



Mental Health and Law

For CHO/SN





DISCLAIMER

- This presentation is for academic purpose only
- For legal opinion please do contact an advocate
- Conflict of Interest – None





LEARNING OBJECTIVES

At the end of the session, participants should be able to-

- Enlist the legislations in India to protect the rights of persons with mental illness and person with disability due to mental illness / intellectual disability
- Describe the provisions under the Mental Health Care Act, 2017.
- Describe the provisions under the Rights of Persons with Disabilities Act, 2016.



CONTENTS

- CHO module on MNS disorders – Chapter 11
(Pages 85-87)

- Staff Nurse module on MNS disorders – Chapter 11
(Pages 76-78)





54 YEARS IN CUSTODY

- Shocking plight of a 77 year-old man,
- Machal Lalung was arrested in 1951 when he was 23
- Released after intervention from NHRC and Supreme Court at the age of 74yrs
- Offence under Section 326 (voluntarily causing grievous injuries) of the IP (Supreme Court, Writ Petition (CRL.) NO(s). 296 OF 2005)



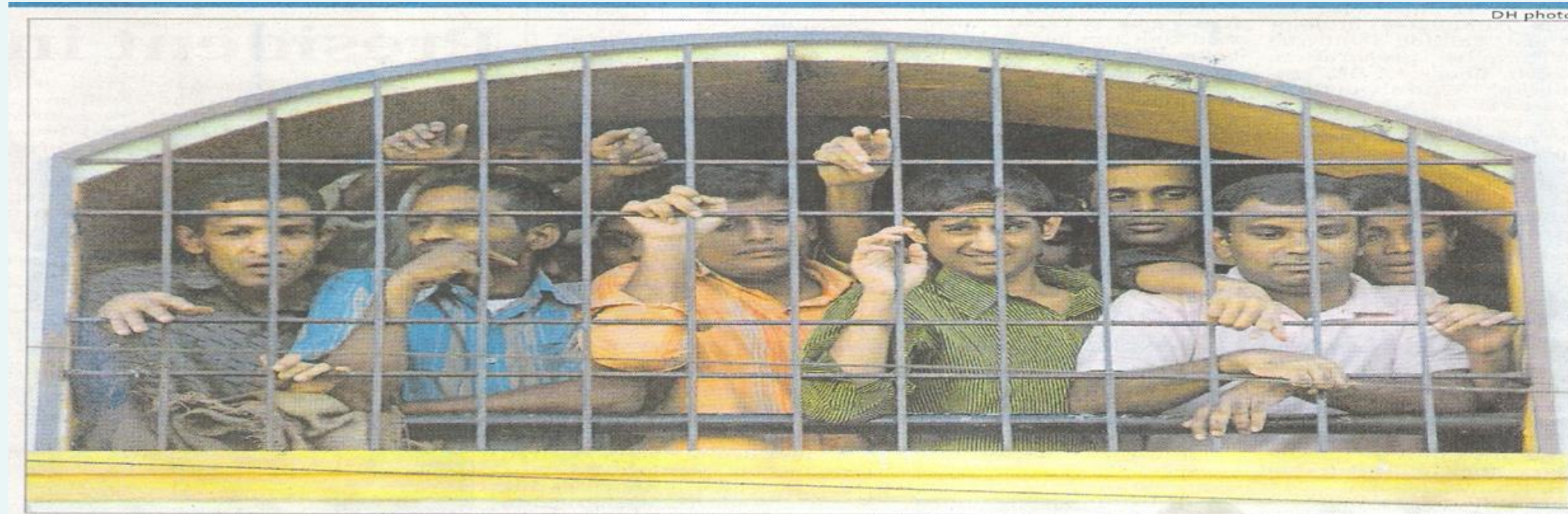


ERWADI FIRE TRAGEDY (6 AUG 2001)





REHAB CENTERS



DH photo

The inmates who were held captive inside "Safe & Serene" rehabilitation centre at R T Nagar, Bangalore on Tuesday.

Rehab centres raided, 130 rescued

By S LALITHA
DH News Service

BANGALORE: A series of police raids at two rehabilitation centres in R T Nagar and Kaval Byrasandra on Tuesday evening brought horrendous tales of brutality to light. Nearly 130 inmates have been rescued from the two centres run by Safe and Serene Foundation here on Tuesday. The foundation's Managing Director Syed Saif Shah and the staffs at the centres have been taken into custody.

The raids were conducted with the help of an NGO, South India Cell for Human Rights Education and Monitoring (SICHREM).

