



# Protecting Rights of Mentally Ill Persons: A Legislative and Judicial Approach

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**Abstract:** In a developing state like India persons with mental illness are found in vulnerable position. As a result of growth of humanistic values, now it has become the accepted position that there is need of taking appropriate steps for the care and treatment of mentally ill persons. Following the norms of human rights and liberal jurisprudence in this respect in India various legislations have been enacted of which Mental Health Act, 1987 was the first of its kind. Mental Health Act, 1987 focused on administrative procedures rather addressing need of services and protecting rights of mentally ill persons. After noticing lacunae in this enactment for granting protection to mentally ill persons in real sense the judiciary have come up with the appropriate interpretation of various provisions of this enactment. In this paper the approach adopted by the judiciary and the legislature while protecting the rights of mentally ill persons have been discussed at length including the Mental Healthcare Act, 2017 which recognizes statutory rights of these person along with set up of regulatory bodies and more.

**Key words-** Mental illness, Mental health, mentally ill person, Mental Care Hospital, Rehabilitation, Right to Health

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## 1. Introduction

Since the time immemorial, mentally ill persons have received the little care and concern of the community. They have not only been neglected but received step motherly treatment from the health planners especially in the developing countries. In India also the situation was not so different. It was only after the plea of progressive incorporation of the norms of human rights and liberal jurisprudence in the respective legal system of nation states that has created the urgency and necessity of initiating appropriate steps for the care and treatment of mentally ill persons. Thus, as a result of the growth of humanistic values it is now admitted that a mentally ill person needs more care and concern for his treatment and well being. A new mental healthcare standard advocates that the mentally ill persons are not only the objects of social protection but are more the subjects with rights and State and others are under an obligation to provide them with the means of enforcing these rights.

## 2. Protection under The Mental Health Act, 1987

The year 1982 is a significant year in the history of mental health care in India. It saw the birth of the National Mental Health Programme, an ambitious endeavor to provide minimum basic mental health care to reach all sections of society. It was followed by the enactment of The Mental Health Act, 1987 the objective of which was to consolidate and amend law relating to the treatment and care of mentally ill persons, to make better provisions with respect to their property. The legislation defined a mentally ill person<sup>1</sup>. It recognized three classes of medical practitioners<sup>2</sup>. It prescribed the procedure for voluntary admission as well as admission under special circumstances of mentally ill persons and their discharge<sup>3</sup>. It was concerned mainly with the legal procedure of licensing, regulating

<sup>1</sup> Sec 2(m), The Mental Health Act, 1987

<sup>2</sup> Sec 2(k), The Mental Health Act, 1987

<sup>3</sup> Chapter IV, The Mental Health Act, 1987



admissions and guardianship matters of mentally ill person. This is to note that apart from protection of human rights of mentally ill person during treatment given under section 81(1) of the enactment no human right issues of mentally ill persons were properly addressed in this Act.

### 3. Need of Judicial Intervention

Because of a large number of very complicated procedures, strict licensing regime, other defects like excluding mentally retarded persons from definition of mentally ill persons, no differentiation between the various degrees of mental illness that requires specialized care and treatment and also defects in the Rules made under the Act, the difficulty was faced while protecting the rights of the mentally ill persons. However, the fact cannot be denied that before the enactment of Mental Healthcare Act, 2017, the Mental Health Act, 1987 was the only major legislation that governed the mental health sector. In the circumstances, if the rights of the mentally ill are to be assured and protected in real sense, several players from diverse areas of society need to play an active role. Judiciary being important organ of the government plays vital role even in this respect. The citizens of the country look up to the judiciary for the protection of their rights and freedoms and this leading to the tremendous pressure on judiciary to step in aid for the suffering citizens. In this paper the author has tried to examine the specific role of the judiciary in addressing some of the critical mental health care issues related with mentally ill persons. The attempt is also made to examine the approach adopted by legislature while protecting the rights of mentally ill persons.

### 4. Role of Judiciary

Indian judiciary has always been playing the role of watch dog. By interpreting the laws through various judgments courts are giving justice to the people. Courts in India have repeatedly and unequivocally protected the rights of mentally ill persons through number of judicial pronouncements. Some of the aspects are discussed as under.

