

The Mental Healthcare Act, 2017 (MHCA)



outlive!

Youth Suicide Prevention

The Mental Healthcare Act, 2017 (“MHCA”) is a law which provides for and regulates mental health care and treatment in India.

The MHCA came into force on 29th May, 2018 repealing the earlier Mental Health Act, 1987. It was enacted in pursuance of obligations under the United Nations Conventions on Rights of Persons with Disabilities, 2006 (“UNCRPD”) which India ratified in 2007.

The MHCA adopts a rights-based approach to mental healthcare and treatment by placing obligations on the government and mental health professionals to protect the rights of persons with mental illness.

Basic guiding principles of MHCA

1. All individuals have basic human rights, including the right to equality, liberty and dignity.
2. Every person must be given the autonomy to make the choices they consider the best for themselves and this extends to decisions about their mental health care and treatment.
3. Everyone has the right to full participation and inclusion in society.
4. No person can be discriminated against based on any grounds such as caste, class, ethnicity, sex, gender, sexual orientation, religion, disability, social, political or cultural beliefs.
5. Every person has the right to receive any form of support to help them make their own decisions.

Determination of mental illness

Determination or diagnosis of mental illness can be done only in accordance with nationally and internationally accepted medical standards notified by the Central Government such as the World Health Organisation's International Classification of Diseases (ICD).

MHCA makes it clear that mental illness is not the same as unsoundness of mind. While mental illness is a medical concept determined in accordance with medical standards, an unsound mind is a legal concept which can be determined only by a competent court of law.

What is not a mental illness?

Mental illness cannot be determined based on:

- **A person's identity or political, economic and social status in society.** For example, homosexuality or identifying with different gender identities is not a mental illness.
- **A person's beliefs or values which are separate from those prevailing in their community.** For example, believing in inter-caste marriages is not a mental illness if one's community prohibits such marriages.
- **Past history of treatment or hospitalisation.** For example, a person with a past history of mental illness can recover and live without a mental illness in the present or future.

Capacity

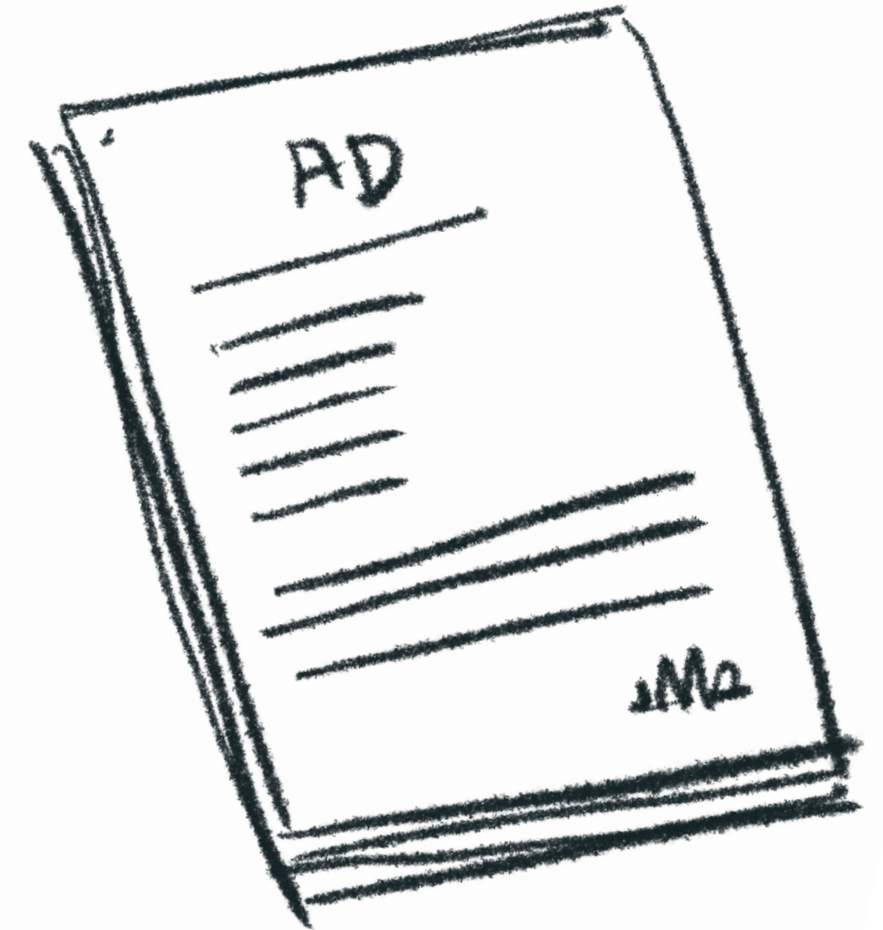
- Capacity refers to the ability of a person to make decisions regarding one's own mental health care and treatment.
- Capacity means that a person can:
 - o understand information relevant for making their decision
 - o understand consequences of their decision
 - o communicate their decision through speech, expression, gestures, or any other way
- If a person has a mental illness doesn't mean they lack capacity. A person can have a mental illness and still have capacity to make decisions.
- Every person has a right to receiving any form of support so that they can make their own decisions.
- Mental health professionals are required to assess the capacity of a person in accordance with guidelines issued by an Expert Committee set up by the Central Mental Health Authority.
- A person cannot be said to lack capacity to make decisions just because their decision is perceived as wrong or inappropriate by the mental health professional or family members.

