

WORKING PAPER
ON
AMENDMENTS
TO THE
MENTAL HEALTH ACT, 1987

DRAFT DATED 28TH FEBRUARY 2010

Prepared by

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for

The Ministry of Health
Government of India
New Delhi

28th February 2010

A National Consultation on the Mental Health Programme was held on 22nd January 2010 under the Chairpersonship of Secretary, Health & Family Welfare, Government of India with the objective to review and identify gaps in the Mental Health Programme and actions to fill up these gaps. The first item on the agenda for this meeting was a discussion of the Mental Health Act, 1987.

It was felt that the MHA 1987, is archaic and needs amendments. It was felt by all the participants that the law should move towards supporting, promoting and protecting the rights of persons with mental illness. Participants also felt there should be a departure from the policy of dealing with mental illness just as a law and order problem, the focus should be community care, and a range of support systems should be incorporated into the MHA. Hence it was suggested an urgent relook at the issues related to involuntary admission, reception orders, guardianship etc was needed. While revisiting the Mental Health Act, it has to be ensured that the proposed amendments are in harmony with the United National Convention on Rights of the Physically Disabled which India ratified in May, 2008.

It was decided at the National Consultation meeting that Dr. Soumitra Pathare, Consultant Psychiatrist and Coordinator, Centre for Mental Health Law & Policy, ILS College, Pune would take the lead along with IPS and other members in revisiting the Mental Health Act, 1987 to bring it in harmony with the United Nations' Convention on Rights of Persons with Disability (UNCRPD) ratified by the Government of India in May, 2008 and in tune with the present requirements. The first draft will be circulated by 28th Feb, 2010 among the participants of this meeting and other stakeholders and comments will be sought by 15th March, 2010. On the basis of comments received, the draft will be amended by end of March, 2010. In April, regional consultations would be held on the proposed Amendments and the final draft Amendments to the Mental Health Act would be crystallized. Thereafter it would be forwarded to Ministry of Law for comments and vetting by the end of June 2010.

As per the time table above, the first draft of the proposed amendments is sent to you for your opinion. We request you to have a look at the proposed amendments and **send in your comments and suggestions on the proposed amendments, in writing by the 15th March 2010.**

It would be appreciated if the feedback was sent in the following format

A. General Feedback on various aspects of the legislation such as admission procedures, supported decision making structures, rights protection etc.

B. Detailed feedback on specific sections in the Act in the format below :

Chapter No.

Section No

Proposed amendments to this section in this documents (write none if no proposed amendments)

Your suggestions for changes/modification to the existing section and/or proposed amendments

Why you are proposing the change (rationale for proposed changes)

Other related remarks

We request you to send your comments to Dr Soumitra Pathare in writing, preferably on email at his personal email address which is as follows:

incarnapune@gmail.com

Alternatively, if you wish to use the post, the address is

Dr Soumitra Pathare/Dr Jaya Sagade
Co-ordinator, Centre for Mental Health Law and Policy
Indian Law Society,
ILS Law College Campus
Law College Road
Pune 411004
INDIA

If you wish to send your comments to the Ministry, please address your comments to Mr V Venkatachalam, Additional Secretary, Ministry of Health and Family Welfare, New Delhi and mark a copy of the same to us so that you comments can be collated by us at the Centre.

Warm Regards

**Dr Soumitra Pathare
Dr Jaya Sagade
Centre for Mental Health Law and Policy, ILS Pune.**

General:

1. Replace the term '**mentally ill**' with the term "**person(s) with mental illness**" across the entire Act

Explanation: Language has a role in stigma associated with any condition. It is therefore important to separate the person from the illness, hence 'persons with mental illness' is preferred to the term 'mentally ill person' where the use of the adjective, makes the illness the identity of the person.

2. Replace the term '**psychiatric hospital or psychiatric nursing home**' with the term '**mental health facility**' throughout the Act

Explanation : this is broader definition and also includes non-medical facilities where persons with mental illness may be treated. (see definition q below)

Description

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

replace with

An Act to protect and promote the rights of persons with mental illness during the delivery of health care in institutional and community settings by :

- providing treatment in the least restrictive environment and manner**
- setting out the procedures to be followed when persons are admitted to mental health facilities,**
- establishing registration, review and complaints procedures,**
- setting up a support system to assist persons with mental illness make decisions regarding treatment and other matters, and**
- to provide for other matters connected therewith.**

Statement of Objects and Reasons

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

replaced with

1. The attitude of the society towards persons **afflicted** with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness. Thus **persons with mental illness should be treated like other persons with health problems and persons with disability** and the environment around them should be made as **conducive as possible to facilitate recovery, rehabilitation and full participation in society.**

2. The **experience of the working of Indian Lunacy Act, 1912 (4 of 1912) has revealed that it has become out-moded.** With the rapid advance of medical science and the understanding of the nature of **malady**, it has become necessary to have fresh legislation with provisions for treatment of **mentally ill**

persons in accordance with the new approach.

replaced with

2. The experience of the working with the current Act has shown up many flaws in the actual implementation of the same and the understanding of mental illness under the Act. With the rapid advance of medical sciences, advances in the understanding of rights of persons with mental illnesses, advances in our understanding of legal capacity, advances in the understanding of the nature of illness and disability, and to fulfill the obligations under the Constitution of India and the international obligations under the various International Conventions ratified by India, it has become necessary to amend the Mental Health Act to bring the provisions for treatment of persons with mental illness in accordance with the new approach.

3. It is considered necessary -

- 1) To regulate admission to **psychiatric hospitals or psychiatric nursing homes of mentally ill persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained;**
- 2) **To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;**
- 3) To protect citizens from being detained in **psychiatric hospitals or psychiatric nursing homes** without sufficient cause;
- 4) **To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;**
- 5) To provide facilities for establishing **guardianship or custody of mentally ill persons who are incapable of managing their own affairs;**
- 6) To provide for the establishment of Central Authority and State Authorities for Mental Health Services;
- 7) To regulate the powers of the Government for establishing, licensing and controlling **psychiatric hospitals and psychiatric nursing homes for mentally ill persons;**
- 8) To provide for legal aid to **mentally ill persons** at State expense in certain cases.

replaced with

3. As persons with mental illness constitute a vulnerable section of society it is considered necessary -

1. To regulate admission of persons with mental illness to mental health facilities and to protect the rights of such persons when admitted in a mental health facility ;
2. ~~-(delete)-To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;~~
3. To protect citizens from being admitted in mental health facilities without sufficient cause;
4. ~~(delete) To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;~~
5. To provide facilities for establishing supported decision making systems for persons with mental illness who may need such support;
6. To provide for the establishment of Central Authority and State Authorities for Mental Health Services and State Mental Health Commissions ;
7. To regulate the powers of the Government for **establishing, (delete) registering and regulating mental health facilities;**

8. To provide for legal aid to persons with mental illness at State expense in certain cases.
9. **To ensure that care is provided in the least restrictive environment possible, and in a manner that intrudes on the rights and dignity of the person to the least degree possible. Where possible, community-based solutions, preferably in the vicinity of the person's usual place of residence, are to be preferred to institutional solutions.**
10. **Care and treatment of mental illness will be directed to the improvement of the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life.**

Chapter 1 : Preliminary

Section 1. No change

Section 2. Definitions

(a) "cost of maintenance" in relation to a **mentally ill person** admitted in a psychiatric hospital or psychiatric nursing home, shall mean the cost of such items as the State Government may, by general or special order, specify in this behalf

replaced with

(a) "cost of maintenance" in relation to a **person with mental illness** admitted in a **mental health facility**, shall mean the cost of such items as the State Government may, by general or special order, specify in this behalf

(c) "Inspecting Officer" means a person authorised by the State Government or by the licensing authority to inspect any **psychiatric hospital or psychiatric nursing home**;

replaced with

(c) "Inspecting Officer" means a person authorised by **the State Mental Health Authority** to inspect any **mental health facility** ;

(d)"license" means a licence granted under Sec.8;

replaced with

(d)"**Registration**" means a **mental health facility registered under Chapter III of the Act**

(e) "**licensee**" means the holder of a **licencee (deleted)**

(f) "licensed psychiatric hospital" or "licensed psychiatric nursing home" means a psychiatric hospital or psychiatric nursing home, as the case may be, licensed, or deemed to be licensed, under this Act;

replaced with

(f) "**Registered mental health facility**" means a **mental health facility, registered, or deemed to be registered, under Chapter III of this Act**

(j) "medical officer in charge" in relation to any **psychiatric hospital or psychiatric nursing home**

means the **medical officer** who, for the time being is in charge of that **hospital or nursing home**;

replaced with

(j) "medical officer in charge" in relation to any **mental health facility** means **the medical practitioner or psychiatrist** who, for the time being is in charge of that **mental health facility**;

Explanation: as per definition in this act a 'medical officer' means a gazetted medical officer in the service of the Government or a medical practitioner declared by a general or special order of the State Government to be a medical officer for the purpose of the Act. This thus excludes almost all the medical practitioners and/or psychiatrists working outside the government sector, and thus mental health facilities in the non-governmental sector, effectively do not have a 'medical officer in charge' the way the term is currently defined in the Act.

(l) "**mentally ill person**" means a person who is in need of treatment by reason of any mental disorder other than mental retardation

replaced with

(l) "**Mental illness**" means a substantial disorder of mood, thought, perception, orientation or memory which grossly impairs a person's behavior, judgment, capacity to recognize reality or ability to meet the demands of life and includes conditions flowing from the use or abuse of alcohol and drugs, but excludes mental retardation.

The following criteria need to be fulfilled for a legal determination of mental illness :

(i) A determination of mental illness shall never be made on the basis of political, economic or social status or membership in a cultural, racial or religious group, or for any other reason not directly relevant to mental health status and ;

(ii) Non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in the diagnosis of mental illness and;

(iii) A background of past treatment or hospitalization to a mental health facility may be relevant , but shall not by itself justify any present or future determination of mental illness ;

(iv) No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness, except for purposes directly relating to mental illness or the consequence of mental illness and;

(v) A determination that a person has mental illness shall be made in accordance with internationally accepted medical standards.

Explanation The current MHA definition does not define mental illness but rather defines a 'mentally ill person'. It is important that mental illness is defined so that the boundaries are made clear. Furthermore, certain principles for definition need to be included so that the category is limited and is not abuse for political or other purposes.

There are suggestions that substance misuse should be included in the definition of mental illness,

because substance abuse is included under mental health conditions in classificatory systems, psychiatrists and mental health professionals are involved in the treatment of alcohol and substance abuse conditions and de-addiction centers need to be regulated under this Act. This suggestion has been incorporated in the definition. It is hoped there will be a discussion on this issue of inclusion of substance abuse, before a consensus is reached.

(m) "**mentally ill prisoner**" means a **mentally ill person** for whose detention in, or removal to, a **psychiatric hospital, psychiatric nursing home, jail** or other place of safe custody, an order referred to in section 27 has been made;

replaced with

(m) "**prisoner with mental illness**" means a **person with mental illness** for whose detention in, or removal to, a **mental health facility, jail (deleted) or other place of safe custody, (deleted)** an order referred to in section 27 has been made;

Explanation : Jail is not normally considered a place of safety and most importantly the section 27 referred to in the definition is about transfer of persons with mental disorder from jail to a hospital.

(q) "**psychiatric hospital**" or "**psychiatric nursing home**" means a **hospital or the case may be, a nursing home** established or maintained by the Government or any other person **for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not** include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services.

replaced with

(q) "**mental health facility**" means **all facilities either wholly or partly meant for the care of persons with mental illness**, established or maintained by the Government or any other person **or organization, where persons with mental illness are admitted to, or reside at, or kept in, for care, treatment, convalescence and/or rehabilitation, either temporarily or otherwise; and includes** any general hospital or general nursing home established or maintained by the Government **or any other person or organization; and excludes a family residential place if a person with mental illness resides with his or her own family.**

Explanation: There is lack of clarity whether rehabilitation centers, half way homes etc, especially in the private sector, where persons with mental illness are admitted come under the definition of 'psychiatric hospital'. The proposed amendments to the PWD Act exclude rehabilitation centers from the licensing requirements of the PWD Act, because they are regulated under the Mental Health Act. (see the draft PWD amendments for same). There is also lack of clarity whether any private non-medical institutions where persons with mental illness are kept (sometimes in appalling conditions) come under the Act. The suggested changes make it clear that ALL institutions, medical or non-medical, where persons with mental illness are admitted to or reside at, come under the Act. The primary purpose of the Act is to protect the rights of persons with mental illness when they receive health care for their mental illness. Hence there is no logic in the exclusion of general hospitals and exclusion of any other facilities from the Act. Therefore all exclusions related to mental health facilities are now removed.

New definitions:

(v) 'Mental health professional' for the purpose of the Act, means, a psychiatrist registered as such with the relevant medical council in the state, a registered mental health nurse registered with the relevant nursing council in the state, and clinical psychologists and psychiatric social workers, whose names are included in the Register of mental health professionals maintained by a State Mental Health Authority and/or Central Mental Health Authority.

