UNIT 2 LAWS RELATED TO MENTALLY ILL

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2.1 INTRODUCTION

As mental health professionals we need to be aware about both the rights and laws related to mental illness. Understanding the rights and laws related to persons with mental illness is crucial in order to provide these persons and their families with suitable care and services. In the last unit we extensively discussed about the rights related to persons with mental illness. In the present unit we will now focus on the laws related to mentally ill. Laws related to mentally ill need to be focused on in order to not only ensure accessibility to mental health care and facilities but also to ensure that persons with mental illness are not discriminated in the society. The present unit will cover both, Mental Health Act, 1987 and the Mental Health Care Bill, 2011.

2.2 OBJECTIVES

After reading this unit, you will be able to:

• describe the Mental Health Act of 1987; and
• discuss the Mental Health Care Bill, 2011.

2.3 MENTAL HEALTH ACT, 1987

The enactment of the Mental Health Act, 1987 is a landmark in the mental healthcare delivery in India. It is not simply a cosmetic improvement over the outdated Indian Lunacy Act, 1912, but represents the conclusion of lengthy presentation by the Indian Psychiatric Society to the Government of India. As per the order of Government of India this Act came into force in April 1993. However, it is still not been implemented in some States and UT’s.

The Mental Health Act is “an act to consolidate and amend the law relating to the treatment and care of the mentally ill persons, to make better provisions with respect to their property and for matters connected with or incidental thereto.”
The Mental Health Act has the following objectives:

1) To regulate admission to psychiatric hospitals or psychiatric nursing homes, of mentally ill persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained.

2) To protect society from the presence of mentally ill persons who have become a danger or nuisance to others.

3) To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homewithout sufficient cause.

4) To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes.

5) To provide facilities for establishing guardianship or custody of mentally ill persons who areincapable of managing their own affairs.

6) To provide for the establishment of Central Authority and State Authorities for mental health services.

7) To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons.

8) To provide for legal aid to mentally ill persons at state expense in certain cases. The Government of India has constituted Central Mental Health Authority. Before implementing the Mental Health Act in the States, the States have to take action regarding the following:
   i) To establish a State Mental Health Authority.
   ii) To spell out guidelines for establishment of private psychiatric hospitals and nursing homes.
   iii) Formation of a Board of Visitors.

In the Mental Health Act, 1987, a modest attempt has also been made to bring mental illnesses on par with physical illness, thus reducing the stigma attached to mental illnesses. The Mental Health Act has modified certain terms and definitions. The Act uses the term mentally ill person instead of lunatic, mentally ill prisoner, instead of criminal lunatic. Other new terms are psychiatric hospital instead of lunatic asylum, psychiatric nursing home and psychiatrist.

**Self Assessment Questions 1**

1) What is Mental Health Act?
The Mental Health Act (1987) has 10 chapters

Chapter I : Preliminary
Chapter II : Mental Health Authorities
Chapter III : Psychiatric Hospitals and Psychiatric Nursing Homes
Chapter IV : Admission and Detention in Psychiatric Hospital or Psychiatric Nursing Home
Chapter V : Inspection, Discharge, Leave of Absence and Removal of Mentally Ill Persons.
Chapter VI : Judicial Inquisition Regarding Alleged Mentally Ill Person Possessing Property, Custody of his Person & Management of his Property.
Chapter VII : Liability to Meet Cost of maintenance of Mentally Ill persons detained Psychiatric Hospital or Psychiatric Nursing Home.
Chapter VIII : Protection of Human Rights of Mentally Ill Persons.
Chapter IX : Penalties and Procedure.
Chapter X : Miscellaneous.

I) It is called the Mental Health Act 1987 and came into force with effect from 1.4.93 in all the States and Union Territories.

II) Mental Health Authorities:
   i) Central Authority for Mental Health Services: - established by the Central Government.
   ii) State Authority for Mental Health Services – established by the State Government.

   Authority shall-
   1) Be in charge of regulation development, direction and Coordination with respect to Mental Health Services under the Central Government and all other matters Concerning Central Government / authority / sub. ordinate to Central Government.
   2) Supervise Psychiatric Hospital / Psychiatric Nursing Homes / other Mental Health Service agencies under the Control of Central Government / State Government respectively.
   3) Advice the Central Government / State Government in all matters relating to Mental Health.
   4) Discharge such other functions with respect to matters relating to mental health as the Central Government / State Government may require.

III) Psychiatric Hospitals and Psychiatric Nursing Homes:
   i) Establishment or maintenance of psychiatric hospital / nursing home by the Central Government / State Government. Within the limits of its
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jurisdiction for the admission, treatment and care of mentally ill persons at such places as it may think fit.

ii) Establishment or maintenance of psychiatric hospital / nursing home only with license under this Act.

iii) Application for license:

1) Every person holding a license under this act; if wishes to continue after the expiry of person the nursing home / hospital should apply at least one month before the date of expiry to issue a fresh license.

