ANALYSING THE LATEST REFORMS IN THE LEGAL FRAMEWORK WITH RESPECT TO THE HEALTH SECTOR OF INDIA –A STUDY FROM THE PERSPECTIVE OF WOMEN'S ISSUES

Thesis Submitted in Partial Fulfillment of the Requirements for the Award of the Degree of Doctor of Philosophy in Law

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Chapter XIII

XIII. CONCLUSION AND SUGGESTIONS

1. THE CONSTITUTION OF INDIA -THE CONSTITUTIONALITY & LEGALITY OF THE MENTAL HEALTHCARE ACT, 2017

The Preamble to the Constitution of India upholds the ethos of dignity, equality and justice, in the background of which is the indispensable right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Right to life entails within its ambit the right to live with dignity, the right to healthcare,[438] the right to privacy, the right to a home and family, the right not to be ill-treated or tortured and the right to make one's own decisions, etc.[439] Right to equality includes not only the right to be treated equally and be given equal opportunity but also the right not to be discriminated against arbitrarily. Equality includes equality of opportunity, of freedom, and an independent decision-making right in one's economic, social and cultural setup.

Persons with mental illness are the weaker sections of this society, sometimes requiring aid in decision-making and care-takers to address their needs.[440] This necessitates the need for the law to particularly protect the right to privacy of persons with mental illness and their right to autonomy to the extent exercisable.

The Hon'ble Supreme Court of India in the landmark Judgement of *Justice K.S. Puttaswamy (Retd.) v. Union of India*[441]upheld the right to privacy as a fundamental right covered under the right to life guaranteed under Article 21 of the Constitution of India, and discussed privacy from the context of the *"freedom of choice."* The Court held that the freedoms of an individual under Article 19(1) of the Constitution of India can only be fulfilled when the individual

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[438] ANDREW CLAPHAM, ET. AL., REALIZING THE RIGHT TO HEALTH (2009)

[439] *See* Lata Singh v. State of Uttar Pradesh, AIR 2006 SC 2522; Shakti Vahini v. Union of India and Ors. W.P. Civil No. 231 of 2010 (Supreme Court of India); Paschim Bangal Khet Mazdoor Samity v. State of West Bengal, AIR 1996 SC 2426; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; State of Punjab v. Ram Labhaya Bagha, AIR 1998 SC 1703

[440] *See* MARC STAUCH MA, ET. AL., TEXT, CASES AND MATERIALS ON MEDICAL LAW AND ETHICS (2012)

[441] (2017) 10 SCC 1

has the right to choose his/her preferences pertaining to those freedoms.[442] Read with Article 21, the freedom and liberty envisaged in Article 19 of the Constitution of India entails with it the right of the person to choose factors pertaining to various facets of his/her life, including what to eat, where to live, how to live, who to live with, healthcare and various other vital life decisions. Right to privacy is indispensable for a person's dignity and thereby recognizes his/her autonomy to make choices that have the potential of affecting his/her life.[443] From the very crux of this Judgement of the Hon'ble Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*[444], the constitutionality of psychiatric advance directives under the Mental Healthcare Act, 2017 can be seen to ensue. The right of a person with mental illness to decide the way he/she wants/does not want to be cared for and treated is very much his/her *"freedom of choice"* to decide upon the vital factors about treatment and care during mental illness, in which because of the provision of psychiatric advance directive, he/she has the power and privilege to decide about the same in advance. The Hon'ble Supreme Court in its landmark Judgement *Common Cause (A Regd. Society) v. Union of India and Another*[445] delivered this year, upheld the constitutionality of passive euthanasia and laid down guidelines for advance directive pertaining to the same. Even though such an advance directive is different from the psychiatric advance directive issued under the 2017 Act, nevertheless they both are advance directives with respect to their basic feature (basic features being: issued by the person when he/she is of sound mind to be executed when he/she is unable to give consent); which implies the approval to the constitutionality of the concept of advance directives in general, given by the Hon'ble Supreme Court of India.[446]

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[442] *See* MARY DONNELLY, HEALTHCARE DECISION-MAKING AND THE LAW –AUTONOMY, CAPACITY AND THE LIMITS OF LIBERALISM (2010)
[443] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
[444] (2017) 10 SCC 1
[445] W.P. (CIVIL) NO. 215 OF 2005
[446] Judgement Common Cause (A Regd. Society) v. Union of India and Another, W.P. (CIVIL) NO. 215 OF 2005

Rights of persons with mental illness are the same as that of any other persons, but the role of the State to respect and protect the rights of these persons is more active. The rights of persons with mental illness envisaged in Chapter V of the 2017 Act are in the reflection of the rights laid down in the United Nations Convention on Rights of Persons with Disabilities. It is also important to note that these rights take after the fundamental rights in Part III of the Constitution of India, either directly or through various landmark Judgements of the Hon'ble Courts in the country.[447]

The 2017 Act provides for the setting up of and assigning of duties to, Mental Health Authorities at the Central[448] and State[449] level, Mental Health Boards.[450] It lays down the duties of the appropriate government;[451] and provides for registration, recognition and regulation of mental health establishments[452] for the purposes of this Act and the admission, treatment and discharge of persons in need of mental healthcare[453]. Sections 107 to 109 of the Act provide for punishments and penalties for violation of various provisions of the Act respectively. These provisions, it is submitted, have the capacity to pave the way for proper implementation of the rights guaranteed under the 2017 Act in the time to come. However, it is pertinent to note that the implementation is possible successfully only if it is accompanied by massive flow of fund from the Central Government to various State Governments which are already grappling with inadequate medical infrastructure at district levels.[454]The National Health

