

Mental Healthcare Act 2017: Need to Wait and Watch

Abstract

Mental health is different from general health as in certain circumstances mentally ill people may not be in a position to make decisions on their own. Those who suffer rarely get access to appropriate medical treatment as their families try to hide their condition out of a sense of shame. Over 300 million people are estimated to suffer from depression, equivalent to 4.4% of the world's total population. According to a study conducted by the National Institute of Mental Health and Neurosciences, 1 in 40 and 1 in 20 people are suffering from the past and current episodes of depression in India. In spite of this big burden of mental health issues, unfortunately, it continues to be misunderstood in developing countries like India. The new Mental Healthcare Act 2017 rescinds/revoked the existing Mental Healthcare Act 1987 which had been widely criticized for not recognizing the rights of a mentally ill person.

Keywords: Advance directive, disability-adjusted life years, electroconvulsive therapy exploitation

Introduction

Health encompasses the composite union of physical, spiritual, mental, and social dimensions according to the World Health Organization (WHO), which recognizes that “mental health and well-being are fundamental to quality of life, enabling people to experience life as meaningful, become creative and active citizens.” Mental health is significantly different from general health as in certain circumstances mentally ill people may not be in a position to make decisions on their own.^[1] Mental illness lasts for a protracted period and has a lifelong impact which gradually result in a poor quality of life.^[2,3] Those who suffer rarely get access to appropriate medical counseling and treatment as their families try to hide their condition out of a sense of shame. This attitude not only harms patients but also leaves them vulnerable to exploitation, abuse, neglect, and marginalization.^[4-6]

The global burden of disease report states that mental disorders account for 13% of total disability-adjusted life years lost, with years lived with disability with depression being the leading cause.^[7] Over 300 million people are estimated to suffer from depression, equivalent to 4.4% of the world's total population. Various researches

have demonstrated the close association of mental disorders as precursors of a wide range of acute and chronic conditions such as noncommunicable diseases, injury and violence, and poor maternal and child health conditions.^[8-10]

According to a study conducted by the National Institute of Mental Health and Neurosciences, India, in 2016, across 12 different states, the prevalence of depression for both current and lifetime is 2.7% and 5.2%, respectively. Approximately 1 in 40 and 1 in 20 people are suffering from past and current episodes of depression all over the country.^[11-14] This survey has shown that the lifetime prevalence of mental disorder is 13.7% as a whole, which would mean at least 150 million Indians are in need of urgent intervention. Mental illness in vulnerable age groups such as adolescent and in geriatric population accounts for more than half of the total burden.^[15,16] Another report regarding the projected burden of mental illness conveys that it will increase more rapidly in India than the other countries over the next 10 years and will account for one-third of the global burden of mental illnesses, a figure greater than all developed countries put together.^[17] In spite of this big burden of mental health issues, unfortunately, it continues to be misunderstood in developing countries like India.^[18-20]

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Another critical aspect is the existing infrastructure and workforce in our country to address this health challenge. There are just about 40 mental institutions (out of which only nine are equipped to provide treatment for children) and fewer than 26,000 beds available for a nation comprising 150 billion people.^[21] The WHO report on the Mental Health Atlas reveals that there are just three psychiatrists, and even lesser number of psychologists for every million people in India, which is 18 times fewer than the commonwealth norm of 5.6 psychiatrists/100,000 people.^[22]

Keeping in view the massive health burden of mental illness in our country, existing inadequate infrastructure/workforce, the social stigma attached, and glaring shortcomings of Mental Healthcare Act 1987, it becomes imperative for the government and various stakeholders to address these issues. There is also a need to work on the country's international obligation toward the mentally ill people as per the Convention on Rights of Persons with Disability (2007) and its optimal protocol.^[23] Hence, a patient-centric bill that safeguards available, affordable, and accessible mental healthcare services was a long due in India.^[24]

Mental Healthcare Act 2017

On March 27, 2017, Lok Sabha in a unanimous decision passed the Mental Healthcare Act 2017 which was passed in Rajya Sabha on August 2016 and got its approval from Honorable President of India on April 2017. The new act defines “mental illness” as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs.^[25] This act rescinds/revoked the existing Mental Healthcare Act 1987 which had been widely criticized for not recognizing the rights of a mentally ill person and paving the way for isolating such dangerous patients.^[26-30] This act has overturned 309 Indian Penal Code which criminalizes attempted suicide by mentally ill person. Another highlight of this Act is to protect the rights of a person with mental illness, and thereby facilitating his/her access to treatment and by an advance directive; how he/she wants to be treated for his/her illness.^[31]

The various provisions under the Mental Healthcare Bill are as follows.^[32]

Rights of persons with mental illness

Every person will have the right to access mental healthcare services. Such services should be of good quality, convenient, affordable, and accessible. This act further seeks to protect such persons from inhuman treatment, to gain access to free legal services and their medical records, and have the right to complain in the event of deficiencies in provisions

Advance Directive: This empowers a mentally ill person to have the right to make an advance directive toward the way

she/he wants to be treated for the requisite illness and who her/his nominated representative shall be. This directive has to be vetted by a medical practitioner.

