

### **MHRBs**

Redressal establishments such as Mental Health Review Boards are important in ensuring the effective functioning of mental healthcare services. Grievance redressal, review of involuntary admissions, and safeguarding the rights of the patients form part of the services offered by these boards. However, delays in their formation would hinder accountability and efficiency of healthcare institutions. Many states have not set up such boards, and this has resulted in gaps in oversight and service delivery. Without timely establishment, the checks and balances of the mental healthcare system remain ineffective, hence affecting its overall functionality.

## **Inter sectoral coordination**

Poor coordination between state and central authorities poses a major challenge in the effective implementation of the Mental Healthcare Act. Such a gap often results in delay in policy execution, non-uniform standards in regions, and underutilization of resources. There is a lack of strong mechanisms for monitoring and evaluation of the implementation of the act. Without proper monitoring and cooperation, gaps in service delivery, infrastructure, and compliance persist, which actually prevents the act from delivering its intended goals to improve the mental health care system.

## **RECOMMENDATIONS FOR EFFECTIVE IMPLEMENTATION / SUGGESTIONS**

### **Enhancing infrastructure**

The government should prioritize building infrastructural facilities, particularly construction of

healthcare facilities in underserved areas like increasing the setup of dedicated health units

Exploring public-private partnerships to create more infrastructures and bring in available resources key focus should be on increasing the conditions of government institutions ensuring adequate facilities like trained staff equipment etc.

### **Capacity structure**

The medical practitioners including general practitioners, health care workers should be trained and strengthened to enhance health care services. specialized medical healthcare education should be provided . Recruiting more medical officers including psychiatrists, psychologists, and social workers for binding the gap and to meet the increasing demand

### **Increased funding**

Increase in funding Both the central and state governments should allocate increased percentage of budget in health to mental health care . More percentage of health budget that the care provided can be sustainable Funding should include for operational costs, research initiatives, and subsidies for mental health services to make them affordable. This will make health care accessible and affordable for everyone

### **Awareness**

**The** awareness campaigns should be conducted public should be educated about mental health people should be awarded that mental illness is treatable and encouraged to seek mental health assistance without fear of discrimination and social stigma . importance of early diagnosis should be emphasized awareness should be spread through different channels to outreach the community and spread awareness. Integrate mental health education into school curriculums promote awareness from young age

### **Inter – sectional coordination**

There should be coordination between governments for emphasizing a better implementation of Mental Healthcare Act 2017. The governments together should create provisions and laws according to the state's needs . implement policies that prioritize mental health and align with the act . In addition, social welfare departments must collaborate to provide support

services for people with mental health issues and ensure a comprehensive approach to the care of their mental health.

### **Monitoring and evaluation**

establish a robust monitoring a dedicated mechanism conduct assessments to track down the progress and identify drawbacks in implementation A feedback mechanism must be established to channel individuals' complaints about the services, so that policymakers act swiftly to address the complaints. Data collection on health services and outcomes will guide decisions regarding policies and improve their implementation.

### **community based care**

Community-based care should be merged with primary care to bring a more accessible, communitybasedandsupportive place to the lives of mental illness patients. People c ommunities can then create supporting systems for those with mental sickness that will provide a network to care and understand. Additional organizations and advocacy groups, in addition, should endorse mental health as a crucial priority in their communities. This way, the aspect about mental illness is reduced on stigma, creates a helping environment, and ensures constant and timely care for someone to remain functional

## **CONCLUSION**

The Mental Healthcare Act 2017 marks a milestone in the Indian legal and health care structure, since it acknowledges that mental health is a right and, therefore, patient-centered and rights-based. The act repealed the suicide provision of criminal law, created Central and State Mental Health Authorities, and ensured dignity, privacy, and informed consent. The Act aims at developing an all-inclusive and accessible system by promoting community-based care and integrating mental health with primary healthcare services.

Implementation of the Act is still facing serious challenges. Systemic barriers such as poor infrastructure and the extreme lack of professional training exist in both accessibility and quality, especially in rural areas.

The budgetary provision for mental health is woefully inadequate and has come to be a bottleneck in the development of infrastructures, training programs, and research. Stigma within society coupled with a lack of sensitization on mental health deters people from exercising their rights under the Act. Administrative failures include a slow pace in the formation of Mental Health Review Boards as well as poor inter-sectoral coordination that ultimately results in a dilution of accountability and the effectiveness of the Act.

These issues call for a multi-pronged approach. Sufficient finances will be required to strengthen infrastructure, professional manning, and sustainable delivery. Public awareness programs should be conducted in ways to challenge stigma and misconceptions while creating a mentally informed citizenry of mental illness and the Act provisions. Inculcation of mental health education in school curricula will foster an understanding from a young age and more acceptance. Coordination of inter-agency machinery among central and state governments can also be complemented with proper monitoring mechanisms that could help in successful implementation with accountability. Community-based care should be given more emphasis because it not only provides accessible services but also creates supportive environments for people with mental illness. Advocacy groups and non-governmental organizations can be crucial in pushing for mental health awareness and policy reforms. In conclusion, while the Mental Healthcare Act of 2017 provides a robust framework for reform, its potential can be fully realized only by the collaborative efforts of stakeholders aimed at addressing systemic, societal, and administrative obstacles. By placing mental health at the forefront of the broader public health agenda, India can progress toward realizing a comprehensive, equitable, and humane mental healthcare system that respects the dignity and rights of every individual.

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