

Department of Health & Family Welfare
DRAFT MENTAL HEALTH CARE BILL (01.10.2012)

	under this sub-section.	
	(2) The decision of the Central Government whether a question is one of policy or not shall be final.	
	121. (1) If at anytime the Central Government is of the opinion—	Power of Central Government to supersede Central Authority.
	(a) that on account of circumstances beyond the control of the Central Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or	
	(b) that the Central Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or	
	(c) that circumstances exist which render it necessary in the public interest so to do,	
	the Central Government may, by notification and for reasons to be specified therein, supersede the Central Authority for such period, not exceeding six months, as may be specified in the notification:	
	Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Central Authority to make representations against the proposed supersession and shall consider representations, if any, of the Central Authority.	
	(2) Upon the publication of a notification under sub-section (1) superseding the Central Authority,—	
	(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;	
	(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;	
	(c) all properties owned or controlled by the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), vest in the Central Government.	
	(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Central Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.	

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	(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.	
	122. (1) If at anytime the State Government is of the opinion—	Power of State Government to supersede State Authority.
	(a) that on account of circumstances beyond the control of the State Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or	
	(b) that the State Authority has persistently defaulted in complying with any direction given by the State Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or	
	(c) that circumstances exist which render it necessary in the public interest so to do,	
	the State Government may, by notification and for reasons to be specified therein, supersede the State Authority for such period, not exceeding six months, as may be specified in the notification:	
	Provided that before issuing any such notification, the State Government shall give a reasonable opportunity to the State Authority to make representations against the proposed supersession and shall consider representations, if any, of the State Authority.	
	(2) Upon the publication of a notification under sub-section (1) superseding the State Authority,—	
	(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;	
	(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the State Authority shall, until the State Authority is reconstituted under sub-section (3), be exercised and discharged by the State Government or such authority as the State Government may specify in this behalf;	
	(c) all properties owned or controlled by the State Authority shall, until the State Authority is reconstituted under sub-section (3), vest in the State Government.	
	(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government shall reconstitute the State Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.	

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	(4) The State Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature at the earliest.	
	123. (1) Notwithstanding anything contained in this Act, the provisions of this Act shall, taking into consideration the communication, travel and transportation difficulties, apply to the States of Assam, Meghalaya, Tripura, Mizoram, Manipur, Nagaland, Arunachal Pradesh, Sikkim, with following modifications, namely:—	Special provisions for states in north east and hill States.
	<p>(a) under sub-section (3) of section 80, the president of the Commission may constitute a single Board for all the states;</p> <p>(b) in sub-section (2) of section 88, reference to the period of “seven days”; and in sub-section (3) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days” respectively;</p> <p>(c) in sub-section (9) of section 96, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”; and in sub-sections (3) and (12) of that section, reference to a period of “seven days” shall be construed as “ten days”;</p> <p>(d) in sub-section (3) of section 97, reference to the period of “twenty-four hours” shall be construed as “seventy-two hours”;</p> <p>(e) in clauses (a) and (b) of sub-section (9) of section 98, reference to the period of “three days” and “seven days” shall be construed as “seven days” and “ten days” respectively;</p> <p>(f) in sub-section (3) of section 99, reference to the period of “seven days” and in sub-section (4) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days” respectively;</p> <p>(g) in sub-section (4) of section 103, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”;</p>	
	(2) The provisions of clauses (b) to (g) of sub-section (1) shall also apply to the States of Uttarakhand, Himachal Pradesh and Jammu and Kashmir and the Union territories of Lakshadweep and Andaman and Nicobar Islands.	
10 of 1897.	(3) The provisions of this section shall cease to have effect on the expiry of a period of ten years from the commencement of this Act, except as respects things done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897, shall apply as if this Act had then been repealed by a Central Act.	

