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## ***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

# **CIVIL COMMITMENT: COMPARISON OF MENTAL HEALTH CARE LAWS IN INDIA AND USA**

AUTHORED BY - ANOOP KRISHNA YADAV

“The humanity we all share is more important than the mental illnesses we may not”

Elyn R. Saks

## **INTRODUCTION**

The Twin Towers, a complex erected in Los Angeles, California, is the world's largest jail as well as America's largest mental health facility.<sup>1</sup> In short, inmates of twin towers are collection of men confined to a prison of their own minds -broken, vulnerable and in unrelenting pain.<sup>2</sup> Approximately thirty three percent inmates of twin towers jail are facing some sort of mental illness.<sup>3</sup> The United States has the highest incarceration rate in the world and now it became a public health crisis.<sup>4</sup> Mental illness is not just a health crisis but it is form of an invisible community disability that echo into economic crisis, an educational crisis and an inequality crisis. When compared to physical health with mental health, the difference is only of the impaired organ, which is brain. Not all brain diseases are categorized as mental illnesses.<sup>5</sup> Mental retardation or general learning disability is only a neurodevelopmental disorder that results in impaired intellectual and adaptive functioning. A mental illness can be defined as a health condition that changes a person's thinking, feelings, or behