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## **Implications of the Mental Healthcare Act, 2017 on the Rights of Women with Mental Illnesses in India**

By Kirandeep Kaur<sup>1</sup>

### **Abstract**

The Mental Healthcare Act, 2017 aims to provide for mental health care and services for persons with mental illness in India and to protect, promote and fulfill the rights of such persons during delivery of mental health care and services. Chapter V of the Act enumerates the rights of persons with mental illness, including the right to equality, right to confidentiality, the right to protection from cruel, inhuman and degrading treatment in any mental health establishment (which includes the right to proper clothing so as to protect such person from exposure of his/her body to maintain his/her dignity, and the right to be protected from all forms of physical, verbal, emotional and sexual abuse), right to community living, etc. This paper analyses the provisions of the Act from the perspective of rights of women with mental illness in need of mental health care, and draws a comparison with the relevant provisions of the United Nation Convention of Rights of Persons with Disabilities. Comparison is also made with the existent reality reported in legal literature, the media and the field work undertaken by the author in India.

*Keywords:* women's rights, women in India, mental illness, healthcare, equality

### **Introduction**

The mention of women with mental illness is rarely made in the legal discussions pertaining to human rights. "Rights of women" and "rights of differently abled persons including persons with mental illness" are discussed time and again in the academic, legal and medical sector, but separately and in segregated contexts. There needs to be a confluence in these two arenas of discussions to address the predicament of the overtly marginalized sector in these two categories, that is, the women with mental illness.

Women's rights activists are struggling to work for equal rights of women in various spheres of life. In this background, it is pertinent to note that the plight of women with mental illness is overtly vulnerable and much worse. Being unable to be fit mentally all the time, such women are more likely to be exploited, violated and deprived of their rights.<sup>2</sup>

The Mental Healthcare Act, 2017 repealed the Mental Health Act, 1987. The Mental Healthcare Act, 2017<sup>3</sup> aims to bring the legal framework in India in consonance with the provisions of United Nations Convention on Rights of Persons with Disabilities (UNCRPD) which was signed

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<sup>2</sup> Human Rights Watch, *Treated Worse than Animals- Abuse against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India* (2014), available at [https://www.hrw.org/sites/default/files/report\\_pdf/india1214.pdf](https://www.hrw.org/sites/default/files/report_pdf/india1214.pdf) (Last visited on May 13, 2017)

<sup>3</sup> Hereinafter referred to as "The Act."

and ratified by India in October, 2007. The Preamble of the Mental Health Care Act, 2017<sup>4</sup> states that the aim of the Act *inter alia* is:

*“to provide for mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.”*

Sections 18 to 28 in Chapter V of the Act enumerate the various rights of persons with mental illness. These rights are a progressive and welcome change in the legal framework and are in adherence to the mandates of UNCRPD.

Being a very recent Act, the academic discourse analyzing its provisions is sparse and its influence and effect on the rights of women with mental illness has hardly found place in any legal discourse. This paper aims to analyze these Sections of the Act with respect to women with mental illness and bring out to the forefront the challenges which might come up in the actual enforcement of these rights.

The Preamble of the Mental Healthcare Act, 2017 states that the aim of the Act *inter alia* is:

*“to provide for mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.”*

Rights of persons with mental illness during delivery of mental health care and services have found express mention for the first time in any enactment in India.<sup>5</sup> Chapter V of the Act enumerates these rights which are a penumbra of hope, reflected from the ultimate right of health. Following are the categories of rights of persons with mental illness recognized with respect to their mental health care under the Act:

- i. Section 18 Right to access mental healthcare
- ii. Section 19 Right to community living
- iii. Section 20 Right to protection from cruel, inhuman and degrading treatment
- iv. Section 21 Right to equality and non-discrimination
- v. Section 22 Right to information
- vi. Section 23 Right to confidentiality
- vii. Section 24 Restriction on release of information in respect of mental illness
- viii. Section 25 Right to access mental records
- ix. Section 26 Right to personal contacts and communications
- x. Section 27 Right to legal aid
- xi. Section 28 Right to make complaints about deficiencies in provision of services

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<sup>4</sup> Hereinafter referred to as “*The Act*.”