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[447] *See* Lata singh v.state of Uttar Pradesh, AIR 2006 SC 2522; Shakti Vahini v. Union of India and Ors. W.P. Civil No. 231 of 2010 (Supreme Court of India); Paschim Bangal Khet Mazdoor Samity v. State of West Bengal, AIR 1996 SC 2426; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; State of Punjab v. Ram Labhaya Bagha, AIR 1998 SC 1703

[448] The 2017 Act, Chapter VII

[449] The 2017 Act, Chapter VIII

[450] The 2017 Act, Chapter XI

[451] The 2017 Act, Chapter VI

[452] The 2017 Act, Chapter X

[453] The 2017 Act, Chapter XII

[454] Raghuraj Gagneja, *Mental Healthcare Bill: Despite the positive reform, a lot more needs to be done for the mentally ill,* FIRSTPOST (April 8, 2017), Available at

Policy, 2017[455] aims to raise the public healthcare expenditure from 1.4% to 2.5% of GDP. Public healthcare includes within its ambit mental healthcare and the National Health Policy, 2017 aims to consider the provisions of the National Mental Health Policy of India, 2014. The National Health Policy, 2017 could resultantly, prove to be pivotal in fulfilling the aims of the 2017 Act.

When undergoing treatment, a woman with mental illness is in the most vulnerable of states. The 2017 Act will play a pivotal role in ensuring that the vulnerabilities of such women requiring and undergoing mental healthcare are not exploited. The provisions of the Act are progressive and are a welcome change. Proper implementation of the legal provisions word for word will lead to the ultimate success of this legislation.[456]

2. TESTING THE MENTAL HEALTHCARE ACT, 2017 ON THE ANVIL OF THE WHO CHECKLIST ON MENTAL HEALTH LEGISLATION

Having tested the Mental Healthcare Act, 2017 on the anvil of the Constitution of India and the mandates of the United Nations Convention on the Rights of Persons with Disabilities, the final stage of critical evaluation of the new law was done in this research through evaluating its contents on the WHO Checklist on Mental Health Legislation[457](See Annexure 5.) The WHO Resource Book on

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http://www.firstpost.com/india/mental-healthcare-bill-despite-the-positive-reform-a-lot-more-needs-to-be-done-for-the-mentally-ill-3373156.html (Last visited on May 10, 2017)

[455] The National Health Policy, 2017, Available at http://cdsco.nic.in/writereaddata/National-Health-Policy.pdf (Last visited on May 10, 2017)

[456] *See* DR. LILY SRIVASTAVA, LAW AND MEDICINE (2010)

[457] WHO Checklist on Mental Health Legislation, Annexure 1 of THE WHO RESOURCE BOOK ON MENTAL HEALTH, HUMAN RIGHTS AND LEGISLATION (2005), Available at https://ec.europa.eu/health/sites/health/files/mental_health/docs/who_resource_book_en.pdf (Last visited on April 5, 2018)

Mental Health, Human Rights and Legislation (2005)[458] comprises the WHO Checklist on Mental Health Legislation.[459] The Checklist is aimed at helping the law makers of various countries in evaluating the comprehensiveness of their mental health legislation and/or assists them in drafting a new legislation on the matter. The provisions of the Mental Health Care Act, 2017 were tested by the researcher through the checklist[460] and out of the 175 requirements mentioned in the checklist, the provisions of the 2017 Act cover 149 requirements. It is noteworthy that some of the requirements in the checklist, like reservation, education, etc. have been covered under the Rights of Persons with Disabilities Act, 2016 and hence do not find mention in the 2017 Act. As a whole the mental healthcare legal framework in India presently covers the requirements specified in the WHO Checklist fairly well.

3. ADDRESSING STIGMA, DISCRIMINATION AND EXCLUSION[461] OF WOMEN WITH MENTAL ILLNESS IN THE COUNTRY

Stigma is one of the worst aspects of mental illness that a woman faces because of her condition. Ostracizing, non-recognition, abandonment ensue from the stigma attached to mental illness in the society.[462] Paragraph 5.3.1 of the National Mental Health Policy of India, 2014 requires the government to

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[458] THE WHO RESOURCE BOOK ON MENTAL HEALTH, HUMAN RIGHTS AND LEGISLATION (2005), Available at https://ec.europa.eu/health/sites/health/files/mental_health/docs/who_resource_book_en.pdf (Last visited on April 5, 2018)

[459] WHO Checklist on Mental Health Legislation, Annexure 1 of THE WHO RESOURCE BOOK ON MENTAL HEALTH, HUMAN RIGHTS AND LEGISLATION (2005), Available at https://ec.europa.eu/health/sites/health/files/mental_health/docs/who_resource_book_en.pdf (Last visited on April 5, 2018)

[460] *See* Annexure 5

[461] The 2014 Policy, Para 5.3.1

[462] Christie Hunter, *Understanding and reducing the stigma of mental illness in women*, Women's Health Research Institute, Available at http://www.womenshealth.northwestern.edu/blog/understanding-and-reducing-stigma-mental-illness-women (Last visited on April 1, 2018)

address the stigma associated with mental illness in the Indian society, discrimination and exclusion meted out to persons with mental illness. Section 30 of the 2017 Act requires the Appropriate Government to take all possible measures to ensure that various programmes to reduce stigma relating to mental illness should be planned, funded, enforced and implemented effectively. One of the major features of such programmes being, generating awareness by disseminating information and making various sections of the society sensitive to the issue of mental illness.