Informed Consent

- A person can be provided treatment only with their informed consent
- Informed consent means that treatment can be given only when the person agrees to receive it. A person can refuse treatment if they don't want it or wish for an alternative.
- Before taking informed consent, the mental health professional should explain in simple language:
 - o Benefits and risks of treatment
 - o Alternative options
 - o Consequences of taking or refusing treatment
- If a person cannot make decisions with support, their nominated representative can give informed consent on their behalf

Advance Directive (AD)

- AD is a written document made by a person stating how they would like or not like to be treated in the situation that they have a mental illness and are unable to make decisions about their treatment.
- The AD is effective only when the person ceases to have capacity and is not able to make decisions regarding their mental health care and treatment and remains effective till the person regains capacity.
- The AD can specify any or all of the following information:
 1. How the person wishes to be cared for and treated for a mental illness; or
 2. How the person wishes not to be cared for and treated for a mental illness; or
 3. Individual that the person wishes to appoint as their nominated representative.
- An AD can be challenged before a MHRB on grounds that:
 1. it was not made out of a person's free will but under force or threat by another person
 2. the AD was not intended to apply to present circumstances
 3. the person was not sufficiently well informed to make a decision
 4. the person did not have capacity
 5. the AD is contrary to any law or the Constitution

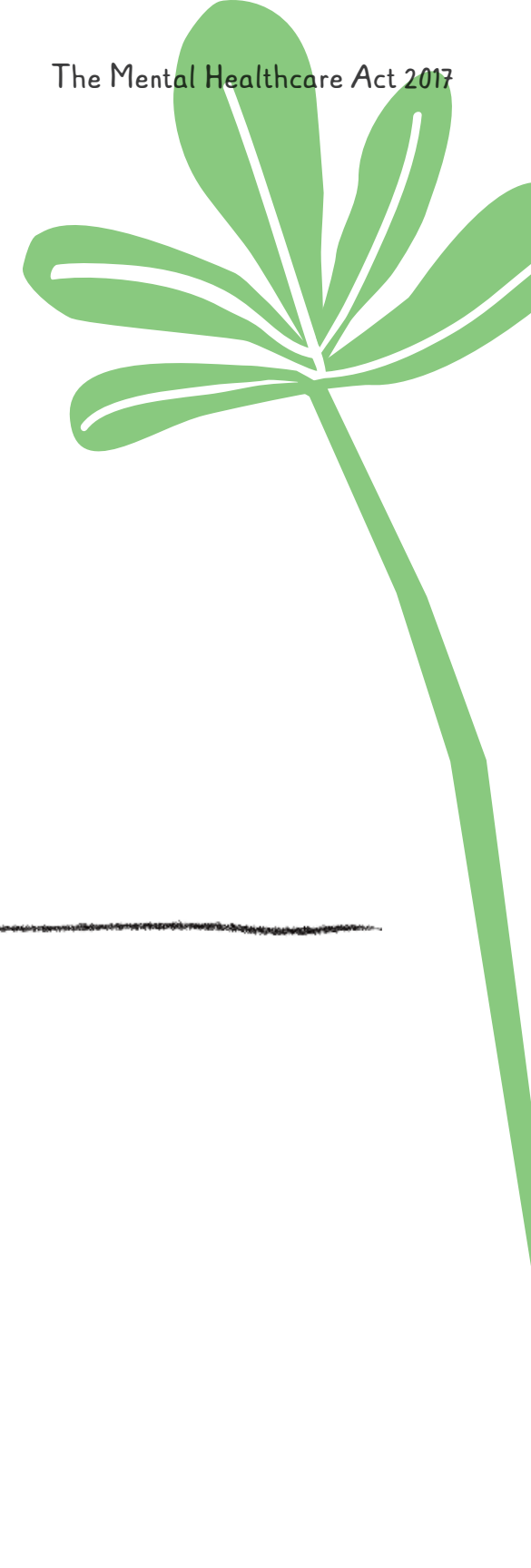


Nominated Representative (NR)

- Individual appointed by a person with mental illness to represent them in matters related to their mental healthcare, provide support and take decisions on their behalf when they don't have capacity
- The NR should not be a minor, must be competent to perform their duties and give consent for the same in writing.

The NR has the following duties:

- o Consider the current and past wishes, life history, values, cultural background and best interests of the person
- o Provide support in making treatment decisions
- o Provide care while the person is admitted or receiving treatment
- o Apply to the Mental Health Review Board in case of any rights violations or complaints



Mental health review boards (MHRB)

- MHRBs are official bodies which have powers to conduct proceedings to protect the rights of persons with mental illness and ensure proper implementation of the provisions of the MHCA.
- The MHRBs are chaired by a District Judge and members include one representative of the District Collector, one psychiatrist, one medical practitioner and two representatives of persons with mental illness/caregivers/ NGOs working in the field of mental health
- MHRBs can take decisions regarding review of advance directives, appointment of NRs, address complaints against deficiency of services and violations of rights.
