



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**

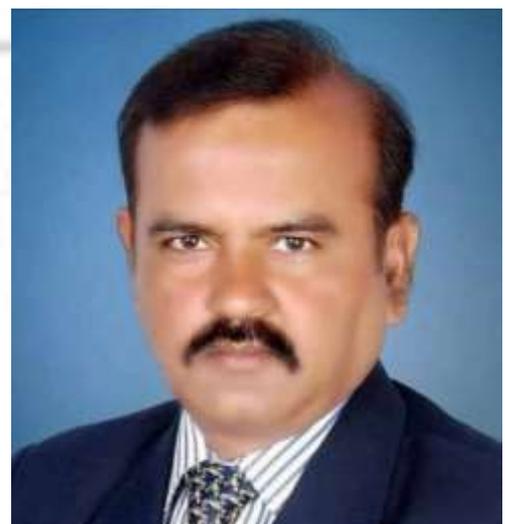


a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

OPERATIONALIZATION AND LEGAL ENFORCEMENT OF THE MENTAL HEALTHCARE ACT, 2017

AUTHORED BY - DEEPENDRA YADAV

Research Scholar, Raffles University (Neemrana)

CO-AUTHOR - DR. NAMRATA YADAV

Assistant Professor of Law, Raffles University (Neemrana)

Introduction

The Mental Healthcare Act, 2017 (MHCA) represents a transformative step in India's approach to mental health, shifting the paradigm from custodial and institutional care to a rights-based, patient-centered framework. The Act was enacted to address the longstanding neglect and marginalization of persons with mental illness, particularly in the wake of the inadequacies of the earlier Mental Health Act, 1987, which prioritized institutionalization and often violated patients' autonomy and rights. MHCA, 2017, aligns Indian law with international conventions such as the UN Convention on the Rights of Persons with Disabilities, emphasizing dignity, autonomy, and the right to access mental health care without discrimination. The Act's provisions are comprehensive, covering rights to community living, informed consent, confidentiality, and access to legal aid. It also mandates the establishment of regulatory authorities and review boards to oversee implementation and safeguard patient rights. Despite these progressive features, the Act's impact on the ground has been mixed, with significant challenges in implementation, enforcement, and awareness among stakeholders. The introduction of MHCA, 2017, thus marks both a legal milestone and a continuing challenge in realizing mental health rights in India, especially for vulnerable populations such as prisoners.

Mechanisms for Implementation and Enforcement of Mental Healthcare Act, 2017

The MHCA, 2017, establishes a multi-tiered system for implementation and enforcement, involving central and state authorities, mental health review boards (MHRBs), and designated mental health establishments. The Central and State Mental Health Authorities are responsible for registering mental health establishments, setting minimum standards, and monitoring

compliance. MHRBs act as quasi-judicial bodies to protect patient rights, adjudicate disputes, and ensure due process in admissions and treatment decisions. The Act also prescribes detailed procedures for voluntary and involuntary admissions, advance directives, and the appointment of nominated representatives. Key mechanisms include periodic inspections, mandatory reporting, and grievance redressal systems. Despite this robust legal architecture, operationalization has been slow and uneven across states. Many authorities and boards are yet to be fully constituted, and there is a lack of trained personnel to oversee compliance. Practical challenges such as inadequate funding, poor infrastructure, and limited awareness among stakeholders further hinder effective enforcement. Courts have frequently intervened to direct state governments to fulfill their obligations under the Act, underscoring the need for stronger administrative will and better coordination among agencies.

National Mental Health Programme and Mental Healthcare Infrastructure

The National Mental Health Programme (NMHP) serves as the backbone for implementing the MHCA, 2017, aiming to integrate mental health care into the broader public health system. The NMHP focuses on decentralizing mental health services, expanding community-based care, and strengthening district mental health programs. Infrastructure development is a critical component, with efforts to upgrade mental health institutions, establish psychiatric units in general hospitals, and promote telemedicine initiatives like Tele-MANAS. However, the mental health infrastructure in India remains grossly inadequate, with significant disparities between urban and rural areas. There is a chronic shortage of mental health professionals, and many facilities lack basic amenities and resources. The NMHP's effectiveness is further constrained by limited budget allocations, fragmented service delivery, and bureaucratic inefficiencies. While the MHCA, 2017, mandates the creation of adequate infrastructure and human resources, progress has been slow, and much of the country's mental health burden remains unaddressed. Strengthening the NMHP and ensuring its alignment with the legal mandates of the MHCA are essential for bridging the gap between policy and practice.