2) A person who intends to establish or maintain such nursing home / hospital shall apply to the licensing authority for the grant of license.

3) Every application should be of the prescribed format with the prescribed fee.

iv) Grant or refusal of license:

The licensing authority should be satisfied in matters relating to

1) Establishment / maintenance

2) Minimum facilities provided which are proscribed for the admission, treatment and care for mentally ill persons and

3) The hospital / nursing home should be under the control of medical officers.

If not satisfied on the above aspects the licensing authority can cancel the orders after giving a reasonable chance for hearing.

Duration of renewal of license:

The psychiatric hospital / nursing home shall be maintained in accordance with conditions laid down in the Act.

The licensing authority can revoke the license by an order in writing if it is satisfied that the hospital / nursing home is not maintained in accordance with the Act. If it is against the moral, mental or physical well being of the inpatients thereof after giving a reasonable opportunity of being heard.

An appeal can be made on such revocation with such period of time.

The appeal can be made in a prescribed format with a prescribed fee.

IV) Chapter IV mainly deals with admission

It has three parts.

1) Admission on voluntary basis

2) Admission under special circumstances

3) Reception order

Requisition can be made by major for admission as voluntary patient. So any person who considers himself as mentally ill can apply to a medical officer-in-charge for being admitted as voluntary patient in the hospital / nursing home.

Requisition can also be made by the Guardian for admission of a ward whom he considers as mentally ill to be admitted in a hospital or nursing home. In
both the cases the medical officer on receipt of such application conduct an enquiry within a period of 24 hrs may admit such an applicant. The patient should abide by the regulations made by the medical officer.

With regard to admission under special circumstance; if a mentally ill person is unable to express his willingness for admission, he may be admitted on an application made by a relative of such a person in a prescribed format accompanied by two medical certificates by two medical practitioners.

With reference to reception orders on application, a medical officer in charge of a hospital / nursing home, husband, wife or any relative of such person shall apply to the magistrate for the detention of such a person and a reception order.

V) Chapter V deals with inspection, discharge, leave of absence and removal of mentally ill person.

The State government/Central Government shall appoint not less than five visitors for the inspection of hospital/nursing home. Not less than 3 visitors shall make a joint inspection of every part of the hospital/nursing home at least once in every month. If such a visitor does not participate in such an inspection for 3 consecutive months, he shall cease to hold the office.

In case of inspection of mentally ill prisoners all the 3 visitors should visit at least once in three months in the place where he is detained.

Part II of the chapter deals with discharge of mentally ill person.

The medical officer in charge may direct the discharge of any person other than a voluntary patient by an order in writing based on the recommendations made by two medical practitioners. In case if a person is admitted by the application made under this Act, shall be discharged only if an application is made to the medical officer by the concerned person.

Any person not being ill prisoner who feels that he has recovered from his mental illness may make an application for his discharge.

Part III deals with leave of absence of medically ill person from a psychiatrist hospital may be made by an application by the husband or wife or relatives or any other person related to the medical officer. If the medical officer refuses to grant leave of absence, the applicant may apply to the magistrate within the local limit.

The application should be of the prescribed format.

VI) Chapter VI deals with the property of the mentally ill person.

If a mentally ill person possess a property, it can be taken care of by any of his relatives or by public curator or by the advocate general of the state concerned or by the collector of the district in case the property is a land, by means of an application to the district court which shall pass order after examining the concerned mentally ill person personally. If the district court finds the mentally ill person incapable of maintaining his property may appoint a guardian to take care of the person and a manager for his property who shall within a period of six months from the date of appointment gives a statement of all claims due and all debts and liabilities due by such mentally
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ill person. He should also within a period of three months from the close of the financial year an account of property, sums received and disbursed.

VII) Chapter VII deals with the cost of maintenance of a mentally ill person.

The cost of maintenance unless otherwise provided by the law should be borne by the state. In case of a mentally ill person having an estate or person bound to maintain a mentally ill person has a means to maintain shall apply to the concerned government or to the district court for a direction to tear the cost of maintenance of such mentally ill person.

VIII) Chater VIII deals with the protection of human rights of mentally ill person.

No mentally ill person should be treated with indignity or cruelty during the treatment. No mentally ill person shall be used for research unless otherwise for the benefit of such person or with the acceptance of such person in writing. In case of the person is incompetent because of minority or otherwise, with the consent of the guardian.

IX) Chapter IX deals with penalties and procedures:

Any person establishes or maintains such nursing home or hospital in contravention of the Act, shall be punishable with an imprisonment of 3 months or with fine or with both.