- Persons with mental illness or their NRs can submit an application to the MHRBs for

seeking redressal or relief regarding their mental healthcare and treatment if their rights have been violated or addressing other issues



Central/state mental health authority (CMHA/SMHA)

- CMHA/ SMHA are regulatory bodies set up under the Central and State Governments respectively for implementing the MHCA, laying down minimum standards for mental health care services, registration of mental health establishments and registering mental health professionals.
- They also have the duty to conduct social audits (every three years) and/or inspections and inquiries for mental health establishments to ensure that they are complying with the minimum standards notified under the MHCA and are protecting the rights of persons with mental illness

Mental health establishments (MHEs)

- Mental Health Establishment (“MHE”) refers to a health establishment meant for the treatment and care of persons with mental illness where such persons are admitted and reside at, or kept in, for care, treatment and rehabilitation.

This includes private and public mental health establishments such as:

- o Psychiatric hospitals and nursing homes
- o General hospitals and nursing homes with psychiatric wards
- o Half-way homes
- o Supported & supported accommodations
- o De-addiction centres
- o Rehabilitation homes

Right to Equality and Non-Discrimination: 1. All persons with mental illness must be treated equally and at par with persons with physical illnesses in the provision of healthcare; and further cannot be discriminated against on any ground.

Right to Personal Contacts and Communication: 2. Right to receive or refuse visitors and communicate with others.

Right to Protection from Cruel, Inhuman and Degrading Treatment: 3. All mental health establishments have to comply with basic minimum standards to ensure persons with mental illness are treated with dignity.

Right to Confidentiality: 4. A person's right to confidentiality in respect of their mental health, treatment and physical healthcare is protected subject to certain exceptions.

Right to Information: 5. Persons with mental illness and their nominated representatives have a right to information regarding details of their admission, mental illness, treatment plan etc.

Rights of persons with mental illness

Right to Access Medical Records: 6. A person with mental illness has the right to access their medical records unless disclosure would cause harm to the person or anyone else.

Right to Community Living: 7. Persons with mental illness have the right to live in and be a part of society and cannot be segregated or excluded from their community.

Right to Legal Aid: 8. All persons with mental illness have the right to receive free legal aid to exercise his or her rights under the MHCA.

Right to Make Complaints about Deficiencies in Provision of Services: 9. A person with mental illness has the right to complain about the deficiencies in the provision of care, treatment, and services. Such a person can also seek a judicial remedy for violation of rights under any other law in force.

