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ANALYSIS OF THE MENTAL HEALTHCARE LAWS IN INDIA WITH SPECIAL REFERENCE TO THE MENTAL HEALTHCARE ACT, 2017

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ABSTRACT

Mental Health Issues and the need for Mental Healthcare have always been disregarded in the discussion around Law and Human Rights. A World Health Organisation report claims that about 7.5% of India's population experiences mental health issues, and yet we have little to no discussion about the subject. People suffering from mental illness are subjected to a tremendous amount of inequality and discrimination on an everyday basis.

An analysis of the various legislations concerning the mentally ill reveals that their Human Rights have been conveniently neglected and denied at every point. Various legislations have been passed and then replaced by supposedly progressive laws, but none has so far proved to be in favour of the Mentally Ill.

In 2013, a Mental Health Bill was presented in Rajya Sabha to make the Indian Mental Healthcare Laws at par with the international standards. The Bill received the President's assent in 2017 and came into force as the 'Mental Healthcare Act, 2017' on July 7th, 2018. Though progressive in some areas, the Act is not without shortcomings. While safeguarding the right of the Mentally Ill, the Act has the effect of shrinking the responsibility of the State and puts the burden on the family of the patient.

This article attempts to explain the genesis of the Mental Healthcare Laws enacted in India and throws light on the various provisions of the newly enacted

'Mental Healthcare Act, 2017'. It further insists upon greater responsibility of the State towards protecting the Human Rights of the mentally ill persons.

INTRODUCTION

According to 'The American Psychiatric Association', mental illness can be defined as "*health conditions involving changes in emotion, thinking or behaviour (or a combination of these). Mental illnesses are associated with distress and/or problems functioning in social, work, or family activities."*[1]

In layman's terms, 'Mental Illness' can be described as an ailment resulting in a changed behavioural pattern of a person. It can be said that a person suffering from any form of Mental Illness requires an extra degree of care and concern.

However, in a country like ours, a person suffering from mental illness is either looked down upon or the illness is not considered important enough to consult a professional. This social stigma attached to mental health issues, the residual disability, and most essentially, the incapacity of those suffering from mental illness to speak up against mistreatment and discrimination has led to their Human Rights being denied at every point in their life.

In the case of mentally ill persons, Human Rights include not only the innate privileges but also the right to obtain appropriate treatment and care coupled with the right to protect and exercise their human rights along with other statutory entitlements.

[1] *What is Mental Illness?* , (September 24, 2020, 11:40 AM) https://www.psychiatry.org/patients-families/what-is-mental-illness.

The 'Universal Declaration of Human Rights, 1948' brought about some hope for the specially-abled, even though it did not explicitly talk about the rights of the mentally ill persons. The resolution laid down more common yet, definitive entitlements like the right to life and liberty, the right to be free from insensitive, demeaning treatment, etc.

Subsequently, resolutions such as the 'Declaration on the Rights of Mentally Retarded Persons' (1971) and the 'Declaration on the Rights of The Disabled Persons' (1975) initiated the process of setting up minimum standards at the international level for the treatment of the mentally ill persons.

However, in reality, specially-abled people have been treated as a liability since the dawn of human civilization. They receive scant care and concern from society because they have always been considered unproductive in the socioeconomic value system. Not only the community, the government, and the healthcare experts have also treated the disabled as second-class citizens. In a society that treats the specially-abled as a burden, the mentally ill have it worse.

GENESIS OF THE MENTAL HEALTH CARE LAW IN INDIA

Mental Health Care law is the special law applicable to persons diagnosed with mental illness and those involved in caring for and treating the patient. Mental Health Care Laws should not only provide curative rights but must also address the protective, rehabilitative and preventive aspects.

The first-ever legal document that provided equal rights to the mentally ill was the 'Universal Declaration of Human Rights'. The declaration did not explicitly talk about the entitlements of the Mentally ill but provided that the rights

enshrined under the UDHR are inalienable entitlements of all people without any discrimination.

The first all-inclusive declaration concerning the rights of mentally ill persons was the United Nations 'Principles for the Protection of Persons with Mental Illness' and the 'Improvement of Mental Health Care' in 1991.

In India, the first legislation concerning the people suffering from mental illness was the Lunatic Removal Act, 1891, which was chiefly brought about with the aim of regulating the transfer of British patients back to England. However, the Act ceased to be operative in 1891.

