COMMITTEE ON HEALTH AND FAMILY WELFARE

The Mental Health Care Bill, 2013

SEVENTY FOURTH REPORT

The Mental Health Care Bill, 2013, aims to improve the conditions in the nation's mental health facilities while ensuring the process of appeal by a person admitted to a psychiatry institution, rehabilitation, and reintegration with families and the community in non-medical settings. The Bill addresses the following topics: admission, treatment, and discharge; advance directive; designated representative; rights of people with mental illness; obligations of the appropriate government; central and state mental health authorities; mental health facilities; mental health review commission.

The United Nations Convention on the Rights of Persons with Disabilities, which was ratified by the Government of India in October 2007, required the Government to align its policies and laws with the Convention, according to the Statement of Objects and Reasons (SOR) of the Bill. The Mental Health Act of 1987 would be repealed.

According to the Bill's Statement of Objects and Reasons (SOR). Its goals are to:

- Protect and advance the rights of people with mental illness while providing healthcare in institutions and in the community;
- Make sure that people with mental illness receive health care, treatment, and rehabilitation in the least restrictive setting possible and in a way that respects their rights and dignity; and
- Fulfil the requirements of the Constitution and other international agreements.
- Establish a mental health system integrated into all levels of general health care;
- Promote principles of equity, efficiency, and active participation of all stakeholders in decision-making;
- Improve accessibility to mental health care by mandating sufficient provision of high-quality public mental health services and non-discrimination in health insurance.

Essential Features of the Mental Healthcare Bill 2013:

- As regulating bodies, the Central and State Mental Health Authorities will still exist.
- Any individual, with or without a mental illness, is able to create an **Advance Directive (AD)** that specifies how he or she wants to be treated in the event of a mental illness in the future as well as how he does not want to be treated. Families, experts, etc. may also contest such an AD.
- A person suffering from mental illness may designate a **Nominated Representative** to act on their behalf. This clause is also inserted to satisfy the CRPD's demand that people with mental illnesses have their legal ability protected.
- A person with a mental illness has the right to live in society, to participate in it, and to not be excluded from it. Government is required to fund halfway houses, community care facilities, etc.
- All people have the right to obtain mental health care and treatment from mental health services managed or supported by the government, according to the MHC Bill, 2013. Such services must be accessible, reasonably priced, and of high quality.
- The right to be free from cruel, inhumane, and humiliating treatment extends to those who suffer from mental illness. It will be illegal to employ some present procedures, most notably Electro-Convulsive Therapy administered without anaesthesia and the practice of chaining patients to their beds.
- The Bill acknowledges that the vast majority of people who are mentally ill live at home. Any family that provides care for a mentally ill person finds it emotionally and financially taxing. **Mental illness affects a sizable part of the homeless who are on the streets. The Bill thereby addresses the requirements of carers, families, and mentally ill homeless people.**
- In some cases of advanced disease, when the patient is unable to make decisions for themselves, it may be necessary to make decisions for them in order to protect their health and safety.
- A **Mental Health Review Commission** which would be administered by District Boards, will examine each case of such assisted admissions. **The Commission/Boards' primary responsibility is to make sure that sending any individual to a mental health facility is the least restrictive course of treatment possible in the given situation.**
- Mental Health Review Commission (MHRC) and Central and State Mental Health Authorities (CMHA & SMHA) are both mentioned in the MHC Bill. **The MHRC is a quasi-judicial authority that oversees the operation of mental health facilities independently and defends the rights of those with mental illnesses who reside there.**

The goal and focus of the MHC Bill, 2013, is for the State to take over responsibility for delivering appropriate health care, including assistance to facilities that provide care. Although it must be acknowledged that healthcare service delivery is not ideal at this time, the District Mental Health Programme (DMHP) currently runs in 123 districts across the nation.

Views on the bill:

Certain apprehensions were displayed by representatives of various organisations :

- The idea that parents of a kid must obtain the Mental Health Review Commission's approval before treating a mental disorder is dehumanising for both the parents and the child in question.
- **The idea of a nominated representative would cause conflict between the family of the person with a mental illness and the nominated representative, who may not be a blood relative of the person with a mental illness**. This nominated representative might also abuse the provision in question to usurp the property or gain other advantages that would accrue to the person with a mental illness.
- **The aforementioned Bill portrays mental illnesses as a stigma**, which is undesirable from both the patients' and the doctors' perspectives.

Clause-by-Clause Recommendation of the Committee to the Bill:

Clause 1(3) and 1(4)

- (1) This Act may be called the Mental Health Care Act, 2013.
- (2) It shall extend to the whole of India.
- (3) The provisions of this Act, except the provisions of sections 33, 45 and 73, shall come into force within a period of three months from the date on which it receives the assent of the President.
- (4) The provisions of sections 33, 45 and 73 shall come into force within a period of nine months from the date on which it receives the assent of the President.

The amended clauses would make the proposed Act's operation more coherent and clear while also accomplishing its stated goals. Therefore, the proposed modification should be included in the Bill.

