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## Mental Health and Indian Legislature

*Shubhangi Singh*

*Student of B.A.LL.B.(Honours) 5th Year, Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India*

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### ABSTRACT

Click here and insert your abstract text. One of the most important element of any country are the people of the country itself who create the law the law is basically created for the comfort and control of the people under the guidance of a strict set of rules and regulations which controls the behavior and the actions of the public and then the mechanism of punishment is segregated accordingly. In such a situation when the law and the people are directly proportional to each other and they both are supported by each other and one Cannot exist without the another, we should realize the importance of a good mental health and diagnosis of the mental illnesses and diseases . Mental health plays an extremely important role specially in the legislature of a country because the people suffering from mental illnesses constitute a very vulnerable section of the society which needs special care and treatment and the law shall deal with them in a specific manner where the law blends a mixture of the hard laws and the soft laws and various policies, acts and legislations which deal With the people suffering from mental illnesses in a legal manner but in a distinct way that it deals with regular people. When a person suffering from any kind of mental illness commits a crime then there are a few important things that shall be taken into account which may be classified into:-

1. The status of the mind of the person when he committed the crime
2. Diagnosis of any kind of mental illness or mental disease
3. Referring to the special acts or special legislations which are made for the people suffering from any kind of mental disorder who commit a crime and so on so forth

So, keeping all these things in mind India became a signatory to a few of the has conventions which were created at an international level and then it incorporated various policies and legislations in its own Indian legal system to tackle the people who are mentally differently able in a specific way and also to recognize the rights and remedies of these people.

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## 1 INTRODUCTION

### **Mental Health Meaning**

Mental health includes a gentle combination of our emotional health, our psychology and also our physical and personal well-being which includes the element of social well-being as well. It is our brain that, when it comes in contact with the external environmental factors and the society and also keeping in our mind our internal health, affects the way we process our thinking and how we feel and how we respond and act, our mental health determines how we handle stressful situations, how do we relate to each other and react and the kind of choices that we make. So, we should know that mental health is of utmost priority and affects us at every stage in our life from childhood to old age because a human brain Forms the working of a body and if the mind is that tranquillity and the mind is free from illness and diseases then it is going to project in our physical health as well and that is what keeps us going ahead in life or vice versa. Mental health is extremely crucial but when the mind is diseased and there Is an existence of the mental illness like depression or anxiety or schizophrenia et cetera then the working component of the brain is disturbed and we know more have control on our actions and emotions which can sometimes lead to dangerous consequences as well

which may be discussed More in the legal sense And so it is very important that any person who is suffering from any kind of mental disease or illness must be treated medically and shall have accessibility to good professional doctors and in efficient health service.<sup>1</sup>

India is a democracy and in democracy the rights of everyone is taken into account irrespective of the caste colour religion creed place of belonging and so on so forth. Also among all these standards that are set for non-discrimination among the people and where everyone stands equally before the law ,there comes a section of the society which is vulnerable and needs more candour and conversation .they are people with not a very good mental health .the rights ,protection and remedies to any kind of unbecoming treatment or right transgression shall be well mothered by the law. People suffering from mental disorders are often treated callously and sometimes in a way that may totally ruin the definition of the article 21 of the Indian constitution that embeds its roots deep into the principle of a dignified life for all. The abuse may come from any direction family, workplace, hospitals and others so what stands of the highest importance here is, a well-developed protective mechanisms and effectively implemented legislations that would serve the purpose of protection of such susceptible people. There is a boundless relationship between the mental illnesses and the legal system. A mental institution may diagnose a person with a kind or type of the disease ensuing with a treatment but it's the law that can ascertain the competency of the person keeping in mind the degree of the condition and its relationship with the welfare of the society. India being one of the most dynamic countries in the world with daily dynamic processes in relationship with a fight to keep a stable economy the mental instability rates can scale up and according to the WHO India constitutes around 15% of the world's mentally ill population and the ratio between the ill population and doctors meant for it is on an uttermost disparity and in such a critical aspect the law plays a pivotal character lending a helping hand. Apart from the article 21 that talks about the dignity, the section 16 of the Representation Of People Act talks in terms of the social welfare and disqualifying a person from registering in the electoral roll if he's of unsound mind and so he can't hold offices like that of the president, vice-president, ministers or members of parliament and state legislatures.<sup>2</sup>