<sup>5</sup> Right to health recognized as a part of the right to life guaranteed under Article 21 of the Constitution of India in *Parmanand Katara v. Union of India*, (1989) 4 SCC 286; *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42; *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal*, (1996) 4 SCC37; *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

## **Right of Access to mental healthcare**

According to the Report of the National Commission on Macroeconomics and Health, Ministry of Health and Family Welfare, Government of India, as quoted by the Union Health and Family Minister, Government of India, Mr. J.P. Nanda in the Lok Sabha in 2016, almost 650-700 lakhs people in India are in need of care for various kinds of mental disorder, around 70-80% of whom do not receive adequate care and protection.<sup>6</sup>

Section 18 of the Act gives the right to every person, the right to have access to mental health care and treatment from mental health services run or funded by the appropriate Government<sup>7</sup>. Access to health care is pivotal for the exercise of all other rights in mental health care treatment. Impediments to access to health care range from multifarious factors like family, society, financial status, location, etc. Lack of awareness about mental health care, and the general tendency to ignore mental aberrations as mere temperamental issues also bar persons suffering from mental illness from getting access to mental health care. The adherence to traditional healing methods for mental illness, also leads to many persons with mental illness never getting access to mental health care. There is the need to read the provisions of Section 18 of the Act in the background of these existent dynamics in the Indian society.

The “*right to access mental healthcare and treatment*” for the purposes of the Act means mental health services:

- of affordable cost,
- of good quality,
- available in sufficient quantity,
- accessible geographically,
- without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis, and
- provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

If these mandates are fulfilled, it is quite acceptable that access to mental health care treatment will be open and available to one and all. However, the present infrastructure and Government expenditure on this sector of health shows that the implementation process of these requirements has a long way ahead.

According to the Mental Health Atlas 2011 prepared by the Department of Mental Health and Substance Abuse, World Health Organization, there are only 43 state-run mental hospitals in

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<sup>6</sup> Report of the National Commission on Macroeconomics and Health, Ministry of Health and Family Welfare, Government of India (2005), available at <http://www.who.int/macrohealth/action/Report%20of%20the%20National%20Commission.pdf> (Last visited on May 23, 2017)

<sup>7</sup> Appropriate Government means- “(i) in relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government; (ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of— (A) a State, the State Government; (B) a Union territory having legislature, the Government of that Union territory.” (The Mental Healthcare Act, 2017, Section 2(b))

India and 10,000 beds for psychiatric patients in general hospitals.<sup>8</sup> Most states have only one or two mental hospitals located in remote areas; and the 72 percent population of India which is in the rural areas has access to only 25 percent of the locations where mental health care facilities are available.<sup>9</sup>

Proper implementation of the right to access mental healthcare can go a long way in enabling the persons with mental illness to a good life. Section 18 states *inter alia* that the right to access mental health care includes the right to access to mental health care treatment without any prejudice of sex or sexual orientation.<sup>10</sup> Section 18 mandates the appropriate government to make sufficient provisions as maybe necessary for the services required by persons with mental illness including, provision of acute mental healthcare services, half-way homes, sheltered accommodation, supported accommodation as may be prescribed, etc.<sup>11</sup>

Section 18(5) requires the appropriate government to integrate mental health services into general healthcare services at all levels of healthcare including primary, secondary and tertiary healthcare and in all health programmes run by it. A Professor of Psychiatry and practicing psychiatrist, whom the author had the opportunity to interview, expressed concerns about this provision of the Act.<sup>12</sup> According to him, integrating mental healthcare into general health services may further hinder the patients from approaching mental healthcare, who could hesitate because of the stigma of being acknowledged or seen at the mental health section of a general hospital. The healthcare for mental illness is also specialized in its sphere and integrating the same into general health care, he suggested, would require sensitization of the general healthcare service providers.

The district of Thiruvananthapuram in Kerala, India is one such part of India where mental health care has been integrated in primary healthcare and where the doctors and other healthcare staff diagnose and treat mental disorders as a part of their primary healthcare treatment.<sup>13</sup> Iran is the only country which has had nationwide integration of mental health into primary care. The role of mental health service coordinator in the general healthcare units would be vital in this process of integrating which would also incur the need to have more human and financial resources to cater to the process.<sup>14</sup> Ensuring the confidentiality and privacy of the patient is another thing which should be carefully catered to in such a situation.