Challenges in Enforcing Mental Health Rights of Prisoners

Prisoners represent one of the most vulnerable groups under the MHCA, 2017, yet the enforcement of their mental health rights faces unique and formidable challenges. Prisons are often overcrowded, understaffed, and ill-equipped to provide even basic health services, let

alone specialized mental health care. The Act mandates mental health services for prisoners, periodic assessments, and the transfer of inmates with severe mental illness to appropriate facilities. However, implementation is hampered by a lack of trained professionals, inadequate infrastructure, and poor coordination between prison authorities and health departments. Stigma, security concerns, and the punitive culture of prisons further deter inmates from seeking help. Legal safeguards such as the right to informed consent, confidentiality, and access to legal aid are often difficult to realize in the correctional environment. Judicial interventions have highlighted these deficiencies, directing authorities to improve services and uphold prisoners' rights, but progress remains slow and inconsistent. Addressing these challenges requires targeted policy measures, capacity building, and a shift towards a rehabilitative, rather than punitive, approach to prison health care.

Critical Analysis of Implementation Gaps in the Mental Healthcare Act, 2017

Despite its progressive intent, the MHCA, 2017, suffers from significant implementation gaps. Many states have been slow to establish the required regulatory authorities and review boards, resulting in weak oversight and inconsistent enforcement. There is a lack of clarity regarding the roles and responsibilities of different agencies, leading to bureaucratic delays and poor coordination. Funding constraints are a major barrier, with mental health receiving a fraction of the overall health budget. Training and sensitization of stakeholders—including police, judiciary, and health professionals—are inadequate, leading to poor awareness and compliance with the Act's provisions. Monitoring and evaluation mechanisms are weak, and data on service delivery and outcomes are often unavailable or unreliable. The persistence of outdated practices, such as involuntary admissions without due process, further undermines the Act's objectives. These gaps highlight the need for stronger administrative commitment, increased resource allocation, and continuous capacity building to ensure that the rights and protections envisioned by the MHCA, 2017, are realized in practice.

Practical Policy Recommendations

To address the challenges in implementing and enforcing the MHCA, 2017, a multi-pronged policy approach is required. First, there must be a concerted effort to establish and operationalize all mandated authorities and review boards, with clear lines of accountability. Adequate funding should be allocated to strengthen infrastructure, recruit and train mental

health professionals, and support community-based services. Awareness campaigns targeting stakeholders including law enforcement, judiciary, health workers, and the general public—are essential to promote understanding and compliance with the Act. Integration of mental health services into primary health care and digital health platforms can expand access, particularly in underserved areas. Regular monitoring, data collection, and independent audits should be instituted to track progress and identify gaps. Special attention must be given to vulnerable groups such as prisoners, women, and children, with tailored interventions to address their unique needs. Finally, ongoing review and amendment of the Act, informed by stakeholder feedback and emerging best practices, will ensure that India's mental health laws remain responsive and effective.

Legal Enforcement Levers & Recommendations

A robust legal framework is essential for the effective implementation of mental health policies and the protection of rights under the Mental Healthcare Act (MHCA), 2017. To strengthen compliance and accountability, a combination of judicial, administrative, and community-based mechanisms must be activated.