Explanation: There is a shortage of psychiatrists specifically and mental health professionals in general, in the country. For certain activities in the Act, such as certifying the presence of conditions for a supported admission of a person to a mental health facility under the Act, it would be appropriate to increase the pool of professionals who could carry out these functions. This will help families and persons with mental illness especially in emergency situations, and in non-urban areas which have a paucity of psychiatrists, to access necessary mental health services and care. The Central and/or State Mental Health Authorities will regulate the activities of the 'mental health professional' by making the rules and regulations about qualifications and experience required to be included in the register of mental health professionals.

(w) "carer" includes any person who is not a "relative" (as defined in (t) above), but who normally resides with a person with mental illness and/or is predominantly responsible for providing care to that person.

Explanation : the Act does not recognize care-givers who may not be relatives as defined in the Act. Many persons with mental illness may live with persons who do not necessarily get included in the definition of relative but do provide the bulk of the care and need to be recognised in the Act. Hence it is suggested that this category be included in the Act and also be adequately defined.

(x) "nominated representative" means a person as defined in Section 2.1 of the Act.

(y) "Special Personal Representative means a person as defined under Section 52 of the Act

(z) Mental Health Review Commission means a body established under Chapter II Section 4.1 of the Act

NEW SECTION UNDER CHAPTER 1

Section 2.1 : Nominated Representative

(a) A person who has attained the age of eighteen years and is competent to do so, has the right to appoint a nominated representative. Such appointments shall be made either in writing; or communicated verbally to the person in charge of the person's medical care, who will note the appointment in the person's clinical record and get signature or thumb impression of the person on this record.

(b) The Nominated Representative" for a person with mental illness, under this Act will be the individual in the order of precedence as given below

i) the individual appointed by the person who fulfills criteria as noted under subsection (a) above,

as nominated representative (person who is competent to do so, who is eighteen years and above, appointing own nominated representative); or, if none

ii) the individual named as the nominated representative in an Advance Directive under section 50 sub-section 1 of the Act subject to Section 50 sub-section 6 below; or if none,

iii) the relative as defined in Chapter 1, Section 2 (t) above ; or if none,

iv) the carer as defined in Chapter 1, Section 2 (w) above ; or if none,

v) the person appointed as nominated representative by the Mental Health Review Commission.

In case of persons who are homeless or otherwise, and do not have a nominated representative under (i), (ii), (iii) or (iv) above, any member of the public, or a representative of organizations working with homeless or a representative of organizations working with persons with mental illness, may temporarily perform the duties of a nominated representative and will be recognized as such under this Act, pending appointment of a nominated representative by the Mental Health Review Commission.

(c) Notwithstanding subsection (b) above, the nominated representative for a person under the age of eighteen years ("minor") shall be the legal guardian of that person, unless a Mental Health Review Commission orders otherwise under subsection (d) below

(d) Upon application by a mental health professional and based on evidence presented before it, a Mental Health Review Commission may order that the legal guardian of a person under the age of eighteen years ("minor") will not be the nominated representative of the person on the grounds that either :

(i) the legal guardian is not acting in the best interests of the person; or

(ii) the legal guardian is otherwise unsuitable to act as the nominated representative.

When the Mental Health Review Commission makes an order under paragraph (d), it shall designate another individual to act as the nominated representative of the person. The provisions of Chapter 1 section 2.1 apply to appointments under this sub-section.

(e) In deciding who should be appointed as the nominated representative for a person under subsection (b)(v) or subsection (d) above, the Mental Health Review Commission shall consider –

(i) the current and past wishes of the person, insofar as these can be reasonably ascertained;

(ii) the knowledge of the proposed nominee of the life history, values, cultural background of the person;

(iii) the views of family members and carers of the person, and in particular of the individual(s), who, but for an appointment under this section, would be the nominated representative of the person;

(iv) the ease with which the proposed nominee can be contacted in furtherance of fulfilling the role described in this Act.

(v) such other factors as the Mental Health Review Commission may deem appropriate in determining whether the proposed nominee is a suitable person to fulfill the role described in this Act

(f) The person nominated to be representative must be at least eighteen years of age, must be competent to fulfill the role as described in this Act, and signify, in writing, his or her willingness to perform the role.

(h) Anyone who has made an appointment under this section may revoke the appointment if they

are competent to do so. Such revocation must be in writing, or by direct communication with the mental health professional or psychiatrist or medical officer in charge of the mental health facility, who will note that revocation in the patient's clinical record and get signature or thumb impression of the person this record.

(i) The Mental Health Review Commission may in writing revoke an appointment made under this section, and may appoint a different representative under this section when appropriate to do so.

(j) Applications to the Mental Health Review Commission to make, revoke, alter, change, or modify an appointment under this section may be made by the person with mental illness, or by a relative of such person, or by the mental health professional responsible for the care of such person, or by the medical officer in charge of the mental health facility where the individual is or is proposed to be admitted.

(k) In fulfilling his or her duties under this Act, the nominated representative shall consider the wishes of the individual, both at the time the decision is to be made and in the past, the life history, values, cultural background of the individual and the best interests of the individual. The nominated representative will give particular credence to the views of the person to the extent that person understands the nature of the decisions under consideration.

(l) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, does not presume or should not be taken to presume a lack of legal capacity. All persons with mental illness have legal capacity but may require varying levels of support from their nominated representative to make decisions. The amount of support required may vary in amount from little support to very high support and over time.

Chapter II: Mental Health Authorities

replaced with

Chapter II : Mental Health Authorities and State Mental Health Review Commissions

Section 3 : Central Authority For Mental Health Services

1. The Central Government shall establish an authority for mental health with such designation as it may deem fit.
2. The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government.
3. The authority established under sub-section (1) shall -
 - a. be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government.
 - b. Supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or

detained) directly under the control of the Central Government.

- c. Advise the Central Government on all matters relating to mental health; and
- d. Discharge such other functions with respect to matters relating to mental health as the Central Government may require.

replaced with

Section 3 : Central Authority For Mental Health Services

1. The Central Government shall establish an authority for mental health with such designation as it may deem fit.
2. The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government.
3. The authority established under sub-section (1) shall -
 - a. be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government.
 - b. Supervise **mental health facilities** and other Mental Health Service Agencies ~~(including places in which mentally ill persons may be kept or detained)~~ **(delete)** directly under the control of the Central Government.
 - c. Advise the Central Government on all matters relating to mental health; and
 - d. Discharge such other functions with respect to matters relating to mental health as the Central Government may require.
 - e. **Co-ordinate programs run by different ministries in the Central Government which impact upon persons with mental illness, such as social justice programs, employment programs, and other such programs that may be for the benefit of persons with mental illness, and also to co-ordinate activities in the field of mental health between Central and State Governments.**
 - f. **Maintain and publish an all India register of registered mental health professionals as defined under the Act, which is an amalgamation of the registers maintained by the State Mental Health Authorities**
 - g. **Maintain and publish an all-India register of registered mental health facilities in the country which is an amalgamation of the registers maintained by the State Mental Health Authorities**

4. State Authority For Mental Health Services

1. The State Government shall establish an authority for mental with such designation as it may deem fit.

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

replaced with

4. State Authority For Mental Health Services

1. The State Government shall establish an authority for mental health with such designation as it may deem fit.
2. The Authority established under sub - section (1) shall be subject to the superintendence, direction and control of the State Government.
3. The Authority established under sub - section (1) shall -
 - a. be in charge of regulation, development and co-ordination with respect to Mental Health Service under the State Government and all other matters which, under this Act , the concern of the state Government or any officer or authority subordination to the State Government :
 - b. supervise **mental health facilities** and other Mental health Services Agencies ~~(including places in which mentally ill persons may be kept or detained)~~ **(delete) in the State under the control of the State Government :**
 - c. advise the State Government on all matters relating to mental health ; and
 - d. discharge such other functions with respect to matters relating to mental health as the State Government may require and;
 - e. **Co-ordinate all activities of the State Government which are relevant for the benefit of persons with mental illness**
 - f. **be in charge of registration of mental health facilities in the State under Chapter III of the Act and maintain a register of such facilities and;**
 - g. **make rules, criteria and regulations for the registration of clinical psychologists**

and psychiatric social workers as mental health professionals in the state and to maintain a register of such mental health professionals as defined in the Act and;

- h. train all relevant persons including judicial officers, mental health, other health professionals and others, in the use of the Act.

NEW SECTION

Section 4.1 : Mental Health Review Commission (alternative term suggested is : Mental Health Review Board)

1. The State Government shall establish a State Mental Health Review Commission (referred to as the Commission subsequently) within 6 months of notification of the amendment to this Act. The State Mental Health Review Commission shall have jurisdiction over all mental health facilities which are geographically located within the State.

2. Composition of the Commission

The Commission shall consist of

a) President, who shall be a person who is or has been or is qualified to be appointed, as Judge of a High Court. This appointment shall be made by the State Government in consultation with the Chief Justice of the High Court in the State.

b) Members :

i) Judicial members : persons who are, or have been, or are qualified to be appointed as District Judges

ii) Professional members: persons who are recognized and registered as mental health professionals for the purpose of this Act in the Register maintained by the Central or State Mental Health Authority

iii) Representatives of persons with mental illness and family members of persons with mental illness

c) Provided that all members shall have the following qualifications :

i) possess a bachelor's degree from a recognized University and;

ii) be persons of ability, integrity and standing;

d) A person shall be disqualified for appointment as a member if he or she :

i) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or

ii) is an undischarged insolvent; or

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

iv) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

v) has such other disqualifications as may be prescribed by the State Government;

e) Every appointment as Member to the Commission shall be made, following public advertisement, by a Selection Committee comprising of the President of the Commission, who shall be the Chairperson of the Selection Committee, and Secretary (or a suitable person

nominated by the Secretary to carry out this function) of Law Department of the State and Secretary (or a suitable person nominated by the Secretary to carry out this function) of Health Department of the State .

f) The President and every member of the Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier. The President and a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he or she fulfills the qualifications and other conditions for appointment mentioned in sub-section 2 (b) and (c) above and such re-appointment is made on the basis of the recommendation of the Selection Committee. The President may resign his office in writing addressed to the State Government, while a member may resign his office in writing addressed to the President of the Commission and on such resignation being accepted, his office shall become vacant and shall be filled by appointment of a person, possessing any of the qualifications mentioned in sub-sections 2 (b) and 2 (c) above in relation to the category of the member who is required to be appointed, in place of the person who has resigned.

g) The President of the Commission shall be a full time appointment. The appointment of members on a full-time or part time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

h) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the President and members of the State Commission shall be such as may be prescribed by the State Government.

3. Panels of the Commission

a) The jurisdiction, powers and authority of the Commission shall be exercised by the Panels of the Commission;

b) A Panel shall be constituted by the President of the Commission for a duration as specified by the President and shall consist of 3 members namely a judicial member, a professional member, and a member representing persons with mental illness and/or their families ; The President of the Commission has the power to change, alter or modify appointment of members of any Panel.

c) A Panel will be chaired by the judicial member of the Panel ;

d) If the members of the Panel differ in opinion on any point, it shall be decided according to the opinion of the majority;

e) The State Commission shall function from the Capital of the State but shall appoint as many Panels in each district of the State depending on the workload in the district, and in as many Districts of the State taking into account the presence of mental health facilities in the district and the convenience of persons with mental illness, their families and the professionals involved in providing care in mental health facilities in the district.

4. Hearings and Process

a) All proceedings before a Panel of the Commission shall be deemed to be a judicial proceeding within the meaning of section.....of the Indian Code and the Panel shall be deemed to be a civil court for the purposes of the Act.

b) Any matter before the Panel shall be heard expeditiously as possible. An endeavor shall be made to dispose of any applications for appointment of nominated representative under section

2.1 of the Act and applications challenging admissions under section 19 of the Act within a period of 7 days from the filing of the application, and applications challenging admission under section 16 and section 20 of the Act within a period of 30 days from filing of the application. With respect to all other applications under other sections of the Act, an endeavor shall be made to finally dispose of the appeal within a period of ninety days from the date of filing of the application.

c) With respect to review to be carried out by the Commission under Section 16 and Section 20 of the Act, the Panel shall endeavor to complete such review within a period of 30 days from the time it is due. The Panel may decide to hold a hearing in this regard if it feels it necessary to do so.

d) No adjournment shall be ordinarily granted by the Panel unless sufficient cause is shown and reasons for grant of adjournment have been recorded in writing by the Panel.

e) The parties to the hearing will be the person with mental illness, his or her nominated representative, and the medical officer in charge of the mental health facility or mental health professional responsible for the care of the person as the case may be. The parties may be represented by counsel or other representative of their choice, or may appear in person.

f) The hearing shall not be open to the public. Persons other than those directly involved may be admitted with the permission of both the person with mental illness and the chairperson of the Panel.

g) The person with mental illness about whom the hearing relates shall have the right to give oral evidence to the Panel, if he or she wishes to do so. The Panel shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate under the circumstances.

h) All parties have the right to see any document relied on by any other party in its submissions to the Panel.

i) The decision of the Panel will be communicated to the parties in writing with reasonable promptness, and in any event within three days of the termination of the hearing.

j) Where it is brought to the notice of the Commission that a mental health facility is willfully neglecting the orders of the Commission, the Commission may, without prejudice to any other action that the Commission may take against the facility, recommend to the State Mental Health Authority to cancel the registration of the mental health facility.

k) Where it is brought to the notice of the Commission that a mental health facility is persistently violating the rights of persons with mental illness, the Commission shall direct the State Mental Health Authority to conduct an inspection and inquiry under section 7 subsection 22 of the Act below, and submit a report of such inspection and inquiry to the Commission, and the action taken or proposed to be taken by the State Mental Health Authority under section 7 sub-section 21 and sub-section 22, to protect the rights of persons with mental illness in such mental health facility. Notwithstanding anything else in the Act, the Commission may take any action as it deems appropriate, to protect the rights of persons with mental illness in mental health facilities.

j) If in any judicial process before a competent court in the State, a certificate about mental illness is produced and is challenged by the other party, the court shall refer the certificate for further scrutiny to the State Mental Health Review Commission and the Commission after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, shall certify its opinion to the relevant court.

