

**6 DECEMBER 2010**

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**MENTAL HEALTH CARE ACT, 2010**

**Ministry of Health & Family Welfare  
Government of India  
New Delhi**

**6 DECEMBER 2010**

**Notes :**

During the Regional Consultations on the amendments to the MHA, 1987, it became clear that the number of amendments to the MHA 1987 led to multiple repealed sections and this resulted in difficulty in reading the amended Act.

This is now written as a new Act because it allows for certain sections to be moved to the front of the Act and renumbering of sections sequentially. Most importantly it makes for ease of reading and use of the Act.

The contents in this Act are as discussed in the Regional Consultations and are a continuation from the previous draft amendments (Draft 1 and Draft 2) to the MHA, 1987. Suggestions made at the Regional Consultations have been incorporated into this draft wherever appropriate.

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**TITLE :** MENTAL HEALTH CARE ACT (2010)

**Description :** An Act to provide access to mental health care for persons with mental illness and to protect and promote the rights of persons with mental illness during the delivery of mental health care.

**Statement of Objects and Reasons :**

**Recognizing that :**

Persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society;

Families bear disproportionate financial, emotional and social burden of providing treatment and care for their relatives with mental illness;

Persons with mental illness should be treated like other persons with health problems and the environment around them should be made as conducive to facilitate recovery, rehabilitation and full participation in society;

The Mental Health Act, 1987 has failed to protect the rights of persons with mental illness and promote access to mental health care in the country;

**And in order to :**

Protect and promote the rights of persons with mental illness during the delivery of health care in institutions and in the community;

Ensure health care, treatment and rehabilitation to persons with mental illness is provided in the least restrictive environment possible, and in a manner that does not intrude on their rights and dignity. Community-based solutions, preferably in the vicinity of the person's usual place of residence, are preferred to institutional solutions;

Provide treatment, care and rehabilitation to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life;

Fulfill the obligations under the Constitution of India and the obligations under various International Conventions ratified by India;

Regulate the public and private mental health sectors within a rights framework to achieve the greatest public health good;

Improve accessibility to mental health care by mandating sufficient provision of quality public mental health services and non-discrimination in health insurance

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;

**This Act is enacted as follows**

## Chapter 1 : Preliminary

### Section 1: Short title, extent and commencement

- i) This Act may be called the Mental Health Care Act, 2010
- ii) It extends to the whole of India
- iii) It shall come into force on such date as the Central Government may appoint by notification in the Official Gazette. This date shall not be later than 3 months from the date of assent of the President of India.

### Section 2: Definitions

In this Act, unless the context otherwise requires :

- (a) **Care-giver** means any person who normally resides with a person with mental illness and/or is predominantly responsible for providing care to that person. A care-giver may be a relative (as defined below) or any other person who performs this function, either free or with remuneration.
- (b) **Family** means a group of persons related by blood, adoption or marriage.
- (c) **Informed Consent** means consent given to a proposed specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to the person adequate information including risks and benefits of, and alternatives to, the proposed intervention in a language and manner understood by the person.
- (d) **Least Restrictive Alternative or Less Restrictive Option** means offering an option for treatment or a setting for treatment which a) meets a person's treatment needs and b) imposes the lowest restriction on the person rights.
- (e) **Magistrate** means -  
in relation to a metropolitan area within the meaning of Cl (k) of Sec. 2 of the Code of Criminal Procedure, 1973 (2 of 1974), a Metropolitan Magistrate;  
in relation to any other area, the Chief Judicial Magistrate, Sub-Divisional Judicial Magistrate or such other Judicial Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act
- (f) **Medical Officer in Charge** in relation to any mental health facility means the psychiatrist or medical practitioner who, for the time being is in charge of that mental health facility
- (g) **Medical Practitioner** means a person who possesses a recognized medical qualification as defined -  
in Cl (h) of Sec 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in the State Medical Register, as defined in Cl. (k) of that section;  
in Cl (h) of sub-section (1) of Sec. 2 of the Indian Medicine Central Council Act, 1970 (48 of 1970), and whose name has been entered in a State Register of Indian Medicine, as defined in cl (j) of sub-section (1) of that section; and  
in Cl. (g) of sub-section (1) of Sec. 2 of the Homeopathy Central Council Act, 1973 (59 of 1973), and whose name has been entered in a State Register of Homeopathy, as defined in Cl. (l) of sub-section (1) of that section

(h) **Mental Health Facility** means all facilities either wholly or partly, meant for the care of persons with mental illness, established or maintained by the Government or any other person or organization, where persons with mental illness are admitted, or reside at, or kept in, for care, treatment, convalescence and/or rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the Government or any other person or organization; and excludes a family residential place if a person with mental illness resides with his or her own family

(i) **Mental Health Professional** for the purpose of this Act means

i) Psychiatrist as defined below

ii) Mental Health Nurse means a person with degree in general nursing and degree in psychiatric nursing recognized by the Nursing Council of India and registered with the relevant nursing council in the state,

iii) Clinical Psychologist means a person with a post graduate degree or doctorate in clinical psychology acquired after a minimum two year course from any university recognized by the University Grants Commission (UGC);

iv) Psychiatric Social Worker means a person with post graduate degree or doctorate in the field of psychiatric social work from any university recognized by the University Grants Commission (UGC);

(j) **Minor** means a person who has not completed the age of eighteen years

(k) **Notification** means a notification published in the Official Gazette

(l) **Prescribed** means prescribed by rules made under this Act

(m) **Prisoner with Mental Illness"** means a person with mental illness, detained in a jail or prison, for whose detention in, or removal to, a mental health facility, an order referred to in Section 59 has been made

(n) **Psychiatrist** means a medical practitioner possessing a post-graduate degree or diploma in psychiatry awarded by any University recognized by University Grants Commission (UGC) and/or awarded or recognized by the National Board of Examinations and/or recognized by the Medical Council of India, constituted under Indian Medical Council Act, 1856 (102 of 1956) and includes, in relation to any State, any medical officer who, having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act

(o) **Relative** means any person related to the person with mental illness by blood, marriage or adoption

(p) **Mental Health Review Commission** and **District Panel of the Mental Health Review Commission** means bodies established under Chapter IV Section 21 and Section 22 of the Act.

(q) **State Mental Health Authority** means body established under Chapter V Section 32 of the Act.

### Section 3: Mental Illness

i) 'Mental illness' for the purpose of this Act, means a disorder of mood, thought, perception, orientation or memory which causes significant distress to a person or impairs a person's behavior,

judgment and ability to recognize reality or impairs the person's ability to meet the demands of normal life and includes mental conditions associated with the abuse of alcohol and drugs, but excludes mental retardation.

ii) Mental illness shall be determined in accordance with nationally and internationally accepted medical standards such as the latest edition of the International Classification of Disease of the World Health Organization and;

iii) Mental Illness shall never be determined on the basis of political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status and;

(iv) Mental Illness shall never be determined on the basis of non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community and;

(v) A background of past treatment or hospitalization to a mental health facility though relevant, shall not by itself justify any present or future determination of mental illness and;

(vi) No person or authority shall classify a person as having, or state that a person has a mental illness, except for purposes directly relating to the treatment of mental illness or in other matters related to the Act and;

(vii) A determination of mental illness shall in no way imply or be taken to mean that the person lacks competence to make his or her decisions.

#### **Section 4: Competence**

(i) "Competence" or "competent to make a decision" means the person has ability to:

- a) understand the information relevant to the decision and;
- b) retain that information and;
- c) use or weigh that information as part of the process of making the decision and;
- d) communicate his or her decision by any means (by talking, using sign language or any other means)

Explanation : 'Information relevant to a decision' above means information about the consequences of making a decision one way or other and information about the consequences of not making the decision. Such information shall be given to a person in a way and manner (using simple language, in the language the person understands, sign language, visual aids or any other means) that the person is able to understand the information.

(ii) If a person makes a decision which is perceived by others as inappropriate or wrong decision, this shall by itself not be grounds to regard the person as not being competent to make the decision, as long as the person has the ability as mentioned in sub-section (i) above.

(iii) That a person has a mental illness by itself shall not be taken to mean that he or she is not competent to make decisions. All persons with mental illness are regarded as competent to make decisions except when they lack the ability as mentioned in sub-section (i) above.

**Section 5 : Advance Directive**

(i) Every person has a right to make an 'Advance Directive' in writing, specifying any or all of the following:

- a) the way the person wishes to be cared for and treated for a mental illness and/or;
- b) the way the person wishes not to be so cared for and treated for a mental illness and/or;
- c) the individual or individuals, in order of precedence, the person wants appointed as their nominated representative under Section 6 below

in the event of his or her having a mental illness in the future.

(ii) An Advance Directive may be made by a person whether or not the person has had a mental illness in the past and whether or not the person has received treatment for a mental illness in the past.

(iii) An Advance Directive shall be made in writing on a plain paper with the person's signature or thumb impression on it. The Advance Directive shall also be signed by a medical practitioner certifying that the person is competent at the time of writing the Advance Directive.

(iv) An Advance Directive may be revoked, amended or canceled at any time by the person who made it. The procedure for revoking, amending or canceling an Advance Directive shall be the same as making an Advance directive in sub-section (iii) above. In particular, all revocations, amendments or cancellations should be signed by a medical practitioner certifying that the person is competent and aware of what he is doing, when the Advance Directive is revoked, amended or canceled.

(v) If a person makes an Advance Directive which contains a refusal of all future medical treatment for mental illness, then such an Advance Directive shall not be valid unless it has been submitted to the District Panel of the Mental Health Review Commission (section 22 below) and the District Panel following a hearing, has certified the validity of the Advance Directive.

(vi) Medical officer in charge of a mental health facility and/or the psychiatrist in charge of a person's treatment is duty bound to follow a valid Advance Directive, subject to sub-section (vii) below, when proposing treatment of a person with mental illness.