#### 4.1. Right to Health as a fundamental right :

Right to health is a fundamental right of every citizen in the country. Courts in India have repeatedly extended that there lies a positive duty on the part of the government to promote

health in the society. Mental health is an integral and inseparable part of health.

As a Citizen of India, mentally ill person is entitled to all those human and fundamental rights which are guaranteed to each and every citizen by the Constitution of India, to the extent his disability does not prevent him from enjoying those rights or their enjoyment is expressly or impliedly barred by the Constitution or by any other statutory law. The fundamental right to life and liberty as interpreted by the Supreme Court of India in number of landmark cases includes the right to live with human dignity and the right to health. The Supreme Court has also laid down the maintenance and improvement of public health as one of the obligations of the State that flow from Article 21 of the Constitution. This means that mentally ill persons have the fundamental human right to receive mental health care and to humane living conditions in the home, society as well as in mental hospitals. The right to life in Article 21 of the Constitution means something more than survival of animal existence. It would include within its ambit the right to live with human dignity<sup>4</sup>, right to health, right to potable water, right to pollution free environment and right to education etc., which have been held to be part of right to life. In the context of mentally ill person, apart from above narrated rights, it also includes right to lead a normal family life.

#### 4.2 Right to speedy trial of mentally ill undertrial prisoners

In number of cases where mentally ill persons who have been facing trial for an offence have been undergoing imprisonment have come to light through public interest litigations and much needed relief was provided by the Apex Court.

In Hussainara Khatoon Vs State of Bihar<sup>5</sup> the case of number of undertrial prisoners who had been kept in jail for long periods without trial was come before the Supreme Court. The court has held that speedy trial was an essential and integral part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. Soon after, in a public interest litigation, Veena Sethi Vs State of Bihar case<sup>6</sup> in

<sup>4</sup> Maneka Gandhi case

<sup>5</sup> AIR 1979 SC 1369

<sup>6</sup> AIR 1983 SC 339



1982, the court was informed through a letter that some prisoners, who had been 'insane' at the time of trial but had subsequently been declared 'sane', had not been released due to inaction of the state authorities, and had remained in jail for 20 to 30 years. The court directed them to be released forthwith, considering the requirements of protection of right to life and liberty of the citizen against the lawlessness of the state. These principles were reiterated in *Abdul Rehman Antuley Vs. R.S. Nayak*<sup>7</sup> in which detailed guidelines for speedy trial of an accused were laid down even though no time limit was fixed for trial of offences.

### 4.3 Human Rights of mentally ill persons

In the case of *Sheela Barse Vs. Union of India*<sup>8</sup> and others the Supreme Court was observing the plight of mentally ill persons. This landmark case was with regard to the illegal and unconstitutional practice of locking up non-criminally mentally ill persons in jails of West Bengal. Following the PIL, there was a series of affidavits and counter affidavits. The court appointed a commission in 1992 to evaluate the situation. The commission, in its report highlighted the problems in providing effective mental health services to the mentally ill in jails, lack of human resource, lack of supervision of care, absence of a mental health team, and absence of adequate range of treatment services. It suggested various remedial measures, including setting up managing bodies for all the mental hospitals in West Bengal, formulating schemes to improve conditions of care, establishment of state level rehabilitation centres and association with voluntary agencies.

In its judgment, the Supreme Court held that such a practice of keeping the non-criminal mentally ill persons in prisons contravened Articles 21 and 32 and ordered that on the advice of professional/psychiatrist such person should be sent to the nearest place of treatment and care. It directed the state government to take immediate action and issue instructions for implementation. The state government was also asked to take immediate steps for upgradation of mental hospitals, set up psychiatric services in all teaching and district hospitals and integrated mental health care with primary health care.

In this case the apex Court observed as under :-

- Admission of non-criminal mentally ill persons in jails is illegal and unconstitutional;
- All mentally ill persons kept in various central, district and sub jails must be medically examined immediately after admission;
- Specialised psychiatric help must be made available to all inmates who have been lodged in various jails/sub jails;
- Each and every patient must receive review or reevaluation of developing mental problems;
- A mental health team comprising clinical psychologists, psychiatric nurses and psychiatric social workers must be in place in every mental health hospital.

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It is worth mentioning that there are now a large number of NGOs working in the area of mental health in West Bengal. One such organisation, 'Paripurnatha' was founded to rehabilitate mentally ill women in Kolkata prisons<sup>9</sup>.

*Chandan Kumar Vs State of West Bengal*<sup>10</sup> is a case in which a Public Interest Litigation was filed in the Supreme Court against a State run mental hospital located at Mankundu in the District of Hooghli where the conditions of the patients were found to be pathetic. The Court appointed a Committee to inspect this mental hospital and to write a report about the conditions prevailing there. In its report the Committee took into account the various aspects like the administration, the condition of the hospital, the amenities to the patients and the scope of treatment available therein. Reference was also made to the diet and the staffing pattern of the hospital. On each of these aspects several defects were pointed out. The Court denounced the inhumane practice and ordered the cessation of the practice of tying up the patients who were unruly or not physically controllable with iron chains and ordered medical treatment for these patients.

The apex Court observed : "Management of an institution like the mental hospital requires flow of human love and affection, understanding and consideration for mentally ill persons; these aspects are far more important than a routinized, stereotyped and bureaucratic

<sup>7</sup> AIR 1992 SC 1701

<sup>8</sup> Writ Petition (Criminal) No 237 of 1989. (1995 SCC (5) 654).

<sup>9</sup> D Nagaraja Pratima Murthy, *Mental Health Care and Human Rights*, NHRC, New Delhi, 2008, p.71  
<sup>10</sup> (1995) Supp 4 SCC 505



approach to mental health issues." The Court hoped that the State Government would take a humane view on every aspect and respond to the needs of the patients detained in this mental hospital, particularly in those matters that had been highlighted.

Thus, the cardinal principles laid down by the judiciary in respect of fundamental and human rights of mentally ill persons which are also highlighted in Rakesh C. Narayan vs. State of Bihar<sup>11</sup> are as under:

- Right of a mentally ill person to food, water, personal hygiene, sanitation and recreation is an extension of the right to life as in Article 21 of the Constitution;
- Quality norms and standards in mental health are non-negotiable;
- Treatment, teaching, training and research must be integrated to produce the desired results, mental Health Care and Human Rights;
- Obligation of the State in providing undiluted care and attention to mentally ill persons is fundamental to the recognition of their human right and is irreversible.

In this way the Supreme Court has brought attention to human rights of mentally ill persons living in jails and mental health institutions. The terrible conditions of non-criminal mentally ill persons detained in the jails were noted by the Supreme Court observing that admission of non-criminal mentally ill persons to jails is illegal and unconstitutional. Also, to treat mentally ill persons human love and affection is of prime importance rather than routinized, stereotyped method, was the observation of Apex Court.

**4.5 Management of mental hospitals :** The subject of health falls under the concurrent list in the Indian Constitution empowering both the Centre and States to introduce measures including the authority to legislate. The Mental Health Act, 1987 as a civil rights legislation focused on regulating standards in mental health institutions. There were serious questions over the effectiveness of this Act in ensuring protection to person's property and management of persons covered. In mental health care delivery system mental hospitals play vital role. The observations made by Supreme Court on working and functioning of

mental hospitals are discussed casewise as under.

In R C Narayan Vs State of Bihar<sup>12</sup> a letter petition in regard to the Mental Hospital at Ranchi was considered as a public interest application under Article 32 of the Constitution and the Court called upon the State of Bihar to file its counter affidavit. At the same time, the Court directed the Chief Judicial Magistrate to visit the hospital and submit a report about the conditions prevailing there. In his report he stated about acute shortage of water in the Hospital and bad condition of toilets, sanitary fittings, doors and windows, mattresses and linen. He noticed several patients to be lying on the bare floor; using a single blanket both as mattress and cover. There was no account of the stock of medicines; life-saving drugs were not stored properly in the absence of a refrigerator. He reported no follow-up action by the Jail authorities of the prisoners transferred for treatment. The report submitted by the Chief Judicial Magistrate made a painful reading. The Court had issued directions and made specific orders regarding provision of better food, clothing, medical treatment, housing and improvement of sanitation, etc. The Court observed that in welfare State it is the obligation of the State to provide medical attention to every citizen. The State has to realise its obligation and it has to perform its duties by running the hospital in a perfect standard and serving the patients in an appropriate way. The Court accordingly constituted a Committee of Management for the Mental Hospital and gave directions regarding the financial contribution from the participating States, and also laid down guidelines regarding the functioning and management of the hospital. The Court further directed that the Committee shall take expeditious steps to explore the possibility of transforming the hospital into the pattern obtaining in the hospital run by NIMHANS at Bangalore. The Committee was also ordered take immediate steps to have a rehabilitation centre at a convenient place around Ranchi where appropriate rehabilitation schemes may be operated and the patients after being cured, irrespective of being male or female; if they are not being taken back by the members of their