5. Appeals

Any party may appeal the decision of the Panel of the Commission on any question of fact or law to the High Court of the State.

6. The Commission may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act. The salary and allowances payable to and the other conditions of service of the officers and other employees of the Commission appointed under this section shall be such as may be determined by regulations.

7. The State Government shall, after due appropriation made by State Legislature by law in this behalf, make to the Commission grants of such sums of money as are required to pay salaries and allowances payable to the Chairperson and the members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Commission.

8. The Commission may, from time to time, make Regulations for the purpose of carrying out the provisions of this section.

Explanation : The establishment of a independent, competent, judicial review body is necessary under Constitutional requirements as well as international obligations under binding conventions signed by India.

Chapter III : Psychiatric Hospitals and Psychiatric Nursing Homes

replaced with

Chapter III : Mental Health Facilities

Section 6

Establishment or maintenance of psychiatric hospitals or psychiatric nursing homes only with licence

1. On and after the commencement of this Act, no person shall established or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid licence granted to him under this Act:

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

- a. for a period of three months from such commencement,
- b. if an application made in accordance with Sec. 7 for a licence is pending on the expiry of the period

specified in CI. (a) till the disposal of such application.

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

replaced with

Section 6 : Registration and standards for mental health facilities

1. It shall be the responsibility of the State Mental Health Authority to compile and update a register of mental health facilities in the State.

2. No person or organization shall establish or carry on a mental health facility unless it has been registered with the State Mental Health Authority under the provisions of this Act

3. For registration and continuation of registration, every mental health facility shall fulfill :

- a) the minimum standards of facilities and services as may be prescribed ;**
- b) the minimum qualifications for the personnel as may be prescribed ;**
- c) provisions for maintenance of records and reporting as may be prescribed ;**
- d) and any other conditions as may be prescribed.**

4. Categories and standards

a) Mental Health facilities shall be classified into such categories, as may be prescribed by the State Government on the advice of the State Mental Health Authority, from time to time.

b) Different standards may be prescribed for classification of different categories referred to in sub-section (a) above.

c) In prescribing the standards for mental health facilities, the State Government will have regard to local conditions.

d) Notwithstanding anything in this section, the State Government in consultation with the State Mental Health Authority is duty bound to publish standards for different categories of mental health facilities within a period of two years from this amendment to the Act, coming into force.

Section 7 : Application for licence

replaced with

Section 7. Procedure for Registration, Grant of Registration, Refusal of Registration, Renewal of Registration, Cancellation of Registration and Inspection of mental health facilities

1. For the purpose of registration of the mental health facility, an application in the prescribed proforma accompanied by such details as may be prescribed, along with the prescribed fee shall be furnished to the State Mental Health Authority

2. The application may be furnished in person or by post or online.

3. If any mental health facility is in existence at the time of amendment to this Act coming into force, an application for its provisional registration shall be made within one year from the date of the amendment coming into force.

4. The Authority shall within a period of ten days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and information as may be prescribed ;

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

6. The Authority shall within a period of 45 days from the grant of the provisional registration, cause to be published, in print and in digital form online, all particulars of the mental health facility to be registered.

7. Every provisional registration shall be valid for a period of 12 months from the date of issue of the certificate and such registration shall be renewable.

8. Where standards for particular categories of mental health facilities have been notified by the State Government, under section 6 sub-section 4 above, the mental health facilities in that category will have to apply for and obtain permanent registration within a period of 1 year from notification of these standards. The Authority shall publish these standards in print and online in digital format.

9. Where standards for particular categories of mental health facilities have not yet been notified by the State Government, under section 6 sub-section 4 above, the mental health facilities in those categories may apply for a renewal of provisional registration 30 days before the expiry of the validity of certificate of provisional registration. If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such enhanced fees, as may be prescribed.

10. Application for permanent registration by a mental health facility shall be made to the Authority in such form and be accompanied by such fees, as may be prescribed.

11. The mental health facility shall submit evidence that the facility has complied with the prescribed minimum standards in a manner as prescribed by the Authority

12. As soon as the mental health facility submits the required evidence of the mental health facility having complied with the prescribed minimum standards, the Authority shall cause to be displayed for information of the public at large and for filing objections, if any, in a manner prescribed by the Authority, all the evidence submitted by the mental health facility for a period of 30 days before processing for grant of permanent registration. Such information shall at the minimum be displayed on the website to be maintained by the Authority for this purpose.

13. If objections are received within the period referred to in sub-section 12 above, such objections shall be communicated to the mental health facility for response within a period as prescribed by the Authority.

14. Permanent registration shall be granted only when a mental health facility fulfills the prescribed standards for registration by the State Government.

15. The Authority shall pass an order within a period of 30 days after expiry of the prescribed period, either

- a) allowing the application for permanent registration or
- b) disallowing the application

Provided that the Authority shall record its reasons, if it disallows an application for permanent registration. The Authority may also grant a period of time, not exceeding a period of 6 months to the mental health facility for rectification of the deficiencies which have led to disallowing the application.

16. Notwithstanding anything said above, if the Authority has not communicated any objections received by the Authority to the mental health facility under sub-section 13, nor has the Authority passed an order under sub-section 15 above, within a period of 90 working days from the date of application for permanent registration by the mental health facility, it will be deemed that the Authority has allowed the application for permanent registration.

17. The Authority shall issue a certificate of permanent registration in such form and containing such particulars as it may prescribe, if the Authority has allowed an application under sub-section 15 or sub-section 16 above.

18. Every permanent registration shall be valid for a period of 36 months from the date of issue of the certificate and such registration shall be renewable. The mental health facility may apply for a renewal of permanent registration 90 days before the expiry of the validity of certificate of provisional registration.

19. The disallowing of an application for permanent registration shall not debar a mental health facility from applying afresh for permanent registration under sub-section 10 above and after providing such evidence of having rectified the deficiencies on which grounds the earlier application was disallowed.

20. If at any time after the mental health facility has been registered, the Authority is satisfied that :

- a) the conditions of the registration are not being complied with ; or
- b) the person or persons or entities entrusted with the management of the mental health facility have been convicted of an offence under this Act; or
- c) the mental health facility is found to be persistently violating the rights of persons with mental illness,

it may issue a show cause notice to the mental health facility as to why its registration under this Act should not be canceled for the reasons to be mentioned in the notice.

21. If after giving a reasonable opportunity to the mental health facility under sub-section 20 above, the Authority is satisfied that there has been a breach of any of the provisions of conditions for registration or any Rules made under this Act, the Authority may without prejudice to any other action that it may take against the mental health facility, cancel its registration. Where the Authority is satisfied that the mental health facility is persistently violating the rights of persons with mental illness and where the mental health facility does not, within a reasonable, time, take action to the satisfaction of the Authority to protect the rights of persons with mental illness, the Authority may without prejudice to any other action it may take against the facility, cancel its registration.

Every order made under this sub-section shall take effect

- a) where no appeal has been made against such order, immediately on the expiry of the period prescribed for such appeal and ;
- b) where such appeal has been preferred against such an order and the appeal has been dismissed from the date of the order of dismissal

The Authority after cancellation of the registration for reasons to be recorded in writing, may restrain immediately the mental health facility from carrying on if there is imminent danger to the health and safety of the persons admitted in the mental health facility.

22. Inspection and Inquiry

- a) The Authority shall have the right to cause an inspection of, or inquiry in respect of any mental health facility, to be made by such person or persons as it may direct and that mental health facility shall be entitled to be represented at such an inspection or inquiry.
- b) The Authority shall communicate to the mental health facility the view of the Authority with reference to the results of such inspection or inquiry and may after ascertaining the opinion of the mental health facility, advise the facility upon the action to be taken.
- c) The mental health facility shall report to the Authority the action which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time as the Authority may direct.
- d) Where the mental health facility does not, within a reasonable time, take action to the satisfaction of the Authority, it may, after consideration any explanations furnished or representation made by the mental health facility issue such directions as the Authority may deem fit, and the clinical establishment shall comply with such directions.

23. The Authority or any person authorized by the Authority, may, if there is any reason to suspect that anyone is running a mental health facility without registration, enter and search in the manner prescribed by the Authority, at any reasonable time and the mental health facility shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry.

Section 8 : Grant or refusal of licence

replaced with

Section 8 : Certificates, Fees and Register of mental health facilities

1. Every mental health facility shall display the certificate of registration in a conspicuous place in the mental health facility in such manner so as to be visible to everyone visiting the mental health facility
2. In case the certificate is destroyed, lost, mutilated or damaged the Authority may issue a duplicate certificate on the request of the mental health facility and on the payment of such fees as may be prescribed
3. The certificate of registration shall be non-transferable and in event of change of ownership or

change of category, or change of management, or on ceasing to function as a mental health facility, the certificate shall be surrendered to the Authority and the mental health facility shall apply afresh for grant of certificate of registration.

4. The Authority may charge fees for different categories of mental health facilities, as may be prescribed.

5. The Authority shall maintain in digital format a register of mental health facilities, registered by the Authority, to be called the State Register of Mental Health Facilities and shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner as may be prescribed.

6. The Central Mental Health Authority shall maintain in digital format an all-India register of mental health facilities that shall be an amalgam of the State Register of Mental Health Facilities maintained by the State Mental Health Authorities.

Section 9 Duration and renewal of licence

replaced with

Section 9 : Appeal

1. Any mental health facility or person, aggrieved by an order of the Authority refusing to grant or renew a certificate of registration or revoking a certificate of registration may appeal to the High Court in the State.

Explanation: The current licensing procedure has been shown to be unworkable. This amended procedure for registration of mental health facilities is largely based on the Clinical Establishments Bill which is currently in Parliament and when it becomes law, requires registration of all health establishments in the country. Because mental health facilities have special requirements, which are not the same as those for other clinical establishments, it would be advisable, to have a registration procedure for mental health facilities within the Act.

Sections 10, 11, 12, 13, 14 (repealed)

Chapter IV : Admission to a Mental Health Facility, Treatment in a Mental Health Facility and Discharge from Mental Health Facility

Section 15 : Independent (without support) Admission and Treatment of persons in a mental health facility

An Independent patient or an Independent admission refers to the admission of persons to mental health facilities who can independently (i.e. without support) make decisions or require minimal support in making decisions.

(1) Any person who is not a minor and who considers himself to have a mental illness and desires to be admitted to any mental health facility for treatment may request the medical officer in

charge of the facility to be admitted as a Independent patient.

(2) On receipt of such a request under subsection (1) the medical officer in charge of the facility will admit the person to the facility if he is satisfied that

(a) the person has a mental illness of a severity requiring admission to a mental health facility

(b) the person with mental illness will benefit from admission and treatment to the mental health facility

(c) the person has understood the nature and purpose of admission to the mental health facility and has made the request for admission of his own free will, without any duress or undue influence and can independently make decisions without support or requires minimal support from others in making such decisions.

(3) Every person admitted to a mental health facility shall be bound to abide by such rules and regulations of the mental health facility.

(4) An Independent patient shall not be given treatment without his or her informed consent. If a person is unable to understand the purpose, nature, likely effects of proposed treatment and of the probable result of not accepting the treatment and requires a very high level of support approaching 100% support, in making decisions, he or she will be deemed unable to understand the purpose of the admission under subsection (2) and therefore cannot be admitted under this section of the Act.

(5) Subject to section 18 subsection (3) below, a Independent patient may discharge himself from the mental health facility without the consent of the medical officer in charge of the facility. The medical officer in charge of the facility must ensure that the individual is informed of this right at the time of admission.

(6) A person admitted under this section of the Act may appoint a nominated representative under s 2.1 of this Act.

Explanation : The presumption in all admissions to mental health facility is that the person with mental illness has legal capacity and they may or may not require support to exercise their legal capacity. The level of safeguards provided is based on the level of support needed. The level of safeguards is least for those who need no support or need minimal support to make decisions (as in Section 15) and the level of safeguards is highest for those who have high support needs, such that those persons who need very high or nearly 100% support are provided with substantial protection including judicial review. This is in harmony with the recommendations of the CRPD.

