

Bill No. LIV of 2013

THE MENTAL HEALTH CARE BILL, 2013

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Bill No. LIV of 2013

THE MENTAL HEALTH CARE BILL, 2013

A

BILL

to provide for mental health care and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.

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 came into force on the 3rd May, 2008;

AND WHEREAS India has signed and ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is necessary to align and harmonise the existing laws with the said Convention.

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

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called the Mental Health Care Act, 2013.
 (2) It shall extend to the whole of India.

Short title,
extent and
commence-
ment.

(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. 5

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; 10

(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— 15

(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; 20

(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; 25

(f) “clinical psychologist” means a person—

(i) having a recognised qualification in Clinical Psychology from an institution approved and recognised, by the Rehabilitation Council of India, constituted under section 3 of the Rehabilitation Council of India Act, 1992; or 34 of 1992.

(ii) having a Post Graduate degree in Psychology or Applied Psychology and a Master 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 doctorate in clinical psychology which includes supervised clinical training, 30 35

from any university recognised by the University Grants Commission established under the University Grants Commission Act, 1956; 3 of 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; 40

(i) “informed consent” means consent given for a specific intervention, without any force, undue influence, fraud, threat, 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; 45

(j) “least restrictive alternative” or “least restrictive environment” or “less restrictive option” means offering an option for treatment or a setting for treatment which—

(i) meets the person’s treatment needs; and

5 (ii) imposes the least restriction on the person’s rights;

(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
10 a local authority in any city or town or village;

(l) “Magistrate” means—

(i) in relation to a metropolitan area within the meaning of clause (k) of
2 of 1974. section 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate;

(ii) in relation to any other area, the Chief Judicial Magistrate, Sub-
15 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;

(m) “medical officer in charge” in relation to any mental health establishment
20 means the psychiatrist or medical practitioner who, for the time being, is in charge of that mental health establishment;

(n) “medical practitioner” means a person who possesses a recognised medical qualification—

(i) as defined in clause (h) of section 2 of the Indian Medical Council Act,
102 of 1956. 1956, and whose name has been entered in the State Medical Register, as defined
25 in clause (k) of that section; or

(ii) as defined in clause (h) of sub-section (1) of section 2 of the Indian
48 of 1970. 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

(iii) as defined in clause (g) of sub-section (1) of section 2 of the
30 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;
59 of 1973.

(o) “mental health establishment” means any health establishment, including
35 Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy 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
40 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
45 mental illness resides with his relatives or friends;

- (p) “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; 38 of 1947.
- (q) “mental health professional” means— 5
- (i) a psychiatrist as defined in clause (x); or
- (ii) a professional registered with the concerned State Authority under section 55; or
- (iii) a professional with Doctorate of Medicine (Ayurveda) in ‘Mano Vigyan Avum Manas Roga’ or Doctorate of Medicine (Homeopathy) in psychiatry; 10
- (r) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence; 15
- (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; 20
- (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 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; 25
3 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 and included in the First Schedule of Indian Medical Council Act, 1956, 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; 30 3 of 1956.
102 of 1956.
- (y) “regulations” means regulations made under this Act;
- (z) “relative” means any person related to the person with mental illness by blood, marriage or adoption;
- (za) “State Authority” means the State Mental Health Authority established under section 45. 40
- (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 those Acts. 102 of 1956.
48 of 1970.
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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. 50

(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,—

5 (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 political values or religious beliefs prevailing in a person's community.

10 (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.

15 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,—

Capacity to make mental health care and treatment decisions.

(a) understand the information relevant to the mental health care or treatment decision;

20 (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).

25 (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.

30 (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).

35 *Explanation.*—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

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:—

Advance directive.

40 (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;

(c) the individual or individuals, in order of precedence, he wants to appoint as his nominated representative as provided under section 14.

(2) An advance directive under sub-section (1) may be made by a person irrespective of his past mental illness or treatment for the same.

(3) An advance directive made under sub-section (1), shall be invoked only when such person ceases to have capacity to make mental health care or treatment decisions and shall remain effective until such person regains capacity to make mental health care or treatment decisions. 5

(4) Any decision made by a person while he has the capacity to make mental health care and treatment decisions shall over-ride any previously written advance directive by such person.

(5) Any advance directive made contrary to any law for the time being in force shall be *ab initio* void. 10

Manner of making advance directive.

6. (1) An advance directive shall be made in writing on a plain paper with the person's signature or thumb impression on it and attested by two witnesses and be,—

(a) registered with the Board in the district where the person is ordinarily resident; or 15

(b) signed by a medical practitioner certifying that the person has capacity to make mental health care and treatment decisions at the time of making the advance directive and that the person has made the advance directive of his own free will:

Provided that where the advance directive,—

(a) has been made in accordance with the procedure laid down in this sub-section; and 20

(b) contains a refusal for all future medical treatment for mental illness,

such advance directive shall be valid only after it has been submitted to the relevant Board and the Board following a hearing, has certified the validity of the advance directive:

Provided further that in case a person has written an advance directive which has not been registered with the Board or signed by a medical practitioner as referred to in the first proviso, the Board may decide the validity of such advance directive as and when required to do so. 25

(2) No fee shall be charged for registering the advance directive with the concerned Board or signing by a medical practitioner as required under sub-section (1). 30

Maintenance of online register.

7. Subject to the provisions contained in clause (a) of sub-section (1) of section 91, every Board shall maintain an online register of all advance directives registered with it and make them available to the concerned mental health professionals as and when required.

Revocation, amendment or cancellation of advance directive.

8. (1) An advance directive made under sub-section (1) of section 6 may be revoked, amended or cancelled by the person who made it at any time. 35

(2) The procedure for revoking, amending or cancelling an advance directive shall be the same as for making an advance directive under sub-section (1) of section 6.

Advance directive not to apply to emergency treatment.

9. The advance directive shall not apply to the emergency treatment given under section 103 to a person who made the advance directive. 40

10. It shall be the duty of every medical officer in charge of a mental health establishment and the psychiatrist in charge of a person's treatment to propose or give treatment to a person with mental illness, in accordance with his valid advance directive, subject to section 11.