Medical insurance

Insurers are required to make provisions for medical insurance for treatment of mental illness in the same manner as treatment of physical illnesses by including mental illness in their medical insurance policies.

If insurance companies are discriminating against mental illness in their policies then a complaint can be filed to the Insurance Ombudsman.



Admissions & treatment

Admission are of two kinds

1. **Independent admissions** wherein a person with mental illness can make an application to admit themselves . Treatment can be given only with informed consent of the person.
2. **Supported admissions** wherein the person with mental illness does not have capacity or requires high support and the NR submits an application for admission for a period up to 30 days or more. Supported admission is allowed only if the person:
 - (i) is attempting or threatening to cause harm to the self or others
 - (ii) is unable to take care of the self

- Treatment can be given with informed consent of the person. If the person can't make decisions, the NR can give informed consent.
- MHCA bans electro-convulsive therapy without the use of muscle relaxants and anaesthesia
- It allows for emergency treatment by any medical practitioner in any location for a period of 72 hours only in situations where there is a threat to life of the person or the person might destroy property.
- It bans solitary confinement, chaining and sterilisation of men and women.

It also places restrictions on the use of physical restraints such as:

- (i) informing the NR in 24 hours
- (ii) using physical restraints for the shortest duration when other methods are not available
- (iii) informing the Mental Health Review Board every time restraints are used.

Admission process journey

When admitted via Self



When admitted via Nominated Representative (NR)



Role of police authorities & magistrates

- Magistrates are only authorized to order assessments of persons with mental illness being neglected or ill-treated in their private homes
- Magistrates are no longer authorized to issue reception orders for admissions and treatment in MHEs . Admissions can be authorised only by mental health professionals.
- **Duties of Police Officers**
 - o Police authorities have a duty to take into protection any person who is homeless, wandering or is at risk to the self or others due to a mental illness. The police has a duty to take such individuals

within 24 hours to the nearest public hospital for assessment and treatment.

- o Police should also trace the nominated representative or family members of such individuals and inform them.