(vii). If a mental health professional or a relative or a care-giver of the person desires to over-rule a valid Advance Directive when treating a person with mental illness, the mental health professional or the relative or the care-giver of the person, may apply to the District Panel of the Mental Health Review Commission for review and cancellation of the Advance Directive. Upon such application by the mental health professional, relative or care-giver, the District Panel of the Mental Health Review Commission may either uphold, over-rule, modify, or alter the Advance Directive taking into consideration whether :

- a) the Advance Directive was made of the person's free will and free of all undue influence and/or;
- b) the person intended the Advance Directive to apply to the present circumstances, which may be different from those anticipated and/or;
- c) the person was sufficiently well informed to make the decision and/or;
- d) the person was competent when the Advanced Directive was made and/or;
- e) the Advance Directive is in the best interests of the person concerned and/or;
- f) the content of the Advance Directive is contrary to other laws and Constitutional provisions.

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(viii) Notwithstanding any provision in this section, it shall not apply to any emergency treatment given under Section 50

(ix) The Mental Health Review Commission shall regularly and periodically review the use of Advance Directives. In its reviews, the Mental Health Review Commission shall give specific consideration to the procedure for making an Advance Directive and whether the existing procedure protects the rights of persons with mental illness. The Mental Health Review Commission may from time to time, make additional regulations with regard to the procedure for Advance Directive to ensure that the rights of persons with mental illness are protected.

(x) A medical practitioner or a psychiatrist shall not be held liable for any unforeseen consequences on following a valid Advance Directive.

### **Section 6. Nominated Representative**

(i) Any person with mental illness who has attained the age of eighteen years has the right to appoint a Nominated Representative, except when the person lacks the competence to make this decision. Such appointment shall be made in writing on plain paper with the person's signature or thumb impression. This document shall be countersigned by a medical practitioner certifying that the person is competent when making the decision to appoint a Nominated Representative.

(ii) In the absence of such an appointment under sub-section (i), the individuals in the order of precedence mentioned below shall be the nominated representative for a person with mental illness.

- a) the individual named as the nominated representative in an Advance Directive under Section 5, subject to Section 5, sub-section (vii), or if none,
- b) a relative as defined in Section 2 sub-section (o) above or if none,
- c) a care-giver as defined in Section 2 sub-section (a) above excluding a relative, or if none,
- d) a person appointed as nominated representative by the District Panel of the Mental Health Review Commission.

iii) In case of persons who do not have a nominated representative under sub-section (i) or (ii) above, any member of the public or a representative of registered organizations working with homeless people or persons with mental illness, may temporarily undertake to perform the duties of a nominated representative and shall be recognized as such under this Act, pending appointment of a nominated representative by the District Panel of the Mental Health Review Commission. The person temporarily undertaking to be the nominated representative shall make a written application to the Medical Officer in charge of the mental health facility and the Medical Officer shall recognize this person as the temporary nominated representative, pending appointment of a nominated representative by the District Panel.

(iv) Notwithstanding sub-sections (i) and (ii) above, the nominated representative for a person with mental illness under the age of eighteen years ("minor") shall be the legal guardian of that person, unless the District Panel of the Mental Health Review Commission orders otherwise under sub-section (v) below.

(v) Upon application by a mental health professional or any other person acting in the best interest of the minor, and based on evidence presented before it, the District Panel of the Mental Health Review Commission may order that the legal guardian of a person with mental illness under the age of eighteen years ("minor") shall not be the nominated representative of such minor person on the grounds

that either :

- (a) the legal guardian is not acting in the best interests of the person; or
- (b) the legal guardian is otherwise unsuitable to act as the nominated representative.

(vi) The District Panel of the Mental Health Review Commission at the time of making an order under sub-sections (iii) and (v), shall designate any suitable individual as the nominated representative of the person with mental illness. If no such individual is available for appointment as nominated representative, the Commission shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative for the person with mental illness.

(vii) The person nominated to be representative must be at least eighteen years of age, must be competent to fulfill the role as described in this Act, and must signify, in writing, his or her willingness to perform the role.

(viii) A person who has made an appointment under this section may revoke or alter the appointment at any time, unless he or she is not competent at the time of such revocation or alteration. Such revocation shall be in writing, on plain paper with the person's signature or thumb impression. This document shall be countersigned by a medical practitioner certifying that the person is competent when making the decision to revoke or alter the nominated representative.

(ix) The District Panel of the Mental Health Review Commission may revoke an appointment made under this section, and appoint a different representative under this section when appropriate to do so.

(x) Applications to the District Panel of the Mental Health Review Commission to make, revoke, alter, change, or modify an appointment under this section may be made by the person with mental illness, or by a relative of such person, or by the psychiatrist responsible for the care of such person, or by the medical officer in charge of the mental health facility where the individual is or is proposed to be admitted.

(xi) While fulfilling his or her duties under this Act, the nominated representative shall consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness. The nominated representative shall give particular credence to the views of the person to the extent that person understands the nature of the decisions under consideration.

(xii) The Nominated Representative has the following duties and rights :

- a) Duty to support the person with mental illness in making treatment decisions under Sections 45 and 46 .
- b) Right to information on diagnosis and treatment in so far as is required for the nominated representative to provide adequate care to the person with mental illness.
- c) Right to access family based rehabilitation services as provided in Section 7 on behalf of and for the benefit of the person with mental illness.
- d) Right to be involved in discharge planning under Section 54 .
- e) Right to apply to the mental health facility for admission under Sections 43, 45 and 46
- f) Right to apply to the District Panel of the Mental Health Review Commission on behalf of the person with mental illness for discharge from 43, 45 and 46
- g) Right to apply to the District Panel of the Mental Health Review Commission against violation of the rights of the person with mental illness in mental health facilities.
- h) Right to give consent for research under circumstances mentioned in Section 55 .

(xiii) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, does not presume or shall not be taken to presume a lack of legal capacity. All persons with mental illness have legal capacity but may require varying levels of support from their nominated representative to make decisions. The level of support required may vary from little support to very high support from time to time.

## **Chapter II : Rights of Persons with Mental Illness**

### **Section 7 : Right to Access Mental Health Care**

(i) All persons have a right to access mental health care and treatment from mental health services run or funded by the Government. The exercise of this right requires such mental health services are affordable, of good quality, available in sufficient quantity, accessible geographically, without discrimination on any basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers. To enable persons with mental illness to exercise this right, the minimum obligations on the Government are as outlined in this section below.

(ii) Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness. These include, but is not limited to, provision of acute mental health care services such as outpatient and inpatient admission facilities, facilities and services for providing long term mental health care for persons with long term mental illness, mental health services to support family based rehabilitation, hospital and community based rehabilitation facilities and services, provision for child mental health services and old age mental health services.

(iii) Mental health services shall be integrated into general health care services at all levels of health care including primary, secondary and tertiary care level of health services and in all health programmes run by the Government. As a minimum provision, a range of appropriate mental health services as described in sub-section (ii) above, shall be available at all general hospitals in every district in the country which are run or funded by the Government and basic and emergency mental health care services shall be available at all Community Health Centers (CHC) run or funded by the Government.

(iv) Mental health services shall provide treatment in a manner which supports persons with mental illness to live in the community and with their families. Long term hospital based mental health treatment shall be used only in exceptional circumstances, for as short a duration as possible, and only as a last resort when appropriate community based treatment has been tried and shown to have failed.

(v) No person with mental illness including children and older persons, shall have to travel long distances to access mental health services. Such services shall be available close to where a person with mental illness normally resides. As a minimum, mental health services run or funded by the Government as described in sub-section (ii) above, shall be available in each district. If the Government fails to maintain minimum mental health services as outlined in sub-section (ii) above, in the district that the person with mental illness normally resides in, the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such facilities in that district will be borne by the Government. The Government shall frame rules regarding costs of treatment at such mental health services in this regard.

(vi) A person with mental illness below the poverty line is entitled to treatment free of any charge and

at no financial cost, at all mental health facilities run or funded by the Government and at other mental health facilities designated by the Government.

(vii) Mental health services shall be of equal quality to other general health services and there shall be no discrimination in quality of services provided to persons with mental illness. The minimum quality standards shall be as prescribed by the State Mental Health Authorities.

viii) As a minimum, essential medicines used for the treatment of mental illness as enumerated in the World Health Organisation (WHO) Essential Drug List shall be available free of cost to all persons with mental illness at all times at health facilities run or funded by the Government, starting from community health centres and above in the public health system.

(ix) The Government shall take measures to ensure that necessary budgetary provisions in terms of adequacy, priority, progress, and equity are made for effective implementation of the provisions of this section.

Explanation : In sub-section (ix) above, *Adequacy* means in terms of how much is enough to offset inflation; *Priority* means in terms of compared to other budget heads, *Progress* means in terms of indicating an improvement in the state's response and *Equity* means in terms of fair allocation of resources taking into account the health, social and economic burden of mental illness on individuals, their families and care-givers.

(x) The Central Government shall submit an annual report to the Parliament and the respective State Governments shall submit an annual report to the State Legislature detailing the progress made towards achieving access to mental health care in the country.

### **Section 8 : Right to Community Living**

All persons with mental illness have a right to live in, be part of and not be segregated from society. No person with mental illness shall continue to remain in a mental health facility merely because he or she does not have a family or is not accepted by his or her family or is homeless or because of the absence of community based facilities. The Government shall therefore provide for and/or support the establishment of less restrictive community based facilities including halfway homes, group homes and like, for persons who no longer require treatment in a more restrictive mental health facility.

### **Section 9 : Right to Protection from Cruel, Inhuman and Degrading Treatment**

(i) All person with mental illness have a right to live with dignity.

(ii) No person with mental illness shall be subjected to any cruel inhuman or degrading treatment in a mental health facility.