Mental Health Establishments: The government has to set up the Central Mental Health Authority at national level and State Mental Health Authority in every state. All mental health practitioners (clinical psychologists, mental health nurses, and psychiatric social workers) and every mental health institute will have to be registered with this authority. These bodies will (a) register, supervise, and maintain a register of all mental health establishments; (b) develop quality and service provision norms for such establishments; (c) maintain a register of mental health professionals; (d) train law enforcement officials and mental health professionals on the provisions of the act; (e) receive complaints about deficiencies in provision of services; and (f) advise the government on matters relating to mental health.

Admission of persons with mental illness

The act also outlines the procedure and process for admission, treatment, and subsequent discharge of mentally ill persons.

Decriminalizing suicide and prohibiting electroconvulsive therapy

It decriminalizes suicide attempt by a mentally ill person. It also imposes on the government a duty to rehabilitate such person to ensure that there is no recurrence of attempt to suicide. A person with mental illness shall not be subjected to electroconvulsive therapy (ECT) therapy without the use of muscle relaxants and anesthesia. Furthermore, ECT therapy will not be performed for minors.

Responsibility of certain other agencies

A police officer in charge of a police station shall report to the Magistrate if he has reason to believe that a mentally ill person is being ill-treated or neglected. The bill also imposes a duty on the police officer in the charge of a police station to take under protection any wandering person; such person will be subject to examination by a medical officer and based on such examination will be either admitted to a mental health establishment or be taken to her residence or to an establishment for homeless persons.

Financial punishment

The punishment for violating of provisions under this Act will be imprisonment up to 6 months or Rs. 10,000 one or both. Repeat offenders can face up to 2 years in jail or a fine of Rs. 50,000–5 lakhs or both.

Critical Insight into the Act

The Mental Healthcare Act 2017 aims to provide mental healthcare services for persons with mental illness. It ensures that these persons have a right to live life with

dignity by not being discriminated against or harassed. There are many positive/constructive aspects to this bill, but it is not without its shortcomings, it is not foolproof in the Indian context. Few of these are elaborated here: This act states the right to live life with dignity and no discrimination on basis of sex, religion, culture, and caste. Every person shall have a right to confidentiality in respect of his/her illness and treatment. As per new provisions, ECT has not to be performed without anesthesia, and there is no ECT for the minor. Sterilization shall not be performed in such patients neither they will be put into solitary confinement nor isolation.

This act empowers accessibility to mental health services for all. This right is meant to ensure that services be accessible, affordable, and of good quality. It also mandates the provision of mental health services be established and available in every district of the country. However, with already inadequate medical infrastructure at district and subdistrict levels, the financial burden to be borne by the state governments will be massive unless the central government allocates a larger portion of the budget to incur the expenditure.

The concept of advance directive, which gives patients more power to decide certain aspects of their own treatment, has been picked up from the West. However, unlike developed countries, local factors such as existing mental health resources and lack of awareness about mental illness in India have not been taken into account. Mentally ill persons who suffer from serious psychological disorder often lack the ability to make sound decisions and do not always have a relative to speak on their behalf. In such a situation, treating physician is the best to take decisions because patients or their nominated representatives have limited knowledge on mental health and mental illness. Hence, from a physician perspective, this new directive will definitely lengthen the time of admission of mentally ill persons.^[33]

The act also recognizes the right to community living; right to live with dignity; protection from cruel, inhuman, or degrading treatment; treatment equal to persons with physical illness; right to relevant information concerning treatment, other rights and recourses; right to confidentiality; right to access their basic medical records; right to personal contacts and communication; right to legal aid; and recourse against deficiencies in provision of care, treatment, and services. However, the estimate of expenditure required to meet the obligations under the law is not available. It is also not clear how the funds will be allocated between the central and the state governments.

The act also assures free quality treatment for homeless persons or for those belong to below poverty line (BPL), even if they do not possess a BPL card. In our country, where mental illness is considered equal to depression, the obvious financial burden on government will be too high.

For the financial year 2017–2018, the proposed health expenditure of 1.2% of gross domestic product in India. It is among the lowest in the world and the public health expenditure has consistently declined since 2013–2014.^[34] India spends 0.06% of its health budget on mental health care, which is significantly less than what Bangladesh spends (0.44%). Most developed nations spend above 4% of their budgets on mental health research, infrastructure, frameworks, and workforce, according to 2011 WHO report.^[35] While the new act makes several provisions, it provides no guidelines or rules of implementation.

The newly introduced decriminalization of suicide is definitely a welcome move. There could be very much a possibility of misuse of this bill. However, in cases of dowry-related burning/attempted homicide, this can be twisted as attempted suicide and will not warrant the needed attention.

In developing countries like India, persons with mental illness and their situations are being aggravated by socioeconomic and cultural factors, such as lack of access to healthcare, superstition, lack of awareness, stigma, and discrimination. The bill does not direct any provisions to address these factors. The mental healthcare bill does not offer much on prevention and early intervention.

Conclusion

The new Mental Healthcare Act 2017 is supposed to change the fundamental approach on mental health issues including a sensible patient-centric health care, instead of a criminal-centric one, in India, the second most populous country and one of the fastest economies in the world. The guidelines need to be reviewed on aspects such as primary prevention, reintegration, and rehabilitation because without such strengthening, its implementation would be incomplete and the issue of former mental health patients will continue to exist. Hence, being optimistic about the bill, there is a need to wait and watch for its implementation.

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Conflicts of interest

There are no conflicts of interest.

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