Thus there are two types of admissions for adults under this Act: independent admission, where the person can decided for himself or herself, without support or requires minimal support, and supported admissions where the persons needs substantial or high support approaching 100% support. Supported admissions are further divided into short term supported admission (section 19) and long term supported admission (section 20) and persons admitted under section 20, because of their vulnerability and the longer duration of admission, are provided with the highest level of safeguards, as recommended in international conventions.

High levels of support bordering on 100% support is also viewed as a temporary phenomena. As soon as the person is judged to be able to make independent decisions, he or she is allowed to decide for himself or herself. Alternatively, at the end of the prescribed period, the need for such high level of

support has to be reviewed and continued only if considered absolutely necessary.

Section 16 : Request by guardian for admission of a ward

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

replaced with

Section 16 : Admission of a minor to a mental health facility

Any individual under the age of eighteen years (minor) shall be admitted to a mental health facility only in exceptional circumstances and following the procedure as laid down in this section.

1. The nominated representative for the minor as defined in Section 2.1 above, shall apply to the medical officer in charge of a mental health facility for admission of the minor to the facility.

2. Upon receipt of such an application, the medical officer in charge of the mental health facility may admit such a minor to the facility, if two mental health professionals, atleast one of whom is a psychiatrist, have independently examined the person in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others, that :

(a) the minor has a mental illness of a severity warranting admission to a mental health facility and;

(b) admission is in the best interests of the minor, with regard to his or her health, well-being or safety, taking into account the wishes of the minor if ascertainable and the cultural, religious and social background of the person, and the mental health professional's reasons for reaching this decision

(c) the mental health care needs of the minor cannot be met unless he or she is admitted as proposed and in particular, all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor and ;

(d) the admission is supported in writing by the nominated representative of the minor

3. Any person under the age of eighteen years so admitted shall be accommodated separately from adults, in an environment that takes into account their age and developmental needs and is of the same level of quality as is afforded to other persons of their age admitted to hospitals for medical conditions.

4. A minor shall be given treatment with the informed consent of his or her nominated representative appointed in accordance with the provisions of section 2.1 above

5. If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health facility, the minor must be discharged by the mental health facility.

6. Notwithstanding anything else in this Act, no irreversible treatment shall be provided for the mental illness of a minor.

7. Any admission of a minor which continues for a period of 30 days or more must be immediately informed to the Mental Health Review Commission. All admissions of minors continuing beyond 30 days and every subsequent 30 days requires approval from the Mental Health Review Commission. Before giving such approval, the Mental Health Review Commission will carry out a minimum review of the clinical records of the person so admitted. The Commission may interview the minor if it deems necessary.

Explanation : This section relates to admission of minors and is self explanatory. Sub-section 7 has been added as an extra layer of protection as minors are considered especially vulnerable. In the case of minors, the nominated representative is the legal guardian under normal circumstances (see section 2.1 above) and the nominated representative will in almost all circumstances be the legal guardian which in almost all circumstances will be the natural or adopted parent.

**Section 17 : repealed
(this has been covered under the amended section 15 above)**

Section 18 : Discharge of voluntary patients

- (1) The medical officer in charge of a **psychiatric hospital or psychiatric nursing home** shall, on a request made in that behalf -
- (a) by any voluntary patient
 - (b) **by the guardian of the patient if he is a minor voluntary patient,**

discharge subject to provisions of sub-section (3) and within twenty-four hours of the receipt of such request, the patient from the psychiatric hospital or psychiatric nursing home.

replaced with

Section 18 : Discharge of independent patients

- (1) The medical officer in charge of a **mental health facility shall discharge from the mental health facility any person admitted under section 15 of the Act immediately on request made by such a person or if the person disagrees with his or her admission under section 15 of the Act, subject to sub-section (3) below.**

Section 18 : Discharge of voluntary patients

- (2) Where a minor voluntary patient who is admitted as an inpatient in any psychiatric hospital or psychiatric nursing home attains majority, the medical officer in charge of such hospital or nursing home, shall, as soon as may be, intimate the patient that he has attained majority and that unless a request for his continuance as an inpatient is made by him within a period of one month of such intimation, he shall be discharged and if, before the expiry of the said period, no request is made to the medical officer in charge for his continuance as an inpatient, he shall subject to the provisions of sub-section (3) be discharged on the expiry of the said period.

replaced with

- (2) Where a minor has been admitted to a mental health facility under section 16 of the Act, and is now no longer a minor (i.e. completes eighteen years of age), the medical officer in charge of the mental health facility will classify him/her as a Independent patient under section 15 of the Act and all provisions of the Act as applicable to persons who are not minors will apply ;**

Section 18 : Discharge of voluntary patients

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) where the medical officer in charge of a psychiatric hospital or psychiatric nursing home is satisfied that the discharge of a voluntary patient under sub-section (1) or sub-section (2) will not be in the interests of such voluntary patient, he shall, within seventy two hours of the receipt of a request under sub-section (1) or, if no request under sub-section (2) has been made by the voluntary patient before the expiry of the period mentioned in that sub-section, within seventy-two hours of such expiry constitute a Board consisting of two medical officers and seek its opinion whether such voluntary patient needs further treatment and if the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home, the medical officer shall not discharge the voluntary patient, but continue his treatment for a period not exceeding ninety days at a time.

replaced with

Section 18 : Discharge of independent patients

(3) Notwithstanding anything else contained in the Act, a mental health professional may prevent discharge of a person admitted under section 15 of the Act and now seeking discharge, for a period of 24 hours, to allow assessment necessary for admission under section 19 of the Act, if the conditions below are met :

(a) The mental health professional is of the opinion that the person cannot understand the nature and purpose of their decisions without substantial or very high support from their nominated representative and ;

(b) either one or all of the following

(i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself and/or

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; and/or

(iii) has recently shown or is showing a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

At the end of the period of 24 hours or earlier if the necessary assessments have been completed, the person can no longer be kept admitted in the mental health facility under this section of the Act.

Explanation: Sub-section 18 (3) allows for a limited restriction of the right of independent patients to discharge themselves under exceptional circumstances.

Section 19 : Admission of mentally ill persons under certain special circumstances

replaced with

Section 19: Admission and treatment of persons with mental illness, with high support needs, in a mental health facility, upto 30 days (Supported Admission)

1. The medical officer in charge of a mental health facility shall admit a person with mental illness to the facility, upon application by the nominated representative of the person, under this section if :

(a) Two mental health professionals, of which atleast one is a psychiatrist, who have independently examined the person in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others that the person has a mental illness of a severity that the person :

(i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself and/or ;

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; and/or

(iii) has recently shown or is showing a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

and

(b) the mental health professionals certify that admission to the mental health facility is the least restrictive care option possible in the circumstances ;

and

(c) the person is ineligible to receive care and treatment as a independent patient because the person needs very high support from his or her nominated representative, in making decisions.

2. Admission of a person with mental illness to a mental health facility under this section shall be limited to a period of 30 days. At the end of this period, or earlier, if the person no longer meets the criteria for admission as stated in sub-section (1) above, the patient will forthwith cease to be admitted in the facility under this section of the Act. At the end of the 30 day period, if the conditions under Section 20 of the Act are met, the person may continue to remain admitted in the mental health facility in accordance with the provisions of Section 20 of the Act. If the conditions under Section 20 of the Act are not met, the person may continue to remain in the mental health facility as a independent patient, and the medical officer in charge of the facility will ensure that the person is told of his or her new status, including his or her right to leave the facility.

3. Treatment shall only be provided taking into account any existing Advance Directive as per section 50 of this Act or if the person, with the support of his nominated representative has given his informed consent to the treatment plan. The person may require a very high level of support from the nominated representative, approaching 100 % support, where the nominated representative temporarily consents to treatment on behalf of the patient. In all instances where the level of support required is of a such a high degree that the nominated representative has to temporarily consent to treatment on behalf of the person, the medical officer in charge of the facility should record this in the notes and this should be reviewed every 7 days.

4. Any person admitted under this section may apply to the Mental Health Review Commission for review of the decision to admit him or her to the mental health facility under this section and the decision of the Mental Health Review Commission shall be binding on all parties.

(5) Notwithstanding anything else in this Act, the medical officer in charge of the facility is under a duty to keep the condition of the person under ongoing review. If the medical officer in charge of the facility becomes aware that the conditions in subsection (1) are no longer met, the medical officer in charge will terminate the admission under this section of the Act, and inform the person and his or her nominated representative accordingly. Such a change of status does not preclude the person remaining as an independent patient, in appropriate circumstances.

Section 20 : Application for reception order

replaced with

Section 20 : Admission and treatment of persons with mental illness, with high support needs, in a mental health facility, beyond 30 days (Supported Admission beyond 30 days)

1. Upon application by the nominated representative of a person with mental illness, the medical officer in charge of a mental health facility shall continue admission of a person with mental illness in the facility under this section if :

a) The person is already admitted in a mental health facility under section 19 of the Act and ;

b) Two psychiatrists have independently examined the person in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others that the person has a mental illness of a severity that the person :

(i) has consistently over time threatened or attempted to cause bodily harm to himself or herself; and/or

(ii) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him or her; and/or

(iii) has consistently over time shown a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

and

c) both psychiatrists certify that admission to a mental health facility is the least restrictive care option possible in the circumstances and ;

d) the person continues to remain ineligible to receive care and treatment as a independent patient because the person needs very high support from their nominated representative, in making decisions.

2. All admissions under this section and any renewal of admission under this section must be approved by the Mental Health Review Commission within a period of 60 days from the date that such admission or renewal becomes effective. In case the Mental Health Review Commission refuses to approve initial admission or renewal of admission under this section, the person must be immediately discharged from the mental health facility. When reviewing applications for renewals under this section of the Act, the Mental Health Review Commission should critically examine the need for institutional care, in particular, why such care cannot be provided in less restrictive settings based in the community. The mere absence of community based services

cannot by itself, provide sufficient justification for continued treatment in the mental health facility. In all cases of application for renewal of admission under this section, the Mental Health Review Commission may demand that those in charge of treatment of the person with mental illness present a plan for community based treatment and the progress made, or is likely to be made, towards realizing this plan for community based treatment.

3. Admission of a person with mental illness to a mental health facility under this section will be limited to a period of 180 days. Further admission beyond this period, can be renewed for 180 days at each instance, upon application by the nominated representative of the person, to the medical officer in charge of the mental health facility and by following the procedure laid out in sub-section (1) and sub-section (2) above. If the Mental Health Review Commission refuses to approve admission or renewal under this section as stated in sub-section (2) above, or at the end of this period and no renewal has been made, or earlier if the person no longer meets the criteria for admission as stated in sub-section (1) above, the person will forthwith cease to be kept admitted in the facility under this section of the Act.

4. Treatment shall only be provided taking into account any existing Advance Directive as per section 50 of this Act or if the person, with the support of his nominated representative has given his informed consent to the treatment plan. The person may require a very high level of support from the nominated representative approaching 100 % support, where the nominated representative temporarily consents to treatment on behalf of the patient. In all instances where the level of support required is of a such a high degree that the nominated representative has to temporarily consent to treatment on behalf of the person, the medical officer in charge of the facility should record this in the notes and this should be reviewed every 15 days.

5. Any person admitted under this section may apply to the Mental Health Review Commission for review of the decision to admit him or her in the mental health facility under subsection (1) above and the decision of the Mental Health Review Commission shall be binding on all parties.

6. Notwithstanding anything else in this Act, the medical officer in charge of the facility is under a duty to keep the condition of the person under ongoing review. If the medical officer in charge of the facility becomes aware that the conditions in subsection (1) are no longer met, the medical officer in charge will terminate the admission under this section of the Act, and inform the person and his or her nominated representative accordingly. Such a change of status does not preclude the person remaining as an independent patient, in appropriate circumstances.

NEW SECTION

Section 20.1 Emergency Treatment

1. Notwithstanding anything else in this Act, medical treatment, including treatment for mental illness, may be provided by any medical practitioner to a person with mental illness either at a health facility or in the community, where it is immediately necessary to prevent –

- a) death or irreversible harm to the health of the person or
- b) the person inflicting serious harm to himself or herself or to others; or
- c) the person causing serious damage to property belonging to himself or herself or to others where such behaviour is believed to flow directly from the person's mental illness.

2. Nothing in this section will be taken to permit medical treatment that is not directly related to the emergency identified in subsection (1). Electro-convulsive therapy and irreversible treatments shall not be provided under this section.

3. The nominated representative of the person has given consent to such treatment.

4. Nothing in this section will be taken to permit treatment of more than 72 hours duration or till the person has been assessed at a mental health facility, whichever is earlier.

NEW SECTION

Section 20.2 Prohibited treatments

Notwithstanding anything contained in the Act, the following treatments shall not be performed on any person with a mental illness, whether they are admitted to a mental health facility or are living in the community :

- a) Electro-convulsive therapy without the use of muscle relaxants and anesthesia or
- b) Sterilization of men or women, when such sterilization is intended as a treatment for mental illness or
- c) Persons with mental illness cannot be chained in any manner or form whatsoever

NEW SECTION

Section 20.3 Psychosurgery

Notwithstanding anything contained in the Act psychosurgery may only be performed as a treatment for mental illness subject to the following conditions :

- a) informed consent of the person on whom the surgery is being performed and ;
- b) approval from the State Mental Health Authority to perform the surgery as planned

The State Mental Health Authority may, from time to time, make regulations for the purpose of carrying out the provisions of this section.