(iii) Protection from cruel inhuman and degrading treatment means that all persons have the following minimum rights in mental health facilities:

- a) to live in safe and hygienic environment
- b) to have adequate sanitary conditions
- c) to have facilities for leisure, recreation, education and religious practices
- d) Protection of privacy, in particular for women
- e) Not to be forced to undertake work in a mental health facility they do not wish to do and appropriate remuneration for work when undertaken.

- f) to have adequate provision for preparing the person for living in the community
- g) to have adequate provision for food, space, and access to articles of personal hygiene. In particular, women's personal hygiene needs shall be adequately addressed by providing access to items that may be required during menstruation.
- h) to not be subject to compulsory tonsuring (shaving of head hair).
- i) to wear own personal clothes and not be forced to wear uniforms provided by the facility.
- j) to be protected from all physical, emotional and/or sexual abuse

**Section 10 : Right to Equality and Non-discrimination**

Persons with mental illness shall be treated equal to persons with physical illness in the provision of all health care. This includes but is not restricted to the following :

- (i) There shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability
- (ii) Public and private insurance providers shall make provisions for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.
- (iii) Emergency facilities and emergency services for mental illness shall be of the same quantity and quality as those provided to persons with physical illness. Persons with mental health services are entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness
- (iv) Living conditions in health facilities shall be of the same manner, extent and quality as provided to persons with physical illness;
- (v) Any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

**Section 11 : Right to Information**

(i) A person with mental illness and his or her nominated representative shall have the right to know the following :

- a) The section of this Act under which he or she is admitted, if he or she is being admitted, and the criteria for admission under that section;
- b) Of his or her rights to apply to the District Panel of Mental Health Review Commission for a review of the admission;
- c) Of the nature of the person's mental illness and the proposed treatment plan. This includes information about treatment proposed and the known side effects of such proposed treatment.
- d) In a language and form that the person receiving the information can understand.
- e) In the event that complete information cannot practicably be given to the person with mental illness at the time of the admission or the start of treatment, it is the primary responsibility of the medical officer or psychiatrist in charge of the person's care to ensure that the full information is provided promptly when the individual is in a position to receive it. The nominated representative will nonetheless be given the information immediately.

(ii) The primary responsibility for informing the person with mental illness and his or her nominated representative of the person's medical condition, legal status and rights lies with the medical officer or the psychiatrist in charge of the facility or psychiatrist or medical officer in charge of the individual's care. This task may be delegated by the medical officer or psychiatrist to an appropriate person.

**Section 12 : Right to Confidentiality**

(i) A person with mental illness has a right to confidentiality in the context of his mental health and

mental health care.

(ii) All health professionals providing care and treatment to a person with mental illness have a duty to keep all such information confidential which has been obtained in the context of care and treatment with the following exceptions :

- a) Release of information to the nominated representative to enable him or her to fulfill his or her duties under the Act
- b) 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
- c) 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 may be released.
- d) Life threatening emergencies where such information is urgently needed to save lives
- e) When ordered by the District Panel of Mental Health Review Commission or the Mental Health Commission or High Court or Supreme Court to do so
- f) In the interests of public safety and security

iii) This right to confidentiality also applies to all information stored in electronic and/or digital format in real or virtual space.

### **Section 13 : Access to Medical Records**

(i) All persons with mental illness shall have access to their medical records. 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 and/or
- b) likelihood of harm to other persons

(ii) 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 District Panel of Mental Health Review Commission for an order to release such information.

### **Section 14 : Right to Personal Contacts & Communication**

(i) A person with mental illness admitted to a mental health facility has the right to receive visitors and to receive and make a reasonable number of telephone/mobile phone calls at reasonable times of the day.

(ii) The medical officer in charge of a mental health facility may prohibit or restrict visits or telephone/mobile phone calls with named individuals, when the visit or telephone/mobile phone call is likely to interfere with the treatment of the person to be visited or cause that person undue distress, or may cause danger to any person. A person whose visits have been restricted under this section may apply to the District Panel of Mental Health Review Commission for an order determining their rights to visit the person with mental illness.

(iii) A person with mental illness admitted in a mental health facility may send and receive mail and email.

(iv) Where an individual (the recipient) informs the medical officer in charge of a mental health facility in writing that he or she does not wish to receive mail or email from a named person in the mental health facility, the medical officer in charge may restrict such communication by the person with mental illness to the recipient.

(v) Where the medical officer in charge of a mental health facility is of the view that mail or email sent to an individual (recipient) by a person with mental illness admitted in the mental health facility is sent

for an illegal purpose or would cause undue distress to the person to whom it is addressed, or would cause danger to any person, the medical officer in charge may restrict such communication and make a record of the same in the medical notes. Any person whose mail or email is so restricted may apply to the District Panel of Mental Health Review Commission for a review of this decision.

(vi) Visits from, telephone calls to and from and mail or email to and from individuals listed below cannot be restricted under any circumstances. Sub-section (ii) and (v) shall not apply to visits, telephone calls, mail or email from

- a) any Court or Judicial Officer
- b) the District Panel, the Mental Health Review Commission or the State Mental Health Authority
- c) any member of the Parliament or State Assembly
- d) Nominated representative, lawyer or legal representative of the person

### **Section 15 : Right to Legal Aid**

The person with mental illness shall be entitled to receive free legal services to exercise any of his or her rights given under this Act. It shall be the duty of medical officer in charge of a mental health facility or psychiatrist in charge of the person's mental health care to inform the person with mental illness that he or she is entitled to free legal services under the Legal Services Authorities Act, 1987 and provide the contact details of the availability of services.

### **Section 16 : Right to make Complaints about Deficiencies in Provision of Services**

(i) Any person with mental illness and their nominated representative, has the right to complain regarding deficiencies in provision of care, services in the mental health facility to

- a) the medical officer in charge of the facility and if they are not satisfied with the response,
- b) to the State Mental Health Authority and if they are not satisfied with the response,
- c) to the District Panel of the Mental Health Review Commission

(ii) The complaints provisions in sub-section (i) above, is without prejudice to the rights of the person to seek any judicial remedy for violation of their rights in a mental health facility or by an mental health professional either under this Act or any other Act.

## **Chapter III : Duties of Government**

### **Section 17: Promotion of Mental Health & Preventive Programmes**

The Government shall have a duty to plan, design and implement programs for the promotion of mental health and prevention of mental illness in the country.

### **Section 18: Creating Awareness about Mental Health and Illness and Reducing Stigma associated with Mental Illness**

The Government shall take all measures to ensure that :

- (i) the provisions of this Act are given wide publicity through public media, including television, radio, print and online media at regular intervals
- (ii) programs to reduce stigma associated with mental illness are planned, designed, funded and implemented
- (iii) Government officials including police officers, members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act.

**Section 19 : Human Resources and Training**

(i) Recognizing that access to mental health care and the rights of persons with mental illness cannot be guaranteed without availability of sufficient numbers of trained health professionals, the Government shall take all necessary measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programs in collaboration with institutions of higher education and training, to increase the human resources available to deliver mental health interventions and to improve the skills of the available human resources to better address the needs of persons with mental illness.

(ii) The Government shall, at the minimum, train all medical officers in public health care facilities and all medical officers in the prisons or jails to provide basic and emergency mental health care.

(iii) The Government shall also make all efforts to meet the internationally accepted recommendations for number of mental health professionals on the basis of population, within ten years from the date of notification of this Act. Information about progress made in improving the human resource situation shall be included in the annual reports to be submitted by the Central and State Governments under Section 7 sub-section (x).

**Section 20: Co-ordination within the Government**

The Government shall take all measures to ensure effective co-ordination between the services provided by concerned Ministries and Departments such as those dealing with law, home affairs, human resources, and social welfare to address issues of mental health care.

**Chapter IV : Mental Health Review Commission**

**Section 21 : Constitution of a Mental Health Review Commission**

(i) The Central Government shall constitute the Mental Health Review Commission within 3 months of the Act coming into force to exercise the powers conferred upon and to perform the functions assigned to it under this Act.

(ii) The Commission shall have jurisdiction all over the country and it shall have its headquarters in .....

(iii) The Commission shall consist of

- a) A President who has been or is qualified to be appointed as Judge of the High Court and;
- b) One member who is a Psychiatrist with at least 15 years experience and;
- c) One member who is a representative of persons with mental illness, or families and care-givers to persons with mental illness or non-governmental organizations working in the field of mental health.

(iv) The President and Members of the Commission shall be appointed by the President of India on the recommendation of the Central Government. The recommendation for appointment of the President of the Commission shall be made by the Central Government in consultation with the Chief Justice of the Supreme Court. The recommendation for appointment of Members shall be made by the Central Government following a public advertisement.

(v) The President of the Commission may appoint administrative officers and such other employees as may be necessary. The salary and allowances payable to and the other conditions of service of the

administrative officers and other employees of the Commission appointed under this section shall be such as may be determined by Central Government.

**Section 22 : Constitution of District Panels of the Mental Health Review Commission**

(i) The Commission shall appoint and function through the District Panels which shall be based in the districts. The functions, powers and authority of the Commission shall be exercised by the District Panels of the Commission. The jurisdiction of a particular District Panel shall be as prescribed by the Commission. The District Panels shall receive guidance from the Commission on the interpretation of the Act and the procedures to be followed.

(ii) Each District Panel of the Commission shall consist of

- a) A Chairperson who has been or is qualified to be appointed as a District Judge.
- b) Two members who shall be mental health professionals of whom one shall be a psychiatrist. If a psychiatrist is not available to serve on the Panel, both members can be mental health professionals other than psychiatrists.
- c) Two members who shall be persons with mental illness or care-givers or persons representing organizations of persons with mental illness or care-givers or non-governmental organizations working in the field of mental health.