The World Health Organization has in its report titled “*Integrating mental health into primary care –A global perspective*” published in 2008, highlights the importance of training both at the pre-service and/ or in-service level of primary care workers on mental health issues as an essential prerequisite.<sup>15</sup> The integration of mental health services into primary care is essential, but

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<sup>8</sup> Mental Health Atlas 2011, Department of Mental Health and Substance Abuse, World Health Organization, available at [http://www.who.int/mental\\_health/evidence/atlas/profiles/ind\\_mh\\_profile.pdf](http://www.who.int/mental_health/evidence/atlas/profiles/ind_mh_profile.pdf) (Last visited on May 13, 2017)

<sup>9</sup> Human Rights Watch, *Treated Worse than Animals- Abuse against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India* (2014), available at [https://www.hrw.org/sites/default/files/report\\_pdf/india1214.pdf](https://www.hrw.org/sites/default/files/report_pdf/india1214.pdf) (Last visited on May 13, 2017)

<sup>10</sup> The Mental Healthcare Act, Section 18(2)

<sup>11</sup> The Mental Healthcare Act, Section 18(3) and 18(4)

<sup>12</sup> The author interviewed a learned Professor of psychiatry at Kolkata, India on 25th August, 2016. It was a focused interview, the questions asked were open-ended and the discussion revolved around the implications of the then Mental Health Care Bill, 2016 on female patients with mental illness

<sup>13</sup> World Health Organization, *Integrating mental health into primary care –A global perspective* (2008), available at [http://www.who.int/mental\\_health/policy/Mental%20health%20+%20primary%20care-%20final%20low-res%20140908.pdf](http://www.who.int/mental_health/policy/Mental%20health%20+%20primary%20care-%20final%20low-res%20140908.pdf) (Last visited on May 20, 2017)

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

must be accompanied by complementary services having secondary care components to which primary care workers can turn for referrals and supervision.

Human Rights Watch conducted a research on Abuse against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India in 2014<sup>16</sup> for which the researchers visited 24 hospitals in India, which were mental hospitals or were general hospitals with psychiatric beds. Out of the 24 institutions that Human Rights Watch visited women with mental illness had to be taken to the closest government hospital even for a minor medical problem, transport for which is also not always available. Many of these institutions also did not provide for reproductive healthcare, access to HIV/AIDS testing or treatment for other sexually transmitted diseases.<sup>17</sup>

*“Rachna Bharadwaj, the superintendent of the female wing of Asha Kiran, a residential facility, told us about a girl with an intellectual and psychosocial disability who was sent to a mental hospital for treatment for a month and returned with a broken arm. Although the girl was in pain and could not move her arm, which was hanging limp on her side, staff in the mental hospital had not bothered to take her to a general hospital to treat her injury. In the end, the injury required two surgeries to mend... In another case, one women came back to the institution after staying in a mental hospital for treatment with an ulcer on her foot that was infected with fat black worms that the mental hospital hadn’t bothered to treat.”<sup>18</sup>*

In the background of this existent scenario, integrating mental healthcare with general healthcare could be of great advantage; however, proper implementation of this integration process mandates the involvement of handsome funding and human resources.

### **Right to Equality –Addressing the concerns of women with mental illness in India**

A study reported by the India Today in July, 2016 stated that one in four women in mental health asylums in India were abandoned by their family members.<sup>19</sup> Most of the family members refused to take them and many had given false address at the admission of the woman at the asylum.<sup>20</sup> The National Commission for Women (NCW) India and the National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore, India in their Report titled “*Addressing concerns of Women admitted to psychiatric institutions in India: An in-depth analysis*” published in October, 2016, lay down detailed account of field visit conducted by representatives from the NCW and/or Faculty members from NIMHANS to ten psychiatric institutions in the country.<sup>21</sup> In

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<sup>16</sup> Human Rights Watch, *Treated Worse than Animals- Abuse against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India* (2014), available at [https://www.hrw.org/sites/default/files/report\\_pdf/india1214.pdf](https://www.hrw.org/sites/default/files/report_pdf/india1214.pdf) (Last visited on May 13, 2017)

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> PTI, *One in four women in mental asylums abandoned by family*, India Today (July 18, 2016), available at <https://www.google.co.in/amp/m.indiatoday.in/lite/story/one-in-four-women-in-mental-asylums-abandoned-by-family/1/717710.html> (Last visited on May 25, 2017)

