

Bill No. 52 of 2022

THE MENTAL HEALTHCARE (AMENDMENT)
BILL, 2022

By

DR. SUJAY RADHAKRISHNA VIKHE PATIL, M.P.

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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.

- Amendment of section 2. **2.** In section 2 of the Mental Healthcare Act, 2017 (hereinafter referred to as the principal Act), in sub-section (1),— 10 of 2017.
- (a) in clause (r), after sub-clause (iii) the following sub-clause shall be inserted, namely:—
- “(iv) a psychotherapist, counsellor or psychoanalyst who has a degree in psychology and is eligible to provide therapy or counselling;” 5
- (b) for clause (s), the following clause shall be substituted, namely:—
- “(s) “mental illness” means a disorder of thinking, mood, perception, orientation, personality or memory that grossly impairs judgement, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;” 10
- Amendment of section 3. **3.** In section 3 of the principal Act, after sub-section (1), the following proviso shall be inserted, namely: 15
- “Provided that the determination of whether the person has the capacity to make decisions regarding their mental healthcare or treatment shall be ascertained only by a psychiatrist or psychotherapist who is a qualified practitioner of modern medicine.”. 20
- Amendment of section 18. **4.** In section 18 of the principal Act, in sub-section (10), after the first proviso, the following proviso be inserted, namely:
- “Provided further that the essential medicines prescribed under ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems shall have the prior necessary approval from the appropriate Government.”. 25
- Amendment of section 22. **5.** In section 22 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:
- “Provided further that before sharing such information with the nominated representative, consent shall be obtained from the person with mental illness, unless he has been determined incapable to consent in accordance with section 3.”. 30

STATEMENT OF OBJECTS AND REASONS

Mental well-being is an essential part of being healthy. The World Health Organization defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Poor mental health is an issue in itself, but more often than not, also gravely impacts physical health and well-being. Mental health conditions reduce the life expectancy of men and women by 20 and 15 years respectively. Thus, a healthy body can only be one that has a healthy mind. The right to health is a fundamental human right as per both article 21 of the Constitution of India and the Office of the United Nations High Commissioner for Human Rights.

Mental illnesses have been predicted to be the next epidemic, with one in seven Indians suffering in some degree. A report by the National Crime Records Bureau titled the 'Accidental Deaths and Suicides in India 2019' states that in 2019, a staggering 1.39 lakh Indians died by suicide and these are only the cases that were reported. The Office of the United Nations High Commissioner for Human Rights has estimated, in its report, that mental health conditions affect one in four people throughout their lifetime, and even then, almost two thirds of persons affected do not seek treatment due to stigma or lack of resources.

Thus, with such a large chunk of the population susceptible to mental illness, it becomes essential to take steps to combat this problem. India ratified the United Nations Convention for Rights of Persons with Disabilities (UNCRPD) in 2008, marking a paradigm shift at how mental health issues are viewed, making them a human rights issue that should be addressed based on equality and dignity.

In this context, the Mental Healthcare Act of 2017 is a step in the right direction, that attempts to move mental health away from stigma by making mental healthcare a right available to all, sans discrimination by way of its definition of a mental health professional and mental illness under section 2. However, the parent Act takes a step back, it defines a mental illness as only those disorders that are 'substantial', excluding many supposedly mild but still significant illnesses. The parent Act also includes substance abuse within its ambit, which has the effect of further stigmatizing mental illness, and does not do either the mentally ill or those caught in a cycle of substance abuse any good. Experts have deemed it necessary that alcohol and drug abuse not be included within the scope of a mental illness and be dealt with separately. Amending the definition is thus essential.

The definition of a mental health professional in the parent Act is also very restrictive, leaving out of its ambit qualified psychotherapists, counsellors, psychoanalysts, who have a degree in psychology and are eligible to provide therapy or counselling. It reduces mental healthcare to only advanced medical intervention, that requires medication. Consequently, assistance can be provided to the mentally ill at an advanced stage only, defeating preventive

care. This is a flawed understanding of mental health, of which counselling and therapy are both inalienable components. Thus, it becomes imperative to amend this definition, widening its ambit.

Furthermore, the parent Act provides for determination of whether a person is capable to make decisions regarding their mental illness under section 3. However, it casts too wide a net by not stating that only trained professionals can do so, defeating the purposes of the Act. Including a safeguard as to who can make this determination is necessary to prevent misuse and further scientific diagnosis. Thus, this section should be amended to state that capacity can be ascertained by a psychiatrist or psychotherapist who is a practitioner of modern medicine only.

The parent Act, under section 18, further provides that essential medicines must be made available for all persons with mental illness free of cost, at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system. This provision also applies to medicines prescribed by practitioners of the ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems. In the absence of a safeguard, this section has the scope of promoting quackery and unsafe and unscientific practices, under the garb of medication or treatment. Therefore, it is important that such medications as prescribed by ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems must necessarily have obtained approvals from the Government as mandated and applicable to modern, allopathic medicines.

Lastly, while the scheme of the entire parent Act is grounded in the mentally ill persons agency and rights, section 22 makes all of their confidential medical information accessible to their nominated representative, who has been placed on the same footing. In the absence of a provision as to consent, the mentally ill persons right to privacy gets endangered. Thus, until and unless they have been determined incapable to consent as under section 3 of the parent Act, the mentally ill person's consent with respect to sharing of their information must be obtained.

The objective of this Bill, is therefore, to enable the intent of the parent Act to be fulfilled by truly creating a person-centric and rights-based mental healthcare ecosystem that fosters equality and dignity, by making the amendments suggested above.

Hence this Bill.

NEW DELHI;
16 February, 2022

SUJAY RADHAKRISHNA VIKHE PATIL

ANNEXURE

EXTRACT FROM THE MENTAL HEALTHCARE ACT, 2017
(10 OF 2017)

*	*	*	*	*	*
2. (1)	*	*	*	*	Definitions.
(r) “mental health professional” means:—					
(i) a psychiatrist as defined in clause (x); or					
(ii) a professional registered with the concerned State Authority under section 55; or					
(iii) a professional having a post-graduate degree (Ayurveda) in Mano Vigyan Avum Manas Roga or a post-graduate degree (Homoeopathy) in Psychiatry or a post-graduate degree (Unani) in Moalijat (Nafasiyatt) or a post-graduate degree (Siddha) in Sirappu Maruthuvam;					
(s) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgement, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;					
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CHAPTER II

MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTHCARE AND TREATMENT DECISIONS

3. (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.	Determination of mental illness.
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18. (1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.	Right to access mental healthcare.
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(10) Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system:	

Provided that where the health professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognised by the Central Government are available in any health establishment, the essential medicines from any similar list relating to the appropriate ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems shall also be made available free of cost to all persons with mental illness.

Right to
Information.

22. (1) A person with mental illness and his nominated representative shall have the rights to the following information, namely:—

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(2) In case complete information cannot be given to the person with mental illness at the time of the admission or the start of treatment, it shall be the duty of the medical officer or psychiatrist in-charge of the person's care to ensure that full information is provided promptly when the individual is in a position to receive it:

Provided that where the information has not been given to the person with mental illness at the time of the admission or the start of treatment, the medical officer or psychiatrist in charge of the person's care shall give the information to the nominated representative immediately.

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to amend the Mental Healthcare Act, 2017.

(Dr. Sujay Radhakrishna Vikhe Patil, M.P.)