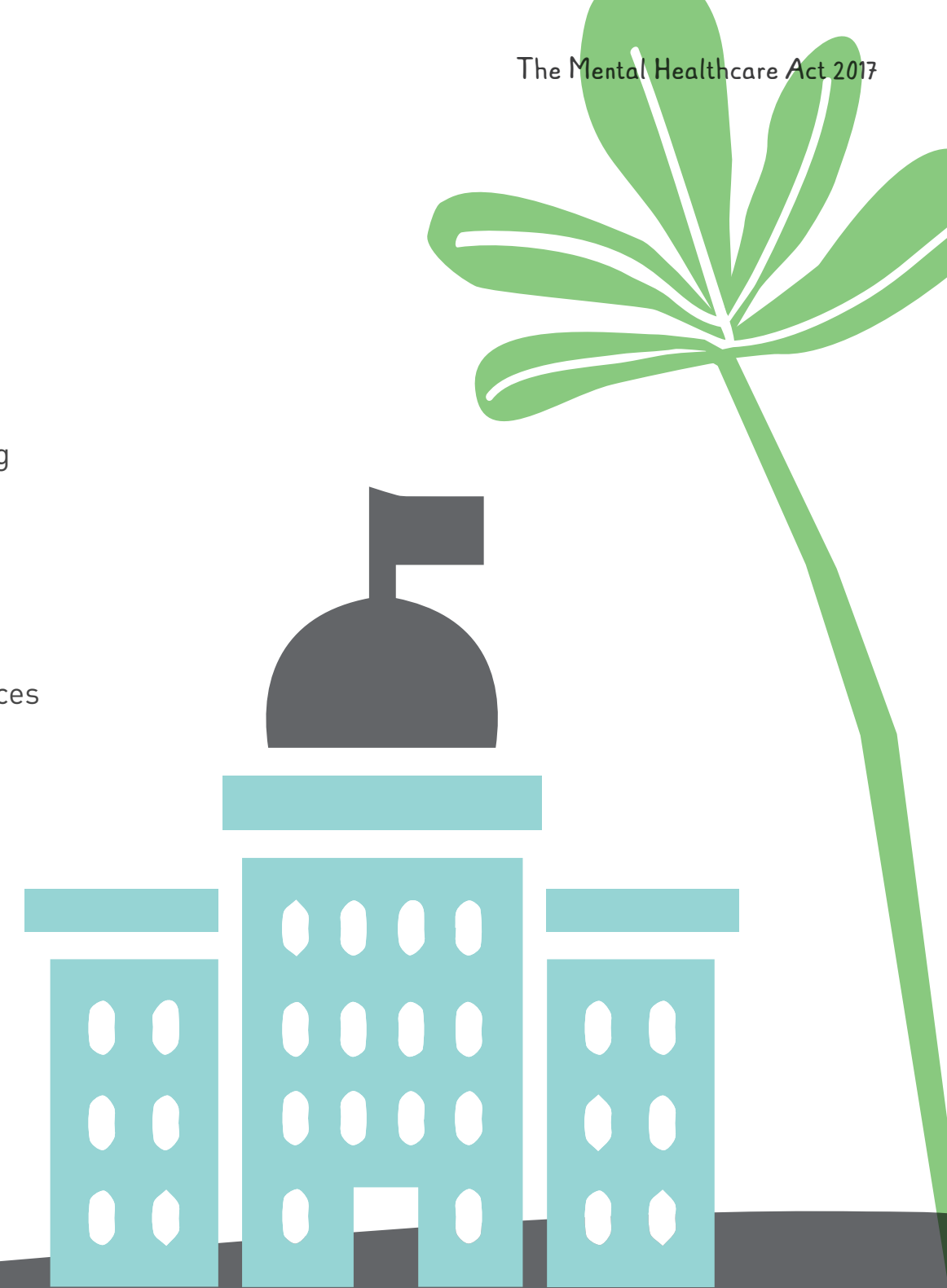
Suicide

Any person who attempts suicide will be presumed to be under severe stress and will not be tried and punished under Section 309, Indian Penal Code, 1860 unless it is proven by investigating authorities that the person was not under severe stress.



Duties of central & state government

- The Central & State governments have obligations to plan, design and implement public health programmes for the promotion of mental health and prevention of mental illness in the country .
- The government shall take all measures to ensure that the provisions of the MHCA are widely publicized; implement programmes for reducing stigma associated with mental illness; and ensure that the relevant officers are given periodic sensitization and awareness training on the issues under the MHCA .
- The government shall also take measures as regards human resource development, training of primary health professionals, and other stakeholders.
- The government shall also take all measures to ensure effective coordination between services provided by concerned ministries and departments for implementation of the Act



Outpatient and inpatient service 1.

Provision of halfway homes; sheltered accommodation and supported accommodation 2.

Services to support family of persons with mental illness 3.

Home based rehabilitation and hospital/community-based rehabilitation establishments 4.

Services and provisions for child mental health services and old age mental health services 5.

Central & State Governments should provide these minimum services:

Free of cost treatment and services to persons living below poverty line, destitute or homeless 6.

All essential drugs and medicines as per the Essential Drugs List should be provided free of cost to all persons with mental illness at MHEs run or funded by the Government 7.

Presence of public mental healthcare services integrated with the public health system in each district, emergency services, and community-based treatment 8.

Reimbursements for accessing private mental health services when public mental health services are not available in the district. 9.

Expert opinion for judicial processes

If during any judicial proceeding in a court of law, proof of mental illness of the party involved in the case is presented or challenged by the other party, then the court can refer the same to the MHRB for its expert opinion on whether the person has a mental illness. The MHRB will examine the person or set up a special committee for the same and submit its opinion to the court.

Restrictions on Mental Health Professionals

Mental health professionals cannot prescribe, recommend or suggest any treatment which is not authorised by their profession.

For example, it is unlawful for mental health professionals to prescribe conversion treatments to LGBTQIA+ persons.

Or clinical psychologists or AYUSH practitioners cannot prescribe allopathic medicines.

Offences and penalties

A person who carries on a MHE without registration or any mental health professional who serves in a non-registered MHE will be liable to a penalty as stipulated under the MHCA.

Any person who has a duty and responsibility under the MHCA will be punished for contravening any of the provisions or regulations. When an offence under the MHCA has been committed by a company, the company and the person-in-charge and responsible for the conduct of the company at the time of the offence are liable.

A person can be sent to prison and fined for violating provisions of the MHCA.



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