Duty to follow advance directive .

5 11. (1) Where a mental health professional or a relative or a care-giver of a person desires not to follow an advance directive while treating a person with mental illness, such mental health professional or the relative or the care-giver of the person may make an application to the concerned Board to review, alter, modify or cancel the advance directive.

Power to review, alter, modify or cancel advance directive.

(2) Upon receipt of the application under sub-section (1), the Board may, after giving an opportunity of hearing to all concerned parties (including the person whose advance directive is in question), either uphold, modify, alter or cancel the advance directive after taking into consideration the following, namely:—

(a) whether the advance directive was made by the person out of his own free will and free from force, undue influence or coercion; or

15 (b) whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated; or

(c) whether the person was sufficiently well informed to make the decision; or

(d) whether the person had capacity to make decisions relating to his mental health care or treatment when such advanced directive was made; or

20 (e) whether the content of the advance directive is contrary to other laws or constitutional provisions.

(3) The person writing the advance directive and his nominated representative shall have a duty to ensure that the medical officer in charge of a mental health establishment or a medical practitioner or a mental health professional, as the case may be, has access to the advance directive when required.

(4) The legal guardian shall have right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, *mutatis mutandis*, shall apply to such minor till such time he attains majority.

30 12. (1) The Commission shall regularly and periodically review the use of advance directives and make recommendations in respect thereof.

Review of advance directives.

(2) The Commission in its review under sub-section (1) shall give specific consideration to the procedure for making an advance directive and also examine whether the existing procedure protects the rights of persons with mental illness.

35 (3) The Commission may modify the procedure for making an advance directive or make additional regulations regarding the procedure for advance directive to protect the rights of persons with mental illness.

13. (1) A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences on following a valid advance directive.

Liability of medical health professional in relation to advance directive.

40 (2) The medical practitioner or mental health professional shall not be held liable for not following a valid advance directive, if he has not been given a copy of the valid advance directive.

CHAPTER IV

NOMINATED REPRESENTATIVE

45 14. (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 5, every person who is not a minor, shall have a right to appoint a nominated representative.

Appointment and revocation of nominated representative.

(2) The nomination under sub-section (1) shall be made in writing on plain paper with the person's signature or thumb impression of the person referred to in that sub-section.

(3) The person appointed as the nominated representative shall not be a minor, be competent to discharge the duties or perform the functions assigned to him under this Act, and give his consent in writing to the mental health professional to discharge his duties and perform the functions assigned to him under this Act. 5

(4) Where no nominated representative is appointed by a person under sub-section (1), the following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of a person with mental illness, namely:—

(a) the individual appointed as the nominated representative in the advance directive under clause (c) of sub-section (1) of section 5; or 10

(b) a relative, or if not available or not willing to be the nominated representative of such person; or

(c) a care-giver, or if not available or not willing to be the nominated representative of such person; or 15

(d) a suitable person appointed as such by the concerned Board; or

(e) if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness:

Provided that a person representing an organisation registered under the Societies Registration Act, 1860 or any other law for the time being in force, working for persons with mental illness, may temporarily be engaged by the mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the concerned Board. 20
21 of 1860.

(5) The representative of the organisation, referred to in the proviso to sub-section (4), may make a written application to the medical officer in charge of the mental health establishment or the psychiatrist in charge of the person's treatment, and such medical officer or psychiatrist, as the case may be, shall accept him as the temporary nominated representative, pending appointment of a nominated representative by the concerned Board. 25
30

(6) A person who has appointed any person as his nominated representative under this section may revoke or alter such appointment at any time in accordance with the procedure laid down for making an appointment of nominated representative under sub-section (1).

(7) The Board may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section. 35

(8) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his mental health care or treatment. 40

(9) All persons with mental illness shall have capacity to make mental health care or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

Nominated
representative
of minor.

15. (1) Notwithstanding anything contained in section 14, in case of minors, the legal guardian shall be their nominated representative, unless the concerned Board orders otherwise under sub-section (2). 45

(2) Where on an application made to the concerned Board, by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it, the concerned Board is of the opinion that,—

(a) the legal guardian is not acting in the best interests of the minor; or

5 (b) the legal guardian is otherwise not fit to act as the nominated representative of the minor,

it may appoint, any suitable individual who is willing to act as such, the nominated representative of the minor with mental illness:

10 Provided that in case no individual is available for appointment as a nominated representative, the Board shall appoint the Director in the Department of Social Welfare of the State in which such Board is located, or his nominee, as the nominated representative of the minor with mental illness.

15 **16.** The Board, on an application made to it 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 establishment where the individual is admitted or proposed to be admitted, may revoke, alter or modify the order made under clause (e) of sub-section (4) of section 14 or under sub-section (2) of section 15.

Revocation, alteration, etc., of nominated representative by Board.

17. While fulfilling his duties under this Act, the nominated representative shall—

Duties of nominated representative.

20 (a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

(b) give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;

(c) provide support to the person with mental illness in making treatment decisions under section 98 or section 99;

25 (d) have right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

(e) have access to the family or home based rehabilitation services as provided under clause (c) of sub-section (4) of section 18 on behalf of and for the benefit of the person with mental illness;

30 (f) be involved in discharge planning under section 107;

(g) apply to the mental health establishment for admission under section 96 or section 98 or section 99;

(h) apply to the concerned Board on behalf of the person with mental illness for discharge under section 96 or section 98 or section 99;

35 (i) apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;

(j) appoint a suitable attendant under sub-section (5) of section 96 or sub-section (6) of section 96;

40 (k) have the right to give or withhold consent for research under circumstances mentioned under sub-section (3) of section 108.

CHAPTER V

RIGHTS OF PERSONS WITH MENTAL ILLNESS

18. (1) Every person shall have a right to access mental health care and treatment from mental health services run or funded by the appropriate Government.

Right to access mental health care.