Each of the above provisions requires a positive and active role of the government and the implementation authorities. The 2017 Act imposes a duty on the appropriate government not only to plan and design but also to implement programmes promoting mental health and preventing mental illness;[463]one of these programmes being those aiming at reducing suicides and attempted suicides in India.[464]In furtherance of the same, the Appropriate Government is required to take the following measures[465]:

- Giving wide publicity to the 2017 Act through public media at regular intervals, namely through television, radio, electronic and print media;
- Programmes to reduce stigma relating to mental illness to be planned, funded, enforced and implemented effectively;
- The Government officials including police officers and other officers to be periodically sensitized and be provided awareness and training on matters pertaining to this Act.

The 2017 Act read with the National Mental Health Policy of India, 2014, therefore, addresses the socio-cultural vice of stigma surrounding mental illness by disseminating information and creating awareness thereby aiming towards clearing the cobwebs of stigma relating to mental illness in the Indian society.

[463] The 2017 Act, Section 29(1)

[464] The 2017 Act, Section 29(2);
It is to be noted that Section 115 of the 2017 Act decriminalizes attempt to commit suicide. It is stated that notwithstanding the provisions of Section 309 of the Indian Penal Code, any person who attempts to commit suicide should be presumed to be under severe stress and should not be tried or punished under the Indian Penal Code for the attempt to commit suicide.

[465] The 2017 Act, Section 30

4. POSITIVE ROLE OF THE APPROPRIATE GOVERNMENT UNDER THE MENTAL HEALTHCARE ACT, 2017

The Appropriate Government[466] is required by the 2017 Act to increase the human resources in mental health services by developing education and training programmes in coordination with institutions of higher education. It is also important to improve the skill of existent human resources by updating them with the latest developments and advancements made in the area of mental healthcare. The Appropriate Government has to take up the responsibility to train the medical officers in public healthcare establishments and medical officers in prisons to be able to provide basic emergency mental healthcare services.[467] The Act requires the Appropriate Government to set up internationally acceptable guidelines within a period of ten years of the commencement of the Act.[468] The 2017 Act also acknowledges the coordinate role of various Ministries and Departments (including health, law, home affairs, employment, women, education, social justice, etc.) of the government, coordination of the same being instrumental in achieving the aim of the Act.[469]

5. THE MENTAL HEALTHCARE (RIGHTS OF PERSONS WITH MENTAL ILLNESS) RULES, 2018

The Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018[470] have been drafted by the Central Government in exercise of the powers

[466] The 2017 Act, Section 2(b)
[467] The 2017 Act, Section 31
[468] *Id.*
[469] The 2017 Act, Section 32
[470] Notification No.: G.S.R. 509(E), Ministry of Health and Family Welfare, Department of Health and Family Welfare, Government of India (29th May, 2018)

conferred by Section 121 of the 2017 Act.[471] The 2018 Rules are in furtherance of the cause of the mandates of UNCRPD, taken up by the 2017 Act. The provisions of the 2018 Rules if implemented completely can be instrumental in addressing the concerns of women with mental illness in the country.

Mental healthcare includes not only the diagnosis and treatment of mental illness but also the care and rehabilitation of the person back into the society.[472] It is therefore very important to understand the various elements that constitute mental illness to gauge this phenomenon.

The Rules lay down provisions for the setting up of *"half-way homes", "sheltered accommodation", "supported accommodation", "hospital and community based rehabilitation establishment" and "hospital and community based rehabilitation service",* respectively, thereby recognizing the pertinent role of rehabilitation for complete mental healthcare. The provisions are not myopic but rather look at mental healthcare holistically, with the ultimate aim of enabling the persons with mental illness to be able to get back to independent living and facilitate their reintegration into the society.

Clarity to the concepts pertaining to rehabilitation of persons with mental illness is provided by the various definitions enumerated in the 2018 Rules. Discussed herein below are some of the important definitions given under the 2018 Rules:

Rule 2(c)	**Half-way home**	means: "a *transitional living facility for persons with mental illness who are discharged as*

[471] See also the Draft Central Regulations, 2017 under the 2017 Act, Available at https://mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf (Last visited on April 27, 2018);
By virtue of the powers to make regulations under Section 122 of the 2017 Act Central Government has drafted the Draft Central Regulations, 2017 on behalf of Central Mental Health Authority. It is important to note that these Draft Central Regulations are subject to the modifications that may be made by the Central Mental Authority once it is constituted.

