



स्वास्थ्य एवं
परिवार कल्याण मंत्रालय
MINISTRY OF
HEALTH AND
FAMILY WELFARE



Training Manual for Implementation of Mental Healthcare Act, 2017 for Care-givers

Central Mental Health Authority

Training Manual

for

Implementation of

Mental Healthcare Act, 2017

for

Care-givers





डॉ. मनसुख मांडविया
DR. MANSUKH MANDAVIYA



मंत्री
स्वास्थ्य एवं परिवार कल्याण
व रसायन एवं उर्वरक
भारत सरकार
Minister
Health & Family Welfare
and Chemicals & Fertilizers
Government of India

Message

An individual is healthy when one has complete physical, mental and social well-being. Instability in either of these fundamental pillars creates added responsibility for the family or guardian of the individual. Every person has basic human rights, which includes right to equality, liberty and dignity.

The Government has been committed to promoting health and well-being for all and believes that mental health is an integral part of our overall health endeavour. The Government believes not only in strengthening of health infrastructure, but also in addressing the social determinants of health and mental health. Emphasizing the importance of mental health in daily life, Honourable Prime Minister of India has quoted "Cleanliness is not just about cleanliness, but also about our physical and mental well-being."

The 'Mental Health Policy, 2014' and 'Mental Healthcare Act, 2017' provides right-based policy and legal framework respectively, for fortification of efforts promoting mental well-being of the population. These documents have also been instrumental in addressing the need to safeguard the rights of persons with mental illness and ensure that they are treated with respect and dignity. The caregiver of person with mental illness plays a vital role in their life. Further, efforts are required to ensure that respect and dignity of the persons with mental illness is maintained while being under care of the caregiver. This module has been developed with an aim to familiarize the caregiver about the rights of mentally ill person.

I congratulate the entire team of Central Mental Health Authority and Ministry of Health and Family Welfare for contributing towards developing this crucial document. I hope that this will pave path for a dignified life of the persons with mental illness who are dependent on the caregivers and further contribute to enhance the quality of life of all across the Country.

(Dr. Mansukh Mandaviya)

प्रो. एस.पी. सिंह बघेल
PROF. S.P. SINGH BAGHEL



राज्य मंत्री
स्वास्थ्य एवं परिवार कल्याण
भारत सरकार
MINISTER OF STATE FOR
HEALTH & FAMILY WELFARE
GOVERNMENT OF INDIA



MESSAGE

As a nation, India has prioritized the rights of all citizen, including the persons with mental illness. The Mental Healthcare Act, 2017 has been put together to support the inclusion of the mentally ill persons in decision making while seeking treatment as well. The notable aspect of the Mental Healthcare Act, 2017 is that it has laid down the rights, procedures and duties in a manner that mental healthcare system revolves around the person with mental illness. The Mental Health Policy, 2014 envisions to reduce the exclusion morbidity and premature mortality associated with the mental health problems.

The manual for caregivers has successfully encompassed the intentions of both Mental Health Policy, 2014 and Mental Healthcare Act, 2017. This manual has been designed keeping in view the aspects important for the understanding of caregiver of the mentally ill person. The empowerment of the caregivers and the mentally ill persons, shall secure the respect and dignity of the mentally ill person while under treatment.

I appreciate the efforts made by the Central Mental Health Authority team and officers of the Ministry of Health and Family Welfare, for drafting this training module. I am certain that the mentally ill residents of the country will be benefited with this module.

With best wishes.

(Prof. S.P. Singh Baghel)



डॉ. भारती प्रविण पवार
Dr. Bharati Pravin Pawar



सत्यमेव जयते



स्वास्थ्य एवं परिवार कल्याण राज्य मंत्री
व जनजातीय कार्य राज्य मंत्री
भारत सरकार

MINISTER OF STATE FOR
HEALTH & FAMILY WELFARE AND
MINISTER OF STATE FOR
TRIBAL AFFAIRS
GOVERNMENT OF INDIA



MESSAGE

Mental wellness is viewed as a positive attribute Mental. The provision of healthcare can never be completed without including mental health. In today's world and with the current challenges we face, mental disorders are a major cause of health burden. The National Mental Health Survey of India (2015-16) shows current prevalence of mental morbidity of individuals above the age of 18 years to be 10.6%. Mental illness impacts the life of the person affected and also of the people living with them. Efforts are required to ensure that the rights, respect and dignity of the mentally ill person are maintained while under treatment. Keeping this in consideration, the module has been formulated to support the mentally ill person and the caregiver.

This module utilizes guidance established by National Frameworks in place that prioritize mental health initiatives in the country. The 'Mental Health Policy, 2014' and 'Mental Healthcare Act, 2017' consolidates the efforts to safeguard the rights of the persons with mental illness to ensure they are treated with respect and dignity. The Mental Health Policy, 2014 has emphasized on medical and non-medical aspects of the mental health issues.

Government of India under visionary leadership of Hon'ble Prime Minister Sh. Narendra Modi ji and in the able guidance of Hon'ble Minister, Health & Family Welfare Dr. Mansukh Mandaviya ji, has taken several initiatives to strengthen the health care system in the country and to improve the availability of resources in the form of mental health infrastructure and manpower. I acknowledge the efforts made by the team of the Central Mental Health Authority and Ministry of Health and Family Welfare for formulation of this important document. I am confident that this module will prepare way for a dignified treatment of the mentally ill persons.

With best wishes to all concerned.

(Dr. Bharati Pravin Pawar)



**Apurva Chandra
Secretary**



भारत सरकार
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
निर्माण भवन, नई दिल्ली - 110011
Government of India
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi - 110011



Training Manual for Implementation of Mental Healthcare Act, 2017 for Caregivers

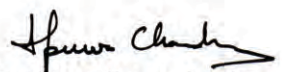
Message

The current prevalence of the common mental disorders reported in National Mental Health Survey 2015-16 report is 10.6%. The current prevalence of some of the mental disorders like depression, neurosis and stress related disorder, substance use disorders is 2.7%, 3.5% and 22.4% respectively. 0.8% of the population was identified to be affected by severe mental disorders. The survey also reports that nearly 80% of the population affected had not received the treatment due to stigma, despite the presence of the illness for 12 months. Hence, considering the current prevalence, it becomes necessary to guard against discrimination against the mentally ill persons.

The Mental Healthcare Act, 2017 has laid down the rights, procedures and duties to ensure mental healthcare and treatment of the mentally ill persons. This training module shall act as a reference note, for the caregivers of the mentally ill persons, about the provisions of the Mental Healthcare Act, 2017. This document is an attempt to acquaint the caregivers about the rights of the persons with mental illness, to ensure that best quality care and treatment is given without violation of their rights.

Appreciating the efforts of the entire team of Central Mental Health Authority and Ministry of Health and Family Welfare for developing this crucial document, I am hopeful that life of the mentally ill residents of the country will be able to live a life of dignity.

With best wishes.


(Apurva Chandra)



एल. एस. चांगसन, भा.प्र.से.
अपर सचिव एवं मिशन निदेशक (रा.स्वा.मि.)

L. S. Changsan, IAS
Additional Secretary & Mission Director (NHM)



सत्यमेव जयते



आज़ादी का
अमृत महोत्सव

भारत सरकार
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
निर्माण भवन, नई दिल्ली - 110011
Government of India
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi - 110011



MESSAGE

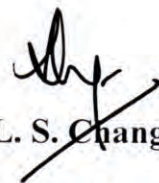
“Mental Health is a Universal Human Right” was the theme for World Mental Health Day 2023, to celebrate the mental health as a human right.

It is known that “man is a social being” interacting with the fellow beings on daily basis. These interactions can be in form of mutual support, guidance and care in health - mentally, physically and socially. But in circumstances when the person is mentally ill, he becomes dependent on family, friends and guardians for support and care. Thus, the role of the caregiver becomes significant for providing support, guidance and care to the mentally ill. While the mentally ill person is under the care of the caregiver, it becomes crucial that the rights, dignity and liberty of the mentally ill person are maintained.

The documents ‘Mental Health Policy, 2014’ and ‘Mental Healthcare Act, 2017’ have been instrumental, in addressing the need to safeguard the rights of persons with mental illness and ensure that they are treated with respect and dignity. This module has been developed with an aim to guide the caregivers about the rights of mentally ill person and bring about necessary changes in their clinical practice according to the duties, procedures and compliance laid down in the Mental Healthcare Act, 2017.

I congratulate the entire team of the experts from Central Mental Health Authority and Ministry of Health and Family Welfare who contributed towards developing this valuable document. I am positive that this will contribute tremendously towards ensuring that the mentally ill persons lead a dignified life while under treatment and further enhance the quality of life of all across India.

With best wishes to all concerned.


(Ms. L. S. Changsan)



इन्द्राणी कौशल, आई.ई.एस.
Indrani Kaushal, IES
आर्थिक सलाहकार
Economic Adviser



भारत सरकार
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
निर्माण भवन, नई दिल्ली-110011
GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
NIRMAN BHAWAN, NEW DELHI - 110011



Message

In this age, India as nation is experiencing a paradigm shift in almost every sector like education, technology, health, etc. Thus, to match the pace of the changing scenario in the day-to-day life of the population in general and the persons suffering from any kind of mental illness in particular, the Mental Healthcare Act, 2017 came into force. While the Mental Health Policy, 2014 envisions to reduce the exclusion morbidity and premature mortality associated with the mental health problems, the Mental Healthcare Act, 2017 brings paradigm shift by introducing right based approach to the treatment and care of the persons with mental illness.

The National Mental Health Survey of India (2015-16) shows current prevalence of mental morbidity of individuals above the age of 18 years to be 10.6%. The report of the survey shows that the presence of morbidity is evident in age group of 18 years and above, though the prevalence of the mental morbidity varies across the age groups. The prevalence is 7.5% in age group of 18-29 yrs, 14.6% in age group of 30-39 yrs, 18.4% in age group of 40-49 yrs, 16.1% in age group of 50-59 yrs and 15.1% in age group of 60 yrs and above. The prevalence steers that people operating as caregiver of the mentally ill, need to be empowered with knowledge of their responsibilities.

The manual for caregivers has successfully encompassed the intentions of both Mental Health Policy, 2014 and Mental Healthcare Act, 2017. This training manual has been designed considering the aspects important for the caregiver of the person with mental illness. The manual makes the caregiver re-cognizant of the aspects which shall secure the respect and dignity of the mentally ill.

I appreciate the efforts of the Central Mental Health Authority team and Ministry of Health and Family Welfare for drafting of this training manual. I am certain that this manual will open the way for a respectful life of the mentally ill residing in the country.

With best wishes to all concerned.

Indrani
(Indrani Kaushal)

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- Capacity Assessment as per Mental Healthcare Act, 2017
- Guidance document is drafted as per the Section B1 of the MHA, 2017
- Assessment of capacity to make mental healthcare and treatment decisions is to be carried out on any person (above 18 years of age)
- Capacity Assessment for Treatment decisions Including Admission

Abbreviations

MO	Medical Officer
MP	Medical Practitioner
MHP	Mental Health Professional
MHE	Mental Health Establishment
CMHA	Central Mental Health Authority
SMHA	State Mental Health Authority
MO/MHP in charge	Medical Officer or Mental Health Professional in charge of the Mental Health Establishment

Chapter 1

Introduction

1. What is the Mental Healthcare Act, 2017?

The Mental Healthcare Act, 2017 [“MHCA”] was brought into force on 29th May, 2018. It is a law which provides for mental healthcare and treatment of persons with mental illness. It protects their rights and ensures that such persons are treated with respect and dignity.

The MHCA is inspired by the United Nations Conventions on Rights of Persons with Disabilities [“CRPD”]. The CRPD is an international convention A convention is a form of international law which is binding on countries which choose to be governed by the law. The CRPD was adopted by countries (member states) of the United Nations in 2006. It protects and promotes the human rights of all persons with disabilities including those who have mental illnesses (psychosocial disabilities). It lists down all the rights of persons with disabilities and the manner in which persons with disabilities should be treated.

The MHCA lays down the rights, procedures and duties to ensure mental healthcare and treatment of persons with mental illness. The most important aspect of the MHCA is that **it places persons with mental illness at the centre of the mental healthcare system**. It recognizes the capacity of all persons with mental illness to take decisions regarding their mental healthcare and treatment and ensures that their will and preferences are considered primary in all situations from the time of admission to rehabilitation and recovery after discharge from hospitals.

According to the MHCA, a **caregiver** is a person who resides with a person with mental illness and is responsible for providing care to that person. A caregiver may include a relative, friend, family member, or any other person who provides care for free or with remuneration.

Caregivers play a crucial role in the care and treatment of persons with mental illness. They also play an important part in ensuring that persons with mental illness are treated with respect and dignity. If the caregivers are aware of the rights of persons with mental illness under the MHCA they can ensure that the best quality care and treatment is given to persons with mental illness without violating their rights.

Some of the guiding principles of the MHCA are:

- ✓ All persons have basic human rights, which includes the right to equality, liberty and dignity.
- ✓ All persons must be given the freedom to make the choices they consider the best for themselves.
- ✓ Everyone has the right to participate fully and be included in society.
- ✓ No person can be discriminated against on the basis of their physical, intellectual, cognitive or psycho-social disability.
- ✓ All persons have the capacity to take decisions regarding all matters of their life, including their mental healthcare and treatment.
- ✓ Supported decision making is an integral part of exercising one's capacity to make decisions about their own mental healthcare and treatment.