(2) The right to access mental health care and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers. 5

(3) The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

(4) Without prejudice to the generality of range of services under sub-section (3), such services shall include—

(a) provision of acute mental health care services such as outpatient and inpatient services; 10

(b) provision of half-way homes, sheltered accommodation, supported accommodation;

(c) provision for mental health services to support family of person with mental illness or home based rehabilitation; 15

(d) hospital and community based rehabilitation establishments and services;

(e) provision for child mental health services and old age mental health services.

(5) The appropriate Government shall,—

(a) integrate mental health services into general health care services at all levels of health care including primary, secondary and tertiary health care and in all health programmes run by the appropriate Government; 20

(b) provide treatment in a manner, which supports persons with mental illness to live in the community and with their families;

(c) ensure that the long term care in a mental health establishment for treatment of mental illness 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; 25

(d) ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides; 30

(e) ensure that as a minimum, mental health services run or funded by Government shall be available in each district;

(f) ensure, if minimum mental health services specified under sub-clause (e) of sub-section (4) are not available in the district where a person with mental illness resides, that the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such establishments in that district will be borne by the appropriate Government; 35

Provided that till such time the services under this sub-section are made available in a health establishment run or funded by the appropriate Government, the appropriate Government shall make rules regarding reimbursement of costs of treatment at such mental health establishment. 40

(6) The appropriate Government shall make available a range of appropriate mental health services specified under sub-section (4) of section 18 at all general hospitals run or funded by such Government and basic and emergency mental health care services shall be available at all community health centres and upwards in the public health system run or funded by such Government. 45

(7) Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other
5 mental health establishments designated by it.

(8) The appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no discrimination be made in quality of services provided to persons with mental illness.

(9) The minimum quality standards of mental health services shall be as specified by
10 regulations made by the State Authority.

(10) Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government
15 starting from Community Health Centres and upwards in the public health system:

Provided that where the health professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognised by the Central Government are available in any health establishment, the essential medicines from any similar list relating to the appropriate ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems shall also
20 be made available free of cost to all persons with mental illness.

(11) The appropriate 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.

(12) The Central Government shall lay an annual report before the Parliament and
25 the State Governments shall lay an annual report before the State Legislature giving therein the details regarding the progress made towards achieving access to mental health care in the country.

Explanation.—For the purposes of sub-section (11), the expressions—

- (i) “adequacy” means in terms of how much is enough to offset inflation;
- 30 (ii) “priority” means in terms of compared to other budget heads;
- (iii) “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;
- (iv) “progress” means in terms of indicating an improvement in the State’s
35 response.

19. (1) Every person with mental illness shall,—

- (a) have a right to live in, be part of and not be segregated from society; and
- (b) not continue to remain in a mental health establishment merely because he does not have a family or is not accepted by his family or is homeless or due to
40 absence of community based facilities.

(2) The appropriate Government shall, within a reasonable period, provide for or support the establishment of less restrictive community based establishments including halfway homes, group homes and the like for persons who no longer require treatment in more restrictive mental health establishments such as long stay mental hospitals.

Right to community living.

Right to protection from cruel, inhuman and degrading treatment.

20. (1) Every person with mental illness shall have a right to live with dignity.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely:—

(a) to live in safe and hygienic environment;

(b) to have adequate sanitary conditions; 5

(c) to have reasonable facilities for leisure, recreation, education and religious practices;

(d) to privacy;

(e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity; 10

(f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;

(g) to have adequate provision for preparing for living in the community;

(h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation; 15

(i) to not be subject to compulsory tonsuring (shaving of head hair);

(j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and

(k) to be protected from all forms of physical, verbal, emotional and sexual abuse. 20

Right to equality and non-discrimination.

21. (1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all health care which shall include the following, namely:—

(a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability; 25

(b) emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;

(c) persons with mental health services shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness; 30

(d) living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and

(e) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

(2) The Insurance Regulatory Development Authority established under the Insurance Regulatory Development Authority Act, 1999 shall endeavour to ensure that all insurers make provisions for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness. 35
41 of 1999.

Right to information.

22. (1) A person with mental illness and his nominated representative shall have the rights to the following information, namely:— 40

(a) the provision of this Act or any other law for the time being in force under which he has been admitted, if he is being admitted, and the criteria for admission under that provision;

(b) of his right to make an application to the concerned Board for a review of the admission;

5 (c) the nature of the person’s mental illness and the proposed treatment plan which includes information about treatment proposed and the known side effects of the proposed treatment;

(d) receive the information in a language and form that such person receiving the information can understand.

(2) In case complete information cannot be given to the person with mental illness at the time of the admission or the start of treatment, it shall be the duty of the medical officer or psychiatrist in charge of the person’s care to ensure that full information is provided promptly when the individual is in a position to receive it:

15 Provided that where the information has not been given to the person with mental illness at the time of the admission or the start of treatment, the medical officer or psychiatrist in charge of the person’s care shall give the information to the nominated representative immediately.

23. (1) A person with mental illness shall have the right to confidentiality in respect of his mental health, mental health care, treatment and physical health care.

Right to confidentiality.

(2) All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely:—

(a) release of information to the nominated representative to enable him to fulfil his duties under this Act;

25 (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;

(d) only such information that is necessary to protect against the harm identified shall be released;

30 (e) release of information in the case of life threatening emergencies where such information is urgently needed to save lives;

(f) release of information upon an order by concerned Board or the Commission or High Court or Supreme Court or any other statutory authority competent to do so; and

35 (g) release of information in the interests of public safety and security.

24. (1) No photograph or any other information relating to a person with mental illness undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness.

Restriction on release of information in respect of mental illness.

40 (2) The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.

25. (1) All persons with mental illness shall have right to access their medical records.

Right to access medical records.

(2) 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; or
- (b) likelihood of harm to other persons.

(3) 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 concerned Board for an order to release such information. 5

Right to personal contacts and communication.

26. (1) A person with mental illness admitted to a mental health establishment shall have the right to refuse or receive visitors and to refuse or receive and make telephone or mobile phone calls at reasonable times of the day subject to the rules of such mental health establishment. 10

(2) A person with mental illness admitted in a mental health establishment may send and receive mail through electronic mode including through email.

(3) Where a person with mental illness informs the medical officer or psychiatrist in charge of the mental health establishment that he does not want to receive mail or email from any named person in the community, the medical officer or psychiatrist in charge may restrict such communication by the named person with the person with mental illness. 15

(4) Nothing contained in sub-sections (1) to (3) shall apply to visits from, telephone calls to, and from and mail or email to, and from individuals, specified under clauses (a) to (f) under any circumstances, namely:— 20

- (a) any Judge or officer authorised by a competent court; or
- (b) members of the concerned Board or the Central Authority or the State Authority;
- (c) any member of the Parliament or a Member of State Legislature;
- (d) nominated representative, lawyer or legal representative of the person;
- (e) medical practitioner in charge of the person's treatment; 25
- (f) any other person authorised by the appropriate Government.

Right to legal aid.

27. (1) A person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under this Act.

(2) It shall be the duty of medical officer or psychiatrist in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services. 30
39 of 1987.

Right to make complaints about deficiencies in provision of services.

28. (1) Any person with mental illness or his or her nominated representative, shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to,— 35

- (a) the medical officer or psychiatrist in charge of the establishment and if not satisfied with the response;
- (b) the State Authority and if not satisfied with the response;
- (c) the concerned Board.

(2) The provisions for making complaint in sub-section (1), is without prejudice to the rights of the person to seek any judicial remedy for violation of his rights in a mental health establishment or by any mental health professional either under this Act or any other law for the time being in force. 40

CHAPTER VI

DUTIES OF APPROPRIATE GOVERNMENT

29. (1) The appropriate Government shall have a duty to plan, design and implement programmes for the promotion of mental health and prevention of mental illness in the country.
- (2) Without prejudice to the generality of the provisions contained in sub-section (1), the appropriate Government shall, in particular, plan, design and implement public health programmes to reduce suicides and attempted suicides in the country.
30. The appropriate Government shall take all measures to ensure that,—
- (a) the provisions of this Act are given wide publicity through public media, including television, radio, print and online media at regular intervals;
- (b) the programmes to reduce stigma associated with mental illness are planned, designed, funded and implemented in an effective manner;
- (c) the appropriate Government officials including police officers and other officers of the appropriate Government are given periodic sensitisation and awareness training on the issues under this Act.
31. (1) The appropriate Government shall take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes 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.
- (2) The appropriate Government shall, at the minimum, train all medical officers in public health care establishments and all medical officers in the prisons or jails to provide basic and emergency mental health care.
- (3) The appropriate Government shall make efforts to meet internationally accepted guidelines for number of mental health professionals on the basis of population, within ten years from the commencement of this Act.
- (4) The appropriate Government shall include in its annual report referred to in sub-section (12) of section 18 the information about progress made in improving the human resource under this section.
32. The appropriate Government shall take all measures to ensure effective co-ordination between services provided by concerned Ministries and Departments such as those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental health care.

Promotion of mental health and preventive programmes.

Creating awareness about mental health and illness and reducing stigma associated with mental illness.

Appropriate Government to take measures as regard to human resource development and training, etc.

Co-ordination within appropriate Government.

CHAPTER VII

CENTRAL MENTAL HEALTH AUTHORITY

33. **The Central Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the Central Mental Health Authority.**
34. (1) The Central Authority shall consist of the following, namely:—
- (a) Secretary or Additional Secretary to the Government of India in the Department of Health and Family Welfare— chairperson *ex officio*;

Establishment of Central Authority.

Composition of Central Authority.

(b) Joint Secretary to the Government of India in the Department of Health and Family Welfare, in charge of mental health— member *ex officio*;

(c) Joint Secretary to the Government of India in the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy— member *ex officio*;

(d) Director General of Health Services—member *ex officio*; 5

(e) Joint Secretary to the Government of India in the Department of Disability Affairs of the Ministry of Social Justice and Empowerment— member *ex officio*;

(f) Joint Secretary to the Government of India in the Ministry of Women and Child Development— member *ex officio*;

(g) Directors of the Central Institutions for Mental Health — members *ex officio*; 10

(h) one mental health professional as defined in item (iii) of clause (g) of sub-section (1) of section 2 having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(i) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the Central Government—member; 15

(j) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(k) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the Central Government—member;

(l) two persons representing persons who have or have had mental illness, to be nominated by the Central Government—members; 20

(m) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the Central Government—members;

(n) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the Central Government—members. 25

(2) The members referred to in clauses (h) to (n) of sub-section (1), shall be nominated by the Central Government in such manner as may be prescribed.

Term of office, salaries and allowances of chairperson and members.

35. (1) The members of the Central Authority referred to in clauses (h) to (n) of sub-section (1) of section 34 shall hold office as such for a term of three years from the date of nomination and shall be eligible for re-appointment: 30

Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other *ex officio* members of the Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated. 35

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

Resignation.

36. A member of the Central Authority may, by notice in writing under his hand addressed to the Central Government, resign his office: 40

Provided that a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon the office or until the expiry of his term of office, whichever is the earliest.

5 **37.** The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

Filling of vacancies.

38. No act or proceeding of the Central Authority shall be invalid merely by reason of—

- 10 (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person as a member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of Central Authority.

15 **39.** Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Central Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Central Authority, and the member shall not take any part in any deliberation or decision of the Authority with respect to that matter.

Member not to participate in meetings in certain cases.

20 **40.** (1) There shall be a chief executive officer of the Authority, not below the rank of the Director to the Government of India, to be appointed by the Central Government.

Officers and other employees of Central Authority.

 (2) The Authority may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required by the Central Authority in the discharge of its functions.

25 (3) 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 shall be such as may be specified by regulations with the approval of the Central Government.