[472] The 2017 Act, Section 2(o)

		inpatient from a mental health establishment, but are not fully ready to live independently on their own or with the family."
Rule 2(d)	**Hospital and community based rehabilitation establishment**	means: *"an establishment providing hospital and community based rehabilitation services"*
Rule 2(e)	**Hospital and community based rehabilitation service**	means: *"rehabilitation services provided to a person with mental illness using existing community resources with an aim to promote his reintegration in the community and to make such person independent in all aspects of life including financial, social, relationship building and maintaining."*
Rule 2(h)	**Sheltered accommodation**	means: *"a safe and secure accommodation option for persons with mental illness, who want to live and manage their affairs independently, but need occasional help and support"*
Rule 2(i)	**Supported accommodation**	means: *"a living arrangement whereby a person, in need of support, who has a rented or*

		ownership accommodation, but has no live-in caregiver, gets domiciliary care and a range of support services from a caregiver of an agency to help him live independently and safely in the privacy of his home."

The 2018 Rules require the Appropriate Government under the Act of 2017 to establish such number of half-way homes, sheltered accommodations, supported accommodations, hospital and community based rehabilitation establishment and services at such places, as are necessary for providing services required by persons with mental illness and are to follow the required minimum standards specified in law.[473]

The Rules also elaborate in detail the *"right to access basic medical records."*[474] It is stated *inter alia* that a person with mental illness is entitled to receive the documented versions of his/her medical information relating to diagnosis, assessment, investigation and treatment as per the medical records.

After having discussed the essential features of the 2018 Rules, it can be said that these Rules are indeed a beacon of hope in fulfilling the aim of the 2017 Act. The rules pertaining to rehabilitation are meticulously framed. It is the implementation of these Rules and the positive action by the appropriate government and various authorities under the 2017 Act that can together facilitate the aims of the Act in the light of UNCRPD to not only provide for the treatment of the person with mental illness but also the reintegration and rehabilitation of the person into society to enable him/her to lead an independent life.

[473] 2018 Rules , Rules 3 and 4
[474] *Id.,* Rule 6

6. NEED TO INCORPORATE THE PROVISIONS OF THE DETAILED DRAFT MENTAL HEALTHCARE RULES, 2017

The 2018 Rules which have been notified on 29th May, 2018[475] were preceded by the Draft Mental Healthcare Rules, 2017. The Draft 2017 Rules were more elaborate and meticulously drafted. Many of the provisions of the Draft Rules have not been incorporated in the 2018 Rules. It is suggested that some of the essential provisions of the Draft 2017 Rules should be incorporated in the 2018 Rules as they provided detail and clarity. Discussed herein below are some of the relevant provisions of the Draft 2017 Rules:

Half-way homes: The Government is required to setup half-way homes for persons with mental illness. The half-way homes can function from within the community or outside the campus of any other mental health establishment. Half-way homes are to be registered as mental health establishments[476] and are to comply with the standards and requirements for the same. Admission to a half-way home can be taken by a person after his/her discharge from a mental health establishment or on advise by a mental health professional to be admitted in a half-way home instead of a mental health establishment. A half-way home runs programmes to help persons with mental illness in their transition journey while recuperating by learning life skills and moving towards an independent living and reintegration into the society. Services to inmates at a half-way home are to include social services, psychiatric services, medical services, educational services and such other services as are required for the holistic welfare of the inmates, including individual counselling and group counselling. In order to prepare the inmates for an independent living after being discharged from half-way homes, their stay at half-way homes should involve, performance of various chores, remuneration for which is also paid to appreciate and recognize the work put in by them, engaging in various

[475] Notification No.: G.S.R. 509(E), Ministry of Health and Family Welfare, Department of Health and Family Welfare, Government of India (29th May, 2018)
[476] The 2017 Act Section 65(1)

occupational activities, being trained in financial management and provided with employment counselling. Movement inside a half-way home for the inmates should be free. Inmates are to be facilitated outings from the half-way home under supervision or subject to some conditions. This helps in gradually finding themselves reintegrated in the society.

Sheltered accommodation: The sheltered accommodations as stated in the Draft Rules are to be owned, maintained, administered and run by a government agency. The persons with mental illness who are allotted admission in a sheltered accommodation can exercise the option of staying there with their parents, spouse or care-giver. The Draft Rules require a sheltered accommodation to have some of the following facilities, namely:

- Communal areas having sports facilities, library, garden, jogging track, etc.;
- Provision for common dining area and common laundry services;
- Visiting area facilitating visits from friends and relatives;
- Twenty-four hours emergency alarm in case of an emergency;
- A manager and other staff members to look after the housekeeping and attending to situations of emergency.

A sheltered accommodation should comprise accommodation facilities ranging from shared rooms, independent rooms with kitchen and bath and apartments with private front door.

Supported accommodation: The concept of supported accommodation as envisaged in the Draft Rules entails structured assistance services from Government agencies for persons with mental illness who want to live in their own homes. This support is in addition to the unstructured support available to such a person from his/her friends and families and the treating mental health professional. These services should be flexible enough to cater to the individual needs of each person with mental illness respectively. Support services, which are a combination of some paid and some free services, may include

assistance with respect to management of money, medical appointments, daily chores, etc.

Hospital & Community based Rehabilitation Services:[477] Hospital & Community Based Rehabilitation are to be made available to persons with mental illness at mental health establishments, community centres homes, including half-way homes. These services, depending on the needs of the persons with mental illness in that area, the local conditions and the availability of resources, are to include:

- Medical treatment facilities;
- Vocational rehabilitation services;
- Family counselling;
- Self-help groups;
- Support in the recovery process;
- Psychological interventions which includes psycho-education, psychotherapy and counselling; etc.