2. About the Manual

This manual is a reference guide to the Mental Healthcare Act, 2017 [“MHCA”] for caregivers to persons with mental illness. It explains the provisions of the MHCA in a simple manner. The manual is divided in the following chapters:

- Chapter 1: Introduction to the Mental Healthcare Act, 2017
- Chapter 2: Mental Illness, Capacity, Advance Directives & Nominated Representatives
- Chapter 3: Rights of Persons with Mental Illness
- Chapter 4: Mental Health Review Boards, Authorities & Mental Health Establishments
- Chapter 5: Admissions, Treatment & Discharge
- Chapter 6: Emergency Treatment & Prohibited Procedures
- Chapter 7: Miscellaneous

3. Important Concepts in the MHCA

- ❖ **Capacity** to make decisions regarding one's own mental healthcare and treatment. Capacity is presumed to be inherent in all persons. It implies the ability of a person to provide informed consent and make decisions for their treatment and care. Capacity can be expressed in different

ways and may require the support of another person. Supported decision making, informed consent and advance directives are integral aspects of exercising one's capacity.

- ❖ **Advance directive** is a declaration made by a person stating how they would like to be treated (or not) in the situation that they have a mental illness and cannot take decisions regarding their treatment individually or without support. Advance directives are meant to ensure that a person is provided mental healthcare or treatment in accordance with their will and preferences. will prevail.
- ❖ **Nominated representative** is appointed by a person with mental illness represent and provide support to the person for making decisions regarding their mental health care treatment. Nominated representatives are expected to reflect the will and preferences of such persons if they are unable to take decisions on their own.
- ❖ **Informed consent** is an integral part of exercising one's capacity. It is usually taken from persons with mental illness before providing them any mental healthcare, treatment or service. In the event if the person is unable to give consent, medical personnel should refer to the advance directive and/or obtain consent from the nominated representative.
- ❖ **Equality & non-discrimination** means that all persons with mental illness must be treated equally and *at par* with patients who have physical illnesses. They must be provided services in the same manner, extent and quality. It also implies that no person with mental illness can be discriminated against on the basis of social, cultural, political, and economic grounds such as caste, class, ethnicity, sex, gender, sexual orientation, language or any other such ground.
- ❖ **Independent admission** means persons with mental illness can be admitted into a mental health establishment only if they consent to do so, and don't require very high support. Admissions can be made only if the person has a mental illness which is severe enough and requires admission for treatment.
- ❖ **Supported admission** is when persons with mental illness have a mental illness of such severity that they are unable to take decisions on their own, require high support, and treatment in a mental health establishment. Supported patients are admitted into a mental health establishment on an application from their nominated representative. In the first instance supported admission can last for only *30 days*. If it is to be extended beyond this period, then medical officer or mental health professional in charge of the mental health establishment must satisfy in accordance with the MHCA's provisions, that the person requires admission for a longer period and further take permission of the Mental Health Review Board within the prescribed time period.
- ❖ **Registration of mental health establishments** is compulsory for every mental health establishment where persons with mental illness may be admitted, reside or kept for care, treatment, convalescence and rehabilitation. In order to receive the certificate of registration, health establishments must satisfy the minimum standards laid down by the Central and State Governments.

- ❖ **Mental health review boards** or MHRBs are authorities that are mandated to ensure that the rights of persons with mental illness are protected. They also have a duty to ensure that mental health professionals, and mental health establishments are complying with the provisions of the MHCA. MHRBs are also authorities where relevant persons can challenge the decision of any medical personnel and make applications to protect their rights under the MHCA.
- ❖ **Central & State mental health authorities** are statutory bodies which are required to oversee the overall implementation of the MHCA. They are required to register mental health establishments and mental health professionals, lay down regulations and develop minimum standards for mental health establishments and services.

4. Important Definitions under the MHCA

The MHCA defines certain terms which are used in the law. It is useful to understand these definitions before reading the provisions of the law.

1) Clinical Psychologist

A clinical psychologist includes a person who has-

- A recognized qualification in Clinical Psychology from an institution approved and recognized by the Rehabilitation Council of India.
- A post-graduate degree in *Psychology or Clinical Psychology or Applied Psychology* **and** a Master of Philosophy in *Clinical Psychology or Medical and Social Psychology* *obtained* after completing a full-time course of two years which includes supervised clinical training from a University recognized by the University Grants Commission and approved and recognized by the Rehabilitation Council of India Act, 1992, or such recognized qualifications as may be prescribed.

2) Family

A group of persons related by blood, adoption or marriage.

3) Least Restrictive Alternative OR

Least Restrictive Environment OR

Least Restrictive Option

An option for treatment or an environment which (i) meets the person's treatment needs; and (ii) imposes the least restriction on the person's rights.

4) Local Authority

Includes a Municipal Corporation, Municipal Corporation, Zilla Parishad, Nagar Panchayat, or Panchayat. It also includes any other authority or body having administrative control over the

mental health establishment or empowered under any law to function as a local authority in any city, town or village.

5) Medical Officer in Charge

The psychiatrist or medical practitioner who is in charge of a mental health establishment.

6) Medical Practitioner

A person who possesses a recognized medical qualification as defined in-

- Section 2 (h) of the Indian Medical Council Act, 1956 and whose name is entered in a State Medical Register
- Section 2 (1) (h) of the Indian Medicine Central Council Act, 1970 and whose name is entered in a State Register of Indian Medicine
- Section 2 (1) (g) of the Homoeopathy Central Council Act, 1973 and whose name is entered in State Register of Homoeopathy

7) Mental Healthcare

Includes analysis and diagnosis of a person's mental condition and treatment. It includes care and rehabilitation of such person for their mental illness.

8) Minor

A person who has not completed the age of 18 years.

9) Mental Health Nurse

A person who has a diploma or degree in *general nursing or psychiatric nursing* recognized by the Nursing Council of India and registered with the relevant nursing council in the State.

10) Mental Health Professional

A MHP includes the following professionals-

- A psychiatrist as defined in Section 2 (1) (y) of the MHCA.
- A professional registered with the State Mental Health Authority which includes mental health nurses, clinical psychologists, psychiatric social workers.
- A professional who has a post graduate degree in Ayurveda for *Mano Vigyan Avum Manas Roga*, in Homoeopathy for Psychiatry, in Unani for *Moalijat (Nafasiyatt)* or in Siddha for *Sirappu Maruthuvam*.

11) Mental Illness

Mental Illness is a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life and mental conditions associated with the abuse of alcohol and drugs. It does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, characterized by subnormality of intelligence.

12) Psychiatric Social Worker

A person with a post-graduate degree in Social Work and Master of Philosophy in Psychiatric Social Work after a full-time course of two years which includes supervised clinical training from any university recognized by the University Grants Commission, or such recognized qualifications as may be prescribed.

13) Psychiatrist

A medical practitioner with a post-graduate degree or diploma in *psychiatry* from a university recognized by-

- (i) University Grants Commission; or
- (ii) National Board of Examinations and included in the First Schedule to the Indian Medical Council Act, 1956; or
- (iii) Medical Council of India
- (iv) Includes any medical officer who having regard to their knowledge and experience in psychiatry has been declared by any State Government as a psychiatrist for the purposes of the MHCA.

14) Relative

Any person related to the person with mental illness by blood, marriage or adoption.

Chapter 2

Mental Illness, Advance Directives & Nominated Representatives

In this chapter, you will learn about-

- Guidelines for determining whether a person has a mental illness
- Capacity to make decisions
- Advance directives
- Nominated representatives

I. MENTAL ILLNESS

1. What are the guidelines for determining a person's mental illness?

Mental illness can be determined only according to acceptable national or international *medical standards* notified by the Central Government. One of the most commonly used medical standards in India is the latest edition of the International Classification of Disease of the World Health Organisation or the ICD. The ICD is a diagnostic manual containing diagnostic criteria of all mental, neurological and substance abuse disorders which is used by mental health professionals to determine a person's mental illness.

2. Can a person be diagnosed with a mental illness for any purpose other than mental healthcare and treatment under the MHCA?

A person can be classified with a mental illness only for purposes of treatment and other matters under the MHCA or *any other* law which requires such a determination or classification.

Example- If a person with mental illness wants to access benefits under the Right to Persons with Disabilities Act, 2016 then they must be classified as a person with mental illness according to the provisions of the MHCA.

3. My son is homosexual and identifies himself as a member of the LGBT community. Does he have a mental illness?

A person cannot be classified with a mental illness on basis that they belong to a particular group, community, status or identity. A person's political, economic, social, cultural, racial or religious status cannot be used to determine if they have a mental illness. A person can be classified with a mental illness only on the basis of *medical standards* notified by the Government. Homosexuality is not a mental illness as per medical standards. If a person chooses to identify as homosexual, they cannot be classified as having a mental illness.

- 4. My daughter doesn't believe in marrying within one's caste. She wants to have an inter-caste marriage. Her beliefs are completely opposed to the community we belong to. Does she have a mental illness?**

A person cannot be classified with a mental illness on the basis that their beliefs or values are opposed to those prevailing in any community. A person's moral, social, cultural, work, political or religious values and beliefs (which are different from any community's) is no indication of a person's mental illness. A person can be diagnosed with a mental illness only on the basis of *medical standards* notified under the MHCA.

- 5. Rajesh and Sunita are a married couple. Sunita has a history of mental illness for the past 10 years. Recently, Rajesh and Sunita had a fight about some marital issues. Rajesh was not happy about Sunita disagreeing with him and forcefully took her to a psychiatrist for treatment citing her past history of mental illness. Can the psychiatrist diagnose Sunita with a mental illness based on her history of mental illness?**

A person's history of mental illness or being treated in a MHE is an important part of their medical history. However, it cannot be the only basis for determining a person's mental illness. A person can be said to have a mental illness only after they are examined by a mental health professional *in the present* based on acceptable medical standards.

- 6. My friend has been diagnosed with a mental illness. Does this mean he is of unsound mind or legally insane?**

Unsound mind is not the same as mental illness. If a person has a mental illness, this does not imply that the person is of unsound mind. Unsound mind and legal insanity are legal concepts which can be determined only by a competent court of law. Mental illness is a medical concept which only mental health professionals can determine according to acceptable medical standards.

II. CAPACITY & INFORMED CONSENT

- 7. What is meant by capacity to make decisions for mental healthcare and treatment?**

Capacity refers to one's ability to make decisions regarding their mental healthcare and treatment. According to the MHCA all persons are *presumed* to have capacity unless it is proved otherwise. It is important to remember that the MHCA **does not** refer to capacity about making decisions in other matters such as entering into contracts, buying or selling property, marriage, parenthood, etc. Under the MHCA a person's capacity is relevant **only** for decisions regarding mental healthcare and treatment.

- 8. What are the essential components of a person's capacity?**

Capacity to make decisions regarding one's mental healthcare and treatment means that such person can:

- a) **Understand information** relevant to make a decision on treatment, admission or personal assistance;
- b) **Appreciate** the foreseeable future consequences of a decision or lack of decision regarding treatment, admission or personal assistance;
- c) **Communicate** the decision by means of speech, expression, gesture or any other means.

9. What is meant by ‘making decisions’ regarding mental healthcare and treatment?

- Decision making refers to the process by which a person makes decision about their mental healthcare and treatment after considering different choices presented for the same.
- Decisions can be exercised only when a person is provided **adequate information and support** (if required) which can help them make a decision in favour or against the choices presented to them.
- Such information should include all the risks, benefits, alternatives, and consequences of choosing a particular option or not choosing it.

Example- A person has been diagnosed with schizophrenia and must be given anti-psychotic medication. The person must be informed of the possible side effects of taking the medication, the consequences of not taking it and any other alternatives to the medication. The person can take a decision of taking the medication or not taking it because of the negative side effects.

10. What is informed consent? What are the criteria for ensuring informed consent?

Informed consent is when a person gives consent to receiving any form mental healthcare and treatment. Informed consent can be given only when the person with mental illness is given *adequate information* such as the risks, benefits, and alternatives to the treatment option. A person should be allowed to give their consent without being forced, threatened, influenced or mistaken about the information. The information must be provided in a language and manner understood by the person. Informed consent includes the right to refuse any treatment or service.

Principles for obtaining informed consent-

- ✓ Person/patient giving consent must have capacity to give consent.
- ✓ Consent must be obtained freely, without threats or force.
- ✓ There should be proper disclosure of information.
- ✓ Information must be provided on the purpose, method, likely duration and expected benefits of the proposed treatment.
- ✓ Possible pain or discomfort and risks of the proposed treatment, and side-effects, should be discussed with the patient.
- ✓ Choices should be offered. Alternative modes of treatment should be discussed and offered to the patient.
- ✓ Information should be provided in a language and form that is understandable to the patient.
- ✓ The patient should have the right to refuse or stop treatment.
- ✓ Consequences of refusing treatment, which may include discharge from the hospital, should be explained to the person.
- ✓ The consent should be documented in the patient's medical records.