<sup>20</sup> *Id.*

<sup>21</sup> NCW and NIMHANS, *Addressing concerns of Women admitted to psychiatric institutions in India: An in-depth analysis* (2016), available at

Regional Mental Hospital (RMH), Yerwada, Pune, Maharashtra, one of the ten institutions visited by the multi-disciplinary team of NCW and NIMHANS, 451 patients in the 1000 bed-capacity facility, were long-stay patients, some of whom said that they had been in RMH for decades together and no one in their family had come to see them during their stay.<sup>22</sup> In Regional Mental Hospital, Thane, Maharashtra, no efforts have been made to reunite the patients with their families after their recovery and many of them are thus, languishing in the Institution. In Calcutta Pavlov Hospital, West Bengal too, there were hardly any efforts made to contact family members of patients who had recovered, leading to many patients to stay in the institution perpetually.<sup>23</sup>

Section 19 of the Act recognizes the right of community living of persons with mental illness. It is stated that every person with mental illness shall:

- have a right to live in, be part of the society and to be not be segregated from it; and
- not continue to remain in a mental health establishment just because he/she does not have a family or is not accepted by his/her family or is homeless or due to absence of community based facilities.

The Section further states that where it is not possible for a mentally ill person to live with his/her family or relatives, or where a mentally ill person has been abandoned by his/her family or relatives, the appropriate Government shall provide appropriate support including legal aid and facilitate exercising his/her right to family home and living in the family home. For the same, the appropriate government is to support the setting up of less restrictive community based establishments including half-way homes, group homes, etc. for persons who no longer require treatment in restrictive mental health establishments.

Community living is a process of rehabilitation of patients who have recovered from the mental illness, into the society. The same is possible only with close coordination with voluntary groups, NGOs and manpower on the part of Government. Special care needs to be taken to ensure that this process is enabling and reintegrating, and that the patients do not deteriorate at any point of time. Patients are generally at the final convalescent stage and therefore, community living facilities cannot be completely devoid of mental healthcare facilitators.

Section 21(1) states that in all provisions of healthcare, every person with mental illness has to be treated as equal to persons with physical illness irrespective of caste, gender, sex, sexual orientation, religion, etc. Section 21(4) states that medical insurance for treatment of patients with mental illness has to be made available, by health insurers, in the same manner as is made available for treatment of physical illness. Section 21 thus, helps in ensuring the protection of the right to equality in healthcare, of all persons with mental illness in a concerted manner.

Section 21 also in particular protects the rights of a woman with mental illness who is mother of a small child. Section 21(2) and (3) state that a child below three years of age shall not ordinarily be separated from his/her mother if the latter is a woman receiving treatment or rehabilitation at a mental health establishment, unless there is a risk to the child from the mother due to her mental illness. However, the woman has a right to continue to have access to the child under the supervision of an establishment staff during the period of separation. The decision to separate the woman from her child has to be reviewed every fifteen dates and the separation has

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[http://ncw.nic.in/pdfreports/addressing\\_concerns\\_of\\_women\\_admitted\\_to\\_psychiatric\\_institutions\\_in\\_india\\_an\\_in-depth\\_analysis.pdf](http://ncw.nic.in/pdfreports/addressing_concerns_of_women_admitted_to_psychiatric_institutions_in_india_an_in-depth_analysis.pdf) (Last visited on May 23, 2017)

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

to be terminated as soon as the decision is arrived at that the conditions which were posing risk to the child from his/her mother because of the mother's mental illness no longer exist. This is a laudable change in the law as it keeps intact one of the most fundamental right of a woman to be able to nurture her child. The periodic review process also helps in obviating the situation whenever the woman is healed enough to take care of her baby.