NEW SECTION

Section 20.4 Restraints and Seclusion

1. Physical restraint or seclusion may only be used when it is the only means available to prevent imminent and immediate harm to person concerned or to others.
2. Physical restraint or seclusion may only be used if it is authorized by the psychiatrist in charge of the person's treatment at the mental health facility.
3. Physical restraint or seclusion may be used no longer than is necessary to remove the immediate risk of significant harm.
4. The medical officer in charge of the mental health facility is responsible for ensuring that the method, nature of restraint or seclusion, justification for its imposition and the duration of the restraint or seclusion are immediately recorded in the person's medical notes.
5. In no case will restraint or seclusion be used as a form of punishment, nor may restraint or seclusion be used because of lack of staff at the mental health facility
6. The nominated representative of the person with mental illness will be informed about every

instance of seclusion or restraint within a period of 24 hours.

7. A person who is placed under restraint or seclusion will be kept under regular ongoing supervision of the medical personnel at the mental health facility.

8. All instances of restraint and seclusion at the mental health facility will be included in a report to be sent to the State Mental Health Authority on a monthly basis.

9. The Central and State Mental Health Authority may from time to time, make regulations for the purpose of carrying out the provisions of this section.

10. The Central and State Mental Health Authority may order a mental health facility to desist from applying restraint and seclusion if the Authority is of the opinion that the mental health facility is persistently and willfully ignoring the provisions of this section and/or the regulations made by the concerned Authority.

NEW SECTION

Section 20. 5 : Discharge Planning

Whenever a person undergoing treatment for mental illness in a mental health facility is to be discharged into the community or to a different mental health facility or where a new mental health professional is to take responsibility of the person's care and treatment, the mental health professional who has been responsible for the person's care and treatment will consult with the person with mental illness, the nominated representative, the mental health professional expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or services would be appropriate for the person. The mental health professional responsible for the person's care will in consultation with the above mentioned persons ensure that a plan is developed as to how these services will be provided. This section creates no right to impose treatment without consent.

Section 21 (repealed)

now irrelevant with section 20 being amended

Section 22 (repealed)

now irrelevant with section 20 being amended

Section 23 : **Power and** Duties of police officers in respect of **certain mentally ill** persons

(1) Every officer in charge of a police station -

(a) **may take** or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself and

b) **shall take** or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness

(2) No person taken into protection under sub-section (1) shall be detained by the police without being informed, as soon as may be, of the grounds for taking him into such protection or where, in the opinion of the officer taking the person into protection such person is not capable of understanding those grounds without his **relatives or friends**, if any, being informed of such grounds.

(3) Every person who is taken into protection **and detained** under this section shall be **produced**

before the nearest Magistrate within a period of twenty four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate

replaced with

Section 23 : ~~Power and (delete) Duties of police officers in respect of certain mentally ill (delete) persons with mental illness~~

(1) Every officer in charge of a police station -

(a) **has a duty to take** or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe **has mental illness and is** incapable of taking care of himself or;

b) **has a duty to take** or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be a **risk to himself or others** by reason of mental illness.

(2) **Any person taken into protection under sub-section (1) shall be informed** of the grounds for taking him **or her** into such protection or **if** in the opinion of the officer taking the person into protection, **the person has difficulty in** understanding those grounds, his **nominated representative**, if any, is informed of such grounds.

(3) Every person who is taken into protection **by a police officer** under this section shall be **conveyed to the nearest mental health facility within a period of 24 hours for assessment of the person's health care needs. The medical officer in charge of the mental health facility will be responsible for arranging the assessment of the person at the mental health facility. At the mental health facility, the person will be dealt with as per other provisions of the Act as applicable in the particular circumstances. The duty of the Police Officer ends once the Officer has conveyed the person to a mental health facility.**

Section 24 (repealed)

(irrelevant once Section 23 is amended)

Section 25

Order in case of mentally ill person cruelly treated or not under proper care and control

1. Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

2. Any private person who has reason to believe that any person is mentally ill and is not under proper care and control,, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

3. If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his

jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.

4. If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.

5. If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (4), proceed in the manner provided in Sec.24 as if such person had been produced before him under sub-section (3) of Sec. 23.

replaced with

Section 25

Order in case of person with mental illness who is cruelly treated or not under proper care

1. Every officer in charge of a police station, who has reason to believe that any person within the limits of his station **who has a mental illness and is being treated cruelly or is not under proper care and control, (delete) or is mentally ill person, (delete)** shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the **person with mental illness** resides.

2. Any private person who has reason to believe that any person **has mental illness** and is not under proper care **and control, (delete)** or is ill-treated or neglected by any relative, **carer** or other person having **responsibility for care of this person**, may report the fact to the Magistrate within the local limits of whose jurisdiction the **person with mental illness** resides.

3. If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any **person with mental illness** within the local limits of his jurisdiction is not under proper care **and control, (delete)** or is ill-treated or neglected by any relative **or carer** or other person having **the responsibility of providing care to such person with mental illness**, the Magistrate may cause the **person with mental illness** to be produced before him, and summon such relative **or carer** or other person who is, **responsible for providing care to or who ought to be in charge of, (delete)** such **person with mental illness**.

4. If such relative, **carer** or any other person is legally bound to maintain the **person with mental illness**, the Magistrate may, by order, require the relative **or carer** or the other person to take proper care of such **person with mental illness** and where such relative **or carer** or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to **ten thousand rupees**.

~~5. If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (4), proceed in the manner provided in Sec.24 as if such person had been produced before him~~

under sub-section (3) of Sec. 23.

(delete - see amended section 28 which deals with this issue)

Section 26 : Admission as inpatient after inquisition (repealed)

Section 27:

An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 111950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec. 143 or Sec. 144 of the Navy Act, 1957 (62 of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974), directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.

replaced with

Section 27:

1. An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 111950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec. 143 or Sec. 144 of the Navy Act, 1957 (62 of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974), directing the **admission of a prisoner with mental illness** into any **mental health facility**, shall be sufficient authority for the admission of such person in such **facility** to which such person may be lawfully transferred for detention therein.

2. The medical officer in charge of a mental health facility wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

28. Detention of alleged mentally ill person pending report by medical officer

1. When any person alleged to be a mentally ill person appears or is brought before a Magistrate under Sec. 23 or Sec. 25, the Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person under proper medical custody in an observation ward of a general hospital or general nursing home or psychiatric hospital or psychiatric nursing home or in any other suitable place for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under Cl. (a) of sub-section (2) of Sec.24.

2. The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding 10 day at a time as he may deem necessary:

Provided that no person shall be authorised to be detained under this sub-section for a continuous period exceeding thirty days in the aggregate.

replaced with

28. Conveying or admitting a person with mental illness to a mental health facility by a Magistrate

1. When any **person with mental illness** appears or is brought before a Magistrate under **Sec. 23 or (delete) Sec. 25**, the Magistrate may, by order in writing,

(a) **that the person is conveyed to a mental health facility for assessment and treatment if necessary. At the mental health facility, the person will be dealt with as per other provisions of the Act as applicable in the particular circumstances or ;**

(b) **authorise the admission of the person with mental illness under proper medical custody in a mental health facility for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to carry out an assessment of the mental illness and to plan for necessary treatment, if any. On completion of the period of assessment, the person will be dealt with as per other provisions of the Act as applicable in the particular circumstances.**

Section 29, 30, 31, 32, 33, 34, 35 (repealed)

All these sections relate to a reception order (section 20), which is being amended and subsequent to this amendment, these sections are no longer necessary.

Section 36. Officers competent to exercise powers and discharge function of Magistrate under certain sections

In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under Secs. **23,24,25** and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in-charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.

replaced with

Section 36. Officers competent to exercise powers and discharge function of Magistrate under certain sections

In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under Secs. **23,24, (delete) 25** and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in-charge of a police station under **Section 23 and 25** of this Act may be discharged by any police officer not below the rank of an Inspector.

Chapter V - Inspection, Discharge, Leave of Absence and Removal Of Mentally Ill Persons

replaced with

Chapter V - Leave of Absence and Transfer of Persons with mental illness between mental health facilities

Section 37 : Appointment of Visitors (repealed)

this is dealt with under the section dealing with the functions of the CMHA and SMHA

Section 38 : Monthly inspection by Visitors (repealed)

this is dealt with under the section dealing with the functions of the CMHA and SMHA

Section 39 : Inspection of mentally ill prisoners (repealed)

unnecessary in the amended law. Sub-section (3) has been included under section 27.

Section 40, 41., 42, 43, 44 (repealed)

these sections pertain to discharge which have been now dealt with in the relevant admission sections above.

Part III Leave of Absence

Section 45 : Leave of absence

1. An application for leave of absence on behalf of any mentally ill person (not being a mentally ill prisoner) undergoing treatment as an in-patient in any psychiatric hospital or psychiatric nursing home may be made to the medical officer-in-charge, -

- a) in the case of a person who was admitted on the application of the husband or wife, by the husband or wife of such mentally ill person, or where by reason of mental or physical illness, absence from India or otherwise, the husband or wife is not in a position to make such application, by any other relative of the mentally ill person duly authorised by the husband or wife, or
- b) in the case of any other person, by the person on whose application the mentally ill person was admitted.

Provided that no application under this sub-section shall be made by a person who has not attained the age of majority.

2. Every application under sub-section (1) shall be accompanied by a bond, with or without sureties for such amount as the medical officer-in-charge may specify, undertaking -

- i. to take proper care of the mentally ill person,
- ii. to prevent the mentally ill person from causing injury to himself or to others, and
- iii. to bring back the mentally ill person to the psychiatric hospital, or , as the case may be, psychiatric nursing home, on the expiry of the period of leave.

3. On receipt of an application under sub-section (1), the medical officers-in-charge may grant leave of absence to the mentally ill persons for such period as the medical officers-in-charge may deem necessary and subject to such condition as may, in the interests of the protection of others, be specified in the order :

Provided that the total number of days for which leave of absence may be granted to a patient under this sub-section shall not exceed sixty days.

4. Where the mentally ill persons is not brought back to the psychiatric hospital or psychiatric nursing home on the expiry of the leave granted to him under this section the medical officer-in-charge shall forthwith report that fact to the Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situate and the Magistrate may, after making such inquiry as he may deem fit, make an order directing him to be brought back to the psychiatric hospital or psychiatric nursing home, as the case may be.

5. Nothing contained in this section shall apply to a voluntary patient referred to in Sec. 15 or Sec. 16 and the provisions of Sec.18 shall apply to him.

replaced with

Section 45 : Leave of absence

1. The medical officer in charge of a mental health facility may grant leave to any person admitted under sections 16, 19 and 20 above, to be absent from the facility subject to such conditions (if any) and for a duration as the medical officer considers necessary. Such leave shall not extend beyond the period of the duration of admission permitted under section 16, 19 or 20. The medical officer shall secure the consent of the nominated representative before taking a decision granting leave.

2. The medical officer may in writing terminate the leave of absence under this part, when appropriate to do so.

3. When an individual does not return to the facility following the expiry or termination of his or her leave of absence, the medical officer in charge will normally first contact the nominated representative of the person on leave. In appropriate circumstances, when the individual does not return following such contact, the medical officer may ask the Police Officer in charge of the police station within the limits of whose station the mental health facility is located, to convey the person back to the mental health facility. A person not returned by the Police Officer within one month of expiry or termination of his or her leave of absence, may not be returned to the mental health facility under this section, but this does not preclude re-admission otherwise, if the relevant substantive and procedural requirements are met.

Section 46 : Grant of leave of absence by Magistrate (repealed)
this section is no longer relevant in the amended Act

Part V : Removal

Section 47 : Removal of mentally ill person from one psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home

1. Any mentally ill person other than a voluntary patient referred to in Sec. 15 or Sec. 16 may, subject to any general or special order of the State Government, be removed from any psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home within the State, or to any other psychiatric hospital or psychiatric nursing home in any other State with the consent of the Government of that other State:

Provided that no mentally ill person admitted to a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under the Act shall be so removed unless intimation thereof has been given to the applicant.

2. The State Government may make such general or special order as it thinks fit directing the removal of any mentally ill prisoner from the place where he is for the time being detained, to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in the State or to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in any other State with the consent of the Government of that other State.

replaced with

Section 47 : Transfer of persons with mental illness from one mental health facility to another mental health facility

1. Any person with mental illness admitted to a mental health facility under this Act, except those

persons admitted to a mental health facility under Sec. 15 or any prisoner with mental illness admitted to a mental health facility under section 27 may, subject to any general or special order of the **Mental Health Review Commission in that State**, be removed from any **mental health facility to another mental health facility** within the State, or to any **mental health facility** in any other State with the consent of the **Mental Health Review Commission of that State**:

Provided that no **person with mental illness** admitted to a **mental health facility** under an order made in pursuance of an application made under the Act shall be so removed **unless intimation has been given thereof to the nominated representative of the person with mental illness.**

2. The State Government may make such general or special order as it thinks fit directing the removal of any **prisoner with mental illness** from the place where he is for the time being detained, to any **mental health facility** or other place of safe custody in the State or to any **mental health facility** or other place of safe custody in any other State with the consent of the Government of that other State.