11. My mother has been diagnosed with a mental illness. Does this mean she lacks capacity?

Mental illness is not the same as capacity. If a person has mental illness, then it is wrong to assume that they lack capacity. A person can make decisions regarding their mental healthcare and treatment even when they have a mental illness. For example, a person can have a mental illness (such as schizophrenia) and still have the capacity to make decisions regarding their mental healthcare and treatment. A person's capacity must be assessed separately from their mental illness, based on the guidelines provided by the Expert Committee appointed by the Central Mental Health Authority under the MHCA.

12. What is presumption of capacity?

Every person (with or without mental illness) is presumed to have capacity to make decisions regarding their healthcare and treatment. If medical personnel or any other person has a contrary opinion, then they must prove that the person does not have the capacity to make decisions based on the guidelines for assessment of capacity.

13. Can a person's decision be revoked because the doctor thinks it is a wrong decision or it goes against the doctor's personal beliefs?

A person's capacity cannot be denied because their decision is perceived as inappropriate or wrong by medical personnel, staff or any other authority. For example, a patient decides not to take a particular medicine because of its side effects. The psychiatrist is of the opinion that this is a wrong decision as it will worsen the patient's condition. However, this does not mean that the patient lacks capacity just because the psychiatrist is of the opinion that the patient's decision is a wrong one. If a person has the capacity to make decisions on their mental healthcare and treatment, then it does not matter whether their decision is right, wrong or against their best-interests.

14. What is supported decision making? Is providing support necessary for enabling a person with mental illness to take decisions?

As human beings, we all have varying abilities to take decisions about different things. Sometimes, we take the support of our family members, friends or experts to take decisions about different aspects in our lives. For example, if you want to invest money in mutual funds, you might take the support of a financial adviser. Receiving support does not mean that you are unable to take decisions. Supported decision making means that a person is given support (of any kind) to help them take a decision.

A person with mental illness can exercise capacity to take decisions with varying levels of support from the nominated representative, mental health professional or caregiver. The levels of support can vary at different points in time- at moments a person might require high support, and in other moments such person might not require any support. Support could also vary with the complexity of the decision to be taken- simpler decisions might not require as much support, whereas complex decisions could require more support.

15. If a person with mental illness has appointed a nominated representative, does that mean the person has no capacity?

If a person with mental illness has appointed a nominated representative to support them in making decisions, this does not mean that the person does not have capacity to make decisions. A person can exercise capacity with varying levels of support from their nominated representative. Similarly, if a person is unable to appoint a nominated representative for any reason, this does not mean that the person lacks capacity.

16. My sister is diagnosed with schizophrenia. There are days when she can take decisions for herself but when she has a severe episode, she is unable to take decisions by herself until she recovers. Can a person lose capacity and then regain it?

A person has capacity **as long as** they are able to make decisions with or without support. A person can lose capacity and regain it at different points in time depending on the severity of the person's mental illness. This means that a person's capacity must be reviewed on an ongoing basis by medical personnel for the entire duration of admission and treatment.

17. Are there any guidelines for assessing a person's capacity?

The Central Mental Health Authority has appointed an **Expert Committee** to formulate guidelines for assessing a person's capacity. All medical personnel have to conduct capacity assessments according to these guidelines.

III. ADVANCE DIRECTIVES

18. What is an advance directive?

An advance directive is a written document in which any person can specify how they wish to be treated (or not) if in the future they have a mental illness and do not have capacity to take decisions. Advance directives help a person plan for the future so that they are provided treatment and care in accordance with their will and preferences. Mental health professionals, nominated representatives and caregivers have a duty to follow a person's advance directive.

An advance directive can specify any or all the following information:

- The way the person wishes to be cared for and treated for a mental illness; or
- The way the person wishes not to be cared for and treated for a mental illness; or
- Individuals he or she wishes to appoint as a nominated representative

Examples of what advance directives may look like:

In the event if I, X, have a mental illness and am not in the condition to take decisions by myself, then:

a. I wish to be care for and treated as under:

I wish to be admitted in a hospital which is close to my family home. I want my food to be cooked at home. If I am in a lot of pain or distress, then I wish to be given medicines to calm me even if I don't give permission in that moment.

b. I wish not to be cared for and treated as under:

I do not want to be administered lithium because of its side effects. I do not want any visitors to come to the hospital to meet me. Under no circumstances do I wish to be physically restrained.

At all times I will be supported by my mother who will take decisions on my behalf since she knows me and my wishes the best.

I have been suffering from schizophrenia for 15 years and live alone. Whenever I have a serious psychotic episode, I admit myself into a hospital as I am unable to take care of myself on my own. If I am admitted, I want the hospital authorities to contact my brother on the number given below as he is my nominated representative.

I do not like it if there are many people present around me in the hospital ward and would prefer getting a bed which is away from everyone else. I don't like injections and prefer taking medicines orally.

If I am very anxious, I would like to be given a sedative to calm me down and put me to sleep.

19. Who can make an advance directive?

According to the MHCA, any person (whether or not they have a history of mental illness) has the right to make an advance directive. However, minors cannot make advance directives for themselves.

20. I have written an advance directive. When will it become applicable?

- The advance directive is effective only when the person loses capacity and is unable to make decisions regarding their mental healthcare and treatment.
- An advance directive will remain effective till the person regains capacity. Once the person regains capacity, informed consent will have to be taken from the person before providing any treatment.
- If a person has made multiple advance directives, only the latest one will be applicable.
- The advance directive is not applicable to emergency treatments under Section 94.
- Advance directives cannot be contrary to the law- if it is then it will be considered as inapplicable.

Example- Amit has bipolar disorder with psychotic symptoms and is admitted in a psychiatric hospital. He first made an advance directive in 2010, and subsequently made another one in 2017. When he arrived in the hospital he was able to take decisions regarding his treatment. However, a week later he lost capacity for 5 days. His advance directive became applicable during this period. He later regained capacity for another 3 weeks following which he lost capacity again for 10 days. The advance directive was made applicable for this period of 10 days till he regained capacity. In both cases the doctors applied the advance directive written in **2017** since it was the latest one.

21. What is the procedure for making an advance directive?

Any person can make their advance directive by writing on a piece of paper as per the format prescribed by the Central Mental Health Authority.

The advance directive must be **registered** with the Mental Health Review Board located in the area where the person lives. Once registered, the advance directive will be made online within 14 days of the registration.

22. Can I change or cancel my advance directive?

Yes. A person can change their advance directive as many times following the same procedure (mentioned above). The latest advance directive will cancel all previous ones.

23. Who can write an advance directive on behalf of a minor?

The legal guardian of a minor can make an advance directive on the minor's behalf. The same provisions will be applicable to the minor with necessary modifications suited to the minor's context.

24. Do I have a duty to inform the medical authorities about an advance directive?

It is the duty of the person or the nominated representative to **inform** the medical personnel about the advance directive and provide them a copy of the same. If the medical personnel or MHP are not provided a copy of the advance directive, they are will not be liable for not following the advance directive.

25. What is the duty of the medical personnel with respect to advance directives?

Once the medical personnel are informed of the valid advance directive it is their duty to propose or give treatment to the person in accordance with the advance directive. The medical personnel or MHP will not be liable for unforeseen consequences of following a valid advance directive.

26. Can a caregiver or anyone else challenge an advance directive?

Yes, an advance directive can be challenged before the concerned Mental Health Review Board. If you feel that the advance directive cannot be followed for any reason, then you can submit an application to the Mental Health Review Board. The Mental Health Review Board will conduct a proceeding and make an order for reviewing, modifying or cancelling the advance directive.

27. On what basis can the Mental Health Review Board review, modify/alter or cancel an advance directive?

The Mental Health Review Board can review, modify, alter or cancel an advance directive based on::

- i. Free Will:** Whether the person made the advance directive out of their own free will

and was not forced to write an advance directive against their wishes.

Example- Ramesh is an old man diagnosed with schizophrenia. His son has threatened to abandon him in an old age home if he doesn't make an advance directive appointing his son as the nominated representative. Ramesh is forced to make the advance directive. Such an advance directive is not valid.

- ii. Change in Circumstances:** Whether the circumstances are different from what the person had thought while making the advance directive. In other words, did the person intend to apply the advance directive in the new circumstances.

Example- Isha is a middle-aged woman diagnosed with clinical depression. She wrote an advance directive in 2013 in which she specified that her husband would be her caregiver. However, recently her husband passed away. Isha's advance directive will not be applicable now since there is a change in circumstances because of her husband's death

- iii. Capacity:** Whether the person had capacity to make the advance directive or take decisions relating to their mental healthcare and treatment.

Example- Ahmed specified in his advance directive that he should not be administered any medication. Ahmed wrote the advance directive at a time when he did not have capacity and was unable to foresee the consequences of what he was writing. The advance directive is not applicable.

- iv. Contrary to Law:** Whether the advance directive is contrary to any law or constitutional provisions in force.

Example- Babita has specified in her advance directive that if she loses capacity, she should be given passive euthanasia. This is contrary to the provisions of law and is not applicable.

IV. NOMINATED REPRESENTATIVES

28. Who is a nominated representative?

A nominated representative is a person who has been appointed by a person with mental illness to:

- Represent them in matters related to their mental healthcare, admission and treatment;
- Provide varying levels of support to help them make decisions;
- Give informed consent on behalf of the person in situations where the person requires very high support and cannot make decisions; and
- Any other matter related to the mental healthcare and treatment of such person

29. What are the duties of a nominated representative?

S. No	Duties
1.	Consider the current and past wishes, life history, values, cultural background and best interests of the person with mental illness
2.	Give importance to the views of the person with mental illness so that they can understand the nature of decisions under consideration
3.	Provide support in making treatment decisions for supported admission
4.	Seek information on diagnosis and treatment to provide support to the person with mental illness
5.	Have access to family or home-based rehabilitation services for the benefit of the person with mental illness
6.	Be involved in discharge planning
7.	Apply to the MHE for supported admission or admission of minors
8.	Apply to concerned Board for discharge of person with mental illness
9.	Apply to concerned Board against violation of rights of person with mental illness
10.	Appoint suitable attendant for the minor admitted in the MHE
11.	Give or withhold consent to persons who wish to collect information for research

30. My 30-year-old nephew has severe depression. He wishes to appoint a nominated representative. As his uncle am I eligible to be his nominated representative?

Any person can become a nominated representative as long as they are:

- not a minor; and
- are competent to discharge their functions; and
- been appointed by the person with mental illness and
- the person has consented to be a nominated representative

31. What is the procedure to appoint a nominated representative?

A person with mental illness can appoint a nominated representative in writing on a piece of paper with a sign or thumb impression. The nominated representative has to give their consent either by signing it or providing a thumb impression.

32. What happens if the person with mental illness does not appoint a nominated representative?

In case a person cannot appoint a nominated representative for any reason, then the medical personnel or MHP will have to consider the following individuals as a **deemed nominated representative** in order of precedence:

- i. Individual appointed as nominated representative in the advance directive; or
- ii. Relative; or
- iii. Caregiver; or
- iv. Suitable person appointed by the Mental Health Review Board; or
- v. Director, Department of Social Welfare or representative as appointed by the Mental Health Review Board.
- vi. A representative of a registered organisation working for persons with mental illness can submit a written application to the medical officer or mental health professional in charge of the person's treatment. Such person can be accepted by the medical personnel as a temporary nominated representative till the Mental Health Review Board appoints another one.

33. My sister appointed her mother as her nominated representative. But recently they have been fighting and have differences. My sister now wishes to change her nominated representative.

A person may revoke or cancel the appointment of their nominated representative and appoint a new person according to the procedure for making a new nominated representative.

34. My son is 15 years of age and is diagnosed with bipolar disorder. Can he appoint a nominated representative for himself?

A minor cannot appoint a nominated representative. The minor's legal guardian is the nominated representative of the minor.

35. My husband and I are divorced. Our minor son who has been diagnosed with a mental illness lives with his father. However, since my husband is extremely busy with his business, he neglects our son and his requirements. Can I change my son's nominated representative even if my husband does not agree?

A minor's nominated representative can be changed according to the following procedure:

- a. MHP or any other person can submit an application (with evidence) to the concerned Mental Health Review Board to appoint a new nominated representative for the minor.
- b. The person making the application must prove that the legal guardian is not acting in the best interests of the minor or is not fit to be the nominated representative of the minor.
- c. The Mental Health Review Board if after seeing the evidence feels- can appoint a new nominated representative for the minor.

36. I work in an orphanage for minor girls. There is a minor girl who has a mental illness. Her aunt used to be her legal guardian, but she passed away recently. How can a new nominated representative be appointed for the girl?

If no individual can be appointed as a nominated representative, the concerned Mental Health Review Board will appoint the Director, Department of Social Welfare of the relevant State, as the nominated representative of the minor.

37. Can I challenge the Mental Health Review Board's order to appoint a nominated representative for a person/minor with mental illness?

Yes. An application for revoking or modifying the order of the Mental Health Review Board can be submitted to the Mental Health Review Board by any of the following persons:

- a. A person with mental illness; or
- b. Relative; or
- c. Psychiatrist in charge of the person's treatment; or
- d. MO/MHP in charge

The concerned Mental Health Review Board can pass an order revoking or modifying its previous order and can appoint a new nominated representative for the person or the minor.