<sup>11</sup> AIR 1989 SC 348

<sup>12</sup> Rakesh C. Narayan vs. State of Bihar AIR 1989 SC 348



families could be rehabilitated. The court further clarified that the funds made available to the Committee may be utilized for such purpose.

Thus, in this case the court has not only gave specific directions to the mental hospital regarding provision of better food, clothing, medical treatment, housing and improvement of sanitation etc but also gave guidelines for the functioning of mental hospital. Emphasis was given for establishment of rehabilitation centre for those who after being cured are not in a position to return to their families or on their own seeking useful employment.

On the basis of the submission note of the Registrar (Judicial) to a news item published in all leading national dailies about a gruesome tragedy in which more than 25 mentally challenged patients housed in a mental asylum at Ervadi in Ramanathapuram district were charred to death, the patients could not escape the blaze as they had been chained to poles or beds, the Supreme Court took suo moto action<sup>13</sup> and issued various directions. In the said decision, the Supreme Court directed all the State Governments to frame policy and initiate steps for establishment of at least one full-fledged Mental Health Hospital in each State catering only to mentally challenged persons and does not include a separate psychiatric ward in a Medical College or Government Hospital. It was further observed that both the Central and State Governments shall undertake a comprehensive awareness campaign with a special focus to educate people as to provisions of law relating to mental health, rights of mentally challenged persons, the fact that chaining of mentally challenged persons is illegal and that mental patients should be sent to doctors and not to religious places such as Temples or Dargah.

In that respect, the National Human Rights Commission of India (NHRC) advised all the Chief Ministers to submit a certificate stating no person with mental illness are kept chained in either government and private institutions<sup>14</sup>.

<sup>13</sup> Re. Death of 25 chained inmates in Asylum Fire in Tamil Nadu Saarthak Registered Society and Another v. Union of India and Others AIR 2002 SC 979

<sup>14</sup> Nagaraja Pratima Murthy, Mental Health Care and Human Rights, NHRC, New Delhi, 2008, p. 81

In Smt. Mamta Sharma & Others Versus State of Chhattisgarh & Others<sup>15</sup> PIL was filed seeking a relief to the extent to issue a writ in the nature of mandamus commanding to the government authorities to cancel the allotment of State University, Bilaspur, and the same may be provided for the purpose of mental hospital and nursing home to render the medical facilities to mentally ill persons. The court observed that it is a serious matter. University is necessary for education, but the human beings require first food, shelter, clothes to wear, proper treatment and then education and, as such, priority must be given to the Mental Health Hospital. Court also highlighted the necessary requirement of at least one Mental Health Hospital in each State.

Similarly, on the basis of public interest litigation B.R. Kapoor and Anr. Vs. Union of India (UOI) and Others<sup>16</sup> relating to functioning of the hospital for mental diseases, Shahdara, Delhi, the Supreme Court went further and instructed the New Delhi administration to take immediate steps to set up a mental hospital-cum-medical college with sufficient autonomy to bring about quality changes in patient care.

Thus, apart from giving guidelines for the mental hospitals about its functioning, administration, the court has given stress on the establishment of at least one full fledged mental hospital in each state. To bring quality change in mentally ill patients court further went and emphasized on setting up of a mental hospital-cum-medical college with sufficient autonomy.