"Under British Rule, several laws were enacted to deal with the concerns of the mentally ill persons:

1. The Lunacy (Supreme Courts) Act 1858;
2. The Lunacy (District Courts) Act 1858;
3. The Indian Lunatic Asylum Act 1858 (with amendments passed in 1886 and 1889); and
4. The Military Lunatic Act 1877".[2]

These legislations were enacted for the purpose of providing care to mentally ill persons. However, under the provisions of these legislations, patients were instead held captive for an indeterminate period in degrading environments, with little to no chance of recovery or release. Such inhuman and degrading treatment of the mentally ill went on for years. In 1911, a new Bill was introduced that

[2] Muhammad Mudasir Firdosi and Zulkarnain Z. Ahmad, *Mental health law in India: origins and proposed reforms,* 13 BJPSYCH INT. 65, 65-67 (2016).

consolidated the existing legislation, which later came to be known as the Indian Lunacy Act, 1912 (ILA, 1912).[3]

The Indian Lunacy Act, 1912, was principally the foremost legislation to deal with issues related to mental health in India. This law led to fundamental changes in the management and working of the 'Mental Asylums' (which later came to be known as 'Mental Hospitals') where the mentally ill were kept. However, this Act was also not focused on providing protection to those suffering from mental illnesses. It was rather focusing on to provide protection to the public from those considered threatening to the society, i.e., the mentally ill. The ILA 1912 completely disregarded the human rights of the people diagnosed with mental illness and was thus, considered inappropriate.

The Indian Psychiatric Society suggested that a new law be enacted and helped to prepare a new Mental Health Bill in 1950.[4] After a long wait of more than thirty years, the Bill received the President's assent (1987) and was implemented as a codified law in 1993. The Mental Health Act, 1987 (MHA, 1987) was considered progressive in the sense that it put more emphasis on care and providing appropriate treatment to the mentally ill than their custody. This act provided detailed guidelines and procedures for the hospitalization of a person under exceptional conditions and put the focus on the need to protect the human rights of those suffering from mental illness, and guardianship and protection of property belonging to the mentally ill. The MHA, 1987 required that psychiatric hospitals or nursing homes must be supervised by the Central and State Mental Health Authority. It also regulated the responsibility of the Police and the

[3] Somasundaram O*, THE INDIAN LUNACY ACT, 1912: The Historic Background*¸ 29(1) INDIAN J. PSYCHIATRY 3, 3-14 (1987).

[4] Trivedi JK, *The mental health legislation: an ongoing debate*, 44(2) INDIAN J. PSYCHIATRY 95, 95-96 (2002).

Magistrate to manage the cases of wandering PMI (Persons with Mental Illness) and cruelly treated PMI. However, the Act received criticism for dealing merely with technical matters such as licensing, admissions, and guardianship while conveniently ignoring the Human Rights issues of the mental health patients.

In 1995, another legislation by the name of the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act' was enacted by the Government of India for the purpose of removing discriminations in the distribution of development benefits with regard to non-disabled persons and to prevent the abuse and exploitation faced by the persons with disability or the specially-abled persons. The 'Persons with Disabilities Act, 1995' categorizes 'mental retardation' and 'mental illness' as conditions of disabilities. Therefore, those suffering from mental health issues are entitled to the benefits available to the specially-abled (earlier known as 'persons with disabilities') as provided by virtue of the legislation.

In the year 1999, the National Trust Act was enacted to empower people diagnosed with cerebral palsy, mental retardation, autism, and multiple disabilities to live self-reliantly and in close proximity to their community and to aid the protection of their rights.[5]

New international standards for providing care and protection to the persons suffering from mental illness were set through the acceptance of the 'United Nations Convention on the Rights of Persons with Disabilities' in December 2006. It is an international human rights treaty that protects the rights and self-worth of specially-abled persons. It lays down what the term 'Human Rights'

[5] Choudhary Laxmi Narayan and Deep Shikha, *Indian Legal System and Mental Health*, 55 INDIAN J. PSYCHIATRY 177, 177-181(2013).

mean with regards to disability and extends them protection by identifying the obligations on the Government to protect, promote, and ensure those rights. India signed the Convention on March 30th, 2007, and ratified the same on October 1st, 2007.

