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THE MENTAL HEALTH ACT, 1987

INTRODUCTION

The Indian Lunacy Act, 1912 has become outdated because there has been rapid advancement in the field of medical science. Mental illness is now curable, particularly when diagnosed at an early stage. The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness. It had become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach. Accordingly, The Mental Health Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness as it is curable, particularly, when diagnosed at an early stage. Thus the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible.

The experience of the working of the Indian Lunacy Act, 1912 has revealed that it has become outmoded. With the rapid advance of medical science and the understanding of the nature of the malady, it has become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach. Hence this Bill.

ACT 14 OF 1987

The Mental Health Bill having been passed by both the Houses of Parliament received the assent of the President on 22nd May, 1987. It came on the Statute Book as THE MENTAL HEALTH ACT, 1987 (14 of 1987).

THE MENTAL HEALTH ACT, 1987

(14 of 1987)

[22nd May, 1987]

An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

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

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Mental Health Act, 1987.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act in a State shall be construed as a reference to the coming into force of that provision in that State.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) "cost of maintenance", in relation to a mentally ill person admitted in a psychiatric hospital or psychiatric nursing home, shall mean the cost of such items as the State Government may, by general or special order, specify in this behalf;
- (b) "District Court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which the State Government may, by notification, specify as the court competent to deal with all or any of the matters specified in this Act;
- (c) "Inspecting Officer" means a person authorised by the State Government or by the licensing authority to inspect any psychiatric hospital or psychiatric nursing home;
- (d) "licence" means a licence granted under section 8;
- (e) "licensee" means the holder of a licence;
- (f) "licensed psychiatric hospital" or "licensed psychiatric nursing home" means a psychiatric hospital or psychiatric nursing home, as the case may be, licensed, or deemed to be licensed, under this Act;
- (g) "licensing authority" means such officer or authority as may be specified by the State Government to be the licensing authority for the purposes of this Act;

Sec. 2]

The Mental Health Act, 1987

3

(h) "Magistrate" means,—

- (1) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974), a Metropolitan Magistrate;
 - (2) 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;
- (i) "medical officer" means a gazetted medical officer in the service of Government and includes a medical practitioner declared, by a general or special order of the State Government, to be a medical officer for the purposes of this Act;
- (j) "medical officer in charge", in relation to any psychiatric hospital or psychiatric nursing home, means the medical officer who, for the time being, is in charge of that hospital or nursing home;
- (k) "medical practitioner" means a person who possesses a recognised medical qualification as defined—
- (i) in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register, as defined in clause (k) of that section;
 - (ii) in clause (h) of sub-section (1) of section 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 clause (j) of sub-section (1) of that section; and
 - (iii) in clause (g) of sub-section (1) of section 2 of the Homoeopathy Central Council Act, 1973 (59 of 1973), and whose name has been entered in a State Register of Homoeopathy, as defined in clause (i) of sub-section (1) of that section;
- (l) "mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation;
- (m) "mentally ill prisoner" means a mentally ill person for whose detention in, or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in section 27 has been made;
- (n) "minor" means a person who has not completed the age of eighteen years;
- (o) "notification" means a notification published in the Official Gazette;
- (p) "prescribed" means prescribed by rules made under this Act;
- (q) "psychiatric hospital" or "psychiatric nursing home" means a hospital or, as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services;

1. Came into force on 1-4-1993 vide S.O. 43(E), dated 11th January, 1993, published in the Gazette of India, Extra., Pt. II, Sec. 3 (ii), dated 11th January, 1993.

- (r) "psychiatrist" means a medical practitioner possessing a post-graduate degree or diploma in psychiatry, recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 1956 (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;
- (s) "reception order" means an order made under the provisions of this Act for the admission and detention of a mentally ill person in a psychiatric hospital or psychiatric nursing home;
- (t) "relative" includes any person related to the mentally ill person by blood, marriage or adoption;
- (u) "State Government", in relation to a Union territory, means the Administrator thereof.

CHAPTER II MENTAL HEALTH AUTHORITIES

3. Central Authority for Mental Health Services.—(1) The Central Government shall establish an Authority for mental health with such designation as it may deem fit.

(2) The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government.

