

Bill No. 263 of 2022

THE MENTAL HEALTHCARE (AMENDMENT) BILL, 2022

By

DR. SHRIKANT EKNATH SHINDE, M.P.

A

BILL

to amend the Mental Healthcare Act, 2017.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Mental Healthcare (Amendment) Act, 2022.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10 of 2017.

2. In section 17 of the Mental Healthcare Act, 2017 (hereinafter referred to as the principal Act), in clause (a), for the words “best interests”, the words “will and preference” shall be substituted.

Amendment of section 17.

Amendment of
section 21.

3. In section 21 of the principal Act, in sub-section (4), the following explanation shall be inserted, namely:—

“Explanation.— For the purposes of this sub-section (4), "medical insurance" includes the indemnification of the insurer or the hospital in the cases requiring but not limited to:—

(i) hospitalization;

(ii) psychotherapy;

(iii) medication;

(iv) cognitive behavioral therapy;

(v) counseling; or

(vi) any other form of treatment deemed fit for the patient by a medical practitioner or a clinical psychologist.”.

5

10

Amendment of
section 65.

4. In section 65 of the principal Act, for the first proviso of sub-section (3), the following proviso shall be substituted, namely:—

"Provided that till the period the Authority specifies the minimum standards for different categories of mental health establishments, after due inspection of such mental health establishments by authorities, it shall issue a provisional certificate of registration to the mental health establishment."

15

STATEMENT OF OBJECTS AND REASONS

The Mental Healthcare Act, 2017 has been lauded as the legislation of the people but there are several lacunas in the Act which neglect the agency of the mentally ill person under the Act and overlooks the responsibility of the State to provide for a safe space for the treatment of the patient. From addiction to dementia to schizophrenia, almost 1 billion people worldwide suffer from a mental disorder. Lost productivity as a result of two of the most common mental disorders, anxiety and depression, costs the global economy US\$1 trillion each year. Poor mental health amongst employees costs Indian companies a combined \$14 billion a year due to absenteeism, attrition and other reasons. India unfortunately lags behind in mental health when compared to other countries. To give an example, the rest of the world spends about 5 to 18 per cent. of their GDP on mental health whereas India spends only 0.05 per cent. Whereas the problem is huge, according to the latest WHO statistics, there are an estimated forty-five million Indians who suffer from depression and another 45 million who suffer from anxiety.

Section 17(a) of the principal Act casts a duty on the nominated representative to consider the “best interests” of the mentally ill person, while discharging their duty under the act. However, the use of the term “best interests”, makes the Act a reluctant acceptance to India’s obligation to Convention on the Rights of Persons with Disabilities which asserts that the will of the person with disability shall not be undermined, therefore the amendment.

The COVID-19 pandemic laid bare the huge gaps in the healthcare system, especially in access to affordable mental healthcare. According to a scientific brief released by the World Health Organization in March, 2022, the global prevalence of mental illness like depression and anxiety increased by 25 per cent. since the pandemic. Access to affordable mental healthcare, especially after the pandemic has become a basic need for all individuals. The Act instructs insurers to make provisions for medical insurance for treatment of mental illness. In the year 2018, the Insurance Regulatory and Development Authority (hereinafter IRDAI) of India had also directed the India Insurance companies to cover mental disorders as per the Act.

However, a Public Interest Litigation filed in the Supreme Court revealed that the insurance companies are in violation of Sec. 21(4) of the Act. Following which the IRDAI had instructed the insurance companies to introduce policies for mental illness by October 2020. Following the IRDAI directive, insurance companies began to offer insurance for mental illness but only in case of hospitalization.

Treatment of mental illness is not limited to medication or hospitalization. It also includes rehabilitation, counseling and psychotherapy. Some mental illnesses like depression, anxiety, Bipolar Disorder and other behavioral disorders which are chronic in nature may not necessitate hospitalization but require other aids for treatment like psychotherapy and medication. Such treatment can be very hard on the pockets thereby causing economic burden on the family of the patient. An amendment to the Act, extending insurance benefits for mental illness which do not necessarily require hospitalization with a goal to reduce financial burden on the families of people suffering from mental illness is necessary, therefore the amendment is proposed.

Section 65 of the Act provides for registration of the Mental Healthcare Establishments, but the first proviso to Section 65(3) of the Act allows for issuance a provisional certificate of registration to the mental health establishment without any inspection of the same. Since mental healthcare establishments are a place of primary care for the mentally ill patients, it can be detrimental to the safety of the patients to allow for even temporary registration of the establishment without due diligence from the end of the State. Therefore it is imperative that even the provisional certificate be issued only after due inspection of the establishment, therefore the amendment.

Hence the bill.

NEW DELHI;
22 November, 2022.

SHRIKANT EKNATH SHINDE

ANNEXURE

EXTRACTS OF RELEVANT SECTIONS FROM THE
MENTAL HEALTHCARE ACT, 2017

(ACT No. 10 OF 2017)

*	*	*	*
17. While fulfilling his duties under this Act, the nominated representative shall—			Duties of nominated representative.
(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;			
*	*	*	*
21. (1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare which shall include the following, namely:—			Right to equality and non-discrimination.
*	*	*	*
(4) Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.			
*	*	*	*
65. (1) No person or organisation shall establish or run a mental health establishment unless it has been registered with the Authority under the provisions of this Act.			Registration of mental health establishment.
*	*	*	*
(3) The Authority shall, on receipt of application under sub-section (2), on being satisfied that such mental health establishment fulfils the standards specified by the Authority, issue a certificate of registration in such form as may be prescribed:			
Provided that till the period the Authority specifies the minimum standards for different categories of mental health establishments, it shall issue a provisional certificate of registration to the mental health establishment.			
*	*	*	*

LOK SABHA

A

BILL

further to amend the Mental Healthcare Act, 2017.

(Dr. Shrikant Eknath Shinde, M.P.)