30 **41.** (1) The chief executive officer shall be the legal representative of the Central Authority and shall be responsible for—

- (a) the day-to-day administration of the Central Authority;
- (b) implementing the work programmes and decisions adopted by the Central Authority;
- (c) drawing up of proposal for the Central Authority's work programmes;
- 35 (d) the preparation of the statement of revenue and expenditure and the execution of the budget of the Central Authority.

Functions of chief executive officer of Central Authority.

 (2) Every year, the chief executive officer shall submit to the Central Authority for approval—

- 40 (a) a general report covering all the activities of the Central Authority in the previous year;
- (b) programmes of work;

- (c) the annual accounts for the previous year; and
- (d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the Central Authority.

Transfer of assets, liabilities of Central Authority.

42. On the establishment of the Central Authority— 5

(a) all the assets and liabilities of the Central Authority for Mental Health Services constituted under sub-section (1) of section 3 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the Central Authority. 14 of 1987.

Explanation.— The assets of such Central Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such Unique Identification Authority of India and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind; 10 15

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Central Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said Central Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Central Authority; 20

(c) all sums of money due to the Central Authority for Mental Health Services immediately before that day shall be deemed to be due to the Central Authority; and 25

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such Central Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the Central Authority.

Functions of Central Authority.

43. (1) The Central Authority shall— 30

(a) register all mental health establishments under the control of the Central Government and maintain a register of all mental health establishments in the country based on information provided by all State Mental Health Authorities of registered establishments and compile update and publish (including online on the internet) a register of such establishments; 35

(b) develop quality and service provision norms for different types of mental health establishments under the Central Government;

(c) supervise all mental health establishments under the Central Government and receive complaints about deficiencies in provision of services;

(d) maintain a national register of clinical psychologists, mental health nurses and psychiatric social workers based on information provided by all State Authorities of persons registered 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; 40

(e) train all persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

5 (f) advise the Central Government on all matters relating to mental health care and services;

(g) discharge such other functions with respect to matters relating to mental health as the Central Government may decide:

14 of 1987. 10 Provided that the mental health establishments under the control of the Central Government, before the commencement of this Act, registered under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the Central Authority.

15 (2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the Central Government.

44. (1) The Central Authority shall meet at such times (not less than twice in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the Central Authority.

Meetings of Central Authority.

20 (2) If the chairperson, for any reason, is unable to attend a meeting of the Central Authority, the senior most member shall preside over the meeting of the Authority.

25 (3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the Central Authority shall be authenticated by the signature of the chairperson or any other member authorised by the Central Authority in this behalf.

30 (5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the Central Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the Authority with respect to that matter.

CHAPTER VIII

STATE MENTAL HEALTH AUTHORITY

35

45. Every State Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority.

Establishment of State Authority.

40 46. (1) The State Authority shall consist of the following chairperson and members:—

Composition of State Authority.

(a) Secretary or Principal Secretary in the Department of Health of State Government— chairperson *ex officio*;

(b) Joint Secretary in the Department of Health of the State Government, in charge of mental health— member *ex officio*;

45 (c) Director of Health Services or Medical Education—member *ex officio*;

(d) Joint Secretary in the Department of Social Welfare of the State Government— member *ex officio*;

(e) Superintendent of any of the Mental Hospitals in the State or Head of Department of Psychiatry at any Government Medical College, to be nominated by the State Government— member;

5

(f) one eminent psychiatrist from the State not in Government service to be nominated by the State Government— member;

(g) one mental health professional as defined in item (iii) of clause (q) of sub-section (1) of section (2) having of least fifteen years experience in the field, to be nominated by the State Government—member;

10

(h) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the State Government—member;

(i) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the State Government—member;

(j) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the State Government—member;

15

(k) two persons representing persons who have or have had mental illness, to be nominated by the State Government—member;

(l) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the State Government—members;

20

(m) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the State Government — members.

(2) The members referred to in clauses (e) to (m) of sub-section (1), shall be nominated by the State Government in such manner as may be prescribed.

25

Term of office, salaries and allowances of chairperson and other members.

47. (1) The members of the State Authority referred to in clauses (e) to (m) of sub-section (1) of section 46 shall hold office as such for a term of three years from the date of nomination and shall be eligible for reappointment:

Provided that a member shall not hold office as such after he has attained the age of seventy years.

30

(2) The chairperson and other *ex officio* members of the State Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) **The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.**

35

Resignation.

48. A member of the State Authority may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that a member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

40

Filling of vacancies.

49. The State Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

45

50. No act or proceeding of the State Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the State Authority; or

(b) any defect in the appointment of a person as a member of the State Authority;

or

5 (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of State Authority.

51. Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the State Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the State Authority, and the member shall not take any part in any deliberation or decision of the State Authority with respect to that matter.

Member not to participate in meetings in certain cases.

52. (1) There shall be a chief executive officer of the State Authority, not below the rank of the Director to the State Government, to be appointed by the State Government.

Officers and other employees of State Authority.

15 (2) The State Authority may, with the approval of the State Government, determine the number, nature and categories of other officers and employees required by the State Authority in the discharge of its functions.

20 (3) 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 State Authority shall be such as may be specified by regulations with the approval of the State Government.

53. (1) The chief executive officer shall be the legal representative of the State Authority and shall be responsible for—

Functions of chief executive officer of State Authority.

(a) the day-to-day administration of the State Authority;

25 (b) implementing the work programmes and decisions adopted by the State Authority;

(c) drawing up of proposal for the State Authority's work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the State Authority.

30 (2) Every year, the chief executive officer shall submit to the State Authority for approval—

(a) a general report covering all the activities of the Authority in the previous year;

(b) programmes of work;

35 (c) the annual accounts for the previous year; and

(d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the State Authority.

54. On and from the establishment of the State Authority—

Transfer of assets, liabilities of State Authority.

40 (a) all the assets and liabilities of the State Authority for Mental Health Services constituted under sub-section (1) of section 4 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the State Authority.