Principle 11 of the United Nations Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991,<sup>24</sup> states that no treatment, unless otherwise provided in the Resolution, will be given to a patient without her informed consent. The wombs of girls with mental illness are silenced as soon as they attain puberty.<sup>25</sup> Says the mother of a young girl with cerebral palsy, “*I was told the hysterectomy would help avoid hygiene issues during menstruation,*” and on asking about the side-effects of the operation, she was not even offered any reply.<sup>26</sup> The practice came to fore in 1994 when the incident of hysterectomies being conducted on 11 mentally challenged women between the ages of 15-35 (in a Pune Government Hospital) was reported in the national daily newspapers. This practice still continues, with parents quietly going for hysterectomies of their daughters without their consent. In response to the 1994 incident, the Indian Journal of Medical Ethics came out with an article titled “*Hysterectomy in the Mentally Handicapped*”<sup>27</sup> which lashes the logic put up by people endorsing these non-consensual hysterectomies. The discussion herein below summarizes some pertinent points to be noted, with respect to the issue<sup>28</sup>:

- **Hygiene issues and menstruation:** Menstruation is no disease, and an inherent part of a woman's life cycle. A woman without disability would never go for hysterectomy for the sake of convenience and hygiene. Just as excreta from bowel and bladder need attention in the physically and mentally disabled, similar care can be provided for the outpourings of the uterus during menstruation.
- **Health risks associated with hysterectomy:** Hysterectomy is a very major surgery with a mortality rate of 1-2 per 1000 operations and an even higher complication rate. If the ovaries are left in, their function often recedes after hysterectomy, lowering the levels of estrogen in the body. This may lead to complications like cardiovascular disease and, osteoporosis. No standard textbook on gynaecology or psychiatry has ever recommended hysterectomy for the disabled.<sup>29</sup>
- **Sexual abuse and rape:** Hysterectomies are mostly carried out for the never-spoken reason: “*so that the girl doesn't become pregnant if abused.*”<sup>30</sup> The abusers, generally being, men who meet them on an everyday basis, hospital staff, peers and

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<sup>24</sup> A/RES/46/119, available at <http://www.un.org/documents/ga/res/46/a46r119.htm> (Last visited on January 7, 2017)

<sup>25</sup> Divya Sreedharan, *The Silenced Wombs*, THE HINDU (August 4, 2013), available at <http://www.thehindu.com/features/the-yin-thing/the-silenced-wombs/article4985813.ece> (Last visited on January 5, 2017)

<sup>26</sup> *Id.*

<sup>27</sup> Paryay, *Hysterectomy in the Mentally Handicapped*, Indian Journal of Medical Ethics, Vol.2, No. 3 (1994), available at <http://ijme.in/index.php/ijme/article/view/1790/3858> (Last visited on January 3, 2015)

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Divya Sreedharan, *The Silenced Wombs*, THE HINDU (August 4, 2013), available at <http://www.thehindu.com/features/the-yin-thing/the-silenced-wombs/article4985813.ece> (Last visited on January 5, 2017)



own family members.<sup>31</sup> Though, physical and verbal abuse is prevalent in state-run institutions, sexual violence remains hidden as victims, sometimes don't understand what is being done to them, and even if they do, are very less likely to talk about the same.<sup>32</sup> Same applies to women with disability, especially mentally challenged women staying with their family where the abusers are generally the family members and relatives.

It is submitted that there should be an express prohibition in the Act on hysterectomies of women with mental illness undergoing mental healthcare treatment. The same is vital to fully protect the right to equality and non-discrimination of persons with mental illness as guaranteed under Section 21. The reason for removing the uterus of a woman should be purely gynecological.

### **Right to protection from cruel, inhuman and degrading treatment – *delving into how to protect women with mental illness***

Section 20 of the Act lays down the right of persons with mental illness to be protected from cruel, inhuman and degrading treatment in mental healthcare establishments. This right includes the right:

- to live in safe and hygienic environment;
- to have adequate sanitary conditions;
- to have reasonable facilities for leisure, recreation, education and religious practices;
- to privacy;
- for proper clothing so as to protect such person from exposure of his body to maintain his dignity;
- to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;
- to have adequate provision for preparing for living in the community;
- to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;
- to not be subject to compulsory tonsuring (shaving of head hair);
- to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and
- to be protected from all forms of physical, verbal, emotional and sexual abuse.