Clause 4 (1)

4. (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental health care or treatment, if such person has ability

To,—

- (a) Understand the information relevant to the mental health care or treatment decision;
- (b) Retain that information;
- (c) Use or weigh that information as part of the process of making the mental health care or treatment decision; and
- (d) Communicate his decision by any means (including talking, using sign language or any other means).”

The objections made regarding Clause 4 have substance, and the Ministry would make the necessary amendments in order to uphold the constitutional requirement of equality. It also reflects the self-determination concept, which grants the right to make decisions about one's own care and treatment for a mental illness. Therefore, the new or alternative clause for Clause 4(1) offered by the Ministry should be added to the Bill.

Clause 11(1) and 11(2)

"11. (1) Where a mental health professional or a relative or a care-giver of a person desires not to follow an advance directive while treating a person with mental illness, such mental health professional or the relative or the care-giver of the person may make an application to the concerned Board to review, alter, modify or cancel the advance Directive.

(2) Upon receipt of the application under sub-section (1), the Board may, after giving an opportunity of hearing to all concerned parties (including the person whose advance directive is in question), either uphold, modify, alter or cancel the advance directive after taking into consideration the following, namely:—

- (a) whether the advance directive was made by the person out of his own free will and free from force, undue influence or coercion; or
- (b) whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated; or
- (c) whether the person was sufficiently well informed to make the decision; or
- (d) whether the person had capacity to make decisions relating to his mental health care or treatment when such advanced directive was made; or
- (e) whether the content of the advance directive is contrary to other laws or constitutional provisions."

If not changed, Clause 11(1) and (2) could be used to abuse people with mental illnesses and restrict their rights. Therefore, the suggested changes to Clause 11(1) and (2) were supported and it was advised that they be appropriately made in the Bill so that the Board is obligated to thoroughly review the decision to overrule the advance directive.

Clause 21(2)

"21(2) The Insurance Regulatory Development Authority established under the Insurance Regulatory Development Authority Act, 1999 shall endeavour to ensure that all insurers make provisions for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness."

The Clause 21(2), which seeks to eliminate the existing discriminatory provisions and would be a great relief to people with mental illness and their families, seeks to provide for the acceptance of medical insurance policies for persons with mental illness by the insurance companies in the same way as for physical illness. However, the word "shall endeavour" lessens the impact. As a result, the deletion of the word "endeavour" was supported and in accordance with the Ministry's approval and the word "shall" be left in the Bill.

Clause 23(2)

"23(2) All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely:—

- Release of information to the nominated representative to enable him to fulfil his duties under this Act;
- Release of information to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental Illness;
- Release of information if it is necessary to protect any other person from harm or violence;
- Only such information that is necessary to protect against the harm identified shall be released;
- Release of information in the case of life threatening emergencies where such information is urgently needed to save lives;
- Release of information upon an order by concerned Board or the Commission or High Court or Supreme Court or any other statutory authority competent to do so; and
- Release of information in the interests of public safety and security."

The Bill's clause 23(2) addresses a person with a mental illness's right to confidentiality. The goal of this section, to maintain all such information received during care or treatment by health professionals providing care or treatment to a person with mental illness, will therefore be defeated by any scope of ambiguity. Any exception to such a crucial phrase should be carefully written with specific goals in mind in order to prevent disagreement and confusion during the implementation phase. Therefore, the Bill should include the suggested amendments.

Clause 25

(1) All persons with mental illness shall have the right to access their medical records.

(2) The psychiatrist in charge of such records may withhold specific information in the medical records if disclosure would result in,—

- (a) serious mental harm to the person with mental illness; or
- (b) likelihood of harm to other persons.

(3) When any information in the medical records is withheld from the person, the psychiatrist shall inform the person with mental illness of his or her right to apply to the concerned Board for an order to release such information.

Before the Bill is finalised, the extent of medical record misuse be reviewed and appropriately handle

Clause 27(2)

"27(2) : It shall be the duty of medical officer or psychiatrist in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services."

It is crucial to revise clause 27 (2) so that individuals with mental illness are not denied access to legal remedies and rights provided to them by various provisions of the Bill because they lack information or are ignorant of those rights. The suggested modifications will resolve the concerns about arbitrariness.

Clause 65(4)

(4) Every mental health establishment shall, for the purpose of registration and continuation of registration, fulfil—

- The minimum standards of facilities and services as may be specified by regulations made by the Central Authority;
- The minimum qualifications for the personnel engaged in such establishments may be specified by regulations made by the Central Authority;
- Provisions for maintenance of records and reporting as may be specified by regulations made by the Central Authority; and
- Any other conditions as may be specified by regulations made by the Central Authority.

The Ministry's proposed modification is not properly framed. There is room for interpretational ambiguity. The term "Authority" may be defined explicitly while keeping the Ministry's suggested changes.