Any person who detains mentally ill person otherwise than in accordance with the Act, shall be punishable with imprisonment for two years or with a fine of Rs. 1000/- or with both.

Any other person who contravenes any of the provision of the Act for which no penalty is expressly provided shall be punishable with an imprisonment for a period of 6 months or with a fine of Rs. 500/- or with both.

(Source: www.thenationaltrust.co.in)

Lacunae in the Mental Health Act

Though this act has been useful to some extent to the patients and the professionals dealing with mental health, however, there are a number of lacunae in the act. These lacunae or shortcomings interfere with providing suitable mental health services. Some of the shortcomings are discussed as follows:

1) The Act does not, in any way, promote the community based mental health care that is significant in rehabilitation of mentally ill.

2) The mental health care has not been incorporated with primary health care.

3) The act also needs to include the Government policy on mental health framed in 1978 and the Mental Health Programme, 1987.

4) Medical considerations have been given less weightage compared to legal considerations.

5) The act has retained the power given to the criminal court to exert its control over admissions and discharge of non criminal mentally ill persons.

6) Family and community psychiatry have not been given any relevance in the act.
7) No provisions have been made for punishment of relatives and officers who request unnecessary detention of a person to such hospitals.

8) No provisions have been made in the act to educate and create awareness about mental illness in the society, in order to reduce the stigmatization of mentally ill.

9) There is significant emphasis on hospital admission and treatment that can lead to increase in health care cost. No provisions as such have been made about treatment at home.

10) No provisions other than by Police, have been made with regard to the transportation of an unwilling mentally ill patient.

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<td>2) List any three lacunae of Mental Health Act of 1987.</td>
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2.5 MENTAL HEALTH CARE BILL, 2011

The main aim of the newly drafted Mental Health Care Bill is to regulate and improve accessibility to mental health care by mandating and directing suitable and sufficient provision of quality public mental health services. The Bill also seeks to ban certain actions like chaining of persons with mental illness or giving them electric shock to persons with mental illness without anesthesia. It also encourages individuals to come forward and report any inhuman treatment given to mentally ill around them. Further the domain of Right to Information will also be extended to persons with mental illness and their families so as to help them seek information with regard to their treatment care etc. Further it will also provide for the persons with mental illness to report or complaint any and they can make complaints against care givers.

The Mental Health Care Bill, 2011 has been proposed in order to provide persons with mental illness access to mental health care and services. It also proposes to protect, promote and uphold the rights of the persons with mental illness during.

The underlying principle of the Mental Health Care Bill, 2011 can be discussed as follows:

1) Individuals having mental illness are vulnerable and are prone to be discriminated.
2) The families of individuals with mental illness are likely to experience financial, physical, psychological, emotional as well as social burden.

3) People with mental illness should be treated in a similar manner as people with other health problems. Also suitable facilities and environment should be provided for recovery, rehabilitation and participation in society.

4) The Mental Health Care Bill, 2011 is necessary as the Mental Health Act, 1987 has not been able to satisfactorily protect the rights of people with mental illness. Further it has also not able to provide accessible mental health care.

The main objectives of the Mental Health Care Bill, 2011 are as follows:

1) To protect and uphold the rights of people with mental illness when the health care is provided, whether in institutions or in community.

2) To ensure that the required health care is provided in terms of both treatment and rehabilitation to the persons with mental illness in an environment that is as less restrictive as possible, so that it does not interfere with their rights and dignity. Community based health care is preferred compared to institution based health care.

3) The treatment, care and rehabilitation be provided with an objective to help the persons with mental illness improve their capacity and potential and to help them integrate with the society.

4) To fulfill the obligations as given in the Constitution of India as well as the obligations ratified by India under various International Conventions.

5) To promote regulation of the mental health sectors, whether public or private.

6) To bring about improvement in access to mental health care by making available quality mental health care and services. Also to avoid any discrimination in health insurance.

7) Integrate the mental health care in all levels of general health care.

8) To ensure the parity, proficiency and participation of various stake holders in decision making.


**Brief description of the Mental Health Care Bill**

**Description:** It is a proposed act to provide access to mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of persons with mental illness during the delivery of mental health care and services.

Statement of Objects and Reasons: Recognizing that:

Persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society; Families bear disproportionate financial, physical, mental, emotional and social burden of providing treatment and care for their relatives with mental illness; Persons with mental illness should be treated like other persons with health problems and the environment around them should be made conducive to facilitate recovery, rehabilitation and full
participation in society; The Mental Health Act, 1987 has not been able to adequately protect the rights of persons with mental illness and promote access to mental health care in the country; And in order to:

Protect, promote and fulfill the rights of persons with mental illness during the delivery of healthcare in institutions and in the community; Ensure health care, treatment and rehabilitation to persons with mental illness is provided in the least restrictive environment possible, and in a manner that does not intrudes on their rights and dignity. Community-based solutions in the vicinity of the person’s usual place of residence, are preferred to institutional solutions; Provide treatment, care and rehabilitation to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life.