(iii) The President of the Commission shall constitute a Committee for each State to appoint members of the District Panels for the districts in that State. This Committee shall also decide the number of District Panels needed in the State depending on the expected or actual workload of the Panel(s) in that State, and in as many Districts of the country taking into account the presence of mental health facilities in the district and the convenience of persons with mental illness, their families and the professionals involved in providing care in mental health facilities in the district. The Committee shall consist of

- a) the President or one of the Members of the Commission (the Chairperson)
- b) Chief Justice (or a person nominated by the Chief Justice) of the High Court of the State
- c) Secretary (or a person nominated by the Secretary) of Ministry of Law of the State
- d) Secretary (or a person nominated by the Secretary) of Ministry of Health and Family Welfare of the State
- e) Secretary (or a person nominated by the Secretary) of Ministry of Social Welfare of the State

**Section 23: Disqualification & Removal**

(i) A person shall be disqualified to serve as President or Member of the Commission or be removed by the President of India on the recommendation of the Central Government if he or she

- a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude or ;
- b) is adjudged as insolvent; or
- c) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or
- e) has such other disqualifications as may be prescribed by the Government;

(ii) A person shall be disqualified to serve as Chairperson or Member of the District Panel or be removed by the Mental Health Review Commission if he or she

- a) has been convicted and sentenced to imprisonment for an offence which involves moral

- turpitude or;
- b) is adjudged as insolvent; or
- c) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or
- e) has such other disqualifications as may be prescribed by the Government;

(iii) The President of the Commission may resign his office in writing addressed to the President of India, while a Member of the Commission may resign his or her office in writing addressed to the President of the Commission and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to the category under Section 21 sub-section (iii) above, of the person who has resigned.

iv) A Chairperson or Member of the District Panel may resign his or her office in writing addressed to the President of the Commission and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to the category under Section 22 sub-section (ii) above, of the person who has resigned.

#### **Section 24: Terms and Conditions of Service**

(i) The President, Members of the Commission, Chairperson and Members of the District Panels of the Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier. The President, Members and Chairperson shall be eligible for re-appointment for another term of five years or up to the age of seventy years whichever is earlier.

(ii) The President of the Commission shall be a full time appointment. The appointment of Members of the Commission and Chairperson and Members of the District Panels on a full-time or part time basis shall be made by the President of the Commission taking into consideration the work load of the Commission and the Panels.

(iii) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the President, Members of the Commission and Chairperson and Members of the District Panels shall be such as may be prescribed by the Central Government.

#### **Section 25 : Decisions of the Commission and the District Panels**

The decisions of the Commission and the District Panels shall be based on the opinion of the majority present.

#### **Section 26 : Applications to District Panel**

(i) Any person with mental illness whose rights under this Act are violated, or a nominated representative on his or her behalf, or a representative of a registered non-governmental organization with the consent of such a person, may make an application to the District Panel seeking redressal.

(ii) There shall be no fee or charge levied for making such an application.

(iii) Every application shall contain the name of applicant, his or her contact details, the details of the violation of his or her rights, the mental health facility where such violation took place and the redressal sought from the District Panel. In exceptional circumstances, the District Panel shall accept an application made verbally over telephone from a person admitted to a mental health facility.

**Section 27 : Proceedings before the District Panel**

(i) All proceedings before a District Panel of the Commission shall be deemed to be a judicial proceeding within the meaning of Section.....of the Civil Procedure Code and the District Panel shall be deemed to be a civil court for the purposes of the Act. The District Panel may evolve its own procedure to hear the proceedings.

(ii) Any matter before the District Panel shall be heard as expeditiously as possible. An endeavor shall be made to dispose of applications for appointment of nominated representative under Section 6, applications challenging admissions of a minor under Section 43 and applications challenging supported admission under Section 45 within a period of 7 days from the filing of such applications, and applications challenging supported admission under Section 46 within a period of 21 days from date of filing of the application. With respect to all other applications under other sections of the Act, an endeavor shall be made to finally dispose of the application within a period of ninety days from the date of filing of the application.

(iii) The District Panel shall endeavor to complete the mandatory review under Section 43 within a period of 7 days and under Section 46 within a period of 21 days from time it is due.

(iv) The District Panel shall not ordinarily grant adjournment for the hearing.

(v) The parties to the hearing shall be the person with mental illness, his or her nominated representative, and the medical officer in charge of the mental health facility or the psychiatrist responsible for the care of the person as the case may be. The parties may be represented by a counsel or another representative of their choice, or may appear in person.

(vi) The hearing shall not be open to the public. Persons other than those directly involved may be admitted with the permission of both the person with mental illness and the Chairperson of the District Panel.

(vii) The person with mental illness about whom the hearing relates shall have the right to give oral evidence to the District Panel, if he or she wishes to do so. The District Panel shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate under the circumstances.

(viii) All parties shall have the right to see any document relied on by any other party in its submissions to the District Panel.

(ix) The decision of the District Panel shall be communicated to the parties in writing within five days of the completion of the hearing.

(x) Any member who is directly or indirectly involved in a particular case, shall not sit on the District Panel during the hearings with respect to that case.

**Section 28: Functions of the Mental Health Review Commission and District Panel of the Mental Health Review Commission**

- (i) The Mental Health Review Commission shall have the following functions
  - a) Appoint and remove members of the District Panels under Section 22

- b) Give guidance to the District Panel on interpretation of the Act and the procedures to be followed
- c) Periodically review the use of Advance Directives and make additional regulations with regard to the procedure for Advance Directive
- d) Advise the Central Government on matters relating to the promotion and protection of rights of persons with mental illness

- (ii) The District Panel of the Mental Health Review Commission shall have the following functions :
- a) To review, alter, modify an Advance Directive as provided for in Section 5
  - b) To appoint a nominated representative as provided in Section 6
  - b) To decide applications under Sections 16, 26, 43, 45 and 46
  - c) To decide applications regarding non-disclosure of information as provided in Section 13
  - d) To decide complaints regarding deficiencies in care and services as provided in Section 16
  - e) To visit prison or jails and question the responsible medical officer as mentioned in Section 59

(iii) Where it is brought to the notice of a District Panel of the Mental Health Review Commission or to the Commission itself, that a mental health facility is violating the rights of persons with mental illness, the District Panel or the Commission itself shall direct the State Mental Health Authority to conduct an inspection and inquiry and submit a report of such inspection and inquiry to the District Panel and the Mental Health Review Commission and the action taken or proposed to be taken by the State Mental Health Authority to protect the rights of persons with mental illness in the mental health facility. Notwithstanding anything else in the Act, the District Panel in consultation with the Commission may take any action to protect the rights of persons with mental illness as it deems appropriate, including closing down the mental health facility.

(iv) If it is found that a mental health facility is willfully neglecting the order of the District Panel, the Panel may punish the mental health facility with an exemplary fine and as a matter of last resort, order the State Mental Health Authority to cancel the registration of the mental health facility.

### **Section 29 : Appeals**

Any person or facility aggrieved by the decision of the Commission or a District Panel may appeal to the High Court of the State in which the District Panel is located or where the person or the facility is located, within 30 days of the decision.

### **Section 30 : Budgetary Provisions for the Commission and District Panels**

The Central Government shall make sufficient budgetary provisions for the effective functioning of the Mental Health Review Commission and the District Panels.

### **Section 31 : Power to make regulations**

The Central Government may, from time to time, make Regulations for the purpose of carrying out the provisions of this section.

## **Chapter V: State Mental Health Authority**

### **Section 32 : State Mental Health Authority**

(i) The State Government shall establish the State Mental Health Authority (hereinafter referred to as the Authority) within 3 months of the Act coming into force.

(ii) The Authority established under sub-section (i) shall be subject to the superintendence, direction and control of the State Government.

**Section 33 : Composition of the State Mental Health Authority**

(i) The State Government shall constitute the State Mental Health Authority within 3 months of the Act coming into force to exercise the powers conferred upon, and to perform the functions assigned to it under this Act.

(ii) The Authority shall compose of the following members :

a) Ex-Officio Members who shall be

- 1) Secretary or Principal Secretary, State Department of Health
- 2) Representative of State Department of Health responsible for mental health.
- 3) Superintendent of any of the Mental Hospitals in the State or Head of Department of Psychiatry at any Government Medical College.

b) Other Members :

- a) A prominent psychiatrist from the state not in government service
- b) A registered Psychiatric Social Worker
- c) A registered Clinical Psychologist
- d) A registered Mental Health Nurse
- e) Two persons representing persons who have or have had mental illness
- f) Two persons representing care-givers of persons with mental illness and/or organizations representing such care-givers
- g) Two persons representing non-governmental organizations providing services to persons with mental illness or doing advocacy work in the field of mental health.

(iii) The Members referred to in sub-section (ii) (b) above, shall be appointed by the State Government following a public advertisement.

(iv) Every ex-officio member shall hold office as such member so long as he or she holds the office by virtue of which he or she was appointed.

(v) Every member (not an ex-officio member) shall hold office for a period of three years from the date of his or her appointment and shall be eligible for re-appointment.

(vi) A member (not an ex-officio member) may at any time resign from membership of the Authority by forwarding his or her letter of resignation to the Chairperson and such resignation shall take effect only from the date on which it is accepted.

(vii) Where a vacancy occurs by resignation of a member (not an ex-officio member) the State Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-section (ii) (b) above.

(viii) Where the term of office of any member (not an ex-officio member) is about to expire the State Government may appoint a successor at any time within three months before the expiry of the term of such member but the successor shall not assume office until the term of the outgoing member expires.

**Section 34 : Chairperson and Executive Officer of the State Mental Health Authority**

(i) The Secretary, State Department of Health or Principal Secretary State Department of Health shall be the Chairperson of the Authority.

(ii) The Chairperson shall appoint an Executive Officer to the Authority. The Authority shall draw up the skills requirements for the post of Executive Officer, the terms and conditions of service for this post and appoint a person to this post after advertisement and interview.