For the fulfillment of the above goal, the State Government is required to take steps towards providing training to rehabilitation workers and primary health care workers in psychological care; training persons who have recovered from mental illness and their family members to become resource persons for workers working in the area of rehabilitation; creating an inclusive environment congenial to the overall development of the person with mental illness ensuring the protection of his/her rights. The State Government is also required to arrange for awareness and sensitization drives in schools to alert students about the issue at a young age. Instilling awareness among the members of the society about the sensitivity of the issue is an important role involved herein along with making persons with mental illness and their care-givers aware of their rights.

[477] The Draft 2017 Rules, Schedule B

Capacity to consent for treatment:[478] The expert committee appointed by Central Mental Health Authority has to determine the factors to be considered to evaluate the capacity of a person with mental illness to consent for treatment.

The right to access basic medical records:[479] A person with mental illness has the right to receive documented medical information relating to his/her diagnosis and treatment. The person may request for a copy of the basic medical record by making an application in writing.

The right to free legal aid:[480] All mental health establishments are to put up on display on their notice board at a prominent place in a local language about the right of persons with mental illness to get free legal aid and the contact information of the local Legal Services Authority.

The provisions in the Draft 2017 Rules pertaining to rehabilitation have been meticulously framed, providing detail, clarity and precision. These Draft Rules and the positive action by the appropriate government and various authorities under the 2017 Act can together facilitate the aims of the Act in the light of UNCRPD to not only provide for the treatment of the person with mental illness but also the reintegration and rehabilitation of such persons into the society to enable them to lead an independent life. It is therefore, suggested that the afore-discussed provisions of the Draft 2017 Rules should be incorporated in the 2018 Rules.

[478] The Draft 2017 Rules, Rule 16
[479] The Draft 2017 Rules, Rule 19
[480] The Draft 2017 Rules, Rule 20

7. ANSWERING THE RESEARCH QUESTIONS

The research questions, finding answers to which was the primary aim of this research pursuit are:

- What is mental illness?
- Are women with mental illness vulnerable?
- What will be the implications of psychiatric advance directives on the autonomy of women with mental illness?
- Are the rights of women with mental illness adequately protected under the Mental Health Care Act, 2017?
- Are the provisions of the Mental Health Care Act, 2017 in consonance with the standards laid down in various International instruments?

	Research Questions	Answers
1.	What is mental illness?	*"Mental illness"* means *"a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence".*[481]

[481] The 2017 Act, Section 2(s)

		The definition given in the Mental Healthcare Act, 2017[482] is the appropriate definition of the term *"mental illness".*
2.	Are women with mental illness vulnerable?	Yes.
3.	What will be the implications of psychiatric advance directives on the autonomy of women with mental illness?	Positive, subject to proper awareness and implementation.
4.	Are the rights of women with mental illness adequately protected under the Mental Healthcare Act, 2017?	Yes.
5.	Are the provisions of the Mental Health Care Act, 2017 in consonance with the standards laid down in international mental healthcare standards?	Yes, fairly.

<u>Research Question 1</u>: What is mental illness?

Chapter II of this research appraised the definition of mental illness as laid down in the Mental Healthcare Act, 2017 of India and the fact that the 2017 Act brings the Mental Healthcare legal framework in consonance with the mandates of UNCRPD.

[482] *Id.*

The definition given in the Mental Healthcare Act, 2017[483] is the appropriate definition of the term *"mental illness".*

"Mental illness" therefore, means *"a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence."*[484]

<u>Research Question 2</u>: Are women with mental illness vulnerable?

The answer to this question is a 'yes'. Following is the research supporting the answer:

- The findings of Chapter III of the Research on Asking the "Woman Question" support the proposition that women with mental illness are very vulnerable.
- An analysis of the NCW and NIMHANS Report (2016) and HRW Report (2014) proved that women with mental illness are more susceptible to vulnerability and prone to abuse as compared to men with mental illness.
- All the five psychiatrists whom the researcher interviewed also agreed to the fact that women with mental illness are vulnerable.
- The personnel at the three NGOs whom the researcher had interviewed narrated the various ventures being undertaken by their organizations to address and remedy the vulnerabilities of women with mental illness.

[483] *Id.*
[484] The 2017 Act, Section 2(s)

- 81.6% of the 185 responses to the survey conducted by the researcher were in favour of the proposition that women with mental illness in India are more vulnerable than their male counterparts.
- It is also important to note that the WHO Checklist on Mental Health Legislation[485] recognizes women with mental illness as part of the vulnerable section of persons with mental illness.

Research Question 3: What will be the implications of psychiatric advance directives on the autonomy of women with mental illness?

The concept of psychiatric advance directives introduced by the 2017 Act in India is a new concept for the country. Even though questions can be raised pertaining to its implementation and viability, it is a positive step towards ensuring the protection of rights and autonomy of women with mental illness. It will give them the right and choice to decide about their mental healthcare. It is submitted that the checks to the viability of a psychiatric advance directive are sufficiently placed in the provisions of the 2017 Act and proper implementation of the law in its letters and spirit will help in fulfilling the goal with which this concept is being introduced in India.

The Draft Central Regulations, 2017[486]lay down the regulations pertaining to the manner of making an advance directive. It is stated that an advance directive for the purposes of the 2017 Act should be made according to Form CR-A of the Draft Central Regulations, 2017.

