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# **Law Relating To Mental Health In India**

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Covid has deeply altered social and working environments in several ways social distancing policies, mandatory lockdown isolation periods and anxiety of getting sick, along with the suspension of productive activity, loss of income and fear of the future, jointly influence the mental health of citizens and workers. The working place can moderate or worsening the mental health in all the sectors there are only few laws relating to the mental health in India but in the pandemic the mental health has been Deteriorating in coming days the mental health will be a big issue in all the working sectors or even in the education sectors also.

## **There are certain laws relating to the mental health in India.**

The Mental Health Care Act 2017 that position its approach towards mental health and mental health care from rights-based perspective. Its aim is to provide mental health care in a manner that is in line with protecting, promoting and fulfilling the rights of persons with mental illness, throughout the care process.

This law recognizes the capacity in all persons, including those who have a mental illness, to make decisions regarding their own mental health care and the treatment they would want to undertake. Such capacity is recognized if a person understands all relevant information related to the treatment, comprehend the consequences of her/his decisions and communicate this information. The law expressly states that if another person views any such decision is wrong, it does not mean that one cannot make such a decision regarding their personal mental health care by themselves.

The law gives every adult the right to make an 'Advance Directive' in writing, which has to specify the manner in which they wish to be treated or not be treated for a mental illness, along with provisions to appoint a nominative representative.

An advanced directive can be made by a person irrespective of their history of mental illness or treatment as long as it is not in violation of any other law. This directive can only come into force once the person ceases to have the capacity to make such decisions and stops being in force once the person regains such capacity. The person making such a directive can revoke, amend or cancel it at any point. If a mental health professional or a relative does not wish to carry out treatment of the person in accordance with the advance directive they will have to make an application to the concerned board for a review and any changes. The act makes it easier for a person to formalize and have control over the treatment process.

The Act will recognize the right of persons with mental illness to live a life of dignity, that is one without discrimination and reaffirm their equality in all aspects of treatment to persons with physical illness. It further provides protection from cruel, inhumane and degrading treatment at mental health care establishments.

## **Additional Benefits That The Law Has:**

- It gives the mental illness right to community living and governmental support for cases where the person doesn't have familiar support, to live outside of mental health care establishment, when they can medically do so.
- It provides the person with the mental illness and his/her nominated representative with the right to information and regarding the law, nature of illness and treatment, in a comprehensive manner and right to access medical records.
- All mental health care professionals are to maintain confidentiality regarding their clients. No information or photographs relating to a person with mental illness can be released to the media without consent of the person.

- A person with mental illness retains the right to decide on personal contacts and communication in keeping with the guidelines of the mental establishment unless otherwise specified. This would include emails, personal visits, phone calls, etc. and allows the person to refuse or agree to contact any person.
- It also provides for good quality accessible and affordable mental health care facilities by the government and for free services for those that are homeless or (BPL) even if they do not possess BPL card.
- Persons with mental illness are given the right to free legal aid as well as the right to raise complaints regarding deficiencies in services they are receiving.
- In a final act of recognizing the agency of person with mental illness regarding their own lives and understanding the causes behind suicide attempt, the act decriminalizes attempts to commit suicide.

The mental health care brings the conversation back to the person with mental illness, giving them the right to choose and to make decisions. However, the act does raise concerns amongst mental healthcare professionals regarding the realistic effectiveness of such a patient-centered approach.

## **The Rights Of Person With Disabilities Act**

- The rights of person with disabilities act, also known as PWD, was commissioned in 2016, that addresses the rights of those with any kind of disability, physical or mental. This is a conditional act and can be used supplementary per case basis as it has a few ambiguities in its structure.
- PWD Act primarily creates a basis for employee rights in cases of mental illness that can be termed as a disability it will includes:
- PWD Act is meant as an act to give effect to UNC on the Rights of Person with Disabilities. The Convention clearly identifies non-discrimination and equality of opportunity as a key principle for the empowerment of persons with disabilities of any kind.
- The PWD Act further defines ‘discrimination ‘in relation to disability to mean any distinction, exclusion, restrictions on the vass of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise o an equal basis with other of

all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.

- It effectively ensures that in all matters of employment or workplace policies, persons with mental health illnesses cannot be discriminated against. Their treatment has to be par to what would legally be required of someone towards a person with physical disabilities.
- It states that government shall take measures to person with disabilities from being subjected to cruel, torture, inhuman or degrading treatment. The interpretation of such treatment can also be workplace policy or practice that doesn't allow for unfair treatment of anyone with a mental illness or any behaviors at a workplace that demeans a person with mental illness.
- The act clearly states that a government workplace cannot discriminate against any person with a disability in any matter relating to employment the government though can notify of any specific employment roles that are not subject to this provision.
- All employee's government and private are supposed to clearly states their equal opportunity policy. The policy details measuredly they would be taking comply with provisions with the law to ensure the rights of those with disability are upheld. All employers need to ensure that they have a policy in place that gives equal opportunity to someone with any disability, be it physical or mental
- Offences committed by person or company are punishable under the PWD Act. In the case of company all person in charge of conduct of the business of the company will be responsible.
- The concern here is that the PWD act defines 'persons with disability's meaning a person with long-term physical, mental, intellectual or sensory impairments which in interaction with barriers, hinders her/his full and effective participation in society equally with others.
- As it considers 'mental behaviors' 'mental illness' it means that substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgement, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or complete development of mind of a person, specially characterized by sub normality of intelligence.
- In reality, due to the varying categorization of such illness, employment policies do not account for such right instances that are not considered substantial enough, therefore, the act doesn't provide clear guidelines for the rights of those afflicted with mental health illness in relation to their workplace.

- The problem in India is that such laws seem to account for mental health related issue and rights only when the issues can be classified as a disability that is substantial and long term, what the company polices need to account for is the need to recognized mental health as a spectrum, the same way physical health is viewed.
- The laws are the baseline of it all. The company policies need to fulfil the base minimum laid out by the laws, if not then provide more to its employers, says Sonia Sharma, HR, Advance Textiles at Welspun India Limited
- Welspun India uses a tool called amber that monitors the work satisfactory levels of the employers which is the root cause of workplace stress ad anxiety according to Sharma, they act on providing the employee I there is someone who is not happy with the workload or work culture.
- HR can connect, facilitate and communicate to solve the problem but its really up to individual and the department to make the situation better. It is possible, but it will take a lot of time and effort, till then the least we could do is respect everyone regardless, that's where the healing begins.