Besides unconfirmed reports of six deaths, the inmates revealed that three deaths had taken place at each centre due to neglect and torture at the hands of the staff. Police have taken note of their accounts and will soon go in for further investigation.

No one is clear about the exact origin of these centres. It is likely that the centre at R T Nagar was opened around two years ago while the one at Doddanagar appears to have become operational a year ago.

The tag line below a big board at each of the centres proclaims them to be a

DUBIOUS TREATMENT

Prakash C K, Programme Co-ordinator at South India Cell for Human Rights Education and Monitoring is highly sceptical about the treatment given to the inmates there. "I saw many packets of the tablet 'Serin' there. Vishwajith told us that that he used to feel very weak after consuming them. He has seen the faces of a few young boys turn blue after taking them."

There is no professional doctor there and they are simply giving some treatment to the boys, he felt. Another police official Naidu said, "All the antibiotics given to the boys must be checked. I think some of the medication violates the Narcotics Act."

"Treatment and rehabilitation centre for alcohol abuse, substance abuse and other personality disorders". A third centre is functional at Rahmat Nagar, with 30 inmates.

While many adult inmates were alcohol and drug addicts, some young boys were also admitted by their parents, who suspected them of emotional disorder.

The centres apparently survived by the alleged brainwashing of the families

as they were told that they would cure the ailing individuals of all their problems. As a result, big money came in by charging a monthly fee ranging from Rs 4,000 to Rs 10,000 depending on each family's financial status.

Things came to light when a former inmate, a 15-year-old boy Vishwajith and his parents spilled the beans to SICHREM Programme Co-ordinator C K Prakash on Monday morning. He informed IGP (State Human Rights Commission) Bipin Gopalakrishnan, who swung into action with his team.

The inmates, aged between 12 and 67 years, narrated the cruelty they had been subjected to. "Even police torture will never be so bad," wailed an inmate. For the slightest of misdemeanours, the inmates were asked to strip naked in front of others and lathi blows were rained on them after tying up their hands, legs and mouth. Shut behind gates, the inmates were ill-fed, overworked, forced to clean toilets and permitted to meet their family members just for two minutes in a month in the presence of a foundation staff.

The police were at a loss to explain how the Foundation sustained such a large network for two years without getting exposed.