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## 2 OVERVIEW OF THE MENTAL HEALTH ACT 2017

The mental illnesses shall be determined and looked into keeping in mind both the national and the international medical standards. The mental health act has been designed and created with a view specially so that the differently mentally able people can live with tranquillity and dignity and it also helps in preventing the infringements of their rights .it aims at providing the efficient services for the people who are mentally ill with the legal medium and it takes care of various other legal provisions as well created in other legal acts for the similar purposes. Legislation plays a very essential part for the treatment of the sufferers' act was brought to existence on 7<sup>th</sup> April 2017 after the president gave his vote to the mental healthcare bill and it was brought into the lines with the mental health care act of 1987. The act defines mental healthcare as "a substantial disorder of thinking, mood and perception, orientation or memory that grossly impairs the judgement, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions of arrested or incomplete development of the mind of a person, specially characterised by sub normality of intelligence, as mental illness". There is a requirement for the construction of aboard of members namely the mental health review board which is going to protect the rights of the persons with the mental illness and manage advance directives. The act also effectively decriminalised the attempt to suicide which is punishable under section 309 of the Indian penal code by ascertaining the fact that the person who resorted to the committal of suicide must be given humble opportunity for rehabilitation by the government and while the act is performing nationally ,it also is bound by the fact that it has to align with the international obligation on the pursuance of the convention on rights of persons with disabilities and its optional protocol .This act also attacks and tries to eliminate the various stigmas that are related to the mental illnesses and the treatment has to be received by the patient by the government without any form of discrimination and free treatment would be given to people who are living below the poverty line even if they do not possess the BPL card and a special medical insurance has to be made for the treatment of the mentally ill just like we have it for other physical ailments .the act at the same time promises confidentiality and the photograph of any person shall not be circulated on media without the persons consent as the mental health may take a toll and a person's privacy should be of the utmost priority without any fault.<sup>3</sup>

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## 3 RIGHTS OF THE PEOPLE IN CONFORMITY WITH THE MENTAL HEALTH ACT 2017

Chapter VII deals with the rights that are available to the people with mental challenges.

\*Section 17 of the act provides that the government is going to provide halfway homes (a residence for the individuals after the release from the mental institutions where they were being treated for the mental illnesses which is designed especially for their re-adjustments to their private lives), sheltered accommodations as well as the supported accommodation of minimum acceptable standard, as laid down in the Schedule A.

\* According to the section 18 the state government will also establish and provide hospital and community-based rehabilitation establishment and services, of a minimum acceptable standard as laid down in the schedule B

\*According to the lines of section 19 the patient has a right to the basic medical records such as the information relating to their diagnosis ,investigation, assessment and the treatment as per the medical records .the person is also entitles to ask for his medical records in a written request addressing the medical officer of anyone in charge of the medical institution and it is necessary that the written request is met with a

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<sup>1</sup> Information Technology Act 2000, India, available at: <https://www.mentalhealth.gov/basics/what-is-mental-health> (Visited on May 12, 2021)

<sup>2</sup> Information Technology Act 2000, India, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/> (Visited on 12 May, 2021)

<sup>3</sup> *Ibid.*

response by the authority according to the schedule C within 3 days from when the complaint is received .an application may be made to the mental health review boards if the establishment is unable to decide upon the question of the disclosure of the information due to ethical, legal or any sensitive issue ,stating the issues involved and his views in the matter with a request for directions in the form if the written matter .

\*Section 20 states the right to free legal aid which implies that all the establishments shall display the sign boards in the local languages regarding the right of the person with mental illness to seek free legal aid and contact information of the Legal Service Authority.