Chapter 3

Rights of Persons with Mental Illness

In this chapter, you will learn about-

- Right to access mental healthcare and treatment.
- Duties of the Central/State Governments to provide mental healthcare and treatment.
- Rights of persons with mental illness when admitted in mental health establishments.

1. Do I have a right to access mental healthcare? What does this right mean?

Every person has the right to access mental healthcare and treatment from mental health services run or funded by the Central or State Governments This means-

❖ No Person can be **DISCRIMINATED!**

- NO person can be denied or provided lower standards of mental health services because they belong to a particular:
 - caste
 - class
 - gender
 - sex
 - sexual orientation
 - religion
 - culture
 - social or political beliefs
 - disability

❖ Mental Healthcare should be **AFFORDABLE** for all!

- The cost of mental healthcare should not be an unreasonable burden on a person and their family. A person or their family should be able to pay for mental healthcare and treatment, or receive the same for free or at subsidized costs if they are poor or unable to afford expenses. If a person or their family has to pay for private mental health services due to absence of public mental health services, then they should be reimbursed by the Government.

❖ Mental Healthcare must be of **GOOD QUALITY!**

- Mental healthcare services and establishments should fulfill the **minimum standards** laid down by the Government. Anything below this is unacceptable and anything more than this is welcome!
- Quality means that the care, treatment and services provided should:
 - **Improve** the person's mental health

- It should meet **expectations**
- The experience of receiving the services should be **satisfactory**

❖ **Mental Healthcare should be Available in SUFFICIENT QUANTITY!**

- The number of mental health hospitals, medical personnel, equipment, medicines and infrastructure should be:
 - in sufficient number and
 - in proportion to the number of persons with mental illness in each district and State.
- Each mental health establishment should be equipped with adequate services, equipment, supplies, medication and personnel to provide services to all those who are being treated there.

❖ **Mental Healthcare Should Be ACCESSIBLE Geographically!**

- Mental health services should be available in such manner that persons don't have to travel too far to access them.
- Ideally, in each district, mental health services should be available at the level of the sub-health centres, primary health centres, community health centres and at the district hospitals.

❖ **Must be ACCEPTABLE to Persons with Mental Illness, Families and Caregivers!**

- Mental healthcare and treatment should be given according to the will and preferences of persons with mental illness. A person should not be forced to accept any form of treatment or care which they do not want!

2. Right to access mental healthcare is for services provided by the Government. What are these services?

The Central and State Governments have a duty to provide the following services *as a minimum* to ensure the right to access mental healthcare and treatment. However, Governments are free to provide more than these minimum services.

- a) Outpatient and inpatient services.
- b) Provision of halfway homes, sheltered accommodation, supported accommodation
- c) Mental health services to support family of persons with mental illness
- d) Home based rehabilitation.

- e) Hospital and community-based rehabilitation establishments and services
- f) Provision for child mental health services and old age mental health services

Apart from these services the Government has to ensure the following services also:

a) Integration with Public Health System

Mental health services should be provided in the existing public health system which includes:

- sub-centres in villages
- primary health centres
- community health centres
- district hospitals and
- other Government run hospitals.

b) Community Based Treatment

Treatment that supports persons with mental illness to live in the community with their families.

c) Institutionalization as Last Resort

- Long term care (admissions) in a mental health hospital to be provided only in exceptional circumstances and for as short a duration as possible.
- It is a last resort when community-based treatment has failed.

d) Treatment in Each District

- Minimum mental healthcare services must be available in each district.
- If not possible, the Government will allow persons get treatment in any other district or from private mental health services in the same district and **reimburse** the costs.
- **Rule 5 of the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018** provides that a person with mental illness can apply to the Chief Medical Officer of the District for reimbursement of costs. The Chief Medical Office will examine the application and issue an order to the officer in charge of the Directorate of Health Services to reimburse costs in accordance with the rates specified by the Central Government.

e) Mental Healthcare in General Hospitals

Mental health services will be provided at all general hospitals run or funded by the Government.

f) Emergency Mental Healthcare Services

The Government has to provide basic and emergency mental healthcare services at all Community Health Centres and upwards in the public health system.

g) Free Mental Healthcare Services

The Government has to provide mental healthcare treatment and services **free of cost** to persons:

- living below the poverty line
- destitute
- homeless

h) Provision of Essential Drugs & Medicines

– The Essential Drugs List consists of all the essential drugs and medicines which must be provided to **all persons for free of cost**. The Government will provide all drugs which are mentioned in the list in MHEs which are run or funded by the Government starting from Community Health Centres and upwards.

–Where health services in ayurveda, yoga, unani, siddha, homeopathy or naturopathy systems are being offered, and there is a list of essential medicines for such health services- such medicines will be provided free of cost to persons with mental illness.

3. Section 21 of the MHCA talks about the Right to Equality and Non-Discrimination. What does this mean?

Equality and non-discrimination means that:

a) Non-Discrimination

All persons with mental illness are equal. No one can discriminate against a person with mental illness on the basis of their gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability.

b) Parity

- Treat all persons with mental illness equally and on the same basis with persons with physical illnesses.
- Ensure that persons with mental illness are provided services in the **same manner, extent and quality** as persons with physical illness. In other words, the same set of standards should be applicable to all persons with mental illness as are applied to persons with physical illness.

Some Examples of Parity-

- a. If persons with physical illness are being provided wholesome food, then food of the same quality should be provided to persons with mental illness.
- b. If persons with physical illness have their wards in a ventilated and well-lit area, persons with mental illness should be placed in similar wards, and not in a secluded area or a basement.
- c. If persons with physical illness are provided bed linen which is replaced and washed regularly, the linen used by persons with mental illness should also be replaced and washed regularly.
- d. There should be no difference in the inventory of emergency medication, supplies and equipment for both persons with physical illness and those with mental illness.

– These principles apply to all services including-

- a. **Emergency facilities and services:** Persons with mental illness should be provided the same emergency facilities and services as are provided to persons with physical illness which include ICU facilities, personnel, medicines and treatment equipment.
- b. **Ambulance services:** Persons with mental illness must be provided ambulance services during medical and psychiatric emergencies. These services must be advertised and MHEs must have protocols in place to ensure services to persons with mental illness as are provided to persons with physical illnesses.

– **Living conditions:** same living conditions as is available for persons with physical illness.

– **Any other health services**

4. Can a person with mental illness be asked to leave their community or live separately?

No. Section 19 says that all persons with mental illness have a right to live in the community they belong to. They cannot be excluded or asked to live separately. Further, any person cannot be admitted in a mental health establishment only on the grounds that:

- Cannot live with their family
- Have been excluded from their community
- Are homeless
- Abandoned by their family

5. What options do I have if I am unable to or not allowed to live in my community?

If a person with mental illness is unable to live with their family or in the community, or if they don't require admission in the hospital any further, then have the following rights:

- Live in half-way homes, shelter homes, or sheltered accommodations for rehabilitation and recovery.
- Free legal aid or services provided by the Government to exercise their right to live in the community or with their family.
- Homeless persons who don't have a mental illness or have recovered can live in shelter homes.

6. Section 20 of the MHCA states that all persons with mental illness have a right against cruel, inhuman and degrading treatment. What does this mean?

Every person with mental illness has a right to live with dignity. This means that such persons should be protected from cruel, inhuman and degrading treatment. The person should be treated with respect and dignity. One of the ways of treating a person with dignity is to ensure that mental healthcare services meet the *minimum standards*. However, the MHE should provide services which go beyond these minimum standards.

The boxes below include examples of basic standards for providing dignified care and treatment to persons with mental illness-

Every person with mental illness admitted in a MHE has a right to-

- ✓ Live in a safe and clean environment
- ✓ Adequate and wholesome food
- ✓ Adequate sanitary conditions
- ✓ Facilities for leisure, recreation, education and religious practices
- ✓ Privacy
- ✓ Proper clothing
- ✓ Work with consent and appropriate payment
- ✓ Adequate provisions for living in the community
- ✓ Protected from physical, verbal, emotional and sexual abuse
- ✓ Not be forced to shave their head

Minimum Standards for Protecting Rights

1) Safety, Cleanliness & Wholesome Food

- The wards, bathrooms, toilets, corridors and other rooms should be well ventilated and lit with adequate fans, coolers and lights.
- The entire area of the MHE including rooms, bathrooms and toilets should be cleaned and kept hygienic regularly.
- The physical infrastructure such as the walls, windows, roofs, flooring, etc. must not be damaged or in a poor condition.
- The linen, clothes and utensils provided to patients should be regularly cleaned and replaced.
- The food provided to the patients should be wholesome and tasty, according to dietary requirements, and cooked in clean kitchens. Patients should be provided with food which is not stale, rotten or inedible.

2) Sanitary Conditions

- Adequate bathrooms and toilets must be provided keeping in mind the number of patients in each ward.
- Separate bathrooms and toilets should be ensured for women with provisions for menstrual hygiene such as sanitary napkins, toilet paper and waste-paper baskets to dispose used articles.
- Additionally, bathrooms and toilets must be equipped with sanitary products- soaps, disinfectants, toiletries, sanitizers toilet paper, air refreshers, buckets and bugs, etc.

3) Leisure & Recreation

- The MHEs should provide facilities such as a common room for patients of each ward which is equipped with a television, books, drawing/painting supplies, board games, and indoor sports facilities.
- Similarly, outdoor sports facilities should also be provided for play.
- The MHE should provide educational opportunities whether in the form of vocational training, language courses or other workshops that can engage patients.
- The MHE should hold classes for yoga, meditation, art of living, music & dance, art courses, etc.

4) Privacy

- The privacy of the patients must be respected.
- For example, beds in each ward should be enclosed by curtains which can be drawn in case the patient wants some privacy.
- Provision of common rooms should be ensured so that patients can spend their time when they wish to be alone.
- Facilities for telephonic and email communication should be provided in a manner where patients don't feel that their privacy is being infringed. Any mails and communication received or sent by patients should not be checked or reviewed by anyone.
- The medical records and information of any patient should not be shared with another patients or person not concerned with the patient's treatment and care.

5) Proper clothing

- The MHE should provide clothing in case patients don't have their own clothing.
- Such clothing should be of good quality, of sizeable fits and comfortable to wear.
- It should be of the same quality as provided to patients of other physical illnesses and must be appropriate for both men and women.
- Patients should be given an option to wear their own clothing or the clothing provided by the MHE.
- In case it is required that patients wear the clothing provided by the MHE, then parity must be ensured amongst all patients whether with mental illness or any other physical illness.

6) Working & Payment

- No person with mental illness admitted in a MHE should be forced to do any kind of work in the MHE and its premises *without their consent*.
- MHEs may develop a work scheme for patients to ensure their holistic development during their stay in the MHE.
- However, if patients agree to work of their free will, they should be provided adequate remuneration for the same.

7) Living in the Community

- MHEs and the medical personnel should work closely with the State Government departments and organisations working on mental illness, rehabilitation and mental healthcare to ensure that any person with mental illness is equipped with all the provisions for living in their community.

8) Protection from Abuse

- The medical personnel should be aware of any signs that a person is experiencing physical, verbal, emotional or sexual abuse from any person.
- In case, there is a case of abuse, the MO/MHP in charge should institute an appropriate inquiry into the same *after taking informed consent* of the patient.

7. My friend has been admitted in a mental hospital and is being treated for alcohol addiction. He wishes to know more details about his treatment. Does he have a right to ask for information regarding his treatment?

Yes. A person with mental illness and/or their nominated representative have a right to the following information:

- a. They have a right to know under which law the person is being admitted and what is the criteria for admitting them.
- b. Their right to challenge or review their admission by making an application to the Mental Health Review Board- and how to make such an application.
- c. They should be informed person's mental illness, what treatment is being proposed

and what are the side effects of the treatment. They can also ask for information regarding:

- logistics of the wards/hospital premises
- schedules for administering medicines
- living facilities
- history and complaints etc.

d. Information must be provided in a language which is simple and easy to understand by the person and their nominated representative!

8. Can information about a person with mental illness be disclosed to anyone else?

No. Every person with mental illness has the **right to confidentiality**. A person's information regarding their mental health, healthcare and treatment cannot be given to anyone else. Similarly, no person can release any such information or photographs to the media. However, there are a few exceptions to this right. A person's information can be shared with someone else if:

- The person with mental illness gives informed consent to share this information; or
- The nominated representative requires information to fulfil duties under the law; or
- Any other doctor or mental health professional requires this information to provide care/treatment; or
- It is necessary to prevent threat to someone's life; or
- It is necessary to protect the person or anyone else from harm or violence; or
- Any Board, Central Authority, High Court, Supreme Court or any other body under the law has authorised it; or
- In the interests of public safety and security.

9. Does a person with mental illness have a right to access their medical records?

Yes. A person with mental illness has the **right to access their medical records**. If the person wants information from the records, they can apply to the designated mental health professional. Medical records are records of the person's mental illness including:

- Diagnosis
- Investigations
- Assessment
- Treatment

However, information from the medical records can be withheld if the mental health professional feels that it will cause:

- a. Serious mental harm to the person with mental illness; and/or
- b. Can possible cause harm to others

If information is not provided to the person, then they have a right to file an application before the Mental Health Review Board challenging the medical personnel's decision to not release the records. The format of the application is provided in **Form-A of Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018.**

The mental health professional has to provide the information *within 15 days* of receiving the application.