[485] WHO Checklist on Mental Health Legislation, Annexure 1 of THE WHO RESOURCE BOOK ON MENTAL HEALTH, HUMAN RIGHTS AND LEGISLATION (2005), Available at https://ec.europa.eu/health/sites/health/files/mental_health/docs/who_resource_book_en.pdf (Last visited on April 5, 2018)

[486] Draft Central Regulations, 2017 made by the Central Government in exercise of the powers conferred under Section 122 of the 2017 Act on behalf of the Central Mental Health Authority subject to modification by the Central Mental Authority on its constitution. Draft Central Regulations, 2017, Available at https://mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf (Last visited on April 27, 2018)

Form CR-A of the Draft Central Regulations, 2017[487]

FORM –CR-A
Regulation 1 (a)
Advance Directive for Mental Illness Treatment
(U/S 122.2.a with 6)

Name (Enclosed copy of photo ID proof):_____
Age (Enclosed copy of age proof for being above 18 years of age) _____
Father's / Mother's Name: _____
Address (Enclosed copy of proof):_____
Contact number: _____
(Driving License/ Voter's Card/ Passport/ Aadhar card can serve as photo ID, address proof & age proof)
a) I wish to be cared for and treated as under:
_____
_____
b) I wish not to be care for and treated as under:
_____
_____
c)I have appointed the following persons in order of precedence(Enclosed photo ID & age proof), who are above 18 years of age to act as my nominated representatives to make decisions about my mental illness treatment, when I am incapable to do so
1. Name: _____Age_____
Father's name: _____
Address: _____
Contact number/s_____
2. Name: _____Age_____
Father's name: _____
Address: _____
Contact number/s_____
[Any number of nominated representatives can be added in order of precedence]
Any history of allergies, known side effects, or other medical problems
_____
_____
Signature of the person…… Date.....
Signatures of nominated representatives
First nominated representative……Date……..
Second nominated representative……Date……
Signatures of witnesses
……. ….has made the advance directive of his/her own free will and has signed it in our presence.
Witness 1..... .....Date.....
Witness 2..... .....Date.....
Certificate of a Medical Practitioner:
Certified that ……..has the capacity to make mental health care and treatment decisions at the time of making the advance directive.
Name and signature with stamp……

[487] Available at https://mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf (Last visited on April 27, 2018)

A nominated representative who is named in the advance directive should sign in the advance directive thereby consenting to the same.[488] The nominated representative may withdraw his/her consent at any time from the same by writing an application to that effect to the Mental Health Review Board and handing over a copy of the application to the person who made the advance directive.[489] All advance directives are to be countersigned by two witnesses stating that the advance directive was signed by the person making the same in their presence.[490] A person making the advance directive is required to keep a copy with himself/herself and give a copy to his/her nominated representative.[491] Release of a copy of the advance directive to the media or any unauthorized person is not permitted.[492] All advance directives are to be registered with the concerned Mental Health Review Board free of cost.[493] An advance directive should be made online by the Board within 14 days of receiving the same.[494] A person can change his/her advance directives any number of times, there are no restrictions on the number.[495] Each change in an advance directive is required to undergo the same process and regulations as an advance directive to be considered valid.[496] Every time a new advance directive is made, the person making the advance directive and/or his/her nominated representative must inform the treating mental health professional about the same.[497]

It is therefore, submitted that the checks to the viability of a psychiatric advance directive are sufficiently placed in the provisions of the 2017 Act and proper implementation of the law in its letters and spirit will help in fulfilling the goal

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[488] Draft Central Regulations, 2017
[489] *Id.*
[490] *Id.*
[491] *Id.*
[492] *Id.*
[493] *Id.*
[494] *Id.*
[495] *Id.*
[496] *Id.*
[497] *Id.*

with which this concept is being introduced in India. The Draft Central Regulations, 2017 add further regulations and checks to ensure the smooth functioning and proper implementation of psychiatric advance directives. Subject to the implementation of the laws, psychiatric advance directives will have positive implications on the autonomy of women with mental illness and the exercise of their right to choice over the treatment meted out to them.

Research Question 4: Are the rights of women with mental illness adequately protected under the Mental Healthcare Act, 2017?

Yes, the rights of women with mental illness are adequately protected under the Mental Healthcare Act, 2017. Read with the National Mental Health Policy of India, 2014 and the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018[498], the provisions of the Mental Healthcare have the potential to particularly address the vulnerabilities of women with mental illness. There are suggestions to facilitate this further (in the last section of this research, titled **"SUGGESTIONS"**) which, it is humbly submitted, will further enable the fulfillment of this goal.

Research Question 5: Are the provisions of the Mental Healthcare Act, 2017 in consonance with the standards laid down in international mental healthcare standards?

Yes, the provisions of the Mental Healthcare Act, 2017 are in consonance with the standards laid down in International Mental Healthcare instruments. The three documents on the fulcrum of which the Mental Healthcare Act, 2017 has been tested to international mental healthcare standards are:

[498] Notification No.: G.S.R. 509(E), Ministry of Health and Family Welfare, Department of Health and Family Welfare, Government of India (29th May, 2018)

i) WHO, Ten Basic Principles of Mental Health Care Law (1996)
ii) The United Convention on Rights of Persons with Disability (UNCRPD) (2006)
iii) WHO Checklist on Mental Health Legislation (Annexure 1 to WHO Resource Book on Mental Health, Human Rights and Legislation (2005))

After having indulged in an in-depth analysis of i) WHO, Ten Basic Principles of Mental Health Care Law (1996) and ii) The United Convention on Rights of Persons with Disability (UNCRPD) (2006) in Chapter X of this research, it can be stated that the 2017 Act is in consonance with the standards laid down in these two international instruments.

