MENTAL HEALTH ACT, 1987 - AN ANALYSIS

Dr. Prateek Rastogi, Assistant Professor
Dept. Of Forensic Medicine Kasturba Medical College, Mangalore- 575001

ABSTRACT

Health is defined as "the state of complete physical, mental and social well being and not merely an absence of disease or infirmity." 1 Out of three, the mental status is tricky to evaluate and is the one which actually determines other two health parameters.

In our country plenty of legal orders interact with mental disorders in order to protect the interests of mentally ill, society and the state. These legislations are enacted to protect the society from dangerous manifestations of mental illness. There are guidelines regarding restrain, admission and discharge, procedures of civil and criminal action with regard to mentally ill. But do these laws discuss about proper care and treatment? Are there provisions for post discharge care and rehabilitation?

In present study, an attempt has been made to discuss Mental Health Act, 1987 and suggestions to make them more fundamental.

Key words: Mental Health, Mentally ill, Mental Health Act.

HISTORY

Mental health act was drafted by parliament in 1987 but it came into effect in all the states and union territories of India in April 1993. This act replaces the Indian Lunacy act of 1912, which had earlier replaced the Indian Lunatic Asylum act of 1858.[2]

Definition of the act [3]

"An act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto."

Salient features of the act [2]

Mental health act is divided into 10 chapters consisting of 98 sections.

Chapter I: Deals with preliminaries of the act, definitions and provides for change of offensive terminologies used in Indian Lunacy act 1912.

Chapter II: Deals with the procedures for establishment of mental health authorities at central and state levels.

Chapter III: It lays down the guidelines for establishment and maintenance of psychiatric hospitals and nursing homes. There is a provision for licensing authorities to process applications for license which have to be renewed every five years.

Chapter IV: It deals with the procedures of admission and detention of mentally ill in psychiatric hospitals.

Chapter V: It deals with the inspection, discharge, leaves of absence and removal of mentally ill persons.

Chapter VI: It deals with the judicial inquisition regarding alleged mentally ill persons possessing property and its management.

Chapter VII: It deals with the maintenance of mentally ill persons in a psychiatric hospital or psychiatric nursing homes.

Chapter VIII: It deals with the protection of human rights of mentally ill persons.

Chapter IX: It deals with the penalties and procedures for infringement of guidelines of the act.

Chapter X: It deals with miscellaneous matters not covered in other chapters of the act.

Terminologies used in the act [4]

New term Outdated terms
Psychiatric hospital / Nursing home Asylum
Mentally ill person Lunatic
Mentally ill prisoner Criminal lunatic
Other important terminologies used in the act

1. Reception order: Means an order for admission and detention of a mentally ill person in a psychiatric hospital or nursing home.

2. Psychiatric hospital or nursing home: It is a hospital for the mentally ill persons maintained by the government or private party with facilities for outpatient treatment and registered with appropriate licensing authority. Admitting a mentally ill to a general nursing home is an offence.

3. Medical officer: A registered medical practitioner.

4. Medical officer in-charge: Is a medical officer who is in-charge of a psychiatric hospital or nursing home.

5. Mentally ill person: Is a person suffering from mental disorder, other than mental retardation, needing treatment.

6. Mentally ill prisoner: Is a mentally ill person, ordered for detention in a psychiatric hospital, jail or other places of safe custody.

Objectives of the act [5]

1. To establish central and state authorities for licensing and supervising the psychiatric hospitals.

2. To establish such psychiatric hospitals and nursing homes.

3. To provide a check on working of these hospitals.

4. To provide for the custody of mentally ill persons who are unable to look after themselves and are dangerous for themselves and or, others.

5. To protect the society from dangerous manifestations of mentally ill.

6. To regulate procedure of admission and discharge of mentally ill persons to the psychiatric hospitals or nursing homes either on voluntary basis or on request.

7. To safeguard the rights of these detained individuals.

8. To protect citizens from being detained unnecessarily.

9. To provide for the maintenance charges of mentally ill persons undergoing treatment in such hospitals.

10. To provide legal aid to poor mentally ill criminals at state expenses

11. To change offensive terminologies of Indian Lunacy act to new soother ones.

Procedure for admission and discharge of mentally ill

A mentally ill person (not a minor) may make a request for admission as a voluntary patient; in case of minor his guardian may make such request. On such request, medical officer in-charge after enquiry within 24 hrs, if thinks necessary may admit such person. The medical officer shall discharge such patients on request by him or guardian as the case may be, unless he finds such discharge against patient’s interests. Such cases will be referred to medical board, which if decides the same, then patient will be further admitted for a period not exceeding 90 days for treatment.