Related reports on Page 3

Govt doctors



PERSONS WITH MENTAL ILLNESS AND INTERFACE WITH LAW





INTERFACE WITH LAW

Person with mental illness and law

TREATMENT

- Admission
- Duty to care
- Treatment
- Discharge
- Follow-up

CIVIL

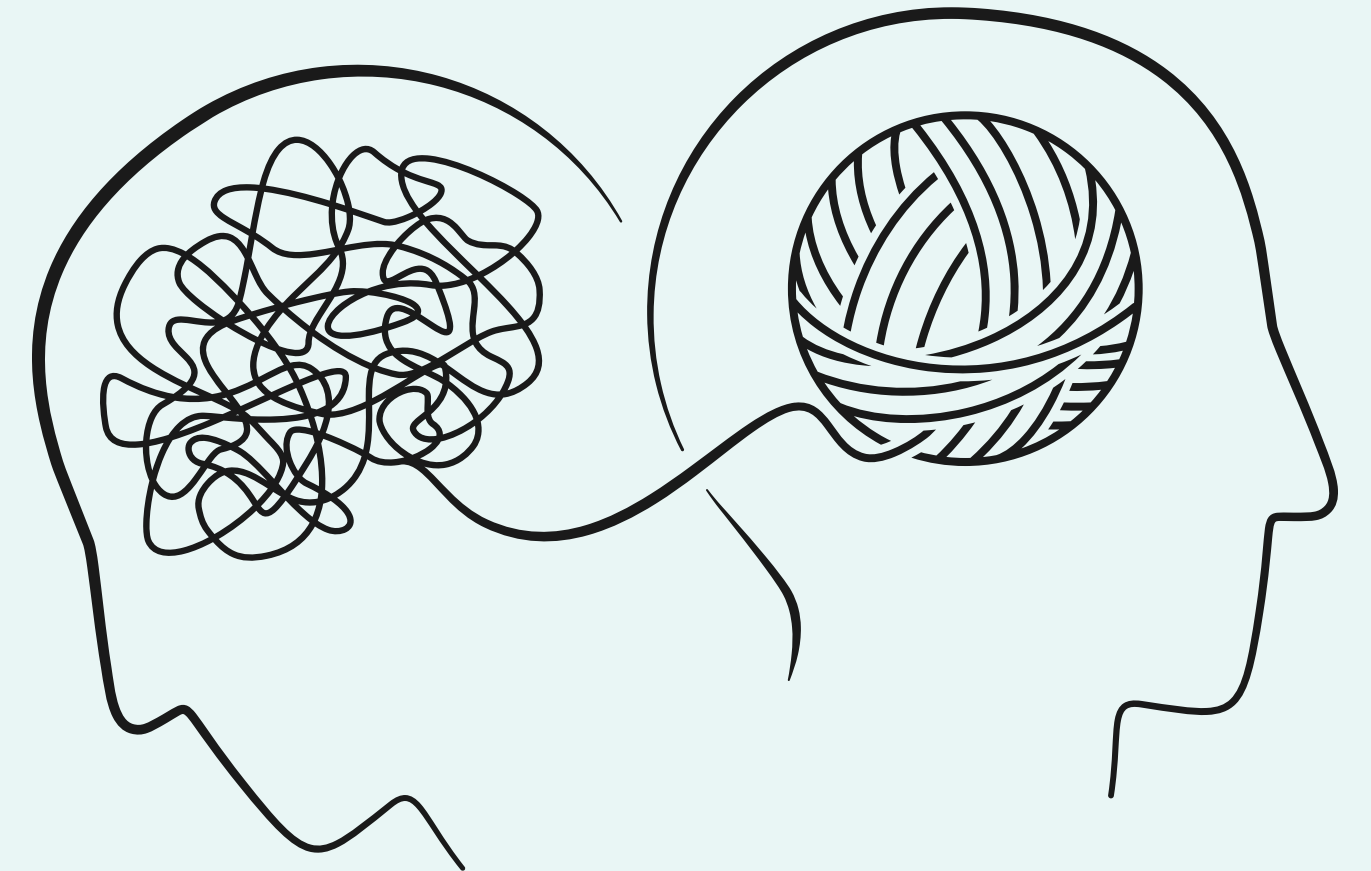
- Testamentary capacity
- Marriage
- Divorce
- Adoption
- Contract
- Transfer of property
- Fitness to duty
- Occupation

CRIMINAL

- Fitness to stand trial
- Criminal Responsibility
- Drugs Use



WHAT ARE THE SAFEGUARDS AVAILABLE FOR MENTAL HEALTH CLIENTS?





MENTAL HEALTH LAW OF INDIA

- Mental Healthcare Act, 1987(MHCA 2017)
- Rights of Persons with Disabilities Act, 2016 (RPWD 2016)
- National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (NTA 2001)
- Narcotic Drugs & Psychotropic Substances Act, 1985 (NDPS 1985)



- Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA 2000)
- Protection of Women from Domestic Violence Act, 2005 (DMV 2005)
- Protection of Children from Sexual offences Act, 2012 (POCSOAct 2005)





PARADIGM SHIFT

Protecting society Vs Protecting patient

Institutional Vs Community care

Seclusion Vs Inclusion

Individual Vs Joint venture of GO and NGOs

Charity Vs Rights



MENTAL HEALTHCARE ACT, 2017

LET'S TALK
ABOUT
MENTAL
HEALTH



THE MENTAL HEALTH CARE ACT, 2017 (MHCA)

- It was passed on 7 April 2017.
- Came into force from 29 May, 2018.
- It superseded the previously existing Mental Health Act, 1987.
- The Act “provides for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.”
- Under Ministry of Health and Family Welfare.





HEART AND SOUL OF THIS LEGISLATION

The Mental Healthcare Act, for the first time, clearly articulated the Rights of persons with mental illness

- Mental Capacity (Sec 4)
- Advance Directive (Sec 5 to 13)
- Nominated Representative (Sec 14 to 17)
- Rights of Persons with Mental illness (Sec 18 to 28)



MENTAL CAPACITY TO CONSENT - SEC 4

- Understand the information that is relevant to take a decision on the treatment or admission or personal assistance; or / &
- Appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance; or / &
- Communicate the decision



ADVANCE DIRECTIVE (SEC 5 TO 13)

5. (1) Every adult shall have a right to make an advance directive in writing, specifying any or all of the following, namely:--

- (a) wishes to be cared for;
- (b) wishes not to be cared for;
- (c) can appoint NR (in order of precedence)

To be in writing and registered with MHRB





NOMINATED REPRESENTATIVE (SEC 14 TO 17)