Explanation.— The assets of such State Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such State Authority for Mental Health Services and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such State Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said State Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the State Authority;

(c) all sums of money due to the State Authority for Mental Health Services immediately before that day shall be deemed to be due to the State Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such State Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the State Authority.

Functions of State Authority.

55. (1) The State Authority shall—

(a) register all mental health establishments in the State except those referred to in section 43 and maintain and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments in the State;

(c) supervise all mental health establishments in the State and receive complaints about deficiencies in provision of services;

(d) register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals, and publish the list of such registered mental health professionals in such manner as may be specified by regulations by the State Authority;

(e) train all relevant persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) discharge such other functions with respect to matters relating to mental health as the State Government may decide:

Provided that the mental health establishments in the State (except those referred to in section 43), registered, before the commencement of this Act, under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the State Authority.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the State Government.

Meetings of State Authority.

56. (1) The State Authority shall meet at such times (not less than four times in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the State Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the State Authority, the senior most member shall preside over the meetings of the Authority.

(3) All questions which come up before any meeting of the State Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the State Authority shall be authenticated by the signature of the chairperson or any other member authorised by the State Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the State Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the State Authority with respect to that matter.

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CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

57. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by Central Government to Central Authority.

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58. (1) There shall be constituted a Fund to be called the Central Mental Health Authority Fund and there shall be credited thereto—

Central Mental Health Authority Fund.

(i) any grants and loans made to the Authority by the Central Government;

(ii) all fees and charges received by the Authority under this Act; and

(iii) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the Authority and the expenses of the Authority incurred in the discharge of its functions and for purposes of this Act.

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59. (1) The Central Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government, in consultation with the Comptroller and Auditor-General of India.

Accounts and audit of Central Authority.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the same to be laid before each House of Parliament.

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| Annual report of Central Authority. | 60. The Central Authority shall prepare in every year, in such form and at such time as may be prescribed by the Central Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the Central Government and the Central Government shall cause the same to be laid before both Houses of Parliament. | 5 |
| Grants by State Government. | 61. The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the State Authority grants of such sums of money as the State Government may think fit for being utilised for the purposes of this Act. | |
| State Mental Health Authority Fund. | 62. (1) There shall be constituted a Fund to be called the State Mental Health Authority Fund and there shall be credited thereto— (i) any grants and loans made to the State Authority by the State Government; (ii) all fees and charges received by the Authority under this Act; and (iii) all sums received by the State Authority from such other sources as may be decided upon by the State Government. | 10 |
| | (2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the State Authority and the expenses of the State Authority incurred in the discharge of its functions and for purposes of this Act. | 15 |
| Accounts and audit of State Authority. | 63. (1) The State Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government, in consultation with the Comptroller and Auditor-General of India. | 20 |
| | (2) The accounts of the State Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Authority to the Comptroller and Auditor-General of India. | 25 |
| | (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the State Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the State Authority. | 30 |
| | (4) The accounts of the State Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the same to be laid before each House of Parliament. | 35 |
| Annual report of State Authority. | 64. The State Authority shall prepare in every year, in such form and at such time as may be prescribed by the State Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the State Government and the Government shall cause the same to be laid before the State Legislature. | 40 |

CHAPTER X

MENTAL HEALTH ESTABLISHMENTS

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| Registration of mental health establishment. | 65. (1) No person or organisation shall establish or run a mental health establishment unless it has been registered with the Authority under the provisions of this Act. | 45 |
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Explanation.— For the purposes of this Chapter, the expression “Authority” means—

(a) in respect of the mental health establishments under the control of the Central Government, the Central Authority;

5 (b) in respect of the mental health establishments in the State [not being the health establishments referred to in clause (a)], the State Authority.

(2) Every person or organisation who proposes to establish or run a mental health establishment shall register the said establishment with the Authority under the provisions of this Act.

23 of 2010. 10 *Explanation.*— In case a mental health establishment has been registered under the Clinical Establishments (Registration and Regulation) Act, 2010 or any other law for the time being in force in a State, such mental health establishment shall submit a copy of the said registration along with an application in such form as may be prescribed to the Authority with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority for the specific category of mental health establishment.

15 (3) The Authority shall, on receipt of application under sub-section (2), on being satisfied that such mental health establishment fulfils the standards specified by the Authority, issue a certificate of registration in such form as may be prescribed:

20 Provided that till the period the Authority specifies the minimum standards for different categories of mental health establishments, it shall issue a provisional certificate of registration to the mental health establishment:

25 Provided further that on specifying the minimum standards for different categories of mental health establishments, the mental health establishment referred to in the first proviso shall, within a period of six months from the date such standards are specified, submit to the Authority an undertaking stating therein that such establishment fulfils the specified minimum standards and on being satisfied that such establishment fulfils the minimum standards, the Authority shall issue a certificate of registration to such mental health establishment.

(4) Every mental health establishment shall, for the purpose of registration and continuation of registration, fulfil—

30 (a) the minimum standards of facilities and services as may be specified by regulations made by the Central Authority;

(b) the minimum qualifications for the personnel engaged in such establishment as may be specified by regulations made by the Central Authority;

(c) provisions for maintenance of records and reporting as may be specified by regulations made by the Central Authority; and

35 (d) any other conditions as may be specified by regulations made by the Central Authority.

(5) The Authority may—

(a) classify mental health establishments into such different categories, as may be specified by regulations made by the Central Authority;

40 (b) specify different standards for different categories of mental health establishments;

(c) while specifying the minimum standards for mental health establishments, have regard to local conditions.

45 (6) Notwithstanding anything in this section, the Authority shall, within a period of eighteen months from the commencement of this Act, by notification, specify the minimum standards for different categories of mental health establishments.

Procedure for registration, inspection and inquiry of mental health establishments.

66. (1) The mental health establishment shall, for the purpose of registration, submit an application, in such form, accompanied with such details and fees, as may be prescribed, to the Authority.

(2) The mental health establishment may submit the application in person or by post or online.

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(3) Every mental health establishment, existing on the date of commencement of this Act, shall, within a period of six months from the date of constitution of the Authority, submit an application for its provisional registration to the Authority.