10. My daughter is admitted in a mental health hospital for long stay. She does not wish to have any visitors or communicate with any people because it makes her anxious. Is she allowed to prevent any person from getting in touch with her?

Every person with mental illness admitted in a MHE has the right to:

- Refuse or receive visitors;
- Refuse or receive and make telephone or mobile phone calls at reasonable times;
- Send and receive mail through electronic mode including emails.

However, there are some exceptions. The following persons shall be allowed to visit the person with mental illness under any circumstances:

- Any Judge or officer authorized by a competent court;
- Members of the Mental Health Review Board, Central Mental Health Authorities and State Mental Health Authorities;
- Any member of Parliament or State Legislature;
- Nominated Representative, Lawyer or Legal Representative of the person;
- Medical Practitioner in charge of the person's treatment
- Any other person authorized by the Government.

11. My friend is admitted in a mental health establishment and requires legal assistance to enforce her rights. What options does she have?

Persons with mental illness have the **right to receive free legal services** under the Legal Services Authorities Act, 1987 or other laws.

The Legal Services Authorities Act, 1987 provides for free legal services such as a lawyer,

paralegal who can represent a person (who is unable to afford legal services on their own) in legal cases.

If a person with mental illness wants to exercise their legal options/rights they can get in touch with any of the following bodies:

- District Legal Services Authority
- State Legal Services Authority
- National Legal Services Authority

It is the duty of the MO/MHP in charge, police officer or magistrate to inform the person of their right to legal aid.

It is also their duty to provide the contact details of lawyers, NGOs or the legal services authorities to the person

12. My family member has been admitted in the mental health hospital for the past one month. However, the services provided by the hospital are of very poor quality. They do not meet the minimum standards laid down by the Government. Can we file a complaint?

If a person with mental illness is not happy or satisfied with the care, treatment or services provided in the MHE because of deficiencies or poor quality in the same, a complaint can be made regarding the same to:

- i. MO or MHP in charge of the MHE. If not satisfied with their response, then;
- ii. The Mental Health Review Board. If not satisfied with their response, then;
- iii. The State Mental Health Authority

A person may with the help of a lawyer also file for a judicial remedy for violation of rights under the MHCA or under any other law, e.g. The Consumer Protection Act, 1986.

13. My sister is currently admitted in a mental health hospital with schizophrenia. She has a 2.5 year old daughter. Is the child allowed to stay with her mother in the hospital?

A child under 3 years of age of a woman admitted in a MHE cannot separated from the mother during her stay. However, in some circumstances, there can be an exception this rule:

The treating psychiatrist can allow for the separation of a child from the mother, if after examining the mother, the doctor believes that:

- a. There is a risk to the child from the woman due to her mental illness; or
- b. It is in the interest and safety of the child to be separated from the woman.

During this period the mother can have access to the child under the supervision of the medical staff or the family.

In case of separation, the medical personnel must ensure that:

- a. The decision to separate the child is reviewed *every 15 days* while the patient is admitted.
- b. What is important is the woman's condition, and the best interests/safety of the child
- c. The separation should be ended as soon as it is not required anymore.
- d. If the separation lasts *more than 30 days* at a stretch, the MHP will have to apply to the relevant Central/State Mental Health Authority for approval.

14. Are persons with mental illness entitled to medical insurance for their treatment?

- All persons with mental illness have a right to receive medical insurance for treatment of mental illness.
- Insurance companies must provide medical insurance on the same basis as for persons with physical illnesses. This means that the same policies, premiums, plans, reimbursements provided to persons with physical illness should also be provided to persons with mental illness.

15. What if an insurance company refuses to provide medical insurance to persons with mental illness?

If an insurance company refuses to provide medical insurance to a person with mental illness, you can file a complaint to the Mental Health Review Board.

Chapter 4

Mental Health Review Boards, Authorities & Mental Health Establishments

In this chapter, you will learn about-

- Mental Health Review Boards
- Central & State Mental Health Authorities
- Mental Health Establishments

I. MENTAL HEALTH REVIEW BOARDS

1. What are Mental Health Review Boards?

Mental Health Review Boards are authorities which have a duty to monitor implementation of the MHCA. The Mental Health Review Boards have powers to protect the rights of persons with mental illness and ensure proper implementation of the provisions of the MHCA. They also have the duty to ensure that the rights of persons with mental illness are not violated, and that the admission, treatment and care of such persons takes place according to the procedures in the MHCA.

2. Where can I find the Mental Health Review Boards?

The State Mental Health Authority has the duty to set up the Mental Health Review Boards in each State. Each district can have one or more than one Mental Health Review Board based on the workload and demand. If there is low workload or demand in some districts, then there can be one Mental Health Review Board covering up to three districts.

3. What are the powers and functions of the Mental Health Review Boards?

The Mental Health Review Boards are quasi-judicial bodies. This means that they hold proceedings to decide cases where rights of a person with mental illness has been violated. What this means is that they have the power to hold hearings to hear both parties, look at evidence, conduct proceedings and pass orders which must be followed by both parties.

The Mental Health Review Boards have the following functions:

a. Review of Advance Directives

Any family member, caregiver or MHP can submit an application to the Mental Health Review Board for reviewing, modifying or cancelling an advance directive.

b. Nominated Representative

The Mental Health Review Boards can appoint, review or cancel the appointment of a nominated representative.

c. Review of Decision to Admit

The Mental Health Review Boards can receive and decide applications from (1) persons with mental illness (2) nominated representatives (3) any other interested person, against any decision to admit a person or minor with mental illness.

d. Review of Decision for Non-Disclosure of Information

The Mental Health Review Boards can receive and decide applications from a person with mental illness or their nominated representatives if their medical records are not disclosed to them.

e. Deficiency of Services

In case there is a deficiency in the provision of care, treatment and services, the Mental Health Review Boards can receive and decide complaints from a person with mental illness, or their nominated representatives.

f. Inspection/Inquiry for Violation of Rights

The Mental Health Review Boards can conduct an inspection or inquiry of a MHE in case the rights of persons with mental illness are violated. They can also take appropriate action for protection of their rights.

g. Additional Measures to Protect Rights

The Mental Health Review Boards can also issue any other directions for other matters under the MHCA or for protecting the rights of persons with mental illness.

4. Who are the members of the Mental Health Review Boards?

The Mental Health Review Boards will consist of six members which include persons with mental illness or caregivers:

- i. **Chairperson** who can be a *District Judge or retired District Judge or officer of the State Judicial Services* qualified to be appointed as District Judge.
- ii. Representative of the District Collector or District Magistrate or Deputy Commissioner of the district/s where the Mental Health Review Board is to be constituted.
- iii. **Two Members** consisting of 1 Psychiatrist and 1 Medical Practitioner.
- iv. **Two Members** consisting of:
 - a. Persons with mental illness or caregivers; or
 - b. Persons representing organisations of persons with mental illness or caregivers; or
 - c. Persons representing NGOs working in mental health.

5. If a person's rights are violated or they are not happy with a decision taken by a MHE, what is the procedure to apply to the Mental Health Review Boards?

- a. An application can be made any person with mental illness, the nominated representative, any person from a registered NGO (with the consent of such person).
- b. Applications can be made if:
 - i. The person wishes to challenge any decision made by medical personnel or other staff in a MHE;
 - ii. If a person's rights are violated in a MHE.
- c. The application should be written based on the format prescribed by Government rules and regulations.
- d. The Mental Health Review Board can also accept an application over telephone by a person admitted in a MHE in exceptional circumstances.
- e. There is no fee for filing an application.
- f. The application should contain the following details:
 - i. Name of the applicant;
 - ii. Contact details of the applicant;
 - iii. Details of the violation of rights;
 - iv. Details of the MHE or place where such violation took place;
 - v. Relief sought from the Mental Health Review Board.

6. Is there a specific time limit for clearing applications before the Mental Health Review Board?

- a. **Time limit:** The Mental Health Review Boards shall hear and dispose an application *within 90 days* of receiving the application unless a specific time period is mentioned for some applications.
- b. The specific timelines for different applications before the Mental Health Review Board are:

S. No.	Application before the Mental Health Review Board	Timeline for Disposal
1.	Appointment of nominated representative under Section 14 (4) (d)	Within 7 days from date of receipt
2.	Challenging admission of minor under Section 87	
3.	Challenging admissions under Section 89 (10) or Section 89 (11)	

4.	Challenging admissions under Section 90	Within <i>21 days</i> from the date of receipt of the application
5.	Any other application	Within <i>90 days</i> from the date of receipt of the application

7. Are the proceedings of the Mental Health Review Boards open to outsiders?

Proceedings of the Mental Health Review Boards shall be *in camera*. This means that proceedings will not be recorded and cannot be open for the public. The confidentiality of the parties will be respected. Persons other than those interested in the application may be allowed to attend the proceedings with the permission of (1) person with mental illness (2) Chairperson of the Mental Health Review Board.

8. Who can represent the parties before the Mental Health Review Boards?

Parties to an application being heard before the Mental Health Review Board can be represented by (1) themselves or (2) a counsel or (3) any other representative of their choice.

9. Where can the Mental Health Review Boards hold their proceedings?

Where an application concerns a person with mental illness in a MHE, the hearings and proceedings will be conducted at the MHE where the person is admitted.

10. What are the rules for evidence, witnesses and inspecting documents during proceedings?

- a. **Evidence:** Persons with mental illness may provide *oral evidence*- they can share it directly with the members of the Mental Health Review Board during proceedings.
- b. **Witnesses:** The Mental Health Review Board can ask for the attendance and testimony of witnesses as it finds appropriate.
- c. **Inspect Documents:** Parties can inspect documents relied upon by another party. Each party will have to provide copies of such documents to the other party.

11. How do the Mental Health Review Boards take decisions?

- a. **Quorum:** No meeting of the Mental Health Review Board will take place without the quorum of *3 members*.
- b. **Decision:** Decisions of the Mental Health Review Board will be taken by:
 - i. Consensus of all members. If there is no consensus, then;
 - ii. By majority of votes of members present and voting;
 - iii. In case of a tie, Chairperson shall have second or casting vote to decide the matter.

- c. **Written Decision:** The Mental Health Review Board has to provide a copy of its decision *in writing* to the parties *within 5 days* of the completion of hearing.

12. Is there a penalty for not complying with the orders of the Mental Health Review Boards?

The penalty for not complying or willfully neglecting the order or directions of the Mental Health Review Board include:

- i. Penalty up to *5 Lakh rupees* and;
- ii. The Mental Health Review Board can recommend the State Authority to cancel the registration of the MHE after giving it an opportunity of being heard.

13. If the person with mental illness or their nominated representative is not happy with a decision of the Mental Health Review Board, can they challenge it?

Yes. A person with mental illness or their nominated representative has the right to appeal to the High Court if they are unhappy with any order of the decision of the Mental Health Review Boards.

The appeal before the High Court should be filed within 30 days from the date that the decision or the order was made by the Mental Health Review Board.

The High Court may accept an appeal beyond 30 days if it feels that there is enough cause for not appealing within 30 days.

II. MENTAL HEALTH ESTABLISHMENTS

14. What are Mental Health Establishments?

Mental Health Establishment [or “MHE”] refers to a health facility meant for the mental healthcare, treatment and rehabilitation of persons with mental illness.

MHEs may include the following:

- a. hospitals meant for the treatment and care of persons with mental illness;
- b. general hospitals and general nursing homes such patients are admitted, kept at or reside in.
- c. persons with mental illness may be treated;
- d. half-way homes, sheltered accommodations and supported accommodations.

15. Who can own or run a MHE?

A MHE may be established, owned, controlled or maintained by:

- Central Government or State Government
- Local Authority
- Public Trust or Private Trust
- Corporation
- Co-operative Society

16. Do all MHEs have to be registered? Why is it important to check for the registration of the MHE where the person with mental illness is getting treatment or care?

Every MHE has to be registered with the Central or State Mental Health Authorities. This is to ensure that MHEs meet the minimum standards for providing mental healthcare, treatment and care. MHEs can be regularly inspected and audited to ensure that they are not violating the rights of persons with mental illness. Every MHE must be registered with the Central or State Mental Health Authorities. The certificate of registration is granted based on whether the MHE has satisfied the minimum standards laid down by the Authorities.

III. CENTRAL/STATE MENTAL HEALTH AUTHORITIES

17. What are the Central & State Mental Health Authorities?

The Central Mental Health Authority [“CMHA”] and the State Mental Health Authorities [“SMHAs”] are regulatory bodies set up under the Central Government and State Governments respectively. The Authorities are supposed to monitor implementation of the MHCA, making regulations for matters under the MHCA, registration of MHEs and any other related issues.