It is imperative to analyse the provisions of Section 20 of the Act from the perspective of female patients with mental illness in the background of the existent mental healthcare scenario in India. In the female ward of the Regional Mental Hospital (RMH), Yerwada, Pune, Maharashtra, one of the ten institutions visited by the multi-disciplinary team of NCW and NIMHANS, lighting was inadequate, and because of inadequate beds and mattresses there was overcrowding; the eating area was full of flies. The patients had to wear compulsory uniforms many of which were torn, and

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<sup>31</sup> *Id.*

<sup>32</sup> Human Rights Watch, *Treated Worse than Animals – Abuses against women and girls with psychological or intellectual disabilities in Institutions in India* (2014), available at [http://www.hrw.org/sites/default/files/reports/india\\_forUpload.pdf](http://www.hrw.org/sites/default/files/reports/india_forUpload.pdf) (Last visited on January 5, 2017)

there was lack of privacy during bathing.<sup>33</sup> In the female ward of the Government Mental Health Centre (GHMC), Kozhikode, Kerala, more than two-third members said that they were not provided sanitary napkins regularly and many said they were not taught how to dispose them. In Regional Mental Hospital, Thane, Maharashtra, the female wards were reported to be “*old leaking and dilapidated*,” there are no mosquito meshes and one toilet for fifty women.<sup>34</sup> During rains there is leakage and the wards become damp making it very difficult to maintain proper hygiene and cleanliness, failure of which leads to malaria and other water-borne diseases.<sup>35</sup> Here too there was no privacy while bathing or changing clothes, some of the toilets did not even have doors. Sanitary napkins are not provided in this institution and patients are given innerwear only during their menstruation days. In Calcutta Pavlov Hospital, West Bengal, there are 270 women with mental illness living in a three-storey building with a locked gate, where the patients complained of lack of space and proper hygiene.<sup>36</sup> In Behrampore Mental Hospital, Murshidabad, West Bengal, 188 women lived on two floors and each woman does not have a separate bed of her own.<sup>37</sup> Most women patients were bathed together in open taps in the corridor; very few patients have undergarments, and they were provided with sanitary napkins only on demand, most of whom disposed them off by throwing them out of the window.<sup>38</sup>

Right to life protected under Article 21 of the Constitution of India, includes within its ambit the right to live with dignity and to be protected from cruel and inhuman treatment. Section 20 of the Act therefore, stands fairly good in the test of the mandates of the right to life and personal liberty as guaranteed by the Indian Constitution and recognized by the Supreme Court of India in various landmark judgements.<sup>39</sup>

Enforcing these rights guaranteed under Section 20 to the female patients with mental illness is the most important, imminent and urgent need of the day. With the law mandating it, quick ratification by the respective State Governments and enforcement and implementation by the appropriate government is something that can better the situation.

### **Other important positive rights guaranteed under the Act and their applicability to women with mental illness**

Sections 22 to 28 of the Act enumerate certain important positive rights of patients with mental illness in mental healthcare which hold significance in the present scenario. The rights are:

- **Right to information (Section 22):** Right of the person with mental illness and his/her nominated representative to information regarding admission to a mental healthcare institution and to his/her treatment therein.
- **Right to confidentiality (Sections 23 and 24):** Right of the person with mental illness to confidentiality with respect to his/her mental health, mental healthcare, treatment, and physical healthcare. No photograph or any other information relating

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621; *Francis Coralie v. Union Territory of Delhi*, 1981 SCR (2) 516; *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802; *Peoples Union for Democratic Rights v. Union of India*, 1983 SCR (1) 456

to a person with mental illness who is undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness. It is to be noted that the right to confidentiality of person with mental illness extends to all information stored in electronic or digital format in real or virtual space.

- **Right to access medical records (Section 25):** Right of the person with mental illness to access to his/her basic medical records.
- **Right to personal contacts and communication (Section 26):** Right of the person with mental illness admitted to a mental health establishment to refuse or receive visitors and to refuse and make telephone and mobile calls at reasonable times and to send and receive emails, etc.
- **Right to legal aid (Section 27):** Right of the person with mental illness to receive free legal services to exercise the rights guaranteed under the Act.
- **Right to make complaints regarding deficiencies of services at the mental healthcare institution (Section 28):** Right of the person with mental illness and his/her nominated representative to complain regarding deficiencies in provision of treatment, care and services in a mental health establishment. The complaint can be made before the medical officer or mental health professional in charge of the establishment and if not satisfied with the response; the concerned Board and if not satisfied with the response; the State Authority.

These positive rights if properly implemented will help in fulfilling the other rights guaranteed under the Act, that is the right to access to mental healthcare, right to equality and protection from cruelty in mental healthcare and protection of the dignity of women with mental illness receiving mental healthcare.