The WHO Resource Book on Mental Health, Human Rights and Legislation (2005) comprises the WHO Checklist on Mental Health Legislation.[499] The Checklist is aimed at helping the law makers of various countries in evaluating the comprehensiveness of their mental health legislation and/or assists them in drafting a new legislation on the matter. The provisions of the Mental Health Care Act, 2017 were tested through the checklist[500] and out of the 175 requirements mentioned in the checklist, the provisions of the 2017 Act cover 149 requirements. It is noteworthy that some of the requirements in the checklist, like reservation, education, etc. has been covered under the Rights of Persons with Disabilities Act, 2016 and hence do not mention in the Mental Healthcare Act, 2017. As a whole the mental healthcare legal framework in India presently covers the requirements in the WHO Checklist fairly well.

[499] WHO Checklist on Mental Health Legislation, Annexure 1 of The WHO Resource Book on Mental Health, Human Rights and Legislation (2005), Available at https://ec.europa.eu/health/sites/health/files/mental_health/docs/who_resource_book_en.pdf (Last visited on April 5, 2018)
[500] *See* Annexure 5

6. TESTING THE HYPOTHESIS AND PUTTING FORTH SUGGESTIONS

i. Result of Testing the Hypothesis in the pursuit of this Research:

Hypothesis of the present research: "The Mental Healthcare Act, 2017 adequately protects the rights of women with mental illness."

Hypothesis proved: Hypothesis is true subject to the fulfilment of the following conditions, namely:

- Proper implementation of the Mental Healthcare Act, 2017 in letter and spirit;
- Enforcement of the provisions of the National Mental Health Policy of India, 2014 and implementation of its ideals and goals; and
- Incorporation of the suggestions recommended hereinafter in this Chapter.

ii. Suggestions

The Mental Healthcare Act, 2017 was introduced with the aim to bring the mental healthcare laws in India in consonance with the provisions of UNCRPD and other International Mental Healthcare Standards. It is important to note that the Mental Healthcare Act, 2017 came into force very recently, that is, from 29th May, 2018[501] on which date the Mental Health Act, 1987 stood repealed. The Mental Healthcare Act, 2017 is gender neutral, at the same time not gender

[501] Notification No.: S.O. 2173(E), Ministry of Health and Family Welfare, Government of India (29th May, 2018)

biased. It propagates justice and equality in mental healthcare and gives the freedom to choose the treatment to be given to a person during his/her mental healthcare. Having analysed the 2017 Act read with the National Mental Health Policy of India, 2014, it is humbly submitted that the proper implementation of the 2017 Act and the 2018 Rules in letter and spirit, read with the National Mental Health Policy of India, 2014 will proficiently improve the condition and status of women in need of mental healthcare in the country.

The NCW and NIMHANS Report (2016),[502]had put forth some important suggestions pertaining to mental healthcare of women with mental illness. Positive and constructive suggestions were also made by the persons interviewed and by the respondents to the questionnaires filled during the surveys conducted by the researcher.

Reliance has been made to all these suggestions in addition to the analysis undertaken in the course of this research, for the researcher to come forth with some suggestions of her own. After having undertaken this entire research pursuit, the researcher hereby humbly submits some suggestions to further the cause of the 2017 Act, particularly from the perspective of women with mental illness in India. Herein below are the suggestions:

- The provisions of the Draft Mental Healthcare Rules, 2017 should be incorporated in the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018 which have been notified on 29th May, 2018;[503] and the Draft Central Regulations, 2017[504]should be passed in their present form;

[502] Available at http://ncw.nic.in/pdfreports/addressing_concerns_of_women_admitted_to_psychiatric_institutions_in_india_an_in-depth_analysis.pdf (Last visited on May 23, 2017)

[503] Notification No.: G.S.R. 509(E), Ministry of Health and Family Welfare, Department of Health and Family Welfare, Government of India (29th May, 2018)

[504] Draft Central Regulations, 2017 made by the Central Government in exercise of the powers conferred under Section 122 of the 2017 Act on behalf of the Central Mental Health Authority subject to modification by the Central Mental Authority on its constitution. Draft Central Regulations, 2017, Available at

- Establishment of the Central Mental Health Authority, the State Mental Health Authorities and the Mental Health Review Boards under the 2017 Act at the earliest;
- Facilitating care-giver support. The 2017 Act provides for mental health services to provide for support to family with mental illness.[505]This support should include support at the financial, medical and emotional level to the care-giver of the person with mental illness;
- The 2017 Act should ensure that women with mental illness in a mental health institution should be provided with appropriate and adequate privacy, including separate sleeping facilities from men;[506]
- Increase the number of women personnel in mental healthcare in India;
- Training health-care providers at the primary healthcare level to identify mental illness in a patient who comes for treatment before them. The health-care providers should be also trained about the basics of mental healthcare for them to be able to prescribe temporary treatment and medicine in case of mental illness of a patient when access to a psychiatrist in case of an emergency is not possible. Training Anganwadi and ASHA workers to identify traits of mental illness in a person and create awareness about mental healthcare and rights of persons with mental illness in the rural pockets of the society;
- Providing digital access to psychiatrists on a regular basis in remote areas;[507]