18. Who are the members of the CMHA and SMHAs?

The members of the CHMHA and SMHAs include ex-officio members comprising of representatives from Government ministries and departments including:

- Department of Health and Family Welfare
- Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy.
- Department of Social Justice & Empowerment
- Ministry of Women and Child Development

Apart from the ex-officio members the Authorities will also comprise members representing:

- Mental Health Professionals
- Clinical Psychologists
- Psychiatric Social Workers
- Mental Health Nurses
- Persons with Mental Illness
- Caregivers
- NGOs

- Other persons relevant in the area of mental health

19. What are the functions of the CMHA & SMHAs?

S. No.	Functions of Central Mental Health Authority
1.	Registration of all MHEs under the control of the Central Government.
2.	Maintenance, Compilation, Update and Publishing (Online) of Register of all MHEs in the country based on information provided by all State Mental Health Authorities of registered establishments.
3.	Develop quality and service provision norms for different types of MHEs under the Central Government.
4.	Supervise all MHEs under the Central Government.
5.	Receive complaints about deficiencies in provision of services.
6.	Maintain and Publish National Register of clinical psychologists, mental health nurses, and psychiatric social workers based on information provided by all State Authorities of persons registered to work as MHPs.
7.	Train all persons including law enforcement officials, MHPs and other health professionals about the provisions of the MHCA.
8.	Advise the Central Government on all matters relating to mental healthcare and services.
9.	Discharge other functions with respect to matters relating to mental health as the Central Government decides.

S. No. Functions of State Mental Health Authorities	
1.	Manner of making advance directives & additional regulations regarding the procedure of advance directives under Section 6 and Section 12 (3)
2.	Salaries, allowances, and other terms and conditions of service of the Chief Executive Officer and other officers/employees
3.	Time and place of meetings of the CMHA and rules of procedure in regard to transaction of business at meetings
4.	Minimum standards of facilities and services under Section 65 (4) (a)
5.	Minimum qualifications for personnel engaged in MHEs under Section 65 (4) (b)
6.	Provisions of maintenance of records and reporting under Section 65 (4) (c)
7.	Any other conditions under Section 65 (4) (d)
8.	Categories of different MHEs under Section 65 (5) (a)
9.	Form of application to be made by MHE and fee to be accompanied under Section 66 (12)
10.	Manner of submitting evidence under Section 66 (13)
11.	Manner of filing objections under Section 66 (14)

Chapter 5

Admissions, Treatment & Discharge

In this chapter, you will learn about-

- Independent or voluntary admissions
- Supported or involuntary admissions
- Admissions and treatment of minors

I. INDEPENDENT or VOLUNTARY ADMISSIONS

1. What is an independent admission?

An independent admission [under Section 86 of the MHCA] is one where the person with mental illness is admitted voluntarily as an **independent patient**.

2. Who is an independent patient?

An independent patient is a person with mental illness who has the capacity to make decisions regarding their mental healthcare and treatment. Such a person requires *minimal support* in making decisions. An independent person can make a decision to admit themselves into a MHE, and consent to treatment and care. They require minimal support to make such decisions.

Example- Rajni has clinical depression. For the past two weeks her condition has worsened. She approaches a mental hospital and requests to be admitted till she recovers.

3. My brother is diagnosed with a mental illness. He wishes to admit himself as an independent patient. What is the procedure for an independent admission?

- a. Any person who wishes to be admitted as an independent patient must submit a request to the MO/MHP in charge in the format of **Form C** as per **Rule 8 of the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018**.
- b. After receiving the request, the MO/MHP in charge will assess the person on the following grounds-
 - i. **Mental Illness-** whether the person has a mental illness in accordance with the accepted medical standards such as ICD.
 - ii. **Severity of Mental Illness-** whether mental illness is severe enough to require

admission.

- iii. **Benefit of Treatment-** whether the person is *likely to benefit* from admission and treatment.
- iv. **Free Will-** whether the request for admission is made by the person of their own free will without being forced or threatened to do so.
- v. **Capacity-** whether the person has capacity to make decisions regarding their mental healthcare and treatment and understands the nature and purpose of admission.
- vi. **Minimum Support-** whether the person requires minimum support for making decisions.

A person will be deemed unable to understand the purpose of admission if:

- a. The person is unable to understand the purpose, nature and likely effects of proposed treatment or not accepting treatment; or
- b. The person requires a very high level of support **approaching 100% support** in making decisions.

4. What are the rules for providing treatment to an independent patient?

- a. An independent patient cannot be given treatment without their *informed consent*.
- b. If the person does not want to consent to a particular option of treatment, an alternative can be provided after discussing with the patient.
- c. Informed consent should be documented in the medical records.

5. When can an independent patient be discharged?

- a. An independent patient can get discharged as per their wish after submitting an application to the MO/MHP in charge in the format of **Form G** as per **Rule 8 of the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018**.
- b. Consent of the MO/MHP in charge is not required.
- c. However, discharge of the patient can be prevented for **24 hours** to assess whether the patient requires **further** admission as a *supported patient* under Section 89 of the MHCA.
- d. This assessment will happen IF the MO/MHP in charge is of the opinion that-

- i. **High Support-** the patient is unable to understand the nature and purpose of their decisions and requires *substantial* or *very high support* from the nominated representative; or
 - ii. **Bodily Harm to Self-** the patient has recently threatened or attempted or is threatening or attempting to cause bodily harm to the self; or
 - iii. **Bodily Harm to Other-** the patient has recently behaved or is behaving violently towards another person or causing them to fear bodily harm to themselves; or
 - iv. **Inability to Care for Self-** the patient has recently shown or is showing an inability to care for the self to a degree that places the person at a risk to themselves.
- e. If there is reason to believe any of the above the person will be assessed according to Section 89 of the MHCA.
- f. If the criteria under Section 89 are satisfied the person will be admitted as a supported patient.
- g. If the criteria under Section 89 are not satisfied then, supported admission is not required. The independent patient will be discharged within 24 hours or as soon as the assessment for supported admission is completed.

6. What is the process of discharging the independent patient?

Every independent patient getting discharged must be given a discharge plan. A discharge plan refers to how a person with mental illness should be treated and cared for after they are discharged into the community, or to a different MHE. It also contains instructions for a new psychiatrist who will be responsible for treating the person.

Specifically, the plan should contain details of-

- Treatment
- Duration of treatment
- Medicines and services required for care and treatment of the person in the future

The discharge plan is prepared at the time of discharge by the psychiatrist treating the person. The plan is prepared after **consulting** the following-

- Person with mental illness
- Nominated representative
- Family member
- Caregiver with whom the person will reside with after discharge
- New psychiatrist responsible for the person's treatment

II. SUPPORTED or INVOLUNTARY ADMISSION UPTO 30 DAYS

7. What is an involuntary or supported admission up to 30 days?

A supported admission [under Section 89 of the MHCA] is when a person has a mental illness of such severity that they must be admitted involuntarily by their nominated representative. Such a person can be admitted only for **30 days**.

8. Who is a supported patient?

A supported patient is a person with mental illness who does not have the capacity to make decisions regarding his or her mental healthcare and treatment. Such a person requires *very high or almost 100% support* in making decisions and is admitted by their nominated representatives.

Example- John is diagnosed with schizophrenia with psychotic symptoms. John is unable to take care of himself and requires the full support of his caregiver. Recently his conditions have worsened and require admission. His nominated representative files an application for supported admission on his behalf.

9. My son is diagnosed with a mental illness. He is unable to take care of himself. Last week he attempted self-harm thrice. I wish to get him admitted in a hospital till his condition stabilizes. What is the procedure for admitting him under supported admission?

- a. The nominated representative must submit an application for supported admission to the MO/MHP in charge.
- b. 1 Psychiatrist and 1 MHP/Medical Practitioner will examine the person with mental illness on the **day of the admission or in the preceding 7 days**. They may ask for information about the person from the nominated representatives, family members, or Caregivers.
- c. They must independently conclude that the person has a mental illness of such severity that:
 - i. **Harm to Self-** the person has recently threatened/attempted or is threatening/attempting to cause bodily harm to the self; OR
 - ii. **Harm to Other-** the person has recently behaved or is behaving violently towards someone else and has caused/causing them to fear that they will be harmed by the person; OR
 - iii. **Inability to Care for Self-** the person has recently shown or is showing an inability to care for himself to such an extent that the person is at risk of harming the self

AND

- iv. **Capacity-** the person is unable to make decisions their mental healthcare and treatment and needs very high support from the nominated representative to make such decisions; AND
- v. **Least Restrictive Care Option-** that admitting the person to the MHE is the least restriction on the rights of the person. In other words- there are no better alternatives to admitting the person.

10. What happens after 30 days are over? Does the supported admission end?

Supported admission under Section 89 is limited to a period of *30 days*.

a. Before 30 days:

At any time before the end of 30 days if the patient doesn't meet the criteria for supported admission any more then-

- i. The patient will be discharged; OR
- ii. The patient can be admitted as an independent patient- if the criteria are satisfied under Section 86 of the MHCA. The patient should be informed of their rights as an independent patient.

b. After 30 days:

After 30 days are over the patient's condition will reviewed. If the patient's condition has not become better, and admission beyond 30 days is required, the patient will be reviewed according to criteria in Section 90-

- i. If the criteria are satisfied the patient will continue as a *supported patient beyond 30 days*. [Refer to section on supported admission beyond 30 days]
- ii. If criteria are not satisfied, but admission is still required, the patient can continue as an independent patient if they satisfy criteria under Section 86.
- iii. If the criteria are not satisfied and admission is not required, the patient can be discharged.

11. Can a person discharged be re-admitted as a supported patient?

- A supported patient discharged can be re-admitted only *after 7 days* from the date of discharge.
- If the patient has to be readmitted *within 7 days* from the date of discharge, re-admission should be done according to criteria for supported admission beyond 30 days [Section 90].

12. What are the rules for treating a supported patient up to 30 days?

The medical personnel should provide the patient treatment according to the following rules-

- a. **Advance Directive-** if the patient or nominated representative has informed the medical personnel about an advance directive, treatment should be provided accordingly.
- b. **Informed Consent of Patient-** any treatment must be provided after obtaining the informed consent of the patient. Where required the nominated representative should provide adequate support to the patient to take a decision.
- c. **Temporary Consent of Nominated Representative-** in case the patient requires near 100% support, medical personnel should take the temporary consent of the nominated representative till the patient can provide consent with or without support.
- d. **Record Temporary Consent of Nominated Representative-** temporary consent must be recorded in the medical records by the MO/MHP in charge.
- e. **Review of Patient's Capacity to Consent-**The patient's capacity to give consent must be reviewed *every 7 days* and documented in medical records.

13. What is the process of discharging the supported patient?

Every supported patient getting discharged must be given a discharge plan. A discharge plan refers to how a person with mental illness should be treated and cared for after they are discharged into the community, or to a different MHE. It also contains instructions for a new psychiatrist who will be responsible for treating the person.

Specifically, the plan should contain details of-

- Treatment
- Duration of treatment
- Medicines and services required for care and treatment of the person in the future

The discharge plan is prepared at the time of discharge by the psychiatrist treating the person. The plan is prepared after **consulting** the following-

- Person with mental illness
- Nominated representative
- Family member
- Caregiver with whom the person will reside with after discharge
- New psychiatrist responsible for the person's treatment

14. I am not happy with the decision of the mental health professional to admit my son as a supported patient. What is the procedure to challenge a decision of admission made by the mental health professional?

- a. An application to review the medical personnel's decision of supported admission can be submitted to the Mental Health Review Board by:
 - i. Supported patient admitted in the MHE; or
 - ii. Nominated representative; or
 - iii. Representative of a registered NGO with consent of the supported patient.
- b. The Mental Health Review Board will review the decision and give its findings *within 7 days* of receipt of the request.
- c. The decision of the Mental Health Review Board will be binding on both the parties.

III. INVOLUNTARY or SUPPORTED ADMISSION BEYOND 30 DAYS

15. What is an involuntary or supported admission beyond 30 days?

A supported admission [under Section 90 of the MHCA] is when a patient already admitted for 30 days requires continued supported admission beyond 30 days.

16. Who is a supported patient beyond 30 days?

A supported patient beyond 30 days includes:

- a. A patient who is already in supported admission and requires supported admission to continue beyond 30 days; OR
- b. A patient discharged from supported admission [under Section 89 of the MHCA] but requires re-admission **within 7 days** of their discharge.

Example- Bharti has been admitted in a mental health hospital as a supported patient for 29 days. The psychiatrist reviewed her condition and is of the opinion that she does not have capacity to take decisions yet and is also unable to take care of herself. He examines her and concludes that she should be assessed under Section 90 for continued supported admission.

17. Bharti may require continued supported admission beyond 30 days under Section 90. What is procedure for continued supported admission?