- (a) **Judicial Oversight** has proven instrumental in catalyzing enforcement. For example, the Punjab and Haryana High Court has played a proactive role by setting enforceable timelines for MHCA compliance, mandating the operationalization of mental health institutions, and requiring regular status reports from state authorities. The judiciary's ability to hold officials accountable for delays or non-compliance sets a powerful precedent and reinforces the role of courts in advancing mental health governance.
- (b) **Empowering Oversight Bodies** is another key lever. Oversight mechanisms mandated by the MHCA, such as Mental Health Review Boards (MHRBs) and State Mental Health Authorities (SMHAs), must be fully functional. MHRBs, required in every district, play a critical role in reviewing involuntary admissions and ensuring legal protections for patients. SMHAs should be adequately resourced to maintain registers of establishments, conduct quality inspections, address grievances, and organize legal literacy training for stakeholders.
- (c) **Training and Capacity Building** are vital to the MHCA's success. Law enforcement officers must be sensitized to handle mental health emergencies with dignity and legality. Healthcare professionals should receive training on patient rights, confidentiality, advance directives, and proper discharge procedures. Additionally,

judicial officers and magistrates must be well-versed in interpreting and enforcing MHCA provisions, especially in complex cases involving involuntary care or rights violations.

(d) Strengthening Community Care is essential to the Act's goal of deinstitutionalization and recovery-oriented services. This involves investing in infrastructure such as halfway homes, supported housing, and community care centers, as well as expanding mobile mental health units and outreach services to underserved areas. Insurance coverage for mental health conditions must be enforced on par with physical illnesses, as mandated by Section 21(4)(A) of the MHCA. Public-private partnerships can also play a role in expanding access to community-based care.

(e) Monitoring and Accountability mechanisms must be activated to close enforcement gaps. Regular audits both routine and surprise should assess compliance with statutory standards. Grievance redressal systems must be operational at institutional and state levels to ensure timely resolution of complaints. Finally, penalties for violations of the MHCA, including fines and imprisonment, must be actively enforced, as these provisions remain under-utilized despite their potential deterrent effect. Together, these legal levers and policy recommendations create a comprehensive strategy to uphold the rights of persons with mental illness and ensure the full implementation of the MHCA, 2017.

Critical Challenges and Implementation Barriers

The implementation of mental health legislation in India faces several critical challenges and systemic barriers that hinder its effectiveness.

- **Structural and Administrative Weaknesses** remain a significant concern, as many states have yet to fully establish Mental Health Review Boards (MHRBs) and State Mental Health Authorities (SMHAs). This incomplete institutional setup limits the necessary infrastructure for enforcing patient rights and ensuring oversight, as highlighted.
- **Human Resource and Funding Scarcity** further exacerbates the issue. With a wide treatment gap estimated at 80–90% and a severe shortage of trained mental health professionals, the practical implementation of the law is severely constrained. Additionally, budgetary allocations are grossly inadequate to support essential

community-based services such as halfway homes, legal aid, or emergency response systems.

- **Feasibility of Compliance** poses another major hurdle. Clinicians often face procedural complexities such as obtaining informed consent, navigating advance directives, and undergoing Board reviews which can delay urgent care. These requirements, while aimed at protecting patient rights, raise legitimate concerns in high-volume or emergency settings, as noted by Cambridge University Press & Assessment.
- **Societal Stigma and Awareness Deficit** continue to undermine progress. Mental health remains stigmatized, and many families or communities are either unaware of the rights granted under the new legal framework or continue to maintain outdated custodial attitudes. Public education and sensitization efforts remain insufficient, according to Drishti IAS, making it difficult to achieve widespread societal change.

Conclusion

The MHCA, 2017 aspires to transform mental healthcare in India into a rights-centered, dignified, and community-integrated system. While the legal architecture is progressive, its operationalization remains inconsistent across states. Courts are stepping in to enforce compliance; states like Punjab are moving toward realignment of de-addiction services with MHCA principles. However, fulfilling the Act's promise requires full establishment of oversight mechanisms, adequate resourcing, awareness campaigns, and systemic capacity building. Only then can the statutory rights of PMIs translate into lived realities across India. Legal enforcement of mental health rights under MHCA requires a multi-pronged approach: judicial activism, empowered oversight bodies, skilled human resources, robust community services, and effective accountability systems. Each lever reinforces the others and together they form the foundation for a just, accessible, and rights-based mental health system.