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45 of 1960. 2 of 1973.	124. (1) Notwithstanding anything contained in the Indian Penal Code, or the Code of Criminal Procedure, 1973, any person who attempts to commit suicide shall ordinarily be presumed, unless proved otherwise, to have mental illness and not be subject to any investigation or prosecution.	Presumption of mental illness in case of attempt to commit suicide by a person.
	(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having mental illness and who attempted suicide, to reduce the risk of recurrence of attempted suicide.	<i>to commit</i>
	125. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Board is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.	Bar of jurisdiction.
14 of 1987.	126. The Central Government may, if it considers so necessary in the interest of persons with mental illness being governed by the Mental Health Act, 1987, take appropriate interim measures by making scheme for the smooth implementation of the provisions of this Act	Transitory provisions.
45 of 1960.	127. The Chairperson, President and other Members and the officers and other employees of the Authority, Commission and Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.	Members and staff of Authority, Commission and Board to be public servants.
	128. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or against the Chairperson or President or any other Member of the Central Authority or the State Authority or the Commission or the Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder in the discharge of official duties.	Protection of action taken in good faith.
	129. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	Act to have overriding effect.
	130. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.	Application of other laws not barred.
	131. (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.	Power of to make rules.
	(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the	

	<p>following, matters, namely:—</p> <p>(a) the manner of nomination of Members of Central Authority under sub-section (2) of section 34 ;</p> <p>(b) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Central Authority under sub-section (3) of section 35;</p> <p>(c) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 43;</p> <p>(d) the manner of nomination of Members of State Authority under sub-section (2) of section 46;</p> <p>(e) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the State Authority under sub-section (3) of section 47;</p> <p>(f) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 55;</p> <p>(g) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 59;</p> <p>(h) the form in which and the time within which an annual report shall be prepared under section 60;</p> <p>(i) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 63;</p> <p>(j) the form in which and the time within an annual report shall be prepared under section 64;</p> <p>(k) the form of application to be submitted by the mental health establishment with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority, under the <i>Explanation</i> to sub-section (2) of section 65;</p> <p>(l) the form of certificate of registration under sub-section (3) of section 65:</p> <p>(m) the form of application, the detail and fees to accompanied with it under sub-section (1) of section 66;</p> <p>(n) the form of certificate of provisional registration containing particulars and information under sub-section (4) of section 66;</p> <p>(o) the fees for renewal of registration under sub-section (11) of section 66;</p>	<p>11-1</p>
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	<p>(p) the person or persons (including representatives of the local community) for the purpose of conducting an audit of the registered mental health establishments under sub-section (1); and fees to be charged by the Authority for conducting such audit under sub-section (2) of section 67;</p> <p>(q) the person or persons for the purpose of conducting an inspection or inquiry of the mental health establishments under sub-section (1) of section 68;</p> <p>(r) the manner of enter or search of a mental health establishment operating without registration under sub-section (6) of section 68;</p> <p>(s) the fees for issue a duplicate certificate under sub-section (2) of section 70;</p> <p>(t) the form and manner in which the Authority shall maintain in digital format a register of mental health establishments, the particulars of the certificate of registration so granted in a separate register to be maintained under section 71;</p> <p>(u) the salaries and allowances payable to, and the other terms and conditions of service of, the president and other members of the Commission under sub-section (3) of section 77;</p> <p>(v) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission under sub-section (3) of section 79;</p> <p>(w) other disqualifications of president or members of the Commission under clause (e) of sub-section (1) of section 82;</p> <p>(x) other disqualifications of chairperson or members of the Board under clause (e) of sub-section (2) of section 82;</p> <p>(y) the honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board under sub-section (3) of section 83;</p> <p>(z) the form for furnishing periodical information under sub-section (1) or sub-section (2) of section 119;</p>	
	<p>(za) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.</p>	
	<p>132. (1) The Central Authority may, by notification in the Official Gazette, make regulations, consistent with the provisions of the Act and the rules made thereunder, to carry out the purposes of this Act.</p>	<p>Power of Central Authority to make regulations.</p>
	<p>(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the</p>	