## Conclusion

The author had the opportunity to carry out the following field work in pursuance of this paper:

- The author interviewed a learned Professor of psychiatry at Kolkata on 25th August, 2016. It was a focused interview, the questions asked were open-ended and the discussion revolved around the implications of the then Mental Health Care Bill, 2016 on female patients with mental illness;
- The author interviewed an Additional Professor of Psychiatry, Department of Psychiatry, at a Government Mental Hospital in Bangalore on 3rd March, 2017. It was a focused interview, the questions asked were open-ended and the discussion revolved around the implications of the Mental Health Care Act, 2017 on female patients with mental illness and on mental health care in general in his hospital and in other hospitals across India.
- The author interviewed a doctor on 12th August, 2016 at Spandana Nursing Home, Bangalore. It was a focused interview, the questions asked were open-ended and the discussion revolved around the implications of the then Mental Health Care Bill, 2016 on female patients with mental illness and on mental health care in general.

All three doctors were of the opinion that most of the provisions of the Mental Health Care Act, 2017 were a welcome change but would require immense monetary funding and manpower for the proper implementation. They however, expressed reservations about the integration of mental healthcare with general healthcare stating that the integration has to be slow and calculated.

Article 3 of the UNCRPD lays down eight general principles on which the Convention is based, that are:

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The Preamble of UNCRPD recognizes the fact that women and girls with disabilities are often at greater risk “*of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.*” Article 6 of the UNCRPD requires State parties to take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms set out in the Convention.

It is submitted that the Mental Healthcare Act, 2017 has adhered to the mandates of UNCRPD by providing for protection of rights of persons with mental illness undergoing or requiring mental healthcare. When it comes to the rights of women with mental illness and bringing them at par with the other sections of the society, the terrain is rocky and is full of obstacles, which would require concerted efforts to be overcome successfully.

The Act provides for the setting up of and assigning of duties to, Mental Health Authorities at the Central<sup>40</sup> and State<sup>41</sup> level, Mental Health Boards,<sup>42</sup> lays down the duties of the appropriate government<sup>43</sup> and provides for registration, recognition and regulation of mental health establishments<sup>44</sup> for the purposes of this Act and the admission, treatment and discharge of persons in need of mental healthcare<sup>45</sup>. Sections 107 to 109 of the Act provide for punishments and penalties for violation of various provisions of the Act respectively. These provisions, it is submitted, have the capacity to pave the way for proper implementation of the rights guaranteed under the Act in the time to come. However, it is pertinent to note that the implementation is possible successfully only if it is accompanied by massive fund flow from the Central Government to various State Governments which are already grappling with inadequate medical infrastructure

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<sup>40</sup> The Mental Healthcare Act, 2017, Chapter VII

<sup>41</sup> The Mental Healthcare Act, 2017, Chapter VIII

<sup>42</sup> The Mental Healthcare Act, 2017, Chapter XI

<sup>43</sup> The Mental Healthcare Act, 2017, Chapter VI

<sup>44</sup> The Mental Healthcare Act, 2017, Chapter X

<sup>45</sup> The Mental Healthcare Act, 2017, Chapter XII

at district levels.<sup>46</sup> The National Health Policy, 2017 aims to raise the public healthcare expenditure from 1.4% to 2.5% of GDP. Public healthcare includes within its ambit mental healthcare; the National Health 2017 Policy could therefore, prove to be vital in fulfilling the aims of the Mental Healthcare Act, 2017.

When undergoing treatment, a person with mental illness is in the most vulnerable of state. This Act will play a pivotal role in ensuring that the vulnerabilities of such women requiring and undergoing mental healthcare are not exploited. The provisions of the Act are progressive and are a welcome change. Proper implementation of the legal provisions word for word will lead to the ultimate success of this legislation. It is thus, concluded that the implications of the Mental Healthcare Act, 2017 on women with mental illness could be positive, if there is proper implementation and enforcement of its provisions in the near future, which is subject to appropriate budgetary support and its flow.

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<sup>46</sup> Raghuraj Gagneja, *Mental Healthcare Bill: Despite the positive reform, a lot more needs to be done for the mentally ill*, FIRSTPOST (April 8, 2017), available at <http://www.firstpost.com/india/mental-healthcare-bill-despite-the-positive-reform-a-lot-more-needs-to-be-done-for-the-mentally-ill-3373156.html> (Last visited on May 10, 2017)