Clause 81

"(c) two members who shall be mental health professionals of whom at least one shall be a psychiatrist;"

At least one psychiatrist must be among the two members specified under Clause 81(c). However, the identity of the other "mental health professional" is not specified in the Clause. In order for the two qualified medical professionals appointed under this Clause to be able to share their knowledge with the rest of the Board and help it make the best decisions, the second "mental health Professional" proposed under Clause 81(c) must be a licenced medical professional. Therefore, the Ministry may alter Clause 81(c) as necessary.

Clause 99(11)

"99(11) If a person with mental illness has made an advance directive, it shall be taken into account before the commencement of treatment."

It is crucial to introduce the adjustment to Clause 99 (11) and remove the fallacies in order to improve Section 99's clarity. The Ministry's suggested adjustments must be included in the Bill to fill up the gaps and bring it into compliance with Article 21 of the Constitution.

Clause 104 (2)

"104(2) Notwithstanding anything contained in sub-section (1), if, in the opinion of the psychiatrist in charge of a minor's treatment, electro-convulsive therapy is required, then, such treatment shall be done with the consent of the guardian and prior permission of the concerned Board."

Clause 104, which forbids several medical procedures like unaltered ECT, sterilisation, and chaining, is a highly desirable pro-human right provision. However, concerns were raised about ECT for minors and the Ministry must make sure that all treatments are carried out with informed permission by introducing the appropriate revisions to the Bill. The Bill may be amended as necessary as a result.

Clause 106

- "(2) Physical restraint or seclusion shall not be used for a period longer than it is absolutely necessary to prevent the immediate risk of significant harm.
- (3) The medical officer or psychiatrist in charge of the mental health establishment shall be responsible for ensuring that the method, nature of restraint or seclusion, justification for its imposition and the duration of the restraint or seclusion are immediately recorded in the person's medical notes.
- (4) The restraint or seclusion shall not be used as a form of punishment or deterrent in any circumstance and the mental health establishment shall not use restraint or seclusion merely on the ground of shortage of staff in such establishments.
- (5) The nominated representative of the person with mental illness shall be informed about every instance of seclusion or restraint within a period of twenty-four hours.
- (6) A person who is placed under restraint or seclusion shall be kept in a place where he can cause no harm to himself or others and under regular ongoing supervision of the medical personnel at the mental health establishment.

- (7) The mental health establishment shall include all instances of restraint and seclusion, in the report to be sent to the concerned Board on a monthly basis.
- (9) The Board may order a mental health establishment to desist from applying restraint and seclusion if the Board is of the opinion that the mental health establishment is persistently and wilfully ignoring the provisions of this section."

The phrase "seclusion" should be removed from Clauses 106(2), (3), (4),(5),(6),(7), and (9) and this would make the said Clause more clear in terms of the rights to dignity and liberty of people with mental illness. Therefore, the Ministry's suggested deletions be implemented in the Bill.

Clause 112

"(1) An order under section 30 of the Prisoners Act, 1900 or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein.

(2) The medical officer of a prison or jail shall send a quarterly report to the concerned Board certifying therein that there are no prisoners with mental illness in the prison or jail.

(3) The Board may visit the prison or jail and ask the medical officer as to why the prisoner with mental illness, if any, has been kept in the prison or jail and not transferred for treatment to a mental health establishment.

(4) The medical officer in charge of a mental health establishment wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained."

To prevent misunderstandings and inconsistencies during implementation, the Clause should provide more precise facts. Therefore, the Ministry should reexamine the issue raised with relation to Clause 112 and take necessary action.

Clause 113

"If it appears to the person in charge of a State run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary."

Those who are placed in institutions with custodial rights are particularly susceptible to rights abuse. In light of their unique situation, proposed adjustments are therefore highly necessary. The Ministry's modification to Clause 113, should be appropriately integrated into the Bill.

Clause 124

"Presumption of mental illness in case of attempt to commit suicide by person.

124. (1) Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to be suffering from mental illness at the time of attempting suicide and shall not be liable to punishment under the said section.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having mental illness and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide."

Although section 124 of the Bill tries to establish a presumption about mental illness, it is unclear at what point this presumption takes effect.. Therefore, the changes suggested by the Ministry were approved and it was suggested that they be properly included into the Bill.

Clause 126

"The Central Government may, if it considers so necessary in the interest of persons with mental illness being governed by the Mental Health Act, 1987, take appropriate interim measures by making schemes for the smooth implementation of the provisions of this Act."

Caution should be exercised before completely repealing the Mental Health Act of 1987.

The Financial Memorandum attached to the Bill states that it is not possible to estimate the financial burden at this stage, but at the same time, the Financial Memorandum does not guarantee that necessary allocation will be made when the provision of the Bill will be implemented. There are up to 18 clauses in the Bill that will become sections after enactment and involve expenditure from the Consolidated Fund of India. Due to the fact that health is a state responsibility, states must implement its laws. Therefore, as the majority of States are experiencing resource shortages, it is the responsibility of the Centre to secure funding for putting the Bill's provisions into effect.