

A Journey from Indian Lunacy Act 1912 to Indian Mental Health Act 1987 & Draft Amendment

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“The withering away of the old and the establishment of the new are but natural in the passage of time.”

- Sage Bavanandi Nanool

Indian Lunacy Act 1912

Ever since the Indian Lunacy Act had come into existence in 1912, it indeed revolutionized the perspectives of mental illness in the country.

In India, the care of the mentally ill in asylums (now called as mental hospitals) is a British innovation. Prior to this, the mentally ill were neither neglected or ill treated, but were managed according to traditional Indian practices as evidenced by elaborate descriptions of various forms of mental disorder in separate treatises in Ayurveda.

Before the 1912 Act came into effect, the various enactments controlling the care and treatment of the mentally ill of the then British India could be enumerated as -

a) The Lunacy (Supreme Courts) Act, 1858 (Act XXXIV of 1858), b) The Lunacy (Districts Courts) Act, 1858 (Act XXXV of 1858), c) The Indian Lunatic Asylums Act, 1858 (Act XXXVI of 1858), d) The Military Lunatics Act, 1877 (Act XI of 1877), e) The Indian Lunatic Asylums (Amendment) Act, 1886 (Act XVIII of 1886), f) The Indian Lunatic Asylums (Amendment) Act, 1889 (Act XX of 1889), g) Chapter XXXIV of the Code of Criminal Procedure, 1898 and h) Section 30 of the Prisoners' Act, 1900.

The first three Acts were enacted immediately after Queen Victoria's proclamation when India came under the rule of the British Crown. With the introduction of the Indian Lunacy act of 1912, a new approach was carved out for providing consideration and care to patients with mental illness. Indian Lunacy Act claimed that it was an Act for the care, custody and management of lunatics as understood in the legal connotation of the term. It was ironic that though the Act dealt with persons suffering from mental illness the

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basic consideration of the Act was legal rather than medical.

For instance, according to this Act, a patient could only be admitted to a mental hospital by the reception order from a Judicial Authority, a Magistrate or a Police Commissioner. Surprisingly, this method was in no way different from admission into a jail i.e. imprisonment. Is it a legal offence to suffer from mental illness? Certainly this was not the case.

Also, a basic defect of the Act was that a patient who was sent into a mental hospital was going to stay there for the rest of his life. This was connected with the popular belief 'once insane always an insane'.

Under various criticisms, the law was replaced with provision for treatment of all forms of mental disorders with relatively easier & prompter methods of admission into mental hospitals. Unfortunately, it took almost 75 years to amend the law i.e. Mental Health Act 1987 which intended to rectify previous act's lacunae so it could stand the test of time.

Mental Health Act 1987 (MHA)

The MHA, 1987 is an advancement on its predecessors, the Indian Lunacy Act 1912 and the above mentioned acts. In a nutshell, the following features of MHA, 1987 distinguish it from its predecessors - a) Mental illness was clearly defined & absurd words like 'imbecile' and 'idiots' were removed, b) Modern concepts of mental illness and treatment were included, c) Role and importance of medical officers was defined, d) Simplification of the rules for admission and discharge & provision for voluntary admission, e) Protection of rights of the patients, f) Providing for supervision for the standard of care in psychiatric hospitals, g) by creating the Mental Health Authority, h) Provision of penalties in case of breach of laws in connection with welfare of the patients and i) Care was the ultimate aim and not custody alone (Banerjee).

However, the MHA, 1987 has been through rough waters ever since it came into pragmatic being in 1993. Subsequently, there have been substantial critiques of the act, the following being some of them: a) Overly legal in its scope, process and outcome, stressing upon custody with little regard for therapeutic aspects of psychiatric care, b) Establishing similar legal controls upon both voluntary and non-voluntary classes of patients, and c) Being discriminatory towards nongovernmental institutions of psychiatric care.