(4) The Authority shall, within a period of ten days from the date of receipt of such application, issue to the mental health establishment a certificate of provisional registration in such form and containing such particulars and information as may be prescribed.

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

(6) The Authority shall, within a period of forty-five days from the date of provisional registration, publish in print and in digital form online, all particulars of the mental health establishment.

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(7) A provisional registration shall be valid for a period of twelve months from the date of its issue and be renewable.

(8) Where standards for particular categories of mental health establishments have been specified under this Act, the mental health establishments in that category shall, within a period of six months from date of notifying such standards, apply for that category and obtain permanent registration.

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(9) The Authority shall publish the standards in print and online in digital format.

(10) Until standards for particular categories of mental health establishments are specified under this Act, every mental health establishment shall, within thirty days before the expiry of the validity of certificate of provisional registration, apply for a renewal of provisional registration

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(11) If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such fees, as may be prescribed.

(12) A mental health establishment shall make an application for permanent registration to the Authority in such form and accompanied with such fees as may be specified by regulations.

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(13) The mental health establishment shall submit evidence that the establishment has complied with the specified minimum standards in such manner as may be specified by regulations by the Authority.

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(14) As soon as the mental health establishment submits the required evidence of the mental health establishment having complied with the specified minimum standards, the Authority shall give public notice and display the same on its website for a period of thirty days, for filing objections, if any, in such manner as may be specified by regulations.

(15) The Authority shall, communicate the objections, if any, received within the period referred to in sub-section (14), to the mental health establishment for response within such period as the Authority may determine.

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(16) The mental health establishment shall submit evidence of compliance with the standards with reference to the objections communicated to such establishment under sub-section (15), to the Authority within the specified period.

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(17) The Authority shall on being satisfied that the mental health establishment fulfils the specified minimum standards for registration, grant permanent certificate of registration to such establishment.

(18) The Authority shall, within a period of thirty days after the expiry of the period specified under this section, pass an order, either—

(a) grant permanent certificate of registration; or

(b) reject the application after recording the reasons thereof:

Provided that in case the Authority rejects the application under clause (b), it shall grant such period not exceeding six months, to the mental health establishment for rectification of the deficiencies which have led to rejection of the application and such establishment may apply afresh for registration.

(19) Notwithstanding anything contained in this section, if the Authority has not communicated any objections received by it to the mental health establishment under sub-section (15), nor has passed an order under sub-section (18), it shall be deemed that the Authority has granted permanent certificate of registration to the applicant.

67. (1) The Authority shall cause to be conducted an audit of all registered mental health establishments by such person or persons (including representatives of the local community) as may be prescribed, every three years, so as to ensure that such mental health establishments comply with the requirements of minimum standards for registration as a mental health establishment.

Audit of mental health establishment.

(2) The Authority may charge the mental health establishment such fee as may be prescribed, for conducting the audit under this section.

(3) The Authority may issue a show cause notice to a mental health establishment as to why its registration under this Act not be cancelled, if the Authority is satisfied that—

(a) the mental health establishment has failed to maintain the minimum standards specified by the Authority; or

(b) the person or persons or entities entrusted with the management of the mental health establishment have been convicted of an offence under this Act; or

(c) the mental health establishment violates the rights of any person with mental illness.

(4) The Authority may, after giving a reasonable opportunity to the mental health establishment, if satisfied that the mental health establishment falls under clause (a) or clause (b) or clause (c) of sub-section (3), without prejudice to any other action which it may take against the mental health establishment, cancel its registration.

(5) Every order made under sub-section (4) shall take effect—

(a) where no appeal has been preferred against such order, immediately on the expiry of the period specified for preferring of appeal; and

(b) where the appeal has been preferred against such an order and the appeal has been dismissed, from the date of the order of dismissal.

(6) The Authority shall, on cancellation of the registration for reasons to be recorded in writing, restrain immediately the mental health establishment from carrying on its operations, if there is imminent danger to the health and safety of the persons admitted in the mental health establishment.

(7) The Authority may cancel the registration of a mental health establishment if so directed by the Mental Health Review Commission or a Board to do so.

Inspection and inquiry.

68. (1) The Authority may, *suo motu* or on a complaint received from any person with respect to non adherence of minimum standards specified by or under this Act or contravention of any provision thereof, order an inspection or inquiry of any mental health establishment, to be made by such person as may be prescribed.

(2) The mental health establishment shall be entitled to be represented at such inspection or inquiry. 5

(3) The Authority shall communicate to the mental health establishment the results of such inspection or inquiry and may after ascertaining the opinion of the mental health establishment, order the establishment to make necessary changes within such period as may be specified by it. 10

(4) The mental health establishment shall comply with the order of the Authority made under sub-section (3).

(5) If the mental health establishment fails to comply with the order of the Authority made under sub-section (3), the Authority may cancel the registration of the mental health establishment. 15

(6) The Authority or any person authorised by it may, if there is any reason to suspect that any person is operating a mental health establishment without registration, enter and search in such manner as may be prescribed, and the mental health establishment shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry. 20

Appeal to High Court against order of Authority.

69. Any mental health establishment aggrieved by an order of the Authority refusing to grant registration or renewal of registration or cancellation of registration, may, within a period of thirty days from such order, prefer an appeal to the High Court in the State:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days. 25

Certificates, fees and register of mental health establishments.

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

(2) In case the certificate is destroyed or lost or mutilated or damaged, the Authority may issue a duplicate certificate on the request of the mental health establishment and on the payment of such fees as may be prescribed. 30

(3) The certificate of registration shall be non-transferable and valid in case of change of ownership of the establishment.

(4) In the event of change of category of the mental health establishment, such establishment shall surrender the certificate of registration to the Authority and the mental health establishment shall apply afresh for grant of certificate of registration in that category. 35

Maintenance of register of mental health establishment in digital format.