(3) The Authority established under sub-section (1) shall—

- (a) be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government;
- (b) supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or detained) under the control of the Central Government;
- (c) advise the Central Government on all matters relating to mental health; and
- (d) discharge such other functions with respect to matters relating to mental health as the Central Government may require.

Explanation.—For the purposes of this section and section 4, "Mental Health Services" include, in addition to psychiatric hospitals and psychiatric nursing homes, observation wards, day-care centres, inpatient treatment in general hospitals, ambulatory treatment facilities and other facilities, convalescent homes and half-way-homes for mentally ill persons.

COMMENTS

The Central Government has to establish an Authority for mental health. The Authority so established has to function under the superintendence, direction and control of the Central Government. The Authority shall be in charge of regulation, development, direction and coordination with respect to Mental Health Services under the Central Government. It shall supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies under the control of the Central Government. It shall advise the Central Government on all matters relating to mental health.

Sec. 5]

4. State Authority for Mental Health Services.—(1) The State Government shall establish an Authority for mental health with such designation as it may deem fit.

(2) The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the State Government.

- (3) The Authority established under sub-section (1) shall—
- (a) be in charge of regulation, development and co-ordination with respect to Mental Health Services under the State Government and all other matters which, under this Act, are the concern of the State Government or any officer or authority subordinate to the State Government;
- (b) supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or detained) under the control of the State Government;
- (c) advise the State Government on all matters relating to mental health; and
- (d) discharge such other functions with respect to matters relating to mental health as the State Government may require.

COMMENTS

The Chief Secretary or Additional Chief Secretary designated by him shall be the nodal agency to coordinate all activities involved in implementation of Mental Health Act, the powers with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 and National Trust for Welfare of Persons with Autism Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. He shall ensure that there are no jurisdictional problems or impediments to the effective implementation of the three Acts between different Ministries or Departments. At the Central level, the Cabinet Secretary, Government of India or any Secretary designated by him shall be the nodal agency for the same purpose; *In re: Death of 25 Chained Inmates In Asylum Fire in Tamil Nadu v. Union of India*, AIR 2002 SC 979.

CHAPTER III PSYCHIATRIC HOSPITALS AND PSYCHIATRIC NURSING HOMES

5. Establishment or maintenance of psychiatric hospitals and nursing homes.—(1) The Central Government may, in any part of India, or the State Government may, within the limits of its jurisdiction, establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care of mentally ill persons at such places as it thinks fit; and separate psychiatric hospitals and psychiatric nursing homes may be established or maintained for,—

- (a) those who are under the age of sixteen years;
- (b) those who are addicted to alcohol or other drugs which lead to behavioural changes in a person;
- (c) those who have been convicted of any offence; and
- (d) those belonging to such other class or category of persons as may be prescribed.

(2) Where a psychiatric hospital or psychiatric nursing home is established or maintained by the Central Government, any reference in this Act to the State Government shall, in relation to such hospital or nursing home, be construed as a reference to the Central Government.

COMMENTS

The Central Government has to, in any part of India and the State Government has to, within the limits of its jurisdiction, establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care of mentally ill persons. Separate psychiatric hospitals and psychiatric nursing homes, may be established or maintained for— (i) those who are under 16 years; (ii) those who are addicted to alcohol or other drugs; (iii) those who have been convicted of any offence; and (iv) those belonging to the prescribed class or category of persons.

6. Establishment or maintenance of psychiatric hospitals or psychiatric nursing homes only with licence.—(1) On and after the commencement of this Act, no person shall establish or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid licence granted to him under this Act:

Provided that a psychiatric hospital or psychiatric nursing home (whether called asylum or by any other name) licensed by the Central Government or any State Government and maintained as such immediately before the commencement of this Act may continue to be maintained, and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be, under this Act,—

- (a) for a period of three months from such commencement, or
- (b) if an application made in accordance with section 7 for a licence is pending on the expiry of the period specified in clause (a), till the disposal of such application.

(2) Nothing contained in sub-section (1) shall apply to a psychiatric hospital or psychiatric nursing home established or maintained by the Central Government or a State Government.

COMMENTS

No person can establish or maintain a psychiatric hospital or psychiatric nursing home without a valid licence granted to him under the Act.