(iii) The Executive Officer shall be a full-time employee of the Authority. The Executive Officer shall be responsible for the day to day functioning of the Authority, the control and management of office accounts and correspondence. The Executive Officer shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for the efficient functioning of the Authority. The Executive Officer shall exercise such other powers and discharge such other functions as may be authorized in writing by the Chairperson for the efficient functioning of the Authority.

### **Section 35 : Functions of the State Mental Health Authority**

The Authority shall

- (i) register all mental health facilities in the State under Section 39 and maintain and publish (including online on the internet) a register of such facilities.
- (ii) develop quality and service provision norms for different types of mental health facilities in the state
- (iii) supervise all mental health facilities in the State
- (iv) make rules and regulations for the registration of clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals for the purpose of this Act and publish the list (including online on the internet) of such registered mental health professionals.
- (v) train all relevant persons including judicial officers, law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act.
- (vi) advise the State Government on all matters relating to mental health care and services.
- (vii) submit an Annual Report to the State Legislature in June of each calendar year, alongwith a review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year. The Authority shall also publish this Annual Report in the public domain, including online on the internet, within a month of the report being submitted to the State Legislature.
- (viii) discharge such other functions with respect to matters relating to mental health as the State Government may decide.

### **Section 36 : Proceedings of the State Mental Health Authority**

- (i) The Authority shall ordinarily meet once every 3 months at such time and place as may be fixed by the Chairperson. Provided that the Chairperson shall
  - a) call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.
  - b) call a special meeting if he receives a requisition in writing signed by not less than four members and stating the purpose for which they desire the meeting to be called.
- (ii) The Chairperson or in his absence any member authorized by him shall preside at the meetings of the Authority.
- (iii) The quorum for the meeting of the Authority shall be seven members. If within half an hour from time appointed for holding a meeting of the Authority quorum is not present, the meeting shall be adjourned to the same day in the following week at the same time and place and the presiding officer of such meeting shall inform the members present and send notice to other members.

(iv) If at the adjourned meeting also, quorum is not present within half an hour from the time appointed

for holding the meeting, the members present shall constitute the quorum.

(v) In the adjourned meeting if the Chairperson is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.

vi) Each member including the Chairperson shall have one vote. In the case of an equality of votes, the Chairperson or any member presiding over such meeting shall in addition, have a casting vote.

vii) All decisions of the meeting of the Authority shall be taken by a majority of the members present and voting.

viii) Any business which may be necessary for the Authority to transact may be circulated and approved by a majority of members, shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

### **Section 37 : Budgetary provisions**

The State Government shall make adequate budgetary provisions for the functioning of the Authority, in particular, grants of such sums of money as are required to pay allowances payable to the Chairperson and the members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority.

### **Section 38 : Power to make Regulations**

i) The State Government may, by notification in the Official Gazette, make regulations for the function of the Authority

ii) Regulations may provide for

a) the term of office and other conditions of service of the members

b) the powers and duties of the Chairperson and of the members;

c) the form in which and the time within which the Authority shall prepare its budget and its annual report ;

d) the manner in which the accounts of the Authority shall be maintained and audited

## **Chapter VI: Mental Health Facilities**

### **Section 39 : Registration and Standards for mental health facilities**

(i) The State Mental Health Authority shall compile, update and publish (including online) a register of mental health facilities in the State.

(ii) No person or organization shall establish or run a mental health facility unless it has been registered with the State Mental Health Authority under the provisions of this Act. In case a mental health facility has been registered under the Clinical Establishments Act, then a copy of the said registration shall be submitted by the mental health facility to the State Mental Health Authority along with an undertaking that the mental health facility fulfills the minimum standards prescribed by the State Mental Health Authority for the specific category of mental health facility. On submission of the above, mental health facility shall be deemed to be registered under this section of this Act

(iii) For registration and continuation of registration, every mental health facility shall fulfill :

a) the minimum standards of facilities and services as may be prescribed ;

- b) the minimum qualifications for the personnel as may be prescribed ;
- c) provisions for maintenance of records and reporting as may be prescribed ;
- d) and any other conditions as may be prescribed.

(iv) Categories and standards

- a) Mental Health facilities shall be classified into such categories, as may be prescribed by the State Mental Health Authority from time to time.
- b) Different standards may be prescribed for classification of different categories
- c) In prescribing the standards for mental health facilities, the State Mental Health Authority shall have regard to local conditions.
- d) Notwithstanding anything in this section, the State Mental Health Authority shall publish standards for different categories of mental health facilities within a period of 15 months from the date of coming into force of this Act.

**Section 40 : Procedure for Registration and Inspection of Mental Health Facilities**

(i) For the purpose of registration of the mental health facility, an application in the prescribed proforma accompanied by such details as may be prescribed, along with the prescribed fee shall be furnished to the State Mental Health Authority

(ii) The application may be furnished in person or by post or online.

(iii) If any mental health facility is in existence at the time of amendment to this Act coming into force, an application for its provisional registration shall be made within one year from the date of the Act coming into force.

(iv) The Authority shall within a period of ten days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and information as may be prescribed ;

(v) The Authority shall not be required to conduct any inquiry prior to grant of provisional registration.

(vi) The Authority shall within a period of 45 days from the grant of the provisional registration, cause to be published, in print and in digital form online, all particulars of the mental health facility to be registered.

(vii) Every provisional registration shall be valid for a period of 12 months from the date of issue of the certificate and such registration shall be renewable.

(viii) Where standards for particular categories of mental health facilities have been notified by the State Government, under Section 39 sub-section (iv) above, the mental health facilities in that category will have to apply for and obtain permanent registration within a period of 6 months from notification of these standards. The Authority shall publish these standards in print and online in digital format.

(ix) Where standards for particular categories of mental health facilities have not yet been notified by the State Government, under Section 39 sub-section (iv) above, the mental health facilities in those categories may apply for a renewal of provisional registration 30 days before the expiry of the validity of certificate of provisional registration. If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such enhanced fees, as

may be prescribed.

(x) Application for permanent registration by a mental health facility shall be made to the Authority in such form and be accompanied by such fees, as may be prescribed.

(xi) The mental health facility shall submit evidence that the facility has complied with the prescribed minimum standards in a manner as prescribed by the Authority

(xii) As soon as the mental health facility submits the required evidence of the mental health facility having complied with the prescribed minimum standards, the Authority shall display this information publicly for filing objections, if any, in a manner prescribed by the Authority, all the evidence submitted by the mental health facility for a period of 30 days before processing for grant of permanent registration. Such information shall at the minimum be displayed on the website to be maintained by the Authority for this purpose.

(xiii) If objections are received within the period referred to in sub-section (xii) above, such objections shall be communicated to the mental health facility for response within a period as prescribed by the Authority.

(xiv) Permanent registration shall be granted only when a mental health facility fulfills the prescribed standards for registration by the State Mental Health Authority.

(xv) The Authority shall pass an order within a period of 30 days after expiry of the prescribed period, either

- a) allowing the application for permanent registration or
- b) disallowing the application

Provided that the Authority shall record its reasons, if it disallows an application for permanent registration. The Authority may also grant a period of time, not exceeding a period of 6 months to the mental health facility for rectification of the deficiencies which have led to disallowing the application.

(xvi) Notwithstanding anything said above, if the Authority has not communicated any objections received by the Authority to the mental health facility under sub-section (xiii), nor has the Authority passed an order under sub-section (xv) above, within a period of 90 working days from the date of application for permanent registration by the mental health facility, it will be deemed that the Authority has allowed the application for permanent registration.

(xvii) The Authority shall issue a certificate of permanent registration in such form and containing such particulars as it may prescribe, if the Authority has allowed an application under sub-section (xv) or sub-section (xvi) above.

(xviii) Every permanent registration shall be valid for a period of 36 months from the date of issue of the certificate and such registration shall be renewable. The mental health facility may apply for a renewal of permanent registration 90 days before the expiry of the validity of certificate of provisional registration.

(xix) the disallowing of an application for permanent registration shall not debar a mental health facility from applying afresh for permanent registration under sub-section (x) above and after providing

such evidence of having rectified the deficiencies on which grounds the earlier application was disallowed.

(xx) If at any time after the mental health facility has been registered, the Authority may issue a show cause notice to the mental health facility as to why its registration under this Act should not be canceled if it is satisfied that :

- a) the conditions of the registration are not being complied with ; or
- b) the person or persons or entities entrusted with the management of the mental health facility have been convicted of an offence under this Act; or
- c) the mental health facility is found to be persistently violating the rights of persons with mental illness

(xxi) If after giving a reasonable opportunity to the mental health facility under sub-section (xx) above, the Authority is satisfied that there has been a breach of any of the provisions of conditions for registration or any Rules made under this Act, the Authority may without prejudice to any other action that it may take against the mental health facility, cancel its registration. Where the Authority is satisfied that the mental health facility is persistently violating the rights of persons with mental illness and where the mental health facility does not, within a reasonable, time, take action to the satisfaction of the Authority to protect the rights of persons with mental illness, the Authority may without prejudice to any other action it may take against the facility, cancel its registration.

Every order made under this sub-section shall take effect

- a) where no appeal has been made against such order, immediately on the expiry of the period prescribed for such appeal and ;
- b) where such appeal has been preferred against such an order and the appeal has been dismissed from the date of the order of dismissal

The Authority after cancellation of the registration for reasons to be recorded in writing, may restrain immediately the mental health facility from carrying on if there is imminent danger to the health and safety of the persons admitted in the mental health facility.

(xxii) The Authority may cancel the registration of a mental health facility if asked by the Mental Health Review Commission or the District Panel of the Commission to do so.