- a. The nominated representative must submit an application for continuing supported admission beyond 30 days to the MO/MHP in charge.
- b. 2 Psychiatrists will examine the person with mental illness **in the preceding 7 days**. They may ask for information about the person from the nominated representatives, family members, or caregivers.
- c. They must independently conclude that the person has a mental illness of such severity that:
 - i. **Harm to Self-** the person has recently threatened/attempted or is threatening/attempting to cause bodily harm to the self; OR
 - ii. **Harm to Other-** the person has recently behaved or is behaving violently towards someone else and has caused/causing them to fear that they will be harmed by the person; OR
 - iii. **Inability to Care for Self-** the person has recently shown or is showing an inability to care for himself to such an extent that the person is at risk of harming the self

AND

- iv. **Capacity-** the person is unable to make decisions their mental healthcare and treatment and needs very high support from the nominated representative to make such decisions; AND
 - v. **Least Restrictive Care Option-** after reviewing the advance directive of the patient, admitting the person to the MHE is the least restriction on the rights of the person.
- d. The MO/MHP in charge must report all admissions or re-admissions under Section 90 to the Mental Health Review Board *within 7 days* of such admission or re-admission.
 - e. The Mental Health Review Board will *within 21 days* from date of admission or re-admission permit the same or order discharge after examining:
 - i. Whether there is any need to provide institutional care; and
 - ii. Whether such care cannot be provided in less restrictive settings
 - f. A patient can continue as a supported patient up to 90 days in the first instance.

A person with mental illness cannot be admitted or re-admitted as a supported patient beyond 30 days on the ground that there are no community-based services where the person with mental illness resides.

18. What is a community-based treatment plan? Is it a requirement for providing treatment under continued supported admission?

- A community-based treatment plan is for treatment and care of a person with mental illness within their community.
- The Mental Health Review Board may ask the medical personnel to submit to the Mental Health Review Board a plan for community- based treatment of the patient.
- The medical personnel will prepare a community-based treatment plan, and regularly review the condition of the patient in accordance with the plan.
- The plan should be prepared keeping in mind the community that the supported patient resides in, the services available in the community, the cultural context, availability of resources, and facilities provided by the Central or State Government for treatment and care in the community.

19. What is the duration for continued supported admission (beyond 30 days)? What is the procedure after the prescribed time limit is over?

a. Upto 90 days

- i. Supported admission under Section 90 is limited to a period of *90 days* in the first instance.
- ii. The patient will be under on-going review by the medical personnel.
- iii. If the patient does not satisfy the criteria under Section 90 before 90 days then:
 - The patient will be discharged after informing the nominated representative; OR
 - The person can continue as an *independent patient* if the criteria under Section 86 is satisfied. The person should be informed of their rights as an independent patient.

b. After 90 days

After 90 days are over the patient's condition will reviewed. If the patient's condition has not become better, and admission beyond 90 days is required, the patient will be reviewed according to criteria in Section 90-

- i. If the criteria are satisfied the patient's supported admission can continue for another 120 days.
- ii. If criteria are not satisfied, but admission is still required, the patient can continue as an independent patient if they satisfy criteria under Section 86.

- iii. If the criteria are not satisfied and **admission is not required**, the patient can be discharged; OR

c. After 120 days

After 120 days are over the patient's condition will reviewed. If the patient's condition has not become better, and admission beyond 120 days is required, the patient will be reviewed according to criteria in Section 90-

- i. If the criteria are satisfied the patient's supported admission can continue for another 180 days *each time* according to the procedure in Section 90.
- ii. If criteria are not satisfied, but admission is still required, the patient can continue as an independent patient if they satisfy criteria under Section 86.
- iii. If the criteria are not satisfied and admission is not required, the patient can be discharged.

20. What are the rules for treating a supported patient beyond 30 days?

The medical personnel should provide the patient treatment according to the following rules-

- i. **Advance Directive-** if the patient or nominated representative has informed the medical personnel about an advance directive, treatment should be provided accordingly.
- ii. **Informed Consent of Patient-** any treatment must be provided after obtaining the informed consent. Where required the nominated representative should provide adequate support to the patient to take a decision.
- iii. **Temporary Consent of Nominated Representative-** in case the patient requires near 100% support, medical personnel should take the temporary consent of the nominated representative till the patient can provide consent with or without support.
- iv. **Record Temporary Consent of Nominated Representative-** temporary consent must be recorded in the medical records by the MO/MHP in charge.
- v. **Review of Patient's Capacity to Consent-**The patient's capacity to give consent must be reviewed *every 7 days* and documented in medical records.

21. What is the process to challenge the decision of admission made by the medical personnel?

- a. An application to review the medical personnel's decision of supported admission

can be submitted to the Mental Health Review Board by:

- i. Supported patient admitted in the MHE; or
 - ii. Nominated representative; or
 - iii. Representative of a registered NGO with consent of the supported patient.
- b. The decision of the Mental Health Review Board will be binding on both the parties.

22. What is the process of discharging the supported patient?

Every supported patient getting discharged must be given a discharge plan. A discharge plan refers to how a person with mental illness should be treated, rehabilitated and cared for after they are discharged into the community, or to a different MHE such as a halfway home etc. It also contains instructions for a new psychiatrist who will be responsible for treating the person.

Specifically, the plan should contain details of-

- Treatment
- Duration of treatment
- Medicines and services required for care and treatment of the person in the future

The discharge plan is prepared at the time of discharge by the psychiatrist treating the person. The plan is prepared after **consulting** the following-

- Person with mental illness
- Nominated representative
- Family member
- Caregiver with whom the person will reside with after discharge
- New psychiatrist responsible for the person's treatment

Copies of the plan should be provided to all the above-mentioned individuals.

IV. ADMISSION OF MINORS

23. What is the procedure for admitting a minor?

- a. The nominated representative of the minor should submit an application to the MO/MHP in charge.
- b. 2 Psychiatrists **OR** 1 Psychiatrist and 1 MHP **OR** 1 Psychiatrist and 1 Medical Practitioner will examine the minor **on the day of the admission** or **in the preceding 7 days**, and also obtain information from family members, or other relevant persons.

- c. The minor will be admitted after both independently conclude that:
 - i. **Severity of Mental Illness-** the minor has a mental illness of severity requiring admission; and
 - ii. **Best Interests and Wishes of the Minor-** the admission is in the best interests of the minor's health, well-being or safety. The wishes of the minor and the reasons for reaching such a decision should be considered; and
 - iii. **Mental Healthcare Needs-** the mental healthcare needs of the minor cannot be fulfilled without admitting the minor; and
 - iv. **Failure of Community-Based Alternatives-** community-based alternatives have failed or are unsuitable for the minor's needs.
- d. The MO/MHP in charge has to report admission of a minor to the Mental Health Review Board **within 72 hours** of the admission.
- e. If the admission continues for 30 days, the MO/MHP in charge has to report to the Mental Health Review Board.
- f. The Mental Health Review Board has to review the admission of the minor **within 7 days** and for admissions that continue **beyond 30 days** (and every 30 days after that).
- g. The Mental Health Review Board has the right to:
 - i. Visit the minor and interview him or her; and
 - ii. Review the medical records.

25. What are the rules for treatment of a minor admitted in a mental health establishment?

a. Treatment Plan and Informed Consent of Nominated Representative

- i. The medical personnel will provide treatment to the minor only after the nominated representative gives *informed consent*.
- ii. The medical personnel will prepare a treatment plan for the minor.
- iii. The NR will be informed of all the risks, benefits and alternatives to the treatment, and implications of not following treatment for the minor.

b. Admitted in Suitable Environment

- i. The admitted minor should be kept in a ward separate from the adults' ward.

- ii. The environment should be suitable to the minor's age and developmental needs.

c. Attendants

- i. The nominated representative or attendant should stay with the minor throughout the duration of the admission.
- ii. For minor girls- if the nominated representative is a male, a female attendant should be appointed by the nominated representative to stay with the minor girl.

25. What is the process for discharging a minor?

A discharge plan refers to how a minor should be treated and cared for after they are discharged into the community, or to a different MHE. It also contains instructions for a new psychiatrist who will be responsible for treating the minor.

Specifically, the plan should contain details of-

- Treatment
- Duration of treatment
- Medicines and services required for care and treatment of the person in the future

The discharge plan is prepared at the time of discharge by the psychiatrist treating the person. The plan is prepared after **consulting** the following-

- Minor's wishes
- Nominated representative
- Family member
- Care-giver with whom the person will reside with after discharge
- New psychiatrist responsible for the person's treatment

Chapter 6

Emergency Treatment & Prohibited Procedures

In this chapter, you will learn about-

- Emergency treatment
- Regulations regarding prohibited procedures
- Use of Physical Restraints
- Rules for conducting research with persons with mental illness

I. EMERGENCY TREATMENT

1. What is emergency treatment? In which situations can emergency treatment be provided?

A person with mental illness should be provided emergency treatment in case of a **medical or psychiatric emergency**. In an emergency the person with mental illness can be provided treatment anywhere by a registered practitioner when it is necessary to prevent:

- i. Death or irreversible harm to the person; or
- ii. Person with mental illness inflicting harm to the self or others;
- iii. Causing serious damage to property belonging to the self or others due to behaviour flowing directly from mental illness.

While providing emergency treatment-

- If the nominated representative is available, their informed consent should be taken.
- Electro-Convulsive Therapy (ECT) cannot be provided as a form of emergency treatment.

2. For how long can emergency treatment be provided?

- Emergency treatment can be provided for whichever is earlier:
 - Till a period of *72 hours*; or
 - Till the person with mental illness has been assessed at the MHE; and
 - During disasters or emergency declared by the Government, *upto 7 days*.

II. PROHIBITED PROCEDURES

3. Is Electro-Convulsive Therapy a permitted procedure? When can it be used in for treatment?

Electro-convulsive therapy [ECT] is a permitted procedure only if it is used **with** muscle relaxants and anesthesia.

4. Can ECT be used for treatment of minors?

If the psychiatrist in charge of treatment feels that the minor requires ECT they must:

- a. Apply to the Mental Health Review Board to seeking its permission and receiving an approval to apply ECT on the minor; AND
- b. Obtain *informed consent* of the legal guardian

5. Are any other procedures prohibited while treating persons with mental illness?

Yes. Medical personnel cannot perform the following for treatment:

- a. Sterilization of men and women as treatment for mental illness;
- b. Chaining in whatever form.

6. Is psycho-surgery a permitted form of treatment? What is the procedure to perform psycho-surgery?

Yes. Psycho-surgery can be performed on a person with mental illness only after the medical personnel:

- a. Take informed consent of the person on whom the surgery will be performed; AND
- b. Take prior approval of the Mental Health Review Board to conduct the surgery.

7. My husband is admitted in a mental hospital for treatment of schizophrenia. Sometimes during a psychotic episode, he becomes very violent and physically aggressive. The doctors have suggested either restraining him or secluding him during such an episode. Is this permissible?

Seclusion and solitary confinement cannot be used for any person with mental illness. However, if the person with mental illness is violent or physically aggressive, **physical restraints** can be used in the following circumstances:

- a. It is the only means available to prevent imminent and immediate harm to person concerned or others;
- b. All possible alternative methods for restraining the person are exhausted;
- c. The physical restraints are used for as long as it is **absolutely necessary** to prevent any harm to the person or others.
- d. It is not used as a punishment, or because there is not enough staff.
- e. The psychiatrist has authorized it.

8. What is the procedure to be followed while using physical restraints?

- a. **Document in Medical Records-** the medical personnel will have to record in the person's medical notes (as soon as possible):
 - method
 - nature
 - justification for imposition
 - duration of restraint
- b. **Inform Nominated Representative-** the nominated representative will have to be informed of the use of any physical restraints *within 24 hours*.
- c. **Safe Space for Restrained Patient-** the person under restraint should be placed in a place where they cannot harm themselves.
- d. **Ongoing Supervision-** the medical personnel will keep such person under regular ongoing supervision to assess whether use of restraint is required or not.
- e. **Restriction by the Mental Health Review Board-** the Mental Health Review Board can order the MHE to stop using restraints if it feels that the MHE is not following the provisions of this section.

9. My daughter has been admitted in a mental health hospital for 2 months. My family is now planning to go for a 3-day holiday with her. Is she allowed to take leave from the hospital?

An independent patient or supported patient can be granted permission to be absent from the MHE. The MO/MHP in charge can give permission to leave and decide the conditions and duration for how long the patient can be absent from the MHE.

10. My brother has a serious mental health disorder. He was admitted in the district hospital because of a psychiatric emergency. However, the hospital does not have enough resources to treat him for his condition. Can he be transferred to another hospital in the city?

Yes, a person with mental illness can be transferred to another MHE.

- a. An application for transferring the patient to another MHE, must be submitted by the MO/MHP in charge to the Mental Health Review Board.
- b. If the Mental Health Review Board passes a special or general order permitting such a transfer, the patient can be transferred to another MHE within the state.
- c. If the patient is being transferred to a MHE in another state, then permission must be taken from the CMHA.
- d. No transfer can take place without informing the patient and the nominated representatives of the reasons for transferring the patient.

11. My friend has been admitted in a mental health hospital for a serious mental health disorder. She requires near 100% support in taking decisions. Some researchers have approached her nominated representative to collect information for a study on persons with serious mental disorders. Are they allowed to take personal information from my friend? What are the rules for conducting research with persons with mental illness?

a. Persons who can give free and informed consent-

- i. Any mental health professional doing research has to take *free and informed consent* from all persons with illness who are interviewed or involved in:
 - Psychological
 - Physical
 - Chemical
 - or medicinal interventions.
- ii. The person who is the research subject must be informed of all the risks and benefits of participating in the research.
- iii. The research subject can withdraw consent at any point during the research.

b. Persons Who Cannot Give Free and Informed Consent

If the person is unable to give informed consent then-

- i. Informed consent should be taken from the nominated representative after informing them of all the risks and benefits of participating in the research.
- ii. The nominated representative may withdraw consent at any point during the research.
- iii. After obtaining consent from the nominated representative, an application must be made to SMHA for permission to conduct the research. The SMHA will give permission based on whether:

- Only persons who cannot give informed consent can be subjects for the research; AND
- The research is necessary to promote mental health of persons involved in research; AND
- Purpose is to obtain knowledge relevant to particular mental health needs of the persons with mental illness; AND
- Full disclosure is made regarding the interests of the persons and organisations involved. There should be no conflict of interest; AND
- All national and international guidelines and regulations for conduct of research are complied with. Ethical approval has been taken from the Institutional Ethics Committee where such research is to be conducted.