7. Application for licence.—(1) Every person, who holds, at the commencement of this Act, a valid licence authorising that person to establish or maintain any psychiatric hospital or psychiatric nursing home, shall, if the said person intends to establish or continue the maintenance of such hospital or nursing home after the expiry of the period referred to in clause (a) of the proviso to sub-section (1) of section 6, make, at least one month before the expiry of such period, an application to the licensing authority for the grant of a fresh licence for the establishment or maintenance of such hospital or nursing home, as the case may be.

(2) A person, who intends to establish or maintain, after the commencement of this Act, a psychiatric hospital or psychiatric nursing home, shall, unless the said person already holds a valid licence, make an application to the licensing authority for the grant of a licence.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and be accompanied by such fee as may be prescribed.

COMMENTS

Any person, who intends to establish or maintain, a psychiatric hospital or psychiatric nursing home, shall have to make an application in the prescribed form with the prescribed fee to the licensing authority for a grant of a licence.

8. Grant or refusal of licence.—On receipt of an application under section 7, the licensing authority shall make such inquiries as it may deem fit and where it is satisfied that—

- (a) the establishment or maintenance of the psychiatric hospital or psychiatric nursing home or the continuance of the maintenance of

any such hospital or nursing home established before the commencement of this Act is necessary;

- (b) the applicant is in a position to provide the minimum facilities prescribed for the admission, treatment and care of mentally ill persons; and
- (c) the psychiatric hospital or psychiatric nursing home, will be under the charge of a medical officer who is a psychiatrist,

it shall grant a licence to the applicant in the prescribed form, and, where it is not so satisfied, the licensing authority shall, by order, refuse to grant the licence applied for:

Provided that, before making any order refusing to grant a licence, the licensing authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a licence shall set out therein the reasons for such refusal and such reasons shall be communicated to the applicant in such manner as may be prescribed.

9. Duration and renewal of licence.—(1) A licence shall not be transferable or heritable.

(2) Where a licensee is unable to function as such for any reason or where a licensee dies, the licensee or, as the case may be, the legal representative of such licensee shall forthwith report the matter in the prescribed manner to the licensing authority and notwithstanding anything contained in sub-section (1), the psychiatric hospital or psychiatric nursing home concerned may continue to be maintained and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be,—

- (a) for a period of three months from the date of such report or in the case of the death of the licensee from the date of his death, or
- (b) if an application made in accordance with sub-section (3) for a licence is pending on the expiry of the period specified in clause (a), till the disposal of such application.

(3) The legal representative of the licensee referred to in sub-section (2), shall, if he intends to continue the maintenance of the psychiatric hospital or psychiatric nursing home after the expiry of the period referred to in sub-section (2), make, at least one month before the expiry of such period, an application to the licensing authority for the grant of a fresh licence for the maintenance of such hospital or nursing home, as the case may be, and the provisions of section 8 shall apply in relation to such application as they apply in relation to an application made under section 7.

(4) Every licence shall, unless revoked earlier under section 11, be valid for a period of five years from the date on which it is granted.

(5) A licence may be renewed, from time to time, on an application made in that behalf to the licensing authority, in such form and accompanied by such fee, as may be prescribed, and every such application shall be made not less than one year before the date on which the period of validity of the licence is due to expire:

Provided that the renewal of a licence shall not be refused unless the licensing authority is satisfied that—

- (i) the licensee is not in a position to provide in a psychiatric hospital or psychiatric nursing home, the minimum facilities prescribed for the admission, treatment and care therein of mentally ill persons; or
- (ii) the licensee is not in a position to provide a medical officer who is a psychiatrist to take charge of the psychiatric hospital or psychiatric nursing home; or

- (iii) the licensee has contravened any of the provisions of this Act or any rule made thereunder.

COMMENTS

A licence to establish or maintain a psychiatric hospital or psychiatric nursing home is not transferable or heritable. It is valid for a period of five years from the date on which it is granted. It can be renewed from time to time, on an application which should be made not less than one year before the date on which the period of validity of the licence is due to expire. When a licensee is unable to function as such for any reason or when a licensee dies, the licensee, or as the case may be, the legal representative of such licensee has to report the matter in the prescribed manner to the licensing authority.

10. Psychiatric hospital and psychiatric nursing home to be maintained in accordance with prescribed conditions.—Every psychiatric hospital or psychiatric nursing home shall be maintained in such manner and subject to such conditions as may be prescribed.