Section 48 : Admission, detention and retaking in certain cases

Every person brought into a psychiatric hospital or psychiatric nursing home under any order made under this Act, may be detained or, as the case may be, admitted as an in-patient therein until he is removed or is discharged under any law, and in case of his escape from such hospital or nursing home he may, by virtue of such order, be retaken by any police officer or by the medical officer-in-charge or any officer or servant of such hospital or nursing home, or by any other person authorised in that behalf by the medical officer-in-charge and conveyed to, and received and detained or, as the case may be, kept as an in-patient in such hospital or nursing home;

Provided that in the case of a mentally ill person (not being a mentally ill prisoner) the power to retake as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of his escape.

replaced with

Section 48 : Absence without leave or discharge

Any person who is admitted to a mental health facility under sections 16, 18 (3), 19, 20 and 27, if the person absents himself or herself without leave or without discharge from the mental health facility, may be taken into protection by any Police Officer, at the request of the medical officer in charge of the facility and conveyed back to the mental health facility immediately.

Provided that in the case of a **person with mental illness** (not being a **prisoner with mental illness**) the power to **take in protection and convey** as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of **such absence from the mental health facility.**

Section 49 : Appeals from orders of Magistrate (repealed)
under the amended act this section is no longer necessary

Chapter VI - Judicial Inquisition Regarding Alleged Mentally Ill Person Possessing Property, Custody Of His Person And Management Of His Property

replaced with

Chapter VI - Special Support Arrangements for persons with mental illness

Section 50. Application for judicial inquisition

replaced with

Section 50 : Advance Directives

1. Every person, whether they have been diagnosed as having a mental illness or not, has a right to make a written statement referred to as an 'Advance Directive' specifying any or all of the following :

a) the way the person wishes to be cared for and treated for a mental illness and/or;

b) the way the person wishes not to be so cared for and treated for a mental illness and/or;

c) the individual or individuals, in order of precedence, the person wants appointed as their nominated representative under Section 2.1 above and/or;

d) the individual or individuals, in order of precedence, the person wants appointed as their Special Personal Representative under Section 50.1 below

in the event of his or her having a mental illness in the future.

2. An Advance Directive may be made by a person whether or not the person has had a mental illness in the past and whether or not the person has received treatment for a mental illness in the past.

3. An Advance Directive must be made in writing and signed by the person making such an Advance Directive. The Advance Directive should also be signed by a medical practitioner certifying that the person is competent and aware of what he is doing, when the Advance Directive is made.

4. An Advance Directive may at any time be amended or canceled by the person who made it. All amendments or cancellations should be signed by a medical practitioner certifying that the person is competent and aware of what he is doing, when the Advance Directive is amended or canceled.

5. Medical officer in charge of a mental health facility and/or the psychiatrist in charge of a person's treatment is duty bound to follow any existing Advance Directive, subject to sub-section (6) below, when proposing treatment of a person with mental illness.

6. If a mental health professional or a relative or carer of the person wishes to over-rule an applicable Advance Directive when treating a person with mental illness, the mental health professional or the relative or carer of the person, may apply to the Mental Health Review Commission for review and cancellation of the Advance Directive. Upon such application by the mental health professional, relative or carer, the Mental Health Review Commission may either uphold, over-rule, modify, or alter the Advance Directive taking into consideration whether :

a) the Advance Directive was made of the person's free will and free of all undue influences

b) the person intended the Advance Directive to apply to the present circumstances, which may

be different from those anticipated

c) the person was sufficiently well informed to make the decision

d) the person was not competent when the Advanced Directive was made as to render the Advance Directive invalid

e) the Advance Directive is in the best interests of the person concerned

7. Notwithstanding any provision in this section, it will not apply to any emergency treatment given under section 20.1 above.

Section 51 : Issues on which finding should be given by District Court after Inquisition (repealed)

Section 52: Provision for appointing guardian of mentally ill person and for manager of property

replaced with

Section 52 : Special Support arrangements for persons with mental illness requiring very high support for exercise of legal capacity

1. The Mental Health Review Commission may require the creation of special support arrangements in circumstances where a person with mental illness:

a) has long term severe mental illness requiring care and treatment over an extended period of time and;

b) needs very high support in exercising their legal capacity and making decisions regarding their personal matters and property and which frequently results in, or is likely to result in, a need for nearly 100% support in exercising their legal capacity and;

c) that such high support needs as outlined in (b) above are likely to continue for an extended period of time;

2. Application for creating special arrangements :

a) A person with mental illness himself, or through his nominated representative may apply to the Mental Health Review Commission for creation of special support arrangements

b) Such application must be accompanied by certificates from two mental health professionals, of which atleast one is the psychiatrist involved in the care and treatment of the person in the preceding 6 months and both mental health professionals have examined the person in the 30 days prior to issuing the certificate, and both mental health professionals certify that the person meets criteria outlined in sub-section (1) above;

3. Procedure to be followed by the Mental Health Review Commission

Upon receipt of application along with the certificates as stated in sub-section (2) above, the Mental Health Review Commission will conduct a hearing to examine the person and also their nominated representative. Where appropriate, the Mental Health Review Commission may require evidence to be presented in addition to that presented by the parties. Such additional evidence may be either oral or in writing, and may be directed to determining whether the conditions for special support arrangements as outlined in sub-section (1) do exist, or any other matter relevant to the application. Such hearings will not normally be open to the public. Persons other than those directly involved may be admitted with the permission of both the person with

mental illness and the Commission.

4. Appointment of Special Personal Representative

If the Mental Health Review Commission is satisfied that all the conditions exist for making special support arrangements and that such arrangements are in the best interests of the person, the Commission may appoint the nominated representative as a SPECIAL PERSONAL REPRESENTATIVE to provide such level of support as outlined in sub-section (1)b above, to the person with mental illness. In exceptional circumstances, the Mental Health Review Commission may appoint a person other than the nominated representative as the Special Personal Representative, if the Commission feels that this is in the best interests of the person to do so. In all such exceptional circumstances, the Commission will set out in writing its reasons for doing so and these will be conveyed to the person and their nominated representative.

If a person with mental illness has executed an Advance Directive under section 50 of the Act outlining his or her choice regarding the appointment of a Special Personal Representative, then the Mental Health Review Commission shall appoint this person named in the Advance Directive as the Special Personal Representative under this section, unless the Advance Directive is subject to Section 50(6) above.

5. The appointment of a Special Personal Representative will be time-limited, and may not exceed the anticipated period when a high level of support as outlined in sub-section (1) will be required. This does not preclude re-appointment of the Special Personal Representative on a subsequent application under this section if the conditions outlined in sub-section (1) above are present. The initial appointment of the Special Personal Representative will normally not exceed six months, two subsequent appointments will normally not exceed one year at a time, and appointments after that will not exceed three years at a time.

6. An order of the Commission as outlined in sub-section (4) and (5) above does not imply or be taken to mean that the person with mental illness lacks capacity. All persons with mental illness enjoy legal capacity on an equal basis with others in all aspects of life and special support arrangements are intended to assist the person to exercise their legal capacity and are temporary in nature.

7. Decisions taken under this section must be in the best interests of the person for whom the special support arrangements are made. The assessment of best interests will include the following factors:

- (a) A person is not to be held to require 100% support unless all practicable steps have been taken to assist him or her to reach a capable decision with less than 100% support ;**
- (b) the medical condition and prognosis of the person with mental illness;**
- (c) the cultural, religious and social background of the person;**
- (d) the wishes, feelings, beliefs and values of the person with mental illness, both at the time of the hearing and previously**
- (e) the views of the mental health professionals having a duty of care of the person with mental illness**
- (f) the views of the nominated representative of the person with mental illness**
- (g) such other matters as the Mental Health Review Commission thinks appropriate.**

8. A person with mental illness or their nominated representative has the right to appeal to the High Court, any decision of the Mental Health Review Commission under sub-section 4 above,

appointing a Special Personal Representative or a particular individual as the Special Personal Representative.

9. Duties and Responsibilities of the Special Personal Representative

a) The Special Personal Representative shall provide varying levels of support as required to the person with mental illness in making all decisions related to personal matters and matters related to the management of the property of the person with mental illness.

b) With respect to management of property of the person with mental illness, when the person requires 100% support in making a particular decision, the Special Personal Representative may make the decision on behalf of the person with mental illness, and such decisions will be as if the person with mental illness has himself or herself made the decision.

c) With respect to personal matters, when the person requires 100% support in making a particular decision, the Special Personal Representative may make the decision on behalf of the person with mental illness, and such decisions will be as if the person with mental illness has himself or herself made the decision, with the exception of the following decisions :

i) consent to marriage and/or divorce;

ii) consent to engage in sexual relationships and the results thereof;

iii) matters related to voting in an election for public office;

d) The Mental Health Review Commission may set such restrictions on the duties and responsibilities of the Special Personal Representative as it deems appropriate and are in the best interests of the person with mental illness.

e) The Mental Health Review Commission may require Special Personal Representative to post such security, and to make such reports, to the Commission as it deems appropriate, at a frequency to be determined by the Commission and at the termination of their appointment as Special Personal Representative.

10. The Mental Health Review Commission may in writing revoke an appointment made under this section, and may appoint a different person under this section when appropriate to do so.

11. Applications to the Mental Health Review Commission to revoke, alter, change, or modify an appointment under this section may be made by the person with mental illness, or by a relative of such person, or by the mental health professional responsible for the care of such person.

12. The Mental Health Review Commission may, from time to time, make regulations for the purpose of carrying out the provisions of this section.

Explanation: Plenary Guardianship is no longer permitted under the UN CRPD. Article 12 of the CRPD reaffirms that all persons have legal capacity, and State Parties should provide access to support to persons in exercising their legal capacity.

Article 12 (4) also states : "States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. **Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply**

for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests. (emphasis mine) "

The proposed section 52 and section 52.1 below meets the obligations under Section 12 to provide support systems to exercise legal capacity

NEW SECTION

Section 52.1 New forms of support arrangements

The Mental Health Review Commission will also devise alternative forms of support arrangements and formulate regulations and guidelines for such new support arrangements, in active consultation with all stakeholders including persons with mental illness, family members of persons with mental illness, organizations of persons with mental illness, organizations of family members of persons with mental disorders, professional organizations, and representatives of governmental agencies, the judiciary and concerned members of the society at large.

Section 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 (repealed)

Section 76 : Appeals

An appeal shall lie to the High Court from every order made by a **District Court** under this Chapter

replaced with

Section 76 : Appeals

An appeal shall lie to the High Court from every order made by a **Mental Health Review Commission** under this Chapter.

Section 77 : Power of District Court to make regulations (repealed)

Chapter VII - Liability To Meet Cost Of Maintenance Of Mentally Ill Persons Detained In Psychiatric Hospital Or Psychiatric Nursing Home

replaced with

Chapter VII - Liability To Meet Cost Of Maintenance Of Persons with mental illness admitted to a mental health facility

Section 78. Cost of maintenance to be borne by Government in certain cases

The cost of maintenance of a **mentally ill person detained** as an in-patient in any **psychiatric hospital or psychiatric nursing home** shall, unless otherwise provided for by any law for the time being in force, be borne by the Government of the State wherein the authority which passed the order in relation to the **mentally ill person** is subordinate, if -

- a. that authority which made the order has not taken an undertaking from any person to bear the cost of maintenance of such mentally ill person, and
- b. no provision for bearing the cost of maintenance of such a District Court under this Chapter.

replaced with

Section 78. Cost of treatment to be borne by Government in certain cases

a) A person with mental illness is entitled to treatment at mental health facilities maintained by the Government subject to the following :

i) If a person with mental illness is below the poverty line, he or she is entitled to free treatment at mental health facilities maintained by the Government and at other mental health facilities designated by the Government.

ii) If there are no mental health facilities maintained by the Government in the district that the person with mental illness normally resides in, the person with mental illness is entitled to be admitted to any other mental health facility in the district and the costs of treatment at such facilities in that district will be borne by the Government. The Government shall frame rules regarding costs of treatment at such mental health facilities in this regard.

Section 79. Application to District Court for payment of cost of maintenance out of estate of **mentally ill person** or from a person legally bound to maintain him

1. Where any **mentally ill person detained** in a **psychiatric hospital or psychiatric nursing home** has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government liable to pay the cost of maintenance of such person under Sec. 78 or any local authority liable to bear the cost of maintenance of such **mentally ill person** under any law for the time being in force, may make an application to the District Court within whose jurisdiction the estate of **the mentally ill person** is situate or the person legally bound to maintain the **mentally ill person** and having the means therefor resides, for an order authorising it to apply the estate of the **mentally ill person** to the cost of maintenance or, as the case may be, directing the person legally bound to maintain the **mentally ill person** and having the means therefor to bear the cost of maintenance of such **mentally ill person**.