71. The Authority shall maintain in digital format a register of mental health establishments, registered by the Authority, to be called the Register of Mental Health Establishments and shall enter the particulars of the certificate of registration so granted in a separate register to be maintained in such form and manner as may be prescribed. 40

Duty of mental health establishment to display information.

72. (1) Every mental health establishment shall display within the establishment at conspicuous place (including on its website), the contact details including address and telephone numbers of the concerned Board.

(2) Every mental health establishment shall provide the person with necessary forms to apply to the concerned Board and also give free access to make telephone calls to the Board to apply for a review of the admission. 45

CHAPTER XI

MENTAL HEALTH REVIEW COMMISSION

- 5 **73.** (1) The Central Government shall, within nine months from the date on which this Act receives the assent of the President, constitute the Mental Health Review Commission to exercise the powers conferred upon and to perform the functions assigned to it under this Act. Constitution of Mental Health Review Commission.
- (2) The head office of the Commission shall be at Mumbai.
- 10 **74.** (1) The Commission shall consist of a president and four members. Composition of Commission.
- (2) The president and members of the Commission shall be appointed by the President of India on recommendation of the Selection Committee referred to in sub-section (1) of section 76:
- Provided that in case a serving Chief Justice of a High Court or a Judge of the High Court with five years experience is appointed as the president of the Commission, he shall be appointed in consultation with the Chief Justice of India.
- 15 **75.** (1) A person shall be qualified to be appointed as the president of the Commission, if he is a serving or retired Chief Justice of a High Court or a Judge of the High Court with five years experience. Qualifications for appointment of president and members of Commission.
- (2) A person shall be qualified to be appointed as a member, if such person has ability, integrity and standing, and adequate knowledge and experience in mental health.
- 20 (3) Out of the four members referred to in section 74, one each shall be chosen from amongst—
- (a) psychiatrists having at least fifteen years experience in the field;
- (b) persons with mental illness or representatives of persons with mental illness;
- 25 (c) representatives of families and care-givers to person with mental illness or of non-Governmental organisations working in the field of mental health;
- (d) persons having at least fifteen years of experience in public administration.
- 76.** (1) The Central Government shall, for the purpose of selection of the president and members of the Commission, constitute a Selection Committee consisting of— Selection Committee.
- (a) Chief Justice of India —chairperson;
- 30 (b) Secretary of the Department of Health and Family Welfare in the Ministry of Health and Family Welfare as the convener—member;
- (c) Secretary of the Department of Disability Affairs in the Ministry of Social Justice and Empowerment—member;
- (d) Secretary of the Ministry of Women and Child Development—member;
- 35 (e) Secretary, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy in the Ministry of Health and Family Welfare—member;
- (f) an eminent person working in the field of mental health—member.
- (2) The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of the president or a member of the Commission and three months before the superannuation or completion of the term of office of the president or any member of that Commission, make a reference to the Selection Committee for filling up of the vacancy.
- (3) The Selection Committee shall finalise the selection of the president and members of the Commission within two months from the date on which the reference is made to it.
- 45 (4) The Selection Committee shall issue a public advertisement seeking applications from persons for recommendation of names in respect of categories mentioned under clauses (a), (b), (c) and (d) of sub-section (3) of section 75.

(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(6) Before recommending any person for appointment as a president or other member of the Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his functions as a member. 5

(7) Subject to the provisions of sub-sections (1) to (6), the Selection Committee shall regulate its own procedure.

(8) No appointment of the president or other member of the Commission shall be invalid merely by reason of any vacancy in the Selection Committee. 10

Term of office, salaries and allowances of President and other members.

77. (1) The president of the Commission shall be appointed on whole time basis and the members of the Commission shall be appointed on the whole time or part-time basis as the Central Government may decide.

(2) The president and the other members of the Commission shall hold office as such for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: 15

Provided that the president or the member shall not hold office as such after he has attained the age of seventy years.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the president and other members shall be such as may be prescribed by the Central Government: 20

Provided that neither the salary and allowances nor the other terms and conditions of service of the president and other members of the Commission shall be varied to their disadvantage after their appointment.

Vacancies, etc., not to invalidate proceedings of Commission.

78. No act or proceeding of the Commission shall be invalid merely by reason of— 25

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as a member of the Commission; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case. 30

Staff of Commission.

79. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.

(2) The officers and other employees of the Commission shall discharge their functions under the general superintendence of the president. 35

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission shall be such as may be prescribed by the Central Government.

Constitution of Mental Health Review Boards.

80. (1) The Commission shall, with the prior concurrence of the concerned State Government, constitute Boards to be called as Mental Health Review Board in the districts of that State. 40

(2) The number, location and jurisdiction of the Boards shall be decided by the Commission in consultation with the concerned State Government.

(3) While constituting the Boards under sub-section (1), the Commission shall have regard to the followings, namely:—

(a) the expected or actual workload of the Board in the State in which such Board is to be constituted;

5 (b) number of mental health establishments existing in the State;

(c) the number of persons with mental illness;

(d) population in the district in which the Board is to be constituted;

(e) geographical and climatic conditions of the district in which the Board is to be constituted.

10 **81.** Each Board shall consist of—

Composition
of Board.

(a) a District Judge, or an officer of the State judicial services who is qualified to be appointed as District Judge or a retired District Judge who shall be chairperson of the Board;

15 (b) representative of the District Collector or District Magistrate or Deputy Commissioner of the districts in which the Board is to be constituted;

(c) two members who shall be mental health professionals of whom at least one shall be a psychiatrist;

20 (d) two members who shall be persons with mental illness or care-givers or persons representing organisations of persons with mental illness or care-givers or non-governmental organisations working in the field of mental health.

82. (1) A person shall be disqualified to be appointed as the president or a member of the Commission or be removed by the President of India on the recommendation of the Central Government, if he—

Disqualification
and removal.

25 (a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(b) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(c) is adjudged as an insolvent; or

30 (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 Central Government.

(2) A person shall be disqualified to be appointed as the chairperson or a member of a Board or be removed by the Commission, if he—

35 (a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(b) is adjudged as an 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

40 (d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or