- Every adult shall have a right to appoint a nominated representative
- NR shall be an adult and gives consent to execute his responsibilities under this Act
- Plain paper and registered with MHRB





RIGHTS OF PERSONS WITH MENTAL ILLNESS (SEC 18)

- Right to access mental health care
 - All type of services (IP/OP/Rehabilitation)
 - Affordable cost, quality & quantity
 - Compensatory
 - Free treatment for BPL/destitute
 - Long term care also included
- Right to compensation
- Right to Information





- Right to Access Basic Medical Records
- Right to Confidentiality
- Right to community living (Sec 19)
- Right to legal aid (Sec 27)
- Right to restriction on release of information in respect of mental illness (Sec 24)
- Right to personal contacts and communication (Sec 26)
- Right to make complaints about deficiencies in provision of services (Sec 28)



THE MENTAL HEALTH CARE ACT, 2017 (MHCA)

Prescribes the minimum standards for establishing, registering and controlling mental health establishments for mentally ill persons.

Regulates the procedure of admission and discharge of mentally ill persons to mental health establishments either on voluntary basis or involuntary.

Establishes duties and responsibility for police in respect of persons with mental illness.





SALIENT FEATURES OF MHCA

- Provides for the use of ambulance services for mentally ill persons.
- Prohibits certain procedures such as:
 - Sterilization of men or women, when meant as a treatment for mental illness
 - Chaining a person in any manner or form whatsoever
 - Seclusion of persons with mental illness
- Electro-convulsion therapy without anesthesia: the Mental Health Care Act, 2017 decriminalizes attempt to suicide and clearly states that person who attempts suicide should be referred for evaluation and treatment and the State government holds the responsibility to provide care to them.





THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

- Under Ministry of Social Justice and Empowerment.
- The Rights of Persons with Disability Act defines 'person with disability' as a person with long term intellectual or sensory impairment which hinders his full and effective participation in society equally with others.
- The specific disabilities under the Act are-
 - **Physical disability-** e.g. locomotor disability, visual disability, hearing impairment
 - **Intellectual disability-** e.g. specific learning disabilities, Autism spectrum disorder
 - Disability due to **long standing neurological problems** such as multiple sclerosis and blood disorders such as hemophilia
 - **Multiple disabilities**
 - **Any other** disability which may be notified by Government



SALIENT FEATURES OF THE ACT

- Types of disabilities increased from existing 7 to 21.
- Central Government will have the power to add more types of disabilities and includes disabilities due to mental illness, chronic neurological conditions, etc.
- Speech and Language Disability and Specific Learning disability added.
- Acid Attack Victims included.
- Dwarfism, muscular dystrophy indicated as separate class of specified disability. The New categories of disabilities also included three blood disorders, Thalassaemia, Hemophilia and Sickle Cell disease



- Additional benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation schemes etc. provided for persons with benchmark disabilities and those with high support needs.
- Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.
- Government funded and recognized educational institutions will have to provide inclusive education to the children with disabilities.
- Special Courts designated in each district to handle cases concerning violation of rights of PwDs.



- The application for assessment of disability shall be accompanied by
 - Proof of residence
 - Two recent passport size photographs and
 - Aadhaar number.
- The disability legislation prescribes punishment for fraudulently availing any benefit.



EVALUATION

State whether the following statements are true or false:

1. The Mental Health Care Act 2017 considers suicide attempt as a punishable offence.
2. The Mental Health Care Act 2017 prohibits sterilization of men and women for the purpose of family planning.
3. Intellectual Disability Disorders are not included under the Rights of Persons with Disabilities Act 2016.
4. Children with benchmark intellectual disabilities have the right to free education under the Rights of Persons with Disabilities Act 2016.
5. The Mental Health Care Act 2017 has provision for free legal aid services for mentally ill persons.





ANSWERS

State whether the following statements are true or false:

1. The Mental Health Care Act 2017 considers suicide attempt as a punishable offence. **FALSE**
2. The Mental Health Care Act 2017 prohibits sterilization of men and women for the purpose of family planning. **FALSE**
3. Intellectual Disability Disorders are not included under the Rights of Persons with Disabilities Act 2016. **FALSE**
4. Children with benchmark intellectual disabilities have the right to free education under the Rights of Persons with Disabilities Act 2016. **TRUE**
5. The Mental Health Care Act 2017 has provision for free legal aid services for mentally ill persons. **TRUE**



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Thank You