2. An order made by the District Court under sub-section (1) shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit in respect of the property or person mentioned therein.

replaced with

Section 79. Application to District Court for payment of cost of maintenance out of estate of **person with mental illness or from a person legally bound to maintain him**

1. Where any **person with mental illness admitted** in a **mental health facility** has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government liable to pay the cost of maintenance of such person under Sec. 78 or any local authority liable to bear the cost of maintenance of such **mentally ill (delete)** person under any law for the time being in force, may make an application to the District Court within whose jurisdiction the estate of **the person with mental illness** is situate or the person legally bound to maintain the **person with mental illness** and having the means therefor resides, for an order authorizing it to apply the estate of the **person with mental illness** to the cost of maintenance or, as the case may be, directing the person legally bound to maintain the **person with mental illness** and having the means therefor to bear the cost of maintenance of such **person with mental illness**.

2. An order made by the District Court under sub-section (1) shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit

in respect of the property or person mentioned therein.

Section 80. Persons legally bound to maintain **mentally ill person** not absolved from such liability
Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a **mentally ill person** from maintaining such **mentally ill person**.

replaced with

Section 80. Persons legally bound to maintain **person with mental illness** not absolved from such liability.

Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a **person with mental illness** from maintaining such a person.

Chapter VIII : Protection of Human Rights of Mentally Ill Persons

replaced with

Chapter VIII : Protection of Rights of Persons with Mental Illness

Section 81. Mentally ill persons to be treated without violation of human rights

replaced with

Section 81 : Rights of Persons with mental illness receiving care and treatment

1. Cruel, Inhuman and Degrading Treatment

No person with mental illness shall be subjected to any cruel inhuman or degrading treatment in a mental health facility. This includes but is not restricted to the following :

- a) there is provision of a safe and hygienic environment**
- b) adequate sanitary conditions are maintained in the mental health facilities**
- c) the living environment should include facilities for leisure, recreation, education and religious practices**
- d) environment is structured so that persons' privacy is protected**
- e) persons are not forced to undertake work in a mental health facility they do not wish to do and when they do take up work in the mental health facility, this is appropriately remunerated**
- f) adequate provision is made for preparing the person for living in the community**

2. Non-discrimination

Persons with mental illness will be treated equal to persons with physical illness in the provision of health and health care services. This includes but is not restricted to :

- a) right to obtain medical insurance from public and private insurance providers for the treatment of their mental illness as is available to persons with physical illness for treatment of physical illness;**
- b) right to emergency facilities and emergency services of the same quantity and quality as those provided to persons with physical illness. Persons with mental health services are entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;**
- c) living conditions in health facilities in the same manner, extent and quality as provided to**

persons with physical illness;

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

3. Research

Free and informed consent should be obtained from all persons with mental illness for participation in all research especially that involving interviewing the person, or psychological, physical, chemical or medicinal interventions, subject to sub-section (a) below.

a) In case of research involving interviewing the person, or any psychological, physical, chemical or medicinal interventions to be conducted on persons who are unable to give free and informed consent but do not resist participation in such research, permission to conduct such research must be obtained from concerned State Mental Health Authority. The State Mental Health Authority may allow the research to proceed based on consent being obtained from the nominated representative of persons with mental illness, subject to the State Mental Health Authority having reviewed the proposed research is satisfied that :

i) the research cannot reasonably be performed on persons who are capable of giving free and informed consent

ii) the research is necessary to promote the health of the individual person and the population represented

iii) the purpose of the research is to obtain knowledge relevant to the particular health needs of persons with mental illness

iv) a full disclosure of the interests of persons and/or organizations conducting such research has been made and there is no conflict of interest involved

v) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and in particular, ethical approval has been obtained from a duly constituted ethics committee.

This sub-section does not restrict research based study of the case notes of such persons, so long as the anonymity of the persons are secured.

Explanation: A strict reading of International Covenant on Civil and Political Rights (ICCPR) Article 7 and CRPD Article 15, would mean no research should be permitted on people who cannot give informed consent and so sub-clause (a) above is invalid. However the exception in sub-clause (a) does exist in the current legislation and we have left it in here to stimulate discussion and debate on this topic to get some clarity on this issue. On one hand we have the ICCPR and CRPD which are categorically clear on this issue. and it has been argued that the ICCPR & CRPD are binding documents and so should be implemented in toto. On the other hand, it has been argued that, for example, people with certain mental health conditions such as dementia in its late stages, where *all* affected are unable, due to their condition, to give informed consent. In such circumstances, the consequence of not undertaking research with this group may be a reduced likelihood of ever finding treatments or interventions that could cure or prevent the condition.

The amendment proposed here maintains the current MHA's position of allowing research in such circumstances, but the amendment has added an extra layer of protection in asking the Mental Health Authority to authorize such research.

It is hope there is discussion and debate amongst all the stakeholders on this issue and some consensus

can be arrived at.

For information, Netherlands (Holland) has entered a declaration on section 15 of the CRPD which is as follows :

"The Netherlands declares that it will interpret the term 'consent' in Article 15 in conformity with international instruments, such as the Council of Europe Convention on Human Rights and Biomedicine and the Additional Protocol concerning Biomedical Research, and with national legislation which is in line with these instruments. This means that, as far as biomedical research is concerned, the term 'consent' applies to two different situations:

1. consent given by a person who is able to consent, and
2. in the case of persons who are not able to give their consent, permission given by their representative or an authority or body provided for by law.

The Netherlands considers it important that persons who are unable to give their free and informed consent receive specific protection. In addition to the permission referred to under 2. above, other protective measures as included in the above-mentioned international instruments are considered to be part of this protection."

4. Right to Information

The primary responsibility for informing the person admitted to a mental health facility and his or her nominated representative, or the person treated for mental illness as an out-patient at a mental health facility, of his or her medical condition, legal status and rights lies with the medical officer in charge of the facility or psychiatrist in charge of the individual's care. This task may be delegated to an appropriate person. Each person must be informed :

- a) of the section of this Act under which he or she is admitted, if he or she is being admitted, and the criteria for admission under that section;**
- b) of his or her rights to apply to the Mental Health Review Commission for a review of the admission;**
- c) of the nature of the mental illness with which the person admitted or treated is affected, and the proposed treatment plan**
- d) in a language and form that the person receiving the information can understand**
- e) In the event that complete information cannot practicably be given to the person with mental illness at the time of the admission, it is the primary responsibility of the medical officer or psychiatrist in charge of the person's care to ensure that the full information is provided promptly when the individual is in a position to receive it. The nominated representative will nonetheless be given the information at the time of admission.**

5. Right to Confidentiality

All persons providing care and treatment to a person with mental illness have a duty to keep confidential all information obtained in the context of such care and treatment with the following exceptions :

- a) releasing information to the nominated representative or a special personal representative to enable them to fulfill his or her duties under the Act**
- b) releasing information to other mental health professionals and medical practitioners to enable to provide care and treatment to the person with mental illness**
- c) releasing information if it is necessary to protect any other person from harm or violence. Only such information than is necessary to protect against the harm identified may be released.**
- d) life threatening emergencies where such information is urgently needed to save lives**

- e) when ordered by the Mental Health Review Commission or High Court or Supreme Court to do so
- f) in the interests of public safety and security

6. Access to Medical Records

Persons with mental illness shall in general be given access to their medical records. The psychiatrist in charge of such records may withhold information if disclosure would result in :

- a) serious mental harm to the person with mental illness and/or
- b) likelihood of harm to other persons

When any information in the medical records is withheld from the person, the psychiatrist will inform the person with mental illness of his or her right to apply to the Mental Health Review Commission for an order to release such information.

7. Personal Contacts & Communication

- a) A person with mental illness admitted to a mental health facility has the right to receive visitors and to receive and make a reasonable number of telephone calls at reasonable times of the day.
- b) The medical officer in charge may prohibit or restrict visits or telephone calls with named individuals, when the visit or telephone call is likely to interfere with the treatment of the person to be visited or cause that person undue distress, or would cause danger to any person. A person whose visits have been restricted under this section may apply to the Mental Health Review Commission for an order determining their rights to visit the person with mental illness.
- c) A person with mental illness admitted in a mental health facility may send and receive mail and email.
- d) Where an individual (the recipient) informs the medical officer in charge of a mental health facility in writing that he or she does not wish to receive mail or email from a named person in the mental health facility, the medical officer in charge may restrict such communication by the person with mental illness to the recipient.
- e) Where the medical officer in charge of a mental health facility is of the view that mail or email sent to an individual (recipient) by a person with mental illness admitted in the mental health facility is sent for an illegal purpose or would cause undue distress to the person to whom it is addressed, or would cause danger to any person, the medical officer in charge may restrict such communication and make a record of the same in the medical notes. Any person whose mail or email is so restricted may apply to the Mental Health Review Commission for a review of this decision.
- f) Sub-section (b) and (e) does not apply to visits, telephone calls, mail or email from
 - i) any Court or Judicial Officer
 - ii) the Mental Health Review Commission or the Central or State Mental Health Authority
 - iii) any member of the Parliament or State Assembly
 - iv) Nominated representative, special personal representative, lawyer or legal representative of the person

The contents of the mail or email to and from individuals listed in (i) to (iv) above are confidential under all circumstances and should be delivered unopened to the person with mental illness by the staff of the mental health facility.

8. Complaints

a) Any person with mental illness admitted to any mental health facility has the right to complain regarding deficiencies in provision of care, services, or regarding violation of any of their rights mentioned in this Act, to

i) the medical officer in charge of the facility and if they are not satisfied with the response,

ii) to the State Mental Health Authority and if they are not satisfied with the response,

iii) to the relevant Panel of the State Mental Health Review Commission

b) The complaints provisions in sub-section (a) above, is without prejudice to the rights of the person to seek any judicial remedy for violation of their rights in a mental health facility either under this Act or any other relevant Act.

Section 82 : Penalty for establishment or maintenance of psychiatric hospital or psychiatric nursing home in contravention of Chapter III

replaced with

Section 82 : Penalties for establishing or maintaining a mental health facility in contravention of Chapter III

1. Whoever carries on a mental health facility without registration shall, on conviction, be punishable with imprisonment for a term which may extend to six months and/or for first offence, be punishable with a fine upto fifty thousand rupees, for second offence with fine which may extend to two lakh rupees and for subsequent offences with fine which may extend to five lakh rupees

2. Whoever knowingly serves in a mental health facility which is not duly registered under this Act, shall be punishable with a fine which may extend to twenty five thousand rupees.

3. Whoever fails to pay the fine, the Authority may prepare a certificate specifying the amount of fine due from such person or mental health facility and send it to the Collector of the District in which such person owns any property or resides or carries on his business or profession or where the mental health facility is located, and the said Collector on receipt of such certificate, shall proceed to recover from such persons or mental health facility the amount specified thereunder, as if it were an arrear of land revenue.

Section 83 : Penalty for improper reception of mentally ill person (repealed)

Section 84 : Penalty for contravention of sections 60 and 69 (repealed)

Section 85 : General Provision for punishment of other offences

Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided in the Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees.

replaced with

Section 85 : General Provision for punishment of other offences

Any person who contravenes any of the provisions of this Act, or of any rule or regulation made

thereunder, for the contravention of which no penalty is expressly provided in the Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or be punishable for the first offence with a fine which may extend to ten thousand rupees, for any subsequent offence with fine which may extend to fifty thousand rupees and for any subsequent offence with fine which may extend to five lakh rupees.

CHAPTER X : MISCELLANEOUS

Section 88 : Provisions as to bonds (repealed)

Section 89 : Report by medical officer (repealed)

Section 90 : Pension etc., of mentally ill person payable by Government (repealed)

Sections 91-100 are miscellaneous sections which can be amended once the amendments to the main body of the Act are finalised.

NOTE: Amendments to the Central Mental Health Authority Rules are proposed below. Amendments to the State Mental Health Authority Rules have only been proposed upto Rule 14. Rules 15-21 deal with licensing of psychiatric hospitals and nursing homes, Rule 22 deals with norms for psychiatric hospitals and nursing homes, Rules 25-28 deal with the procedural aspects of admission to hospital. The amendment to these rules is dependent on the exact nature of the Amendments to the Act under the relevant sections for registration, admission to mental health facilities etc. Hence these Rules can only be amended once the Amendments to the Act are finalised.

THE CENTRAL MENTAL HEALTH AUTHORITY RULES 1990

G.S.R. 1004 (E) DATED 20TH DECEMBER 1990.1 - In exercise of the powers conferred by sub-section (1) of Sec. 94 of the Mental Health Act, 1987, (14 of 1987), read with Sec. 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely:

CHAPTER I

PRELIMINARY

1. SHORT TITLE AND COMMENCEMENT

1. These rules may be called the Central Mental Health Authority Rules, 1990. **2010.**
2. They shall come into force on the date of **amendment** of the Act.

2. DEFINITIONS

- In these rules unless the context otherwise requires -
- a. "Act" means the Mental Health Act, 1987 (14 of 1987);
 - b. "Authority" means the Central Mental Health Authority established under Sec. 3 of the Act;
 - c. "**Chairperson**" means the **Chairperson** nominated under rule 5;
 - d. "Member" means member of the Authority appointed under rule 3.
 - e. "Membership" means the membership of the Authority established under rule 3.
 - f. "Non-Official Member" means a member appointed under sub-rule (2) of rule 3;
 - g. "Official Member" means a member appointed under sub-rule (1) of rule 3;
 - h. "Secretary" means the Secretary to the Authority appointed under rule 13;
 - i. words and expressions used herein and not defined but defined in the Act shall respectively have the meaning assigned to them in the Act.

