

THE MENTAL HEALTH CARE BILL, 2012

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	THE MENTAL HEALTH CARE BILL, 2012	
	A Bill	
	<i>to provide access to mental health care and services for persons with mental illness and to protect, promote and fulfil the rights of persons with mental illness during delivery of mental health care and services and for matters connected therewith or incidental thereto.</i>	
	WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and was opened for signature on the 30th March, 2007 and came into force on the 3rd May, 2008;	
	AND WHEREAS India has signed and ratified the said Convention to make provision for giving effect thereto.	
	BE it enacted by Parliament in the Sixty- third Year of the Republic of India as follows:—	
	CHAPTER I PRELIMINARY	
	1. (1) This Act may be called the Mental Health Care Act, 2012.	Short title, extent and commencement.
	(2) It shall extend to the whole of India.	
	(3) The provisions of this Act, except the provisions of sections 33 , 45 and 73, shall come into force within a period of three months from the date on which it receives the assent of the President.	
	(4) The provisions of sections 33 , 45 and 73 shall come into force within a period of nine months from the date on which it receives the assent of the President.	

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Definitions.	2. (1) In this Act, unless the context otherwise requires,—	
	(a) “advance directive” means an advance directive made by a person under section 5;	
	(b) “appropriate Government” means,—	
	(i) in relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government;	
	(ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of —	
	(A) a State, the State Government;	
	(B) a Union territory having Legislature, the Government of that Union territory;	
	(c) “Board” means the Mental Health Review Board constituted by the Commission under sub-section (1) of section 80;	
	(d) “care-giver” means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration;	
	(e) “Central Authority” means the Central Mental Health Authority constituted under section 33 ;	
	(f) “clinical psychologist” means a person having—	
	(i) Masters’ degree in psychology or applied psychology and a Masters’ of Philosophy in clinical psychology or medical and social psychology or Masters of Philosophy in mental health and social psychology obtained after completion of a full time course of two years which includes supervised clinical training; or	
	(ii) Doctorate degree in clinical psychology which includes supervised clinical training,	
3 of 1956.	from an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956;	
	(g) “Commission” means the Mental Health Review Commission constituted under sub-section (1) of section 73 ;	
	(h) “family” means a group of persons related by blood, adoption or marriage;	
	(i) “informed consent” means consent given for a specific intervention, without any force, undue influence, fraud, threat,	

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	<p>mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person;</p>	
	<p>(j) “least restrictive alternative” or “least restrictive environment” or “less restrictive option” means offering an option for treatment or a setting for treatment which—</p> <p style="padding-left: 40px;">(i) meets the person's treatment needs; and</p> <p style="padding-left: 40px;">(ii) imposes the least restriction on the person's rights;</p>	
	<p>(k) “local authority” means a Municipal Corporation or Municipal Council, or Zilla Parishad, or Nagar Panchayat, or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the mental health establishment or empowered under any law for the time being in force, to function as a local authority in any city or town or village;</p>	
2 of 1974.	<p>(l) “Magistrate” means —</p> <p style="padding-left: 40px;">(i) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate;</p> <p style="padding-left: 40px;">(ii) 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;</p>	[Clause (h) of mental health Act]
	<p>(m) “medical officer in charge” in relation to any mental health establishment means the psychiatrist or medical practitioner who, for the time being, is in charge of that mental health establishment;</p>	[Clause (j) of mental health Act]
102 of 1956. 48 of 1970. 59 of 1973.	<p>(n) “medical practitioner” means a person who possesses a recognised medical qualification—</p> <p style="padding-left: 40px;">(i) as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in the State Medical Register, as defined in clause (k) of that section; or</p> <p style="padding-left: 40px;">(ii) as defined in clause (h) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 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; or</p> <p style="padding-left: 40px;">(iii) as defined in clause (g) of sub-section (1) of section 2 of the Homeopathy Central Council Act, 1973, and whose name has been entered in a State Register of Homeopathy, as defined in clause (i) of sub-section (1) of that section; or</p>	[Clause (k) of mental health Act]

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48 of 1970.	(iv) in ayurveda, yoga, unani, siddha, homoeopathy or naturopathy, registered under the Indian Medicine Central Council Act, 1970 and working in the field of “Manas Rog” and having a post graduate degree in “Manas Rog”;	
	(o) “mental health establishment” means any health establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends;	
	(p) “mental health professional” means a psychiatrist or a professional registered with the concerned State Authority under the provisions of section 55;	
38 of 1947.	(q) “mental health nurse” means a person with a diploma or degree in general nursing or diploma or degree in psychiatric nursing recognised by the Nursing Council of India established under the Nursing Council of India Act, 1947 and registered as such with the relevant nursing council in the State;	
	(r) “mental illness” means a disorder of mood, thought, perception, orientation and memory which causes significant distress to a person or impairs a person’s behaviour, judgment and ability to recognise reality or impairs the person's ability to meet the demands of daily life and includes mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation;	
	(s) “minor” means a person who has not completed the age of eighteen years;	
	(t) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;	
	(u) “prescribed” means prescribed by rules made under this Act;	
	(v) “prisoner with mental illness” means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison;	
	(w) “psychiatric social worker” means a person having post graduate degree awarded after completion of course of study of	

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3 of 1956.	minimum two years in mental health or psychiatric social work, or doctorate in mental health or psychiatric social work, from an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956;	
3 of 1956. 102 of 1956.	(x) "psychiatrist" means a medical practitioner possessing a post-graduate degree or diploma in psychiatry awarded by an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956, or awarded or recognised by the National Board of Examinations established under the -----, or recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 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;	Please provide details here?
	(y) "relative" means any person related to the person with mental illness by blood, marriage or adoption;	
	(z) "regulations" means regulations made under this Act;	
	(za) "State Authority" means the State Mental Health Authority established under section 45 ;	
102 of 1956. 48 of 1970.	(2) The words and expressions used and not defined in this Act but defined in the Indian Medical Council Act, 1956 or the Indian Medicine Central Council Act, 1970 and not inconsistent with this Act shall have the meanings respectively assigned to them in that Act.	
	CHAPTER II MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTH CARE AND TREATMENT DECISIONS	
Determination of mental illness.	3. (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.	
	(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.	
	(3) Mental illness of a person shall not be determined on the basis of,—	
	(a) 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 of the person;	
	(b) non-conformity with moral, social, cultural, work or	

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	political values or religious beliefs prevailing in a person's community.	
	(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.	
	(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.	
Capacity to make mental health care and treatment decisions.	4. (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental health care or treatment, if such person has ability to,—	
	(a) understand the information relevant to the mental health care or treatment decision;	
	(b) retain that information;	
	(c) use or weigh that information as part of the process of making the mental health care or treatment decision; and	
	(d) communicate his decision by any means (including talking, using sign language or any other means).	
	(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.	
	(3) Where a person makes a decision regarding his mental health care or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental health care or treatment decision, so long as the person has the capacity to make mental health care or treatment decision under sub-section (1).	
	<i>Explanation.</i> — For the purpose of this section, the expression “information relevant to the mental health care or treatment decision” means information about the consequences of making the decision and information about the consequences of not making the decision.	
	CHAPTER III ADVANCE DIRECTIVE	
Advance directive.	5. (1) Every person, who is not a minor, shall have a right to make an advance directive in writing, specifying any or all of the following, namely:—	
	(a) the way the person wishes to be cared for and treated for a mental illness ;	
	(b) the way the person wishes not to be cared for and treated for a mental illness;	