11. Revocation of licence.—(1) The licensing authority may, without prejudice to any other penalty that may be imposed on the licensee, by order in writing, revoke the licence if it is satisfied that—

- (a) the psychiatric hospital or psychiatric nursing home is not being maintained by the licensee in accordance with the provisions of this Act or the rules made thereunder; or
- (b) the maintenance of the psychiatric hospital or psychiatric nursing home is being carried on in a manner detrimental to the moral, mental or physical well-being of the inpatients thereof.

Provided that no such order shall be made except after giving the licensee a reasonable opportunity of being heard, and every such order shall set out therein the grounds for the revocation of the licence and such grounds shall be communicated to the licensee in such manner as may be prescribed.

(2) Every order made under sub-section (1) shall contain a direction that the inpatients of the psychiatric hospital or psychiatric nursing home shall be transferred to such other psychiatric hospital or psychiatric nursing home as may be specified in that order and it shall also contain such provisions (including provisions by way of directions) as to the care and custody of such inpatients pending such transfer.

(3) Every order made under sub-section (1) shall take effect,—

- (a) where no appeal has been preferred against such order under section 12, immediately on the expiry of the period prescribed for such appeal; and
- (b) where such appeal has been preferred and the same has been dismissed, from the date of the order of such dismissal.

12. Appeal.—(1) Any person, aggrieved by an order of the licensing authority refusing to grant or renew a licence, or revoking a licence, may, in such manner and within such period as may be prescribed, prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

13. Inspection of psychiatric hospitals and psychiatric nursing homes and visiting of patients.—(1) An Inspecting Officer may, at any time, enter and inspect any psychiatric hospital or psychiatric nursing home and require the

production of any records, which are required to be kept in accordance with the rules made in this behalf, for inspection:

Provided that any personal records of a patient so inspected shall be kept confidential except for the purposes of sub-section (3).

(2) The Inspecting Officer may interview in private any patient receiving treatment and care therein—

- (a) for the purpose of inquiring into any complaint made by or on behalf of such patient as to the treatment and care, or
- (b) in any case, where the Inspecting Officer has reason to believe that any inpatient is not receiving proper treatment and care.

(3) Where the Inspecting Officer is satisfied that any inpatient in a psychiatric hospital or psychiatric nursing home is not receiving proper treatment and care, he may report the matter to the licensing authority and thereupon the licensing authority may issue such direction as it may deem fit to the medical officer in charge or the licensee of the psychiatric hospital, or, as the case may be, the psychiatric nursing home and every such medical officer in charge or licensee shall be bound to comply with such directions.

14. Treatment of out-patients.—Provision shall be made in every psychiatric hospital or psychiatric nursing home for such facilities as may be prescribed for the treatment of every mentally ill person, whose condition does not warrant his admission as an inpatient or who, for the time being, is not undergoing treatment as inpatient.

COMMENTS

Every psychiatric hospital or psychiatric nursing home has to provide facilities for the treatment of every mentally ill person, whose condition does not warrant his admission as an inpatient or who, for the time being, is not undergoing treatment as inpatient.

CHAPTER IV ADMISSION AND DETENTION IN PSYCHIATRIC HOSPITAL, OR PSYCHIATRIC NURSING HOME

PART I

ADMISSION ON VOLUNTARY BASIS

15. Request by major for admission as voluntary patient.—Any person (not being a minor), who considers himself to be a mentally ill person and desires to be admitted to any psychiatric hospital or psychiatric nursing home for treatment, may request the medical officer in-charge for being admitted as a voluntary patient.

COMMENTS

Any adult person, who considers himself to be a mentally ill person and desires to be admitted to any psychiatric hospital or psychiatric nursing home for treatment, can request the medical officer in-charge for being admitted as a voluntary patient.

16. Request by guardian for admission of a ward.—Where the guardian of a minor considers such minor to be a mentally ill person and desires to admit such minor in any psychiatric hospital or psychiatric nursing home for treatment, he may request the medical officer in charge for admitting such minor as a voluntary patient.

COMMENTS

Any guardian of a minor who considers that such minor is mentally ill person and desires to admit such minor in any psychiatric hospital or psychiatric nursing home for treatment, can request the medical officer in-charge for admitting such minor as a voluntary patient.