The Convention exhibits an exceptional shift with regard to disabilities from a social welfare concern to a human rights issue. The novel standard is based on the presumption of legal capacity, dignity, and equality. Article 2 of the Convention lays down that specially-abled person are entitled to enjoy equal status in terms of legal capacity in all facets of life. Article 3 of the convention makes it obligatory on the part of the state to extend support towards the specially-abled persons to exercise their legal entitlements, and Article 4 of the Convention lays down safeguards to prevent abuse of the support system which is necessary for the specially-abled persons.

A Mental Health Bill was introduced in the Rajya Sabha in 2013 by the then Minister of Health and Family Welfare, Mr. Ghulam Nabi Azad with the purpose of bringing the Indian law at par with the international standards set by the Convention. The bill gained the assent of the President after four long years on April 7th, 2017, and came into effect on July 7th 2018.

The Mental Healthcare Act, 2017 (MHA, 2017) intends to change the way mental health is perceived in the country and to ensure that our law with regard to mental health is in harmony with the 'UN Convention on the Rights of Persons with Disabilities'. The said legislation is quite comprehensive and establishes new procedures and authorities for its implementation.

THE MENTAL HEALTHCARE ACT, 2017

Mental Health can be distinguished from general health in the sense that when a person suffers from mental health issues, he is, in certain circumstances, unable to make decisions on his own. Mental health issues may last for long periods and have a life-long impact, gradually leading to a difficult life. The social stigma attached to mental illness further makes life miserable for the mentally ill by leaving them vulnerable to exploitation, discrimination, abuse, neglect, and marginalization.

The 'Mental Healthcare Act, 2017' (MHA, 2017) was enacted with the purpose of aligning and harmonizing the existing laws related to Mental Health with the 'UN Convention on the Rights of Persons with Disabilities'. The Act of 2017 has the effect of repealing the Mental Health Act, 1987, and overturns Section 309 of the Indian Penal Code, 1860, which aimed to criminalize attempted suicide.

The new Act marks a paradigm shift from looking at the Mentally Ill as a danger to society to treating them as the victims of mental disorders. It emphasizes that the Human Rights of the Mentally Ill should not be compromised. This legislation puts more emphasis on providing the mentally ill with the care and treatment that they require as opposed to the 1987 Act, which attracted criticism for being too technical and deviating from the actual objective of the legislation.

The MHA, 2017 intends to make life somewhat easier for those suffering from any form of Mental Illness. The 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."*

The definition seems very progressive in the first instance. The act of including conditions concomitant with alcohol and drug misuse is a beneficial move, considering the widespread issue of alcohol and drug abuse prevalent in the nation. However, the over-inclusive and far-reaching definition will have a substantial bearing due to the social stigma attached to mental illness as it also brings non-severe mental illness under the purview of this law.[6] The Act has certain provisions that deserve appreciation, and there are also parts that can be criticized. Various provisions of the Act are discussed below:

1. Rights available to persons suffering from mental illness:

   The 'Mental Healthcare Act, 2017', under Chapter V, clearly lays down the variety of rights granted to the persons diagnosed with any form of mental illness. Some of the rights available to the mentally ill are:

   a. Access to affordable healthcare: Section 18 of the MHA, 2017 provides for the mentally ill person's right to access affordable healthcare and appropriate treatment to the persons suffering from mental illness from the institutions funded or administered by the State. Thus, it obliges the government to ensure that whoever is diagnosed with any mental health issue gets access to proper treatment & care.

[6] Rakesh Kumar Chadda, Bichitra Nanda Patra & Nitin Gupta, *Recent developments in community mental health: Relevance and relationship with the mental health care bill,* 31(2) IJSP 153, 153-160 (2015).

b. Right to life with dignity: Section 21 of the MHA, 2017 prohibits discrimination in any form against the mentally ill and ensures that they live a life with dignity.

c. Informed Consent and power to make decisions: Section 4 of the MHA, 2017 lays down that mentally ill person are entitled to know about the available treatment options, and they can make decisions regarding their treatment as long as they understand what is being told to them and can communicate their decision. The section also states that the information being given to the mentally ill must be given in a language that is easy to understand or through gesture language or through visual aids or any other method so that it becomes easier for him to comprehend the information being given to him.

d. The Right to live in close vicinity of a community: S.18(5)(b) of the MHA, 2017 requires that the concerned government must take necessitous steps to warrant that the treatment is provided in a method which extends support to the mentally ill persons to be part of a community and reside with their kin.

e. Right to confidentiality: By virtue of Section 23 of the MHA, 2017, the mentally ill persons are entitled to maintain confidentiality, i.e. they are not required to divulge details of their treatment to anyone. The provision also applies to the healthcare professions treating the patient. However, there are certain exceptions to this rule which allow the medical professionals to release information about the patient under certain circumstances.