	following, matters, namely:—	
	<p>(a) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority under sub-section (3) of section 40;</p> <p>(b) the times and places of meetings of the Central Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 44;</p> <p>(c) the minimum standards of facilities and services under clause (a); the minimum qualifications for the personnel engaged in such establishment under clause (b); provisions for maintenance of records and reporting under clause (c) and other conditions under clause (d), of sub-section (4) of section 65;</p> <p>(d) categories of different mental health establishments under clause (a) of sub-section (5) of section 65;</p> <p>(e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;</p> <p>(f) the manner of filing objections under sub-section (14) of section 66;</p>	
	(g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.	
	133. (1) The Commission may, by notification in the Official Gazette, make regulations, consistent with the provisions of the Act and the rules made thereunder, to carry out the purposes of this Act.	Power of Commission to make regulations.
	(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following, matters, namely:—	
	<p>(a) additional regulation for regarding the procedure of advance directive to protect the right of person with mental illness under sub-section (3) of section 12;</p> <p>(b) the times and places and rules of procedure in regard to the transaction of business at its meetings to be observed by the Commission and the Board under section 87;</p> <p>(c) the procedure for advance directive under clause (c) of section 89;</p> <p>(d) regulations for the purposes of carrying out the provisions of sections 105 and 106;</p>	
	(e) any other matter which is required to be, or may be,	

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	specified by regulations or in respect of which provision is to be made by regulations.	
	134. (1) The State Authority may, by notification in the Official Gazette, make regulations, consistent with the provision of the Act and the rules made thereunder, to carry out the purposes of this Act.	Power of State Authority to make regulations.
	(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following, matters, namely:—	
	<p>(a) the minimum quality standards of mental health services under sub-section (9) of section 18;</p> <p>(b) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and other employees of the State Authority under sub-section (3) of section 52;</p> <p>(c) the manner in which the State Authority shall publish the list of registered mental health professionals under clause (d) of sub-section (1) of section 55;</p> <p>(d) the times and places of meetings of the State Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 56;</p> <p>(e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;</p> <p>(f) the manner of filing objections under sub-section (14) of section 66;</p> <p>(g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.</p>	
	135. (1) Every rule made by the Central Government and every regulation made by the Central Authority and the Commission under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulation, as the case may be, should not be made, the rule or regulation, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation, as the case may be.	Laying of rules and regulations.

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	(2) Every rule made by the State Government and every regulation made by the State Authority under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.	
	136. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:	Power to remove difficulties.
	Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.	
	(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.	
	137. (1) The Mental Health Act, 1987 is hereby repealed.	Repeal and saving.
	(2) Notwithstanding such repeal,—	
	(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or declaration made or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;	
	(b) the Central Authority for Mental Health Services, and the State Authority for Mental Health Services established under the repealed Act shall, continue to function under the corresponding provisions of this Act, unless and until the Central Authority and the State Authority are constituted under this Act;	
	(c) any person appointed in the Central Authority for Mental Health Services, or the State Authority for Mental Health Services or any person appointed as the visitor under the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold their respective offices under the corresponding provisions of this Act, unless they are removed or until superannuated;	
	(d) any person appointed under the provisions of the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold his office under the corresponding provisions of this Act, unless they are removed or until superannuated;	
	(e) any licence granted under the provisions of the repealed Act, shall be deemed to have been granted under the corresponding provisions of this Act unless the same are	

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	cancelled or modified under this Act;	
	(f) any proceeding pending in any court under the repealed Act on the commencement of this Act may be continued in that court as if this Act had not been enacted;	
	(g) any appeal preferred from the order of a Magistrate under the repealed Act but not disposed of before the commencement of this Act may be disposed of by the court as if this Act had not been enacted.	
	(2) The mention of the particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.	10 of 1897.