CHAPTER II

CENTRAL MENTAL HEALTH AUTHORITY

3. CONSTITUTION OF THE AUTHORITY

- The Authority shall consist of the following members, namely;

0. Official Member -

a. Secretary or Additional Secretary, Ministry of Health and Family Welfare, Government of India.

b. Joint Secretary, Ministry of Health and Family Welfare dealing with Mental Health.

c. Additional Director-General of Health Services dealing with Mental Health.

d. Director, Central Institute of Psychiatry, Ranchi.

e. Director, National Institute of Mental Health and Neuro Sciences, Bangalore.

f. Medical Superintendent, Hospital for Mental diseases, Shahdara, Delhi.

1. Non-Official Members-

a) 1 psychiatrist

b) 1 Psychiatric Social Worker

c) 1 Clinical Psychologist

d) 2 members representing persons with mental illness and/or organizations representing such persons

e) 2 members representing families of persons with mental illness and/or organizations representing such families

f) 2 members representing non-governmental organizations providing services to persons with mental illness or non-governmental organizations doing advocacy work in the field of mental health.

4. DISQUALIFICATION

A person shall be disqualified for being appointed as a member or shall be removed from membership by the Central Government if he,-

has been convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude ; or

is an undischarged insolvent ;or

is of unsound mind and stands so declared by a competent court, or

c. has been removed or dismissed from the Government or a body corporate owned or controlled by the Government.

5. Chairperson -

0. The Chairperson of the Authority shall be person who is or has been a Secretary or Additional Secretary, Government of India or an equivalent post in the Central Government for a period of three years.

1. The Chairperson shall be a full time appointment and shall be appointed for a period of five years, or upto the age of sixty-seven years, whichever is earlier.

6. TERM OF OFFICE OF MEMBERS

0. Every official member shall hold office as such member so long as he holds the office by virtue of which he was appointed.

1. Every non-official member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.

2. A non-official member may at any time resign from membership of the Authority by forwarding his letter of resignation to the Chairman and such resignation shall take effect only from the date on which it is accepted.

3. Where a vacancy occurs by resignation of a non-official member under sub rule (3) or otherwise, the Central Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-clause (2) of rule 3 and the person so appointed, shall hold office for the remainder of the term of office of the member in whose place he was so appointed.

4. Where the term of office of any non-official member is about to expire the Central Government may appointment a successor at any time within three months before the expiry of the term of such member but the successor shall not assume office until the term of the member expires.

CHAPTER III

PROCEEDINGS OF THE AUTHORITY

7. MEETINGS OF THE AUTHORITY -

0. The authority shall ordinarily meet **once every 3 months** at such time and place as may be fixed by the **Chairperson**. Provided that the **Chairperson** -

i. may call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.

ii. Shall call a special meeting if he receives a requisition in writing signed by not less than four members and stating the purpose for which they desire the meeting to be called.

1. The first meeting of the Authority to be held in any calendar year shall be the annual meeting for that year.

8. SUBJECTS FOR SPECIAL MEETING

Where a meeting referred to in the proviso to sub-rule (1) of rule 7 has been convened, only the subjects for the consideration of which the meeting was convened, shall be discussed.

9. SUBJECTS FOR THE ANNUAL MEETING

- At the Annual Meeting of the Authority, the following subjects shall be considered and disposed of namely;-

0. review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year.

1. Other business on the agenda; and

2. Any other business brought forward with the consent of the **Chairperson** or where he is absent, with the consent of officer presiding at the meeting.

10. PROCEDURE FOR HOLDING MEETINGS

-

0. Every notice calling for a meeting of the authority shall -

. specify the place, date and hour of the meeting:

a. be served upon every member of the Authority not less than twenty-one clear days in the case of annual meeting and fifteen clear days in the case of other meetings before the day appointed for the meeting.

1. The Secretary shall prepare and circulate to the members alongwith the notice of the meeting an

agenda for such meeting showing the business to be transacted.

2. A member who wishes to move a resolution on any matter included in the agenda shall give notice thereof to the Secretary not less than seven days before the date fixed for the meeting.

3. A member who wishes to move any motion not included in the agenda shall give notice to the Secretary not less than fourteen days before the date fixed for the meeting.

11. PROCEEDINGS OF THE AUTHORITY

0. The **Chairperson** or in his absence any member authorised by him shall preside at the meetings of the Authority.

1. The quorum for the meeting of the Authority shall be four members.

2. If within half an hour from time appointed for holding a meeting of the Authority quorum is not present, the meeting shall be adjourned to the same day in the following week at the same time and place and the presiding officer of such meeting shall inform the members present and send notice to other members.

3. If at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute the quorum.

4. In the adjourned meeting if the Chairman is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.

5. Each member including the Chairman shall have one vote. In the case of an equality of votes, the **Chairperson** or any member presiding over such meeting shall in addition, have a casting vote.

6. All decisions of the meeting of the Authority shall be taken by a majority of the members present and voting.

12. APPROVAL BY CIRCULATION

- Any business which may be necessary for the Authority to transact except as such may be placed before the annual meeting, may be circulated and approved by a majority of members, shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

13. SECRETARY TO THE AUTHORITY

0. The **Chairperson** shall cause to be appointed a Secretary to the Authority from amongst persons possessing post-graduate degree in psychiatry and having three years' experience in the field of psychiatry.

1. The Secretary shall be a full-time or part-time servant of the Authority and shall function as the Administrative Officer of the Authority.

2. The Secretary shall be responsible for the control and management of office accounts and correspondence.

3. The Secretary shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for the efficient functioning of the Authority.

4. The Secretary shall exercise such other powers and discharge such other functions as may be authorised in writing by the Chairman for the efficient functioning of the Authority.

14. FORWARDING OF COPIES OF THE PROCEEDINGS OF THE AUTHORITY TO THE CENTRAL GOVERNMENT

The Secretary shall forward copies of the proceedings of the Authority to the Central Government **every 6 months. The Secretary shall also publish in the public domain a**

report of the Activities of the Authority annually.

STATE MENTAL HEALTH RULES, 1990

1. SHORT TITLE AND COMMENCEMENT -

1. These rules may be called the State Mental Health Rules, **1990 2010**.
2. They shall come into force in a State on the date of **amendment** of the Act in the State.

2. DEFINITIONS - In these rules unless the context otherwise requires -

- a. "Act" means the Mental Health Act, 1987 (14 of 1987);
- b. "applicant" means the person who makes an application to the licensing authority for grant of a licence;
- c. "authority" means the State Mental Health Authority constituted under Sec. 4 of the Act;
- d. "**Chairperson**" means the Chairman nominated under rule 5;
- e. "Form" means Form annexed to these rules;
- f. "licence" means licence granted under Sec. 8 of the Act;
- g. "member" means a member of the Authority appointed under rule 3;
- h. "membership" means membership of the Authority established under Sec. 4 of the Act;
- i. "non-official member" means a member appointed under sub-rule (2) of rule 3;
- j. "official member" means a member appointed under sub-rule (1) of rule 3;
- k. "secretary" means Secretary to the Authority appointed under rule 13;
- l. words and expressions used herein and not defined but defined in the Act shall respectively have the meanings assigned to them in the Act.

These definitions will need to be amended once the amendment to the Act are in place. For example, licence will need to be replaced with registration etc

CHAPTER II :STATE MENTAL HEALTH AUTHORITY

3. CONSTITUTION OF THE AUTHORITY -

The Authority shall consist of the following members, namely;

1. Official Members:

- a) Secretary, Department of Health;
- b) Jt Secretary, Department of Health dealing with Mental Health;
- c) Director of Health Services;
- d) Medical Superintendent, Government Mental Hospital or Head of the Department of Psychiatry, Government Medical College and Hospital.

2. Non-official Members:

- a) **1 psychiatrist**
- b) **1 Psychiatric Social Worker**
- c) **1 Clinical Psychologist**
- d) **2 members representing persons with mental illness and/or organizations representing such persons**
- e) **2 members representing families of persons with mental illness and/or organizations representing such families**

f) 2 members representing non-governmental organizations providing services to persons with mental illness or non-governmental organizations doing advocacy work in the field of mental health.

4. DISQUALIFICATION -

A person shall be disqualified for being appointed as a member or shall be removed from membership by the State Government, if he

a) has been convicted and sentenced to imprisonment for an offence which in the opinion of the State Government involves moral turpitude; or

b) is an undischarged insolvent; or

e) is of unsound mind and stands so declared by a competent court; (delete) or

d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government.

5. CHAIRPERSON :

1. The **Chairperson of the Authority shall be person who is or has been a Secretary or Additional Secretary, State Government or an equivalent post in the State Government for a period of three years.**

2. The Chairperson shall be a full time appointment and shall be appointed for a period of five years, or upto the age of sixty-seven years, whichever is earlier.

6. TERM OF OFFICE OF MEMBERS -

1. Every official member shall hold office as such member so long as he holds the office by virtue of which he was so appointed.
2. Every non-official member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.
3. A non-official member may at any time resign from membership of the Authority by forwarding his letter of resignation to the Chairman and such resignation shall take effect only from the date on which it is accepted.
4. Where a vacancy occurs by resignation of a non-official member under sub-section (3) or otherwise, the State Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-rule (2) of rule 3 and the person so appointed, shall hold office for the remainder of the term of office of the member in whose place he was so appointed.
5. Where the term of office of any non-official member is about to expire, the State Government may appoint a successor at any time within three months before the expiry of the term of such member but the successor shall not assume duty until the term of the member expires.

CHAPTER III : PROCEEDINGS OF THE AUTHORITY

7. MEETINGS OF THE AUTHORITY -

1. The authority shall ordinarily meet **once every 3 months** at such time and place as may be fixed by the **Chairperson**. Provided that the **Chairperson** -

i. may call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.

ii. Shall call a special meeting if he receives a requisition in writing signed by not less than four

members and stating the purpose for which they desire the meeting to be called.

2. The first meeting of the Authority to be held in any calendar year shall be the annual meeting for that year.

8. SUBJECTS FOR SPECIAL MEETING

Where a meeting referred to in the proviso to sub-rule (1) of rule 7 has been convened, only the subjects for the consideration of which the meeting was convened, shall be discussed.

9. SUBJECTS FOR THE ANNUAL MEETING

At the Annual Meeting of the Authority, the following subjects shall be considered and disposed of namely;-

- a. review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year.
- b. Any other business brought forward with the consent of the **Chairperson** or where he is absent, with the consent of officer presiding at the meeting.

10. PROCEDURE FOR HOLDING MEETINGS

1. Every notice calling for a meeting of the authority shall -
 - a) specify the place, date and hour of the meeting:
 - b) be served upon every member of the Authority not less than twenty-one clear days in the case of annual meeting and fifteen clear days in the case of other meetings before the day appointed for the meeting.
2. The Secretary shall prepare and circulate to the members along with the notice of the meeting an agenda for such meeting showing the business to be transacted.
3. A member who wishes to move a resolution on any matter included in the agenda shall give notice thereof to the Secretary not less than seven days before the date fixed for the meeting.
4. A member who wishes to move any motion not included in the agenda shall give notice to the Secretary not less than fourteen days before the date fixed for the meeting.

11. PROCEEDINGS OF THE AUTHORITY

The **Chairperson** or in his absence any member authorised by him shall preside at the meetings of the Authority.

1. The quorum for the meeting of the Authority shall be four members.
2. If within half an hour from time appointed for holding a meeting of the Authority quorum is not present, the meeting shall be adjourned to the same day in the following week at the same time and place and the presiding officer of such meeting shall inform the members present and send notice to other members.
3. If at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute the quorum.
4. In the adjourned meeting if the Chairman is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.
5. Each member including the Chairman shall have one vote. In the case of an equality of votes, the **Chairperson** or any member presiding over such meeting shall in addition, have a casting vote.
6. All decisions of the meeting of the Authority shall be taken by a majority of the members present and

voting.

12. APPROVAL BY CIRCULATION

- Any business which may be necessary for the Authority to transact except as such may be placed before the annual meeting, may be circulated and approved by a majority of members, shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

13. SECRETARY TO THE AUTHORITY

0. The **Chairperson** shall cause to be appointed a Secretary to the Authority from amongst persons possessing post-graduate degree in psychiatry and having three years' experience in the field of psychiatry.

1. The Secretary shall be a full-time or part-time servant of the Authority and shall function as the Administrative Officer of the Authority.

2. The Secretary shall be responsible for the control and management of office accounts and correspondence.

3. The Secretary shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for the efficient functioning of the Authority.

4. The Secretary shall exercise such other powers and discharge such other functions as may be authorised in writing by the Chairman for the efficient functioning of the Authority.

14. FORWARDING OF COPIES OF THE PROCEEDINGS OF THE AUTHORITY TO THE STATE GOVERNMENT

The Secretary shall forward copies of the proceedings of the Authority to the **State Government every 6 months. The Secretary shall also publish in the public domain a report of the Activities of the Authority annually.**