Various other rights of the patients of mental illnesses have been recognized under the Act of 2017 such as the right to legal aid[7], right to protection from cruel, inhumane, or degrading treatment[8], treatment at par with that tendered to persons with physical illness[9], right to access their essential medical records[10], right to have personal contacts and communication[11] and the right to make complaints regarding deficiency in services[12]. The legislation also provides for free quality treatment to homeless persons under Section 5(7).

2. Decriminalization of suicide:

Attempt to suicide or any act towards the commission of suicide had been made a criminal act by virtue of Section 309 of the Indian Penal Code. The section imposes punishment in the form of simple imprisonment which may extend to one year. The 'Mental Healthcare Act, 2017' decriminalized attempt to suicide. It makes it obligatory for the authorities to presume that whoever attempts suicide was suffering from severe stress, unless proven otherwise, and cannot be held punishable under Section 309 of the Indian Penal Code. Not only does the MHA, 2017 decriminalize attempt to suicide, it also makes the State responsible for providing proper care, treatment, and

[7] Mental Healthcare Act, 2017, §19, No.10, Acts of Parliament, 2017(India).

[8] Mental Healthcare Act, 2017, §20(2), No.10, Acts of Parliament, 2017(India).

[9] Mental Healthcare Act, 2017, §21, No.10, Acts of Parliament, 2017(India).

[10] Mental Healthcare Act, 2017, §25, No.10, Acts of Parliament, 2017(India).

[11] Mental Healthcare Act, 2017, §26, No.10, Acts of Parliament, 2017(India).

[12] Mental Healthcare Act, 2017, §28, No.10, Acts of Parliament, 2017(India).

rehabilitation to people suffering from such severe stress in order to prevent the recurrence of such an attempt to suicide.[13]

3. Prohibition of certain procedures:

   Electroconvulsive Therapy (ECT), i.e. 'shock treatment' given to patients suffering from any form of mental illness has been prohibited as an emergency treatment under the Act.[14] The Act further states that whenever absolutely necessary, such Electroconvulsive Therapy can only be performed after appropriate muscle relaxants and anaesthesia have been tendered to the patient.[15] However, ECT has been prohibited absolutely in the case of minors.[16] Sterilization, whether in men or women, as a form of treatment, has been prohibited under the Act.[17] The Act also prohibits the confinement of a person using chains as a method of treating the mentally ill.[18]

4. Advance directive:

   'Mental Healthcare Act, 2017', under Chapter III also provides for provisions allowing Advance Directives to be given concerning the treatment of mentally ill persons. Advance Directive means any directions given in writing by the mentally ill person in advance in consideration of his choices concerning his treatment for any mental illness. The mentally

[13] Mental Healthcare Act, 2017, §115, No.10, Acts of Parliament, 2017(India).

[14] Mental Healthcare Act, 2017, §94, No.10, Acts of Parliament, 2017(India).

[15] Mental Healthcare Act, 2017, §95(1)(a), No.10, Acts of Parliament, 2017(India).

[16] Mental Healthcare Act, 2017, §95(1)(b), No.10, Acts of Parliament, 2017(India).

[17] Mental Healthcare Act, 2017, §95(1)(c), No.10, Acts of Parliament, 2017(India).

[18] Mental Healthcare Act, 2017, §95(1)(d), No.10, Acts of Parliament, 2017(India).

ill person can also appoint a representative who shall have the power to make decisions concerning the treatment of the patient. However, it is pertinent to note here that the directive must be mandatorily certified by a doctor registered with the appropriate medical board at the time of admission of the person.[19]

5. Mental Health establishments:

By virtue of the 'Mental Healthcare Act, 2017', the government is required to establish a Mental Healthcare establishment at the National Level, to be called the 'Central Mental Health Authority'[20] and one in every state to be known as the State Mental Health Authority[21]. The provision further requires that all the professionals such as the nurses, clinical psychologists, and psychiatric social workers along with every Mental Health Institution must be mandatorily registered with the concerned authority.

These authorities shall have the following functions:

"(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 the provision of services; and

[19] Mental Healthcare Act, 2017, §89(1)(b), No.10, Acts of Parliament, 2017(India).