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#### **4 HISTORICAL BACKGROUND**

Mental health is something of the utmost priority and shall be looked into in all the countries very meticulously and taken well care of. talking about India the first aspect of mental health was dealt by the “Indian Lunacy Act, 1912”.Although the mental legislations have existed in India since a very long time starting from the mid 19<sup>th</sup> century and it went through various diverse changes and substitutes and during the British period we had the lunatic removal act 1851, which eventually ceased in the 1891 as this law mainly was focusing to retrieve the British patients back to England. Once the Indian administration was taken over by the British crown, they introduced various acts including the

\*Military lunatic act 1877

\*Indian lunatic asylum act 1858 along with the various amendments passed afterwards

\*The lunacy (District Courts) Act, 1858

\*Section 30 of the Prisoner’s Act 1900

\*The lunacy (Supreme Court’s) Act, 1858

But these acts mainly were of little to absolutely no help at all as the patients were detained in unfavourable and tough conditions that took even a much unhealthier toll on their mental health and the rate of recovery became much less with the ill treatments.

#### **THE INDIAN LUNACY ACT, 1912**

The medical care of the people suffering from the mental ailments has a very long and descriptive history and mostly the earliest of the asylum and medical systems can be traced back to the western countries and in India the care of the mentally ill people in the asylums is the idea and innovation of the British people .but, this will not imply that the mentally ill weren’t taken care of in the country ,we can find various diverse descriptions of the mental illnesses with the treatments in the Ayurveda, but with the arrival of the British ,the system became much more aligned with an extensive description and the knowledge of the multiple and much more diverse forms of the mental illnesses .before we constructed the Indian lunacy act ,we were following the lines of the diverse enactments that were being regulated and operated in the British period .The most of the Indian acts have their origins in the 1845 English Acts and Lord Ashley played a very important role in passing of these various acts .

So, with the British background playing a much influence in our system, a bill was introduced to consolidate and amend the laws relating to the lunacy by Mr Jenkins to introduce various particulars in line with the English act. A major role was played by the Governor of Madras, Sir Thomas David Gibson Carmichael through a letter in which he wrote,” In the opinion of this government the necessity for a reception order issued by a magistrate has not been established in madras. Regarded as an additional protection from the risk of improper confinement ,the new procedure has no clear advantages over that embodied in the existing law, for the magistrate is very unlikely to refuse to act upon the two medical certificates and from the point view of the lunatics’ relatives there is an objection that the provisions of the bill will unnecessarily complicate procedure and even though the enquiries are held in camera will increase very largely the probability for the publicity.” It was also suggested at the same time to disqualify absolutely the superintendent or any medical officer attached to an asylum from granting a certificate for admission.

After a long series of many events and trials and tribulations, the Indian lunacy act came into force on 16<sup>th</sup> March 1912 after the Select Committee submitted its final report to the council of the governor general of India on 28<sup>th</sup> February 1912.

The Indian lunacy act of 1912 was more focused towards protecting the Indian public from the people with mental illnesses as they were considered as a threat to the Indian society and this aspect of this enactment was highly lambasted by the Indian psychiatric society .the Indian psychiatry society submitted a draft of the mental bill to the Indian government was taking back the act and reviewing and replacing it .they also told the Indian government that the care of the patients must be therapeutic rather than being custodial and the treatments must be made mandatorily free and available to all .The act in comparison to the modern year now has become out-dated and cannot keep pace with the with the much wanted requirements. The Indian lunacy act of 1912 keeps the patients in the asylum for the rest of their lives.

It was very well said by the Prime minister Morarji Desai that you cannot understand the mind of someone else unless you understand your own .it was said at the time he was supporting the psychiatrists in wanting to change the Indian lunacy act 1912 .it was via the bill of 1950 that enforced that the treatment of the patient has to be therapeutic rather than custodial with no money to be charged.

#### **PRESENT MENTAL HEALTHCARE IN INDIA**

India being one of the most populated countries in the world makes the mental health care a little more complex to deal with and needs an efficient time to time dynamic changes as the mental health care services are widely provided by the government but due to the lack of facilities the problem seems to be getting perplexed .be it autism and intellectual disability or depression ,mental illnesses are strongly being faced by the country and stigmas relating to the mental illnesses make it even more difficult to deal with the problem smoothly which in return aggravates the scale of the problem.

The mental health care covers the patients that are suffering from the emotional disorders as well and according to recent studies nearly 30% of the patients are suffering from the various emotional disorders that takes a very serious toll on their overall health as times and should be well taken care of by a qualified and efficient team of the medical practitioners and a fool proof institutional system .in India when we talk about the mental health, women are more likely to suffer from the mental illnesses and commit suicide than men and many studies have been conducted giving rise and highlighting various causes .one cause is due to the financial breakdown in the families ,most women feel pressurised.