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https://mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf (Last visited on April 27, 2018)

[505] The 2017 Act, Section 18(4)(c)

[506] *See* the WHO Checklist on Mental Health Legislation (Annexure 1 to the WHO Resource Book on Mental Health, Human Rights and Legislation , 2005), Available at https://ec.europa.eu/health/sites/health/files/mental_health/docs/who_resource_book_en.pdf (Last visited on April 5, 2018)

[507] *See* The National Health Policy, 2017, Available at http://cdsco.nic.in/writereaddata/National-Health-Policy.pdf (Last visited on April 5, 2018)

- It is should be ensured that every person with mental illness should be treated and provided with healthcare facilities at par with persons with physical illness, and medical insurance for treatment of patients with mental illness should be made available, by health insurers, in the same manner as is made available for treatment of physical illness;[508]
- Gender sensitization and regular and appropriate training, pertaining to special needs and healthcare of women with mental illness, of healthcare professionals, mental healthcare professionals, police, judiciary, educationists, government authorities, etc. Training sessions to be interactional once in every six months for the various sectors to come together and discuss their experiences and concerns;[509]
- Integration of "inter-sectoral liaisons"[510]among various sectors involved in the care, treatment, welfare and rehabilitation of women with mental illness, including health, social justice, rehabilitation, housing, law, home affairs, police, education, etc.[511]
- Sensitizing women in general of their rights in society, and to be able to accept and acknowledge their rightfulness to decision making pertaining to their life irrespective of their mental illness;
- Disseminating information in various sectors of the society about the provisions of the 2017 Act by the Authorities under the 2017 Act, thereby creating awareness pertaining to rights of persons with mental illness, and creating awareness among the general masses about the option of psychiatric advance directives.The Indian media can play a pivotal role in ensuring that the ultimate aim of equity in mental healthcare can be reached. Awareness pertaining to the 2017 Act can be brought about through the media by discussions in the mainstream news,

[508] *See* the 2017 Act, Section 21
[509] *Id.*
[510] NCW and NIMHANS Report (2016), Page 244
[511] *Id.*

advertisements by the Government in the primetime news television, radio channels, magazines, newsletters and newspapers;

- Visits to women with mental illness in mental health establishments by outsiders should be supervised;
- Absolute transparency in the process of determining the status of mental illness of a person;
- The Policy makers and law makers should always ask the "woman question"[512] while addressing mental healthcare issues in the country, and while making plans and improving plans relating to mental healthcare;
- Inspections in the likes of the one conducted by NCW and NIMHANS in coming out with its 2016 Report should be made a practice to be repeated once in every six years;[513]
- The provisions relating to shelter homes, supported accommodation and half-way homes in the 2018 Rules to be implemented, the same to be backed by sufficient funding by the Government of India. There should be proper monitoring of these homes and accommodations including regular inspections to avert situations of exploitation or abuse[514] and to ensure that the purpose of setting up these homes and accommodation is fulfilled
- Applying the principle of *"best interest"* of the person with mental illness and the principle of *"medical necessity"* by the person taking mental healthcare decisions for himself/herself or by anyone taking the decision on his/her behalf, keeping in mind that the *"least restrictive"* methods of treatment for mental healthcare should be incorporated;[515]

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[512] *See* Katherine T. Barlett, *Feminist Legal Methods,* 103 (4) Harvard Law Review 829 (1990)
[513] *See* also the 2017 Act, Section 67(1)
[514] *See* Himanshi Dhawan, *What the Deoria story tells you about India's unwanted girls,* TIMES OF INDIA (August 12, 2018), Available at https://m.timesofindia.com/home/sunday-times/what-the-deoria-story-tells-you-about-indias-unwanted-girls/amp_articleshow/65369502.cms (Last visited on August 13, 2018)
[515] *See* Ravinder v. Government of NCT of Delhi and Ors., W.P. (CRL) 3317/2017

- Increasing the funding allotment towards mental healthcare in the Annual Budget of India;
- Creating Sexual Harassment Redressal Centres in all mental health establishments;
- Discouraging the practice of long-stay patients in mental hospitals and making all efforts to locate the family and residence of abandoned women with mental illness;
- Vocational and occupational training of women with mental illness. At the same time confidence boosting sessions of counselling and character building is vital to rehabilitate the women and help them in leading an independent life;[516]and
- Follow-up with rehabilitated women by the authorities and psychiatric social workers under the 2017 Act is also necessary to avert relapse of the illness.

Finally it is suggested that educating the society in general about mental healthcare, clearing the cobwebs of stigma that many sections of the society associate to mental illness is very important for the complete fulfilment of this goal. Taking refuge with faith healers for cure to mental illness should be discouraged and the importance of timely medication and mental healthcare should be discussed and highlighted. Gender sensitization across all sections of the society that is across geographical, social, gender, cultural, economic, ethnic, regional boundaries and differences is the most vital of all steps that need to be taken for a holistic solution of this issue.

[516] *See* also UN, Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), Available at https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html (Last visited on January 1, 2018)