(xxiii) Inspection and Inquiry

- a) The Authority shall have the right to cause an inspection of, or inquiry in respect of any mental health facility, to be made by such person or persons as it may direct and that mental health facility shall be entitled to be represented at such an inspection or inquiry.
- b) The Authority shall communicate to the mental health facility the view of the Authority with reference to the results of such inspection or inquiry and may after ascertaining the opinion of the mental health facility, advice the facility upon the action to be taken.
- c) The mental health facility shall report to the Authority the action which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time as the Authority may direct.
- d) Where the mental health facility does not, within a reasonable time, take action to the satisfaction of the Authority, it may, after consideration any explanations furnished or representation made by the mental health facility issue such directions as the Authority may deem fit, and the mental health facility shall comply with such directions.

(xxiv) The Authority or any person authorized by the Authority, may, if there is any reason to suspect that anyone is running a mental health facility without registration, enter and search in the manner prescribed by the Authority, at any reasonable time and the mental health facility shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry.

(xxv) Any mental health facility or person, aggrieved by an order of the Authority refusing to grant or renew a certificate of registration or revoking a certificate of registration may appeal to the High Court in the State.

**Section 41 : Certificates, Fees and Register of mental health facilities**

(i) Every mental health facility shall display the certificate of registration in a conspicuous place in the mental health facility in such manner so as to be visible to everyone visiting the mental health facility

(ii) In case the certificate is destroyed, lost, mutilated or damaged the Authority may issue a duplicate certificate on the request of the mental health facility and on the payment of such fees as may be prescribed

(iii) The certificate of registration shall be non-transferable and in event of change of category the certificate shall be surrendered to the Authority and the mental health facility shall apply afresh for grant of certificate of registration.

(iv) The Authority may charge fees for different categories of mental health facilities, as may be prescribed.

(v) The Authority shall maintain in digital format a register of mental health facilities, registered by the Authority, to be called the State Register of Mental Health Facilities and shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner as may be prescribed.

**Chapter VII : Admission, Treatment and Discharge**

**Section 42 : Independent (without Support) Admission and Treatment**

An Independent patient or an Independent admission (without Support) refers to the admission of person to a mental health facility who is competent to make decisions or require minimal support in making decisions. As far as possible, all admissions to mental health facilities should be Independent admissions except when such conditions exist as make supported admission unavoidable.

i) Any person who is not a minor and who considers himself to have a mental illness and desires to be admitted to any mental health facility for treatment may request the medical officer or psychiatrist in charge of the facility to be admitted as a Independent patient.

ii) On receipt of such a request under sub-section (i) the medical officer or psychiatrist in charge of the facility will admit the person to the facility if he is satisfied that

(a) the person has a mental illness of a severity requiring admission to a mental health facility

(b) the person with mental illness will benefit from admission and treatment to the mental health facility

(c) the person has understood the nature and purpose of admission to the mental health facility, has made the request for admission of his own free will, without any duress or undue influence and is

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competent to make decisions without support or requires minimal support from others in making such decisions.

(iii) Every person independently admitted to a mental health facility shall be bound to abide by such rules and regulations of the mental health facility.

(iv) An Independent patient shall not be given treatment without his or her informed consent. If a person is unable to understand the purpose, nature, likely effects of proposed treatment and of the probable result of not accepting the treatment and/or requires a very high level of support approaching 100% support in making decisions, he or she shall be deemed unable to understand the purpose of the admission under sub-section (ii) and therefore shall not be admitted under this section.

(v) Subject to Section 44 sub-section (iii) below, an Independent patient may discharge himself from the mental health facility without the consent of the medical officer in charge of the facility. The medical officer in charge of the facility shall ensure that the individual is informed of this right at the time of admission.

(vi) A person admitted under this section may appoint a nominated representative under Section 6 .

(vii) The mental health facility shall admit an independent patient on his own request, and shall not require the consent or presence of a nominated representative or a relative or care-giver for admitting the person to the mental health facility.

### **Section 43 : Admission of a Minor**

Any person under the age of eighteen years (minor) may be admitted to a mental health facility only in exceptional circumstances and following the procedure as laid down in this section.

i) The nominated representative for the minor as defined in Section 6 , shall apply to the medical officer in charge of a mental health facility for admission of the minor to the facility.

ii) Upon receipt of such an application, the medical officer in charge of the mental health facility may admit such a minor to the facility, if two psychiatrists, or one psychiatrist and one mental health professional or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others, that :

- (a) the minor has a mental illness of a severity warranting admission to a mental health facility and;
- (b) admission is in the best interests of the minor, with regard to his or her health, well-being or safety, taking into account the wishes of the minor if ascertainable, and the cultural, religious and social background of the person, and the reasons for reaching this decision and;
- (c) the mental health care needs of the minor cannot be met unless he or she is admitted as proposed and in particular, all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor.

iii) Any person under the age of eighteen years so admitted shall be accommodated separately from adults, in an environment that takes into account his or her age and developmental needs and is of the same level of quality as is provided to other persons of their age admitted to hospitals for medical conditions. The nominated representative or an attendant appointed by the nominated representative

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shall under all circumstances stay with the minor in the mental health facility for the entire duration of the admission of the minor to the mental health facility. In the case of minor girls, where the nominated representative is male, a female attendant shall be appointed by the nominated representative and shall under all circumstances stay with the minor girl in the mental health facility for the entire duration of her admission.

- iv) A minor shall be given treatment with the informed consent of his or her nominated representative.
- v) If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health facility, the minor shall be discharged by the mental health facility.
- vi) Any admission of a minor to a mental health facility shall be informed to the District Panel of the Mental Health Review Commission within a period of 72 hours by the mental health facility. The District Panel shall have the right to visit and interview the minor or review the medical records if the District Panel desires to do so. Any admission of a minor which continues for a period of 30 days or more shall be informed to the District Panel of the Mental Health Review Commission. The District Panel shall carry out a mandatory review within a period of 7 days of it becoming due, of all admissions of minors continuing beyond 30 days and every subsequent 30 days. For this mandatory review, the District Panel shall at minimum, review of the clinical records of the minor. The District Panel may interview the minor if it deems necessary.

### **Section 44 : Discharge of Independent Patients**

- (i) The medical officer in charge of a mental health facility shall discharge from the mental health facility any person admitted under Section 42 immediately on request made by such a person or if the person disagrees with his or her admission under Section 42 , subject to sub-section (iii) below.
- (ii) Where a minor has been admitted to a mental health facility under Section 43 , and is now no longer a minor (i.e. completes eighteen years of age), the medical officer in charge of the mental health facility will classify him/her as a Independent patient under Section 42 and all provisions of the Act as applicable to persons who are not minors will apply ;
- (iii) Notwithstanding anything else contained in the Act, a mental health professional may prevent discharge of a person admitted under Section 42 and now seeking discharge, for a period of 24 hours, to allow assessment necessary for admission under Section 45, if the conditions below are met :
  - (a) The mental health professional is of the opinion that the person cannot understand the nature and purpose of their decisions and require substantial or very high support from their nominated representative and ;
  - (b) either one or all of the following
    - (1) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself and/or
    - (2) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; and/or
    - (3) has recently shown or is showing a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

At the end of the period of 24 hours or earlier if the necessary assessments have been completed, the person can no longer be kept admitted in the mental health facility under this section of the Act.

**Section 45: Admission and treatment of persons with mental illness, with high support needs, in a mental health facility, upto 30 days (Supported Admission)**

i) The medical officer in charge of a mental health facility shall admit a person to the facility, upon application by the nominated representative of the person, under this section if :

(a) The person has been independently examined on the day of admission or in the preceding 7 days by one psychiatrist and the other being a mental health professional or a medical practitioner, and both conclude based on the examination and, if appropriate, on information provided by others, that the person has a mental illness of such severity that the person :

- (1) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself and/or ;
- (2) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; and/or
- (3) has recently shown or is showing a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

and

(b) the mental health professionals and/or the medical practitioner as the case may be, certify that admission to the mental health facility is the least restrictive care option possible in the circumstances ;

and

(c) the person is ineligible to receive care and treatment as a independent patient because the person is not competent to make decisions independently and needs very high support from his or her nominated representative, in making decisions.

(ii) Admission of a person with mental illness to a mental health facility under this section shall be limited to a period of 30 days. At the end of this period, or earlier, if the person no longer meets the criteria for admission as stated in sub-section (i) above, the patient shall no longer remain in the facility under this section. However, at the end of the 30 days, if the conditions under Section 46 are met, the person may continue to remain admitted in the mental health facility in accordance with the provisions of Section 46 below. If the conditions under Section 46 are not met, the person may continue to remain in the mental health facility as a independent patient under Section 42, and the medical officer in charge of the facility shall ensure that the person is told of his or her new status, including his or her right to leave the facility.

(iii) Treatment shall only be provided taking into account an existing Advance Directive as per Section 5 , if any, or if the person with the support of his nominated representative, has given his informed consent to the treatment plan; the person may require a very high level of support from the nominated representative, approaching 100 % support, where the nominated representative temporarily consents to treatment on behalf of the patient. In all instances where the level of support required is of such high degree that the nominated representative has temporarily consented to treatment on behalf of the person, the medical officer in charge of the facility shall record this in the notes and this shall be

reviewed every 7 days.

(iv) All admissions under this section shall be informed to the District Panel of the Mental Health Review Commission by the mental health facility within 7 days from the date of admission, however this period shall be 3 days in case of a woman admitted to the mental health facility. The District Panel shall have the right to visit and interview the person or review the medical records if it desires so.

(v) A person admitted under this section, or his or her nominated representative on his or her behalf or a representative of a registered non-governmental organization with the consent of the person, may apply to the District Panel of the Mental Health Review Commission for review of the decision to admit him or her to the mental health facility under this section and the decision of the District Panel of the Mental Health Review Commission shall be binding on all parties and the decision shall be made in 7 days from the date of filing the application.