The radical psychiatrists claim that the main cause of the mental illness is the societal pressure and social awareness must be created on a very large scale .Apart from this many mental pressures are created in the families and the ultimate sufferers are the children due to the direct impact of everything on them which may also be understood as the parental psychological abuse which is commonly reported in the adolescents by their own parents and is a very challenging and at the same time, the most prevalent form of abuse.

According to some studies nearly 150 million were in need of active interactions and interventions posing a formidable challenge to our insufficient, inequitably distributed and slow mental health system and the mental health in India demands an active policy interventions and proper resource allocations by the Indian government with various diverse and effective steps and one such step has been taken by introducing the Mental Healthcare Act, 2017

### **MENTAL HEALTHCARE ACT, 2017**

The mental healthcare act 2017 was passed on the 7<sup>th</sup> April 2017 and came into force from the 29<sup>th</sup> of May 2018, replacing all the previous acts that rendered to be incompatible and insufficient at providing the much-needed attempts to take care of the mentally ill people. This act provides the effective services for the upliftment of the mentally ill and to protect, promote and fulfil the rights of such people while they are under the mental health care services .This act mainly superseded the previously existing mental health act 1987 and this act focuses on the well-being of the mentally ill while taking into account the medical standards that are set nationally and internationally. One of the most remarkable aspect of this act was that it effectively decriminalised the section 309 of the IPC that says that attempt to suicide is a criminal act and the person would be punished for doing so because the section completely destroyed the norms of the article 21 of the Indian constitution.

The Mental Healthcare Act, 2017 has been divided into around 16 chapters

\*Chapter two deals with the aspect that the person suffering from the mental illness should be treated according to the international standards as well as the national standards of health and the mentally ill people should be treated equally all over the world irrespective of the background, caste, colour, political background, religious beliefs etc .Also, the person suffering from mental ailment shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if the person has the ability to understand the relevant information ,or if he appreciates the decision for the treatment and he can communicate his decision by means of speech, expression ,gesture or any other means.

\*Chapter five deals with the rights of the of the mentally ill people which says that the people suffering from mental illnesses have the right to the mental healthcare and treatment from the mental health services run by the state government which have to be provided at affordable cost, good quality and in sufficient quantity .It shall be noted on the part of the government that a good range of services must be provided to cover all the areas of the problems .The people must be protected from cruel ,inhuman and degrading treatment and have right to live with dignity in safe and hygienic and sanitary conditions and get adequate food .the patients have the right to receive the full and correct information regarding the diagnosis and the status of their health .The patient has the full right to remain in privacy and all the information regarding his health must be given due respect by keeping it confidential and should not be made public or told to anyone without the consent of the patient or unless it's necessary .No photograph of the patient undergoing the treatment must be made public. The patients are to be treated fairly and must be provided clean clothes to wear so that no part of the body is exposed harming their privacy and dignity and they should not be subjected to compulsory tonsuring (shaving of the head).

\*Chapter fifteen deals with the offences and penalties and says that when someone carries on a mental health establishment without registration shall be liable to penalty of 5000 which may even extend to 50,000 which may even extend to two lakh rupees and can go up to five lakh rupees. If the person fails to pay the amount of penalty, the state authority may forward the order to the collector of the district in which such person own. All the funds that are collected must get to the consolidated fund of India.

\*Chapter ten deals with the Mental health review boards .the state authority is to constitute the boards called as the mental health review boards and the location and jurisdiction shall be specified by the state authority in consultation with state governments that are concerned and each board will consist of a District Judge ,or an officer of the state judicial services who is qualified to be appointed as District Judge or a retired District Judge who shall be the chairperson of the Board, .It is mandatory to have at least two psychiatrists and other medical practitioners in the panel along with two members who shall be persons with mental illnesses or care givers or persons representing organisations of persons with mental illness or care givers or non-governmental organisations working in the field of mental health.