Another reason for the act's unpopularity is its relative silence on the more practical aspects of patient care that psychiatrists face on a daily basis. Traditional Indian families carry out many of the responsibilities and duties that in a developed country would fall with the social services. Despite the ready availability of the family to share the burden of caring for the mentally ill, the process of seeking and receiving treatment under the Mental Health Act 1987 is exceedingly arduous, more punitive and less therapeutic, and cannot only isolate the patients and professionals involved, but also stigmatize them (Trivedi, 2002).

Limitations of MHA - 1987

1. The procedural difficulties that it poses for users may discourage mentally ill patients' and their families from using it. This may lead to increasing stigma for the patients and their families, thereby forcing the pursuit of alternative and dubious forms of 'cures' and may lead to desertion of the patients by their families. Keeping these key-issues in consideration, it was felt that the MHA 1987 was archaic and needed amendments.

2. The Indian Psychiatric Society addressed the concerns that Mental Health Act, 1987 needed to be replaced with a new Act, which would take into consideration the cultural context of Indian society and the ground reality about available resources.

3. The current MHA is un-implementable in large parts of the country because it heavily

depends on intramural treatment settings, which are scarce and do not utilize family and community resources which are available.

4. It was felt unanimously that the law should move towards supporting, promoting and protecting the rights of persons with mental illness. It was also felt there should be a departure from the policy of dealing with mental illness just as a law and order problem, the focus should be community care and a range of support systems should be incorporated into the MHA. Hence it was ensured that the proposed amendments were in harmony with the United National Convention on Rights of the Physically Disabled (UNCRPD) which India ratified in May, 2008.

MHA Amendments & Proposed Draft

Although, the Ministry of Health and Family Welfare has taken an initiative to amend the Act, but so far nothing have come up with a new act till today. Probably for the reason of expediency, the Indian Psychiatric Society decided to support the process of amendments with the hope that the process of forming a new Act will also be taken up in not too distant future. Therefore, MHA amendments were put forth with a view to rejuvenate the existing law and rectify it where necessary.

Accordingly, few of the old unacceptable terminologies were judiciously replaced & certain changes in areas viz. treatment setting, treating persons, carers, regulating authorities, admissions and discharges including voluntary as well as under special circumstances, reception order and inquisition were made. There is an inclusion of a whole chapter on the protection of rights of the mentally ill patients.

Criticism of the Draft Amendment

Unfortunately, the amendment has also been criticized over following reasons-

1. The present amendment process to the Mental Health Act is only looking at protecting

the rights of persons living with mental illness in the context of treatment seeking.

2. The amendments to the Mental Health Act remain oblivious of the parallel process of alignment of Persons with Disabilities Act to UNCRPD.

The amendments to the Mental Health Act are thus being seen as an isolated activity and there is no effort to see which other laws will need to be aligned to UNCRPD to ensure that the objective of UNCRPD is met.

Hence there has been opposition to the process of the amendments to the Mental Health Act as it is non-participatory and is against the principles of UNCRPD. There is relevant saying "If we open a quarrel between past and present, we shall find that we have lost future" by Winston Churchill.

It is the need of time to take this opportunity to underline the meaning of the fact that India has ratified the UNCRPD. The ratification implies that no person living with mental illness can be treated in a discriminatory manner on the basis of their illness and that all persons living with mental illness have the right to live their life with dignity, without fear of torture, degrading treatment, exploitation and abuse.

All persons living with mental illness have the right- a) to make decisions regarding their own life, b) to live independently in their community, c) to marry & raise families, d) to have access to education, work, employment and health, e) to manage their own affairs and the government has to put in place arrangements to support such decision making processes.

All persons with mental illness can form associations, represent themselves, enter contracts, make wise, vote and stand for election like all other citizens of India. UNCRPD is the journey to equal citizenship for persons with mental illness and the beginning of this journey is a commitment to change all laws, policies, cultural practices that discriminate against persons living with mental illness.

Any process that does not fulfill the commitments made through ratification needs to be opposed and changed. It is also essential to consult first with the right holders and caregivers across India regarding the proposed draft amendments to determine response. Hence, it is highly desirable to watch the process on the dimensions of participation, inclusion and non-discrimination in coming years. There is a long journey ahead.

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