**4.6 Maintenance of mentally ill person by the government :** In welfare State it is the obligation of the State to provide medical attention to every citizen. Government owes a duty not only to run the mental hospital in a perfect way but to bear cost of mentally ill person also. In a leading case, that of State of Gujarat and Another Vs. Kanaiyalal Manilal and others<sup>17</sup>, the Court referred to the provisions of cost maintenance to be borne by the Government in case of mentally ill person under Section 78 of the Mental Health Act. The Court opined that in a welfare state like India, it is not merely a matter of grace, but a statutory

<sup>15</sup> Writ Petition (PIL) No.39 of 2012, High Court of Chhattisgarh

<sup>16</sup> AIR 1990 SC 752

<sup>17</sup> (1998)1 GLR 40



obligation of the State Government to bear the cost of mentally ill persons.

**4.7 Right to Employment of mentally ill person :** Though in The Mental Health Act, 1987 there was no provision to protect rights of mentally ill person related to his employment, the protection in the employment has been extended by the judiciary by referring Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In Anilkumar Mahajan Vs UOI<sup>18</sup>, it was held that mentally illness being one of the disabilities under Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, under Section 47 it was not open to the respondent government to dispense with, or reduce in rank of the appellant, who acquired a disability during his service.

### 5. Mental Health Care Act, 2017

As a result of judicial pronouncements showing the dire need of protection of rights of mentally ill persons and the initiative taken government to protect rights of mentally ill persons not only in letters but in spirit, a bold step is taken by enacting a new legislation Mental Health Care Act, 2017 which aims to protect the rights of persons with mental illnesses and promote and provide mental healthcare services to those in need. It also recognises various statutory rights to mentally ill persons. Whereas, Mental Health Act, 1987 focused on administrative procedures rather addressing need of services and protecting rights of mentally ill persons without ensuring provisions for informed consent for health care and treatment, under new enactment of 2017 all persons with mental illness are presumed to have capacity to make decisions regarding their own mental treatment. Provisions are made as to advance directives and appointment of nominated representatives to give support to mentally ill person. The list of rights recognized under this statute covers various rights like right to access mental healthcare, right to community living, right to protection from cruel, inhuman and degrading treatment, right to equality and non-discrimination, right to information, right to confidentiality, restriction on release of information in respect of mental illness, right to

access medical records, right to personal contacts and communication, right to legal aid, right to make complaints about deficiencies in provision of services etc. The Act aims to safeguard the rights of the people with mental illness, along with access to healthcare and treatment without discrimination from the government. Additionally, insurers are now bound to make provisions for medical insurance for the treatment of mental illness on the same basis as is available for the treatment of physical ailments. Regulatory bodies like Central and State Mental Health Authority, Mental Health Review Board are formed for better protection of rights of mentally ill persons. However, it has been found that implementation of this enactment is not up to the mark as only few states have established Mental Health Authorities and Review Boards, mentally retarded persons are not under the coverage of new enactment.

### 6. Conclusion

The plethora of judicial pronouncements discussed above shows that in absence of necessary provisions protecting rights of mentally ill persons under Mental Health Act, 1987 the judiciary has addressed those issues and has taken care of proper management of mental hospitals, the administration, the staff pattern, employment rights of mentally ill persons thereby protecting their rights in many ways. From time to time gave directions to state government regarding setting up of at least one mental hospital in each state, caring for humane condition of mentally ill persons in hospitals, jails and in society. However, the cases have demonstrated the need for continued judicial monitoring in order to ensure that the state acts in accordance with the statute and the Constitution. The lacunae marked by the judiciary like social education or patient rehabilitation have been rightly addressed in the Mental Health Care Act, 2017. This shows how the judiciary is helping to form a base to formulate new legislation. The new legislation Mental Healthcare Act, 2017 has played a significant role in establishing regulatory bodies, ensuring insurance coverage, rehabilitation and making various statutory rights available to mentally ill persons. It's the time for the government to take strong steps for the implementation of various provisions under the new enactment to protect rights of mentally ill

<sup>18</sup> (2013) 7 SCC 243



persons. The role of Judiciary and Legislature in protecting the interest of mentally ill persons is commendable one and they have maintained their stand that human well-being in a country cannot be ensured unless its citizens are physically and mentally fit.

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