All mental health facilities shall prominently display within the facility, the contact details including address and telephone numbers of the District Panel of the Mental Health Review Commission. The mental health facility shall provide the person with necessary forms to apply to the District Panel of the Mental Health Review Commission and also give free access to make telephone calls to the District Panel to apply for a review of the admission. In exceptional circumstances, the District Panel shall accept an application for review from a person admitted to a mental health facility, verbally over the telephone.

(vi) Notwithstanding anything else in this Act, the medical officer in charge of the facility is under a duty to keep the condition of the person under ongoing review. If the medical officer in charge of the facility becomes aware that the conditions in sub-section (i) are no longer met, the medical officer in charge will terminate the admission under this section, and inform the person and his or her nominated representative accordingly. Such a change of status does not preclude the person remaining as an independent patient, in appropriate circumstances.

(vii) Following discharge from Section 45, a readmission under Section 45 shall not take place for a period of 7 days from the date of discharge.. Any readmission within 7 days shall be considered as continuation of the admission and provisions of Section 46 shall apply.

**Section 46: Admission and treatment of persons with mental illness, with high support needs, in a mental health facility, beyond 30 days (Supported Admission beyond 30 days)**

i) Upon application by the nominated representative of a person with mental illness, the medical officer in charge of a mental health facility shall continue admission of a person with mental illness in the facility under this section if :

a) The person is already admitted in a mental health facility under Section 45

and ;

b) Two psychiatrists have independently examined the person on the day of admission under this section or in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others that the person has a mental illness of a severity that the person :

- (1) has consistently over time threatened or attempted to cause bodily harm to himself or herself; and/or
- (2) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him or her; and/or
- (3) has consistently over time shown a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

and

c) both psychiatrists certify that admission to a mental health facility is the least restrictive care option possible in the circumstances

and

d) the person continues to remain ineligible to receive care and treatment as a Independent Patient as the person is not competent to make decisions independently and needs very high support from their nominated representative, in making decisions.

(ii) All admissions or renewals under this section shall be informed by the mental health facility to the District Panel of the Mental Health Review Commission within 7 days of date of admission or renewal. Such admission or renewal shall be approved by the District Panel within a period of 21 days from the date it becomes effective. If the District Panel refuses to approve initial admission or renewal of admission, the person shall be discharged from the mental health facility.

While reviewing applications for renewals the District Panel shall critically examine the need for institutional care, in particular, why such care cannot be provided in less restrictive settings based in the community. The mere absence of community based services cannot by itself, provide sufficient justification for continued admission in the mental health facility. In all cases of application for renewal of admission under this section, the Mental Health Review Commission may demand that those in charge of treatment of the person with mental illness present a plan for community based treatment and the progress made, or is likely to be made, towards realizing this plan for community based treatment.

(iii) Admission of a person with mental illness to a mental health facility under this section will be limited to a period of 90 days. Further admission beyond this period, can be renewed for 90 days at each instance, upon application by the nominated representative of the person, to the medical officer in charge of the mental health facility and by following the procedure laid out in sub-section (i) and sub-section (ii) above. If the District Panel refuses to approve admission or renewal under this section as stated in sub-section (ii) above, or at the end of this period and no renewal has been made, or earlier if the person no longer meets the criteria for admission as stated in sub-section (i) above, the person shall cease to be kept admitted in the facility under this section.

(iv) Treatment shall only be provided taking into account any existing Advance Directive as per Section 5, if any or if the person, with the support of his nominated representative has given his informed consent to the treatment plan. The person may require a very high level of support from the nominated representative approaching 100 % support, where the nominated representative temporarily consents to treatment on behalf of the patient. In all instances where the level of support required is of a such a high degree that the nominated representative has to temporarily consent to treatment on behalf of the

person, the medical officer in charge of the facility should record this in the notes and this should be reviewed every 15 days.

(v) A person admitted under this section, or his or her nominated representative on his or her behalf or a representative of a registered non-governmental organization with the consent of the person, may apply to the District Panel of the Mental Health Review Commission for review of the decision to admit him or her in the mental health facility under sub-section (i) above and the decision of the District Panel shall be binding on all parties.

All mental health facilities shall prominently display within the facility, the contact details including address and telephone numbers of the District Panel of the Mental Health Review Commission. The mental health facility shall provide the person with necessary forms to apply to the District Panel of the Mental Health Review Commission and also give free access to make telephone calls to the District Panel to apply for a review of the admission. In exceptional circumstances, the District Panel shall accept an application for review from a person admitted to a mental health facility, verbally over the telephone.

(vi) Notwithstanding anything contained in this Act, if the medical officer in charge of the facility becomes aware that the conditions in sub-section (i) are no longer met, the medical officer in charge shall terminate the admission under this section, and inform the person and his or her nominated representative accordingly. The person may continue to remain in the mental health facility as an Independent Patient, in appropriate circumstances.

**Section 47 : Leave of Absence**

(i) The medical officer in charge of a mental health facility may grant leave to any person admitted under Sections 43, 45 and 46 above, to be absent from the facility subject to such conditions (if any) and for a duration as the medical officer considers necessary. Such leave shall not extend beyond the period of the duration of admission permitted under Sections 43, 45 or 46. The medical officer shall secure the consent of the nominated representative before taking a decision granting leave.

(ii) The medical officer in charge may in writing terminate the leave of absence under this part, when appropriate to do so.

(iii) When an individual does not return to the facility following the expiry or termination of his or her leave of absence, the medical officer in charge will normally first contact the person on leave and his or her nominated representative. If the person with mental illness and his or her nominated representative feel that continued admission in the mental health facility is not necessary, they will convey this to the Medical Officer, who will formally discharge the person from the mental health facility after following all the procedures for discharge from the mental health facility.

(iv) However, if the medical officer in charge has grounds to believe that the person requires ongoing admission to a mental health facility and the nominated representative agrees with this assessment of the medical officer in charge and the person refuses to return to the hospital following expiry or termination of his or her leave of absence, the medical officer may ask the Police Officer in charge of the police station within the limits of whose station the mental health facility is located, to convey the person back to the mental health facility. A person not returned by the Police Officer within one month of expiry or termination of his or her leave of absence, may not be returned to the mental health facility under this section and will be considered as discharged from the facility. This does not preclude re-

admission otherwise, if the relevant substantive and procedural requirements are met.

**Section 48: Absence without leave or discharge**

(i) If a person admitted to mental health facility under Sections 43, 44 (iii), 45, 46 and 59 absents himself or herself without leave or without discharge from the mental health facility, he or she shall be taken into protection by any Police Officer at the request of the medical officer in charge of the facility and taken back to the mental health facility immediately.

(ii) Provided that in the case of a person with mental illness not admitted under Section 59, the power to take in protection and take back to the mental health facility as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of such absence from the mental health facility.

**Section 49 :Transfer of persons with mental illness from one mental health facility to another mental health facility**

(i) A person with mental illness admitted to a mental health facility under Sections 43, 45, 46 or 59 may, subject to any general or special order of the District Panel be removed from such mental health facility to another mental health facility within the State or with the consent of the Mental Health Review Commission to any mental health facility in any other State.

Provided that no person with mental illness admitted to a mental health facility under an order made in pursuance of an application made under the Act shall be so removed unless intimation and reasons for the transfer have been given to the person with mental illness and his or her nominated representative.

(ii) The State Government may make such general or special order as it thinks fit directing the removal of any prisoner with mental illness from the place where he or she is for the time being detained, to any mental health facility or other place of safe custody in the State or to any mental health facility or other place of safe custody in any other State with the consent of the Government of that other State.

**Section 50: Emergency Treatment**

(i) Notwithstanding anything contained in this Act, any medical treatment, including treatment for mental illness, may be provided by any registered medical practitioner to a person with mental illness either at a health facility or in the community, subject to the informed consent of the nominated representative, where the nominated representative is available, and where it is immediately necessary to prevent:

- a) death or irreversible harm to the health of the person or;
- b) the person inflicting serious harm to himself or herself or to others; or
- c) the person causing serious damage to property belonging to himself or herself or to others where such behaviour is believed to flow directly from the person's mental illness.

(ii) Nothing in this section shall be taken to permit medical treatment that is not directly related to the emergency identified in sub-section (i).

(iii) Nothing contained in this section shall permit the use of Electro-convulsive therapy as a form of treatment.

(iv) Nothing in this section shall be taken to permit treatment of more than 72 hours or till the person

has been assessed at a mental health facility, whichever is earlier, except in disasters or emergencies declared by the Government, the period of emergency treatment may be extended upto 7 days.

**Section 51 : Prohibited treatments**

Notwithstanding anything contained in this Act, the following treatments shall not be performed on any person with mental illness:

- (i) Electro-convulsive therapy without the use of muscle relaxants and anesthesia
- (ii) Electro-convulsive therapy for minors
- (iii) Sterilization of men or women, when such sterilization is intended as a treatment for mental illness or
- (iv) Persons with mental illness shall not be chained in any manner or form whatsoever.

**Section 52: Restriction on Psychosurgery for Persons with Mental Illness**

Notwithstanding anything contained in the Act, psychosurgery shall not be performed as a treatment for mental illness unless the following conditions are met :

- (i) informed consent of the person on whom the surgery is being performed and ;
- (ii) approval from the State Mental Health Authority to perform the surgery.

The State Mental Health Authority may, from time to time, make regulations for the purpose of carrying out the provisions of this section.