[20] Mental Healthcare Act, 2017, §33, No.10, Acts of Parliament, 2017(India).

[21] Mental Healthcare Act, 2017, §45, No.10, Acts of Parliament, 2017(India).

(f) advise the government on matters relating to mental health."[22]

6. Responsibility of other agencies:

The MHA, 2017 sets out the responsibilities of various agencies such as a Police Officer or a Magistrate.[23] The Act requires a police officer to report to the magistrate about any exploitation of a person diagnosed with a mental illness in the form of mistreatment or neglect by the medical practitioners. The act further levies a duty on the police officer in charge of a Police Station to take any wandering person (mentally ill person) under his protection and ensure that a medical practitioner examines him. Based on such medical examination, the person shall be sent to his/her home, a homeless persons' establishment or, admitted to a mental health establishment.

7. Punishment in case of violation:

As per the provisions of the MHA, 2017, first-time offenders are liable to be punished with imprisonment for a maximum period of 6 months or with a fine which may extend to Rs. 10,000 or with both. Punishment for subsequent violations is stricter. Any person who violates the law a second time shall be liable to be punished with imprisonment for a maximum period of 2 years or with a fine which should not be less than Rs. 50,000 and can exceed a maximum of Rs. 5, 00, 000 or with both.[24]

[22] Abhishek Mishra & Abhiruchi Galhotra, *Mental Healthcare Act, 2017: Need to Wait and Watch*, 8(2) IJABMR 67, 67-70 (2018).

[23] Mental Healthcare Act, 2017, §100, No.10, Acts of Parliament, 2017(India).

[24] Mental Healthcare Act, 2017, §108, No.10, Acts of Parliament, 2017(India).

CRITICAL INSIGHT INTO THE ACT

The purpose behind the enactment of the 'Mental Healthcare Act, 2017' is to ensure that persons with mental illness live an equal life by safeguarding their human rights and providing for adequate and affordable treatment and care. It makes the responsibility of the State to ensure that the mentally ill persons are not being subjected to discrimination. However, the Act has its own shortcomings and is not fool-proof in the Indian Context. Some of the shortcomings of the Act are as follows:

1. Regulation of Informal Admissions:

   The Act, under Section 21(1) upholds that there shall be no discrimination against the mentally ill persons and they should be subject to treatment in the same manner as those who have physical ailments.[25] On the other hand, Section 86 of the Act provides that whoever believes to be suffering from any form of mental illness and wishes to seek admission to any mental health establishment shall be admitted to the establishment subject to the satisfaction of the Medical officer-in-charge of the establishment. Such an officer must satisfy the fact that the person is suffering from a mental illness of such severity which makes it necessary for him to be admitted to the establishment and that such person is expected to gain advantage from treatment in a hospital. This provision contradicts what is stated under Section 21(1) of this Act by making it necessary for a person to provide proof of his mental illness to gain access to treatment which is contrary to

[25] Manoj Therayil Kumar, *Mental Healthcare Act, 2017: Liberal in Principles, Let down in Provisions*, 40(2) IJPSYM 101, 101-107 (2018).

how a person with a physical ailment is admitted to a hospital, in which, it is not necessary to have a prior diagnosis of the issue. However, Section 86 of the Act makes it mandatory for mentally ill persons to have a diagnosis prior to seeking admission to a mental health hospital.

2. No Safeguards concerning the Nominated Representative System:

   The MHA, 2017 under Section 14(6) states that a patient can remove his Nominated Representative (NR) at any time. Ideally, whenever a nominated representative does not seem to be acting for the benefit of the patient, he must be removed. However, the Act gives the authority to remove a nominated representative only to the patient, which is problematic because a mentally ill patient may not have the capacity to remove an existing NR. Even if he has the mental capacity to remove the NR, he may not be financially capable of doing so, for fear of unsettling his family relationships. Moreover, if the patient had the capacity to remove a Nominated Representative, he might not have required one in the first instance.

3. Advance Directives- Adverse effect:

   The Act under Chapter III provides for Advance Directive. It is the concept that gives the patient power to decide about certain aspects of the treatment. However, the concept may have adverse effects in a developing country like India due to factors like the lack of awareness surrounding mental health and the number of existing resources not being taken into account. Also, there are certain severe mental health issues such as Schizophrenia where the patient refuses to accept that he is suffering from a mental illness, let

alone being capable of deciding about their treatment and giving consent in writing.[26]

4. Lack of Resources:

   The western system of Mental Healthcare has highly inspired the provisions under the Act. However, India's level of resources is a fraction of those available in most western countries. Along with the scarcity of resources, there is very little awareness and discussion surrounding Mental Health Issues and not to forget the amount of social stigma attached to mental illness. All of these factors together make the implementation of the Act very challenging for the country.