Conventions ratified by India;

Regulate the public and private mental health sectors within a rights framework to achieve the greatest public health; Improve accessibility to mental health care by mandating sufficient provision of quality public mental health services and non-discrimination in health insurance;

Establish a mental health care system integrated into all levels of general health care; Promote principles of equity, efficiency and active participation of all stakeholders in decision making.

(Source: http://mohfw.nic.in/WriteReadData/l892s/6420662643DRAFT%20THE%20MENTAL%20HEALTH%20CARE%20BILL.pdf).

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2.6 MENTAL HEALTH POLICY

In addition to the above it is also important to mention here that the Mental Health Policy was launched in October, 2014. It was launched on the National Mental Health Day celebrated for the first time by the Government. The main goals of Mental Health Policy as stated in the Mental Health Policy (http://mohfw.gov.in/showfile.php?id=2966) are as follows:

1) To reduce distress, disability, exclusion morbidity and premature mortality associated with mental health problems across life-span of the person.

2) To enhance understanding of mental health in the country.

3) To strengthen the leadership in mental health sector at the national, state and district levels.
The policy also recognizes the need for quality mental health services to the poor section of the society. As said by Dr. Harsh Vardhan, Union Health Minister, Government of India, the Mental Health Policy will be backed by the Mental Health Action Plan 365, which will provide details about role to be played by Central and State government as well as local bodies and civil society organisations.

Though this is just a policy, it is a significant step in direction of enhancing the mental health services and facilities and to create awareness about mental health amongst general public.

[Source: http://mohfw.gov.in]

2.7 LET US SUM UP

Thus in the present unit we discussed about the Mental Health Act, 1987 and the Mental Health Care Bill, 2011. Understanding these is significant in order to understand the facilities, laws and services available for persons with mental illness. In the unit we tried to understand what Mental Health Act, 1987 is. To describe the act once again, it is “an act to consolidate and amend the law relating to the treatment and care of the mentally ill persons, to make better provisions with respect to their property and for matters connected with or incidental thereto.” In the unit we also discussed the objectives of the Mental Health Act and further discussed the chapters of the Act. We then discussed the Mental Health Care Bill, 2011 with a focus on its underlying principles and objectives.

In the next unit we will discuss about other Laws Related to Mentally illness: (Persons with Disabilities Act, Narcotic Drugs and Psychotropic Substances Act 1985, National Trust Act, legal responsibility of the mentally ill, Indian Succession Act, Hindu Marriage Act, Domestic Violence Act).

2.8 ANSWERS TO SELF ASSESSMENT QUESTIONS

Self Assessment Questions 1

1) The Mental Health Act is “an act to consolidate and amend the law relating to the treatment and care of the mentally ill persons, to make better provisions with respect to their property and for matters connected with or incidental thereto.”

Self Assessment Questions 2

1) The Mental Health Act (1987) has 10 chapters, they are as follows:

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Chapter VII : Liability to meet cost of maintenance of Mentally Ill persons detained Psychiatric Hospital or Psychiatric Nursing Home.

Chapter VIII : Protection of Human Rights of Mentally Ill Persons.

Chapter IX : Penalties and Procedure.

Chapter X : Miscellaneous.

2) The three lacunae in Mental Health Act of 1987 are:

a) The Act does not, in any way, promote the community based mental health care that is significant in rehabilitation of mentally ill.

b) No provisions have been made in the act to educate and create awareness about mental illness in the society, in order to reduce the stigmatization of mentally ill.

c) There is significant emphasis on hospital admission and treatment that can lead to increase in health care cost. No provisions as such have been made about treatment at home.

Self Assessment Questions 3

1) The underlying principle of the Mental Health Care Bill, 2011 can be discussed as follows:

a) Individuals having mental illness are vulnerable and are prone to be discriminated.

b) The families of individuals with mental illness are likely to experience financial, physical, psychological, emotional as well as social burden.

c) People with mental illness should be treated in a similar manner as people with other health problems. Also suitable facilities and environment should be provided for recovery, rehabilitation and participation in society.

d) The Mental Health Care Bill, 2011 is necessary as the Mental Health Act, 1987 has not been able to satisfactorily protect the rights of people with mental illness. Further it has also not able to provide accessible mental health care.

2.9 UNIT END QUESTIONS

1) Describe the Mental Health Act, 1927.

2) Discuss the lacunae in the Mental Health Act.

3) What are the main objectives of the Mental Health Care Bill, 2011?
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2.10 REFERENCES


2.11 SUGGESTED READING