\*Chapter six deals with the duties of the appropriate government which includes the promotion of mental health and preventive programmes by having an appropriate plan of action and also an awareness has to be created by the government along with the plans and policies to eliminate the stigmas relating to the mental health via public media, print, television and online media .Efforts may also be made by implementing programmes to overcome the superstitions and stigmas relating to the mental health .The police officers from time to time and other government officials are given sensitization training and awareness training on the issues under this act.

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## 5 DECRIMINALISATION OF SECTION 309 OF THE INDIAN PENAL CODE

Suicide is an act of self-murdering or killing oneself and it is an intentional act of the person where the person ends life due to many reasons. It can be emotional trauma; it can be mental distress or anything which is unexplainable and needs professional help. From social factors to internal factors many things play a major role out of which the state of mind of a person has a major impact in taking such a brutal decision for oneself and that is one reason the mental health act 2017 took elements step towards the decriminalisation of the section 309 of IPC.

According to the Constitution the state is embedded with the duty to promote and protect the lives of the people and that has also been well defined by the article 21 which relates to license liberty and when we talk about life and liberty it includes both right to life and the right to live with dignity and it means that the commission of a suicide is unnatural and is a very undignified means of human life extinction. Section 309 provides the authority to the state to punish a person who tries or attempts to commit suicide because life is a gift which is given by nature and shall not be terminated and naturally so it is the duty of the state to prevent people from killing their own selves but there are many cases and many a times it has been held in the court that the state shall not have the right to interfere into the personal lives of individuals and also the fact that if you punish somebody who is already going through an emotional distress and mental trauma, it is in itself an act of atrocity and cruelty. But, there are arguments against this as well in which it has been said that if the attempt to suicide will be decriminalised then the legal authorities and the state authorities will become totally disabled in dealing with people who take the decisions of going on a hunger strike till death which is the kind of protest which is mainly showcased by the activists of politicians to pressurise the government to accept their demands

### **The section 309 of the IPC states that:**

“Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both”

The application of this section is restricted by the Mental Healthcare Act, 2017 and now after the new regulation and restriction on the section, the outcome reads as:

“Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said code “

### **In the case of *Maruti Sripati dubal v. State of Maharashtra***

The Bombay High Court ruled that the section 309 shall be termed unconstitutional because it is violating the article 21 which talks about the freedom to life and liberty. The court in addition to this also observed that when the freedom to remain silent is exists in the freedom of speech then there is also the right to die that exists in the right to life, the desire to die is not a natural and so there exists alright to die.

### ***Smt Gian Kaur v. State of Punjab***

The Supreme Court held that the Right to life is a very natural right and when somebody commits suicide then it becomes the unnatural termination and extinction of life and therefore It may be considered inconsistent with the right to life.

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## 6 Conclusion

Mental illnesses and mental diseases need good treatment which should be provided by a good class of medical specialists and professional doctors. It is important to include the aspect of mental health in the legislature because the law has a controlling aspect in terms of human behaviour and the law is responsible for controlling and coordinating the actions of the humans and when we take into account the element of mental health then the law is responsible to make special acts and special legislations to deal with things differently. A person suffering from a mental disease or mental illness cannot be punished like a regular criminal and this is the reason various acts and bills have come into the existence in the past and many which still continue to exist like the national mental health programme and the mental health act 2017. Whenever a person commits a crime then it is very important for the court of law to determine the mental condition of the person when he committed the act and also it shall be deter mind that the person, If he or she is of unsound mind, was really into the state of abnormality when they did the act or not. So keeping all these things into mind, India being a welfare state , Played an extremely important role in providing justice in every aspect, specially social justice but taking into account the feature of mental illness and mental diseases .Also the government of India ratified the United Nations conventions on The rights of persons with disabilities in the year 2007. Also, the preamble of the mental health care act 2017 Aims to provide effective and efficient medical healthcare services and a good class of treatment to the Persons who are suffering from mental illness and It also makes sure that the rights and privileges of such people are protected by the law and the state. This act is a very progressive act which diligently takes care of the patients so we may call it a patient centric act as well as a right-based act. It also has a specific provision for punishment if there is a violation of the rights of the people who was suffering from mental illnesses and also there are a few things which are to be avoided like sterilisation of women Or Main during any kind of Psychiatric treatment, Seclusion or changing the person down or any other thing which may degrade the condition of the person.