5. Treatment Refusal and Capacity under Section 89:

   Section 89 of the Act provides for admission and treatment of mentally ill persons that need high levels of support in Mental Health Institutions, for a maximum period of thirty days. In regard to mental disorders, most of the countries have taken an intentionally time-consuming course towards the incorporation of the capacity criteria for admission and treatment. The reason behind this approach is the contrast in the treatment of persons with physical ailments and those with mental disorders.[27] The purpose of this section is to provide treatment to those who have such severe mental disorders that they become a threat to themselves and those around them. However, the Act does not provide authority to the medical officer to

[26] Raghuraj Gagneja, *Mental Healthcare Bill: Despite the Positive Reforms, a Lot More Needs to be Done for the Mentally Ill*, (April 08, 2017, 11:45 AM), https://www.firstpost.com/india/mental-healthcare-bill-despite-the-positive-reform-a-lot-more-needs-to-be-done-for-the-mentally-ill-3373156.html.

[27] Manoj Therayil Kumar, *Mental Healthcare Act, 2017: Liberal in Principles, Let down in Provision*s, 40(2) IJPSYM 101, 101-107 (2018).

administer appropriate treatment in any case. Advance Directive given by the person is in contravention to such treatment, or the patient himself refuses (while having the capacity to do so) the treatment or the Nominated Representative of the patient disagrees to the treatment. Thus, this renders the administration of appropriate treatment impossible even in cases where it is absolutely necessary to do so in order to protect the patient from himself and those around him. This also burdens the Mental Health Establishment by letting a person, who fulfils the prerequisite conditions for involuntary admission, stay at the establishment even when no appropriate treatment is being provided to him for 30 days.

6. Mental Health Professionals:

The people involved in the treatment of Mentally Ill persons such as the nurses, psychologists, and social workers working at the Mental Health institutions have conferred the title of 'Mental Health Professionals'. Such professionals are required to make an independent judgment of a person's mental health condition and decide whether such a person satisfies the criteria for admittance. The task involves huge responsibility on the part of such professionals, and hence, it becomes necessary for such professionals to have extensive training in order to do justice to their role as mental health professionals. The Act, however, does not stipulate any compulsory requirements (with regards to training/expertise, etc.) for the people (nurses, psychologists, etc.) responsible for carrying out such complex procedures. Hence, it can be said that considering the lack of comprehensive training

requirements, the role played by Mental Health Professionals as independent assessors are implausible to be effective in practice.[28]

CONCLUSION

A human being's most invaluable asset is his mind. However, taking care of one's mental health is generally not a priority for most people. The social stigma attached to mental illness makes it impossible for a lot of individuals to access proper treatment and care. Thus, it becomes necessary to have legislation that protects an individual's right to access affordable and appropriate treatment in case of mental health issues.

India has had numerous legislations focused on providing treatment and care to those suffering from mental illness. These legislations became obsolete with time and had to be replaced with new laws. The most recent legislation concerned with the concept of mental health is the 'Mental Healthcare Act, 2017'. This legislation replaced the Mental Health Act of 1987 and ensures that Indian mental health laws are at par with the 'UN Convention on the Rights of Persons with Disabilities' adopted in December 2006.

The MHA, 2017, in its scope, marks a paradigm shift from the 1987 Act. It attempts to safeguard the Human Rights of the mentally ill persons and is a step towards adopting the reformist views and ethics that are now recognized and promoted throughout the world. However, the said legislation is not without shortcomings. Various provisions of the Act are discriminatory towards the

[28] Manoj Therayil Kumar, *Mental Healthcare Act, 2017: Liberal in Principles, Let down in Provisions*, 40(2) IJPSYM 101, 101-107 (2018).

mentally ill, thereby contradicting the principle of non-discrimination it supposedly promises to endorse. It is a deliberate attempt on the part of the Government to shrink its obligations and instead divert the burden towards the family of the patient. The determination to practice and implement the principles endorsed by the legislation seems scrawny, given the lack of resources and affirmative action on the part of the State.