A mentally ill may be admitted as inpatient on a request by friends or relatives. Such request should be supported by medical certificates to the effect. In such cases medical officer in-charge may admit the patient if he thinks necessary. Request for admission may also be made by a police officer if such mentally ill person is dangerous to himself or others. Such persons will be discharged by magistrate on request by friends/relatives or after they are certified to be sane by the board of experts.

Most of the sections of the act are in accordance with mental health act 1959 and the mental health (amendment) act 1982 of England and mental health act 1960 of Scotland with minor differences.

Positive aspects of the act

1. Replacement of offensive terminologies of Indian Lunacy act 1912 by new soft and soothing terms. Thus upholding the dignity of mentally ill persons.

2. Establishment of licensing authorities to provide a check on licensing and working of mental health hospitals. This will help in improving standards of mental health care.
4. Provision for out patient care thus avoiding unnecessary detention.
5. Simple procedures for admission and discharge of mentally ill persons to hospitals.
6. Appointment of guardians for maintaining property and person of mentally ill.
7. Provision for bearing the expenses of treatment by relatives and government.
8. Prohibition on any research on such subjects without proper consent.

**Criticism of the act**

1. Change of older terminologies to newer ones might be good from theoretical aspects. But practically will it be helpful in removing the social stigma attached to the illness. This approach is just like a window dressing. This change should be implemented in practice and not on paper.
2. Licensing authorities do not have a doctor who may be in a better position to assess the facilities and services of these centers.
3. Concept of establishing new hospitals might appear good but in a developing country like ours this may be a costly affair. It will put extra burden on health budget.
4. No mention is made of incorporating General hospitals and centers in this act rather they are prohibited. Such hospitals if taken along may provide a better health care.
5. Much stress is laid on hospital admission and treatment. This again increases the cost of health care. No provisions are made for home treatment.
6. Although the act provides for a simpler discharge procedure but no provisions are made for after discharge care and rehabilitation, of patients.
7. In case no relative comes forward for discharge of patient, will that person be detained indefinitely in hospital. Who will bear the expenses in such case? If Govt. then for how long.
8. It is provided that research on such subjects can be carried out by consent of guardian. Is it not like treating them as inanimate objects? This provision violates human rights.
9. There are no provisions for punishing the relatives and officers requesting unnecessary detention of a person to such hospitals.
10. Once a person is admitted to mental hospital he is termed insane or mad by the society. There should be provisions in the act to educate the society against these misconceptions.
11. Act adopts different views for Govt. and private hospitals.

**Suggestions for improvement of the act**

1. Provisions for educating society about mental illness and treating it at par with physical illness should be incorporated.
2. Licensing process should be made simpler.
3. Provision should be there for checking the working of licensing authorities and powers vested in them to be limited.
4. Licensing authorities should appoint a doctor preferably a psychiatrist as inspecting officer.
5. Private Doctors and general nursing homes should be allowed to treat such patients at par with recognized centers. This will help in reducing the workload on the system and will provide much better health care to the patients. This provision can be withdrawn later, once there are adequate recognized hospitals with adequate staff.
6. Other than children and addicts even separate places are to be provided for elderly, destitute and women.
7. Adequate provisions to be provided for long-term treatment and expenses on treatment. If this is not possible, then community mental health centers should be opened to provide such care.
8. Provisions for rehabilitation centers are to be incorporated. Efforts should be there for post discharge care and rehabilitation.
9. Strict provisions should be there for punishing the individuals requesting unnecessary
detention and exploitation of mentally ill.

10. Stress should be on treatment of illness rather than the ill

11. Treatment should be based on concept of socialization and not on hospitalization.

Every law has its own advantages and disadvantages although existing law gives an excellent approach to the problems of mentally ill. But some of the provisions need a proper rethinking. No law once framed can be adapted forever. There should be proper amendments from time to time.

References