**Section 53: Restraints and Seclusion**

- (i) Physical restraint or seclusion may only be used when it is the only means available to prevent imminent and immediate harm to person concerned or to others.
- (ii) Physical restraint or seclusion may only be used if it is authorized by the psychiatrist in charge of the person's treatment at the mental health facility.
- (iii) Physical restraint or seclusion shall not be used longer than is absolutely necessary to prevent the immediate risk of significant harm.
- (iv) The medical officer in charge of the mental health facility 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.
- (v) In no case will restraint or seclusion be used as a form of punishment, and under no circumstances shall lack of staff at the mental health facility be permitted as a reason for use of restraint or seclusion.
- (vi) The nominated representative of the person with mental illness shall be informed about every instance of seclusion or restraint within a period of 24 hours.
- (vii) A person who is placed under restraint or seclusion shall be kept under regular ongoing supervision of the medical personnel at the mental health facility.
- (viii) All instances of restraint and seclusion at the mental health facility shall be included in a report to be sent to the District Panel on a monthly basis.
- (ix) The District Panel may from time to time, make regulations for the purpose of carrying out the provisions of this section.
- (x) The District Panel may order a mental health facility to desist from applying restraint and seclusion if the Panel is of the opinion that the mental health facility is persistently and willfully ignoring the provisions of this section.

**Section 54: Discharge Planning**

Whenever a person undergoing treatment for mental illness in a mental health facility is to be discharged into the community or to a different mental health facility or where a new psychiatrist is to

take responsibility of the person's care and treatment, the psychiatrist who has been responsible for the person's care and treatment shall consult with the person with mental illness, the nominated representative, the family member or care-giver with whom the person with mental illness will reside on discharge from the hospital, the psychiatrist expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or services would be appropriate for the person. The psychiatrist responsible for the person's care shall in consultation with the above mentioned persons ensure that a plan is developed as to how these services shall be provided. Discharge planning applies to all discharges from mental health facilities. This section creates no right to impose treatment without consent.

**Section 55: Research**

(i) Free and informed consent shall be obtained by the professionals conducting the research, from all persons with mental illness for participation in all research especially that involving interviewing the person or psychological, physical, chemical or medicinal interventions.

(ii) In case of research involving any psychological, physical, chemical or medicinal interventions to be conducted on persons who are unable to give free and informed consent but do not resist participation in such research, permission to conduct such research must be obtained from concerned State Mental Health Authority. The State Mental Health Authority may allow the research to proceed based on informed consent being obtained from the nominated representative of persons with mental illness, subject to the State Mental Health Authority having reviewed the proposed research is satisfied that :

- a) the research cannot reasonably be performed on persons who are capable of giving free and informed consent
- b) the research is necessary to promote the health of the individual person and the population represented
- c) the purpose of the research is to obtain knowledge relevant to the particular health needs of persons with mental illness
- d) a full disclosure of the interests of persons and/or organizations conducting such research has been made and there is no conflict of interest involved
- e) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and in particular, ethical approval has been obtained from the institutional ethics committee where such research is to be conducted.

This sub-section does not restrict research based study of the case notes of persons who are unable to give informed consent, so long as the anonymity of the persons is secured.

**Chapter VIII : Responsibilities of Other Agencies**

**Section 56 : Duties of police officers in respect of persons with mental illness**

(i) Every officer in charge of a police station :

- (a) has a duty to take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe has mental illness and is incapable of taking care of himself or;
- (b) has a duty to take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be a risk to himself or others by reason of mental illness.

(ii) A person taken into protection under sub-section (i) shall be informed of the grounds for taking him or her into such protection or if in the opinion of the officer taking the person into protection, the person has difficulty in understanding those grounds, his nominated representative, if any, is informed of such grounds.

(iii) Every person who is taken into protection by a police officer under this section shall be taken to the nearest public health facility within a period of 24 hours for assessment of the person's health care needs. Under no circumstances shall the person be detained in a police lock up or a prison facility. The medical officer in charge of the health facility shall be responsible for arranging the assessment of the person at the nearest mental health facility and the needs of the person with mental illness will be addressed as per other provisions of the Act as applicable in the particular circumstances. After assessment at the mental health facility if the person is found not to have a mental illness of a nature or degree requiring admission to the mental health facility, the medical officer in charge of the facility shall inform this to the Police Officer and the the Police Officer shall have a duty to convey the person to their residence or in case of homeless persons, to a government facility for homeless persons.

**Section 57 : Order in case of person with mental illness who is ill treated or neglected**

(i) Every officer in charge of a police station, who has reason to believe that any person within the limits of his station who has a mental illness and is ill-treated or neglected shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.

(ii) Any private person who has reason to believe that a person has mental illness and is ill-treated or neglected by any person having responsibility for care of this person, may report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.

(iii) If the Magistrate has reason to believe based on the report of a police officer or on the report or information given by any other person, or otherwise, that any person with mental illness within the local limits of his jurisdiction is ill-treated or neglected the Magistrate may cause the person with mental illness to be produced before him and make an order under Section 58.

**Section 58 : Conveying or admitting a person with mental illness to a mental health facility by a Magistrate**

(i) When any person with mental illness appears or is brought before a Magistrate, the Magistrate may, order in writing :

(a) that the person is conveyed to a public mental health facility for assessment and treatment if necessary. At the mental health facility, the person will be dealt with as per other provisions of the Act as applicable in the particular circumstances or ;

(b) authorise the admission of the person with mental illness in a mental health facility for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to carry out an assessment of the mental illness and to plan for necessary treatment, if any. On completion of the period of assessment, the person will be dealt with as per other provisions of the Act as applicable in the particular circumstances.

**Section 59 : Prisoners with mental illness**

(i) An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 1950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec. 143 or Sec. 144 of the Navy Act, 1957 (62 of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 ( 2 of 1974), directing the admission of a prisoner with mental illness into any mental health facility, shall be sufficient authority for the admission of such person in such facility to which such person may be lawfully transferred for detention therein.

(ii) The responsible medical officer of a prison or jail shall send quarterly reports to the District Panel certifying that there are no prisoners with mental illness in the prison or jail. The District Panel may visit the prison or jail if it wishes to do so. The District Panel also has the right to question the responsible medical officer as to why prisoners with mental illness if any, are in the prison or jail and not transferred for treatment to a mental health facility.

(iii) The medical officer in charge of a mental health facility wherein any person referred to in sub-section (i) 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.

**Section 60 : Question of Mental Illness in Judicial Process**

(i) Notwithstanding anything contained in any other Act, proof of a person's current or past admission to a mental health facility or proof of a person's current or past treatment for mental illness shall not by itself be ground for granting divorce.

(ii) If during any judicial process before any competent court proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the District Panel of Mental Health Review Commission and the District Panel after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, shall certify its opinion to the relevant court.

**Chapter IX : Penalties and Miscellaneous provisions**

**Section 61: Penalties for establishing or maintaining a mental health facility in contravention of Chapter VI**

(i) Whoever carries on a mental health facility without registration shall, on conviction, be punishable with imprisonment for a term which may extend to six months and/or for first offence, be punishable with a fine upto fifty thousand rupees, for second offence with fine which may extend to two lakh rupees and for subsequent offences with fine which may extend to five lakh rupees

(ii) Whoever knowingly serves in a mental health facility which is not duly registered under this Act, shall be punishable with a fine which may extend to twenty five thousand rupees.

(iii) Whoever fails to pay the fine, the Authority may prepare a certificate specifying the amount of fine due from such person or mental health facility and send it to the Collector of the District in which such person owns any property or resides or carries on his business or profession or where the mental health facility is located, and the said Collector on receipt of such certificate, shall proceed to recover from such persons or mental health facility the amount specified thereunder, as if it were an arrear of land revenue.

**Section 62: General provision for punishment of offences**

Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ten thousand rupees or both, for any subsequent offence punishable with imprisonment for a term upto two years or with fine minimum of fifty thousand which may extend to five lakh rupees.

**Section 63 : Special relaxation in requirements for States of the North East Council**

(i) The provisions of this section shall be applicable to the States belong to the North East Council as established under .....Act, taking into consideration travel and transportation difficulties in the States of the North East Council.

(ii) For the states included under sub-section (i) above, the following relaxations shall apply :

(a) Under Section 22 sub-section (iii), the President of the Commission may appoint a single Committee for all the states.

(b) Under Section 27 sub-section (ii) and sub-section (iii) where a period of 7 days is mentioned it shall be read as a period of 10 days and where a period of 21 days is mentioned it shall be read as a period of 30 days.

(c) Under Section 43 sub-section (vi) where a period of 72 hours is mentioned it shall be read as 120 hours and where a period of 7 days is mentioned it shall be read as 10 days.

(d) Under Section 44 sub-section (iii) where a period of 24 hours is mentioned it shall be read as 72 hours.

(e) Under Section 45 sub-section (iv) where a period of 3 days is mentioned it shall be read as 7 days and where a period of 7 days is mentioned it shall be read as 10 days.

(f) Under Section 46 sub-section (ii) where a period of 7 days is mentioned it shall be read as 10 days and where a period of 21 days is mentioned it shall be read as 30 days.

(g) Under Section 50 sub-section (iv) where a period of 72 hours is mentioned it shall be read as 120 hours

(iii) This section shall lapse at the end of 10 years from the date of the Act coming into force.

**Section 64. Protection of action taken in good faith**

(i) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

(ii) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

**Section 65. Effect of Act on other laws**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

**Section 66. Power to remove difficulty**

If any difficulty arises in giving effect to the provisions of this Act in any State, the State Government may, by order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

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Provided that no order shall be made under this section in relation to any State after the expiry of two years from the date on which this Act comes into force in that State.

**Section 67. Repeal and Saving**

(i) The Mental Health Act (1987) is hereby repealed.

(ii) Notwithstanding such repeal, anything done or any action taken under either of the said Acts shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force until superseded by anything done or any action taken under this Act.

DRAFT

6 DECEMBER 2010

**Government of India**  
**Ministry of Health & Family Welfare**

The Ministry of Health & Family Welfare has brought out a draft of the Mental Health Care Act, 2010 based on the inputs from the 5 Regional consultations and those provided by the professional bodies and other stakeholders. A copy of the proposed amendments is available on the Ministry's website for wider consultations and for eliciting views of all stakeholders.

Responses/ views/ comments may be mailed to

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