Chapter 7

Miscellaneous

In this chapter, you will learn about-

- Homeless and wandering persons
- Reporting neglect and ill-treatment of a person with mental illness to the police or magistrate
- Decriminalization of suicide
- Restrictions on duties of mental health professionals
- Offences and penalties for not following provisions of the MHCA

1. What is the procedure to deal with homeless or wandering persons?

If the officer in-charge of a police station finds any person who may have a mental illness and is wandering or may be risk to themselves or any one else, then the officer has a duty to take into protection such person and follow the next steps:

Assessment for mental illness

- The officer has to take the person to the nearest public health establishment *within 24 hours* for assessment of the person's healthcare needs. The MO/MHP in charge will have to assess whether such a person has a mental illness which requires admission. If yes, the person shall be admitted as per the provisions of admission in the MHCA.

If Admission Not Required

- If person doesn't require admission, then the MO/MHP in charge will have to inform the police officer of the assessment. Such person will be taken to their residence by the police officer. If the person is homeless, they shall be taken to a government establishment for homeless persons.

Lodge FIR

- For persons homeless, or found wandering in the community, a FIR for missing person should be lodged at the concerned police station by the Police officer who finds the person. The officer shall trace the family and inform them of the location of such person. If a homeless or wandering person approaches the MHE directly, the MHE will have to report the same to the nearest police station.

2. If a person with mental illness is being neglected or ill-treated can the same be reported to a police officer or magistrate?

a. Report to a Police Officer or Magistrate

- If any person feels that a person with mental illness is being neglected or ill-treated,

they should report it to the officer-in-charge of a police station.

- The police officer should report the same to the magistrate who has jurisdiction over the area where the person resides.

b. Magistrate's Order under Section 102

- i. The Magistrate may call the person with mental illness to be produced before them and pass an order under Section 102.
- ii. The Magistrate may order that the person with mental illness should be sent to a public mental health establishment for assessment and treatment (if necessary) as per provisions of the MHCA.
 - a. The MO/MHP in charge will have to conduct assessment of such person as per provisions of the MHCA.
 - b. If admission is required, person will be admitted according to the provisions of the MHCA.
 - c. If admission is not required such person will be released and referred to appropriate Government services or organisations for rehabilitation.
- iii. The magistrate can ALSO authorize admission of the person in a MHE for **not more than 10 days** for assessment.
- iv. After assessment, the MO/MHP in charge will submit a report to the Magistrate regarding assessment and suggested course of action as per MHCA.
 - If admission is required, person will be admitted and treated according to the provisions of the MHCA.
 - If admission is not required such person will be discharged and referred to appropriate Government services or organisations for rehabilitation.

3. Is attempting suicide a criminal offence? How should a person who has attempted suicide be treated?

- Any person who attempts will be presumed to be under severe stress (unless proved otherwise).
- Such person **will not** be tried and punished under Section 309, Indian Penal Code, 1860.
- The Central or State Government will have to provide care, treatment and rehabilitation to a person who has attempted suicide under severe stress.

4. What are the restrictions on the duties of mental health professionals?

- Mental Health Professionals or Medical Practitioners cannot discharge any duty or perform a function which the MHCA does not authorize.

Example- A mental health professional cannot advise a person with mental illness on personal matters such as buying or selling property, entering into contracts, etc.

- A mental health professional or medical practitioner cannot prescribe medicines or treatments which are not allowed by their profession.

Example- A clinical psychologist cannot administer medicines to a person with mental illness or an ayurvedic doctor cannot prescribe allopathic medicines.

5. Are there any penalties or punishment if any mental health professional acts against the provisions of the MHC or does not fulfil their obligations/duties?

a. Punishment for Contravening Provisions/ Regulations of the MHCA-

Any person who has a duty and responsibility under the MHCA and acts against the provisions of the law will be punished with-

- i. Imprisonment for a term up to **6 months** and/or a fine up to **Rs. 10, 000** for the first time.
- ii. Imprisonment for a term up to **2 years** and/or a fine between **Rs. 50, 000** to **Rs. 5,00,000** for *every subsequent time*.

b. Offences by Companies-

- i. A company is a body incorporated under law and includes a firm or association of individuals.
- ii. If a company has committed an offence, then the following will be presumed to be guilty and liable:
 - The Company; and
 - The person in-charge and responsible for the conduct of the company at the time of the offence.

- However, such a person proves that the offence was committed without their knowledge or they exercised due-diligence to prevent the offence, they will not be liable to be punished.
- Any director, manager, secretary, or officer of the Company who has in any way contributed to an offence committed by the Company will be held liable and punished.

Capacity Assessment Guidance Document
As per Section 81 of
Mental Healthcare Act, 2017

An Expert Committee to prepare a guidance document on Capacity Document

As per Section 81 (1) of the Mental Healthcare Act, 2017, the Chairman, Central Mental Health Authority appointed an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing, when necessary or the capacity of persons to make mental health care or treatment decisions. Following Central Authority members were appointed for drafting the guidance document

Dr. B.N. Gangadhar, Chairman of this committee

Dr. Nimesh Desai

Dr. Rajesh Sagar

Dr. Prashant Mishra

Dr. Gorav Gupta

Ms. Rajeshwari Iyer

Mr. Akileshwar Sahay

Mr. D.R. Sachadeva (invited)

The committee acknowledges the contribution of the following professionals in the development of the Capacity Assessment Guidance Document

Dr. Jagadisha Thirthahalli, Professor of Psychiatry, NIMHANS, Bangalore

Dr. Suresh Bada Math, Professor of Psychiatry, NIMHANS, Bangalore

Dr. Nitin Gupta, Professor of Psychiatry, GMCH, Chandigarh

Dr. Naveen C Kumar, Additional Professor of Psychiatry, NIMHANS, Bangalore

Capacity Assessment as per Mental Healthcare Act, 2017

Overview

Capacity is the ability to make a particular decision, having understood the Information relating to the decision at hand and appreciating the consequence of making or not making that decision. Capacity is not static, but dynamic in nature. People may have a condition or illness that affects their ability to make decisions. A lack of capacity may be temporary such as that caused by some illnesses or the influence of drugs or alcohol or mood / affective state. A person's capacity may vary over time depending on the condition or illness that the person experiences.

A person is presumed to have the capacity to make a decision unless there are good reasons to doubt this presumption. In general, capacity is assessed with respect to a specific decision at a specific time. A person is entitled in law to make unwise or imprudent decisions, provided they have the capacity to make the decision. Supported decision-making involves doing everything possible to maximize the opportunity for a person to make a decision for themselves. As per the MHA, 2017 All persons with mental illness shall have capacity to make mental healthcare or treatment decisions but may require varying levels of support from their nominated representative to make decisions. A person's capacity should be assessed in relation to a particular task or decision. Capacity cannot generally be inferred from one task or decision to another. The person's lack of capacity may be temporary, or fluctuating. If possible, an assessment of capacity should be done when the person's condition has improved. For example, if the person has a delirium, it is better to wait until this has resolved. In such patients with Delirium, Severe Manic Excitement, Stupor, Alcohol and other substance use intoxication, Capacity Assessment may not be feasible, and they can be deemed to have "Obvious" lack of capacity and may be recorded as such. Finally, the capacity assessment is based on combination of relevant history, symptoms, behavior observation, mental status examination and diagnosis. It is a clinical judgement of a clinician.

Guidance document is drafted as per the Section B1 of the MHA, 2017

81. (1) The Central Authority shall appoint an Expert Committee to prepares guidance document for medical practitioners and mental health professionals, containing procedures for assessing, the capacity of persons to make mental health care or treatment decisions.

(2) Every medical practitioner and mental health professional shall, while assessing capacity of a person to make mental healthcare or treatment decisions, comply with the guidance document referred to in sub-section (1) and follow the procedure specified therein.

This guidance document is only a guidance document and does not replace the legal advice. This document is not a structured or checklist instrument and only a guidance document with provision for semi-structured assessment and documenting the capacity assessment findings. The final decision of capacity is based on holistic assessment of behavioral observation, clinical findings, mental status examination, diagnosis and capacity assessment as per the guidance document. Further it is the prerogative and the duty of the Mental Health Professional/Clinician to record the clinical findings in details and/or elaboration of the same.

Mental Healthcare Act, 2017 articulates following regarding the Capacity to make mental healthcare and treatment decisions.

4. (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if such person has ability to –

- (a) understand the information that is relevant to take a decision on the treatment or admission or personal assistance;

(b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance;

(c) communicate the decision under sub-clause (a) by means of speech, expression, gesture or any other means.

(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

(3) Where a person makes a decision regarding his mental healthcare or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental healthcare or treatment decision, so long as the person has the capacity to make mental healthcare or treatment decision under sub-section (1).

Assessment of capacity to make mental healthcare and treatment decisions is to be carried out on any person (above 18 years of age) during the following situations:-

- a) The registration of Advance directives as per Section 11(2)d
- b) Before invoking the Advance directive as per Section 5(3)
- c) Independent admission as per Section 86(2)c
- d) Supported Admission as per Section 89(1)c
- e) Every week, when admitted under section 89(8)
- f) Supported Admission as per Section 90(12)
- g) Every fortnightly, when admitted under Section 90(13)
- h) Before giving any information under Section 22 of the person to the Nominated representative (information will be given to NR only if the PMI do not have capacity)
- i) For treatment related decisions (other than admission) as per Section 4

Capacity Assessment for Treatment decisions Including Admission

Name of the patient.....

Age.....

Sex.....

Patient ID No.....

Date of Assessment.....time.....

Place of Assessment.....

Purpose of this Assessment: Admission/Treatment/AD/Any Other

(If admitted under Section 102/103 of MHA, 2017 the rest of the assessment can happen in the ward)

Advance Directive.....(Present/Absent)

Nominated Representative: Name:.....

ID:

Diagnosis (provisional).....

Note: Provide explanation for each question

Obvious lack of capacity:

Is he/she in a condition, that that one cannot have any kind of meaningful conversation with him/her (such as being violent, excited, catatonic, stuporous, delirious, under alcohol or substance intoxication/severe withdrawal, or any other (explain below))

.....?

(Yes/No)

If yes, then go to 4. If no, then go to 1.

1. Understanding the information that is relevant to take a decision on the treatment or admission or personal assistance (Understands the nature and consequences of the decision; possible options explained)

a. Is the individual oriented to time, place and person? (Yes / No / Cannot assess)

Explanation:

b. Has he/she been provided relevant information about mental healthcare and treatment pertaining to the illness in question? (Yes / No)

If no, provide explanation:

c. Is he/she able to follow simple commands like (i) show your tongue (ii) close your eyes (Yes/No / Cannot assess)?

Explanation:

d. Does he/she acknowledge that he has a mental illness? (Yes/No / Cannot assess)

Explanation:

2. Appreciating reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance.

- a. Does the individual agree to receive treatment suggested by the treating team? (Yes/No/Cannot assess)

Explanation:

If yes, go to 2b. If no, go to 2c. If cannot assess, go to 3

- b. Does he/she explain why he/she has agreed to receive treatment? (Yes/No/Cannot assess)

Explanation:

- c. Does he/she explain why he/she does not agree to receive treatment? (Yes/No/Cannot assess)

Explanation:

3. Communicating the decision under sub-clause (1) by means of speech, expression, gesture or any other means (Specify).

- a. Is the individual able to communicate his/her decision by means of speech, writing, expression, gesture or any other means? (Yes / No / Cannot assess)

Explanation:

4. Based on the examination and relevant history, behavioral observation clinical findings and mental status examination findings noted in the medical records, I believe that Mr./Ms. choice that is not applicable) (Strike off the choice that is not applicable)

- a. Has capacity for treatment decisions including admission
- b. Needs 100% support from his/her nominated representative in making treatment decisions including admission

Signature of the Psychiatrist/Mental health professional/
Medical Practitioner
Name of the Psychiatrist/Mental health professional/
Medical Practitioner

5. Fill the following if the choice is 4.a.:

I, Mr. /Ms.....agree to make decisions in respect of my mental healthcare and treatment.

Signature of the assessed person (if it is 4.a). Name of the assessed person:

6. Fill the following if the choice is 4.b.:

I, Mr./Ms..... the nominated representative of Mr./Ms..... agree to make decisions with respect of his/her treatment.

*Signature of the Nominated Representative (if it is 4.b).....
Name of the Nominated Representative:.....*



स्वास्थ्य एवं
परिवार कल्याण मंत्रालय
MINISTRY OF
**HEALTH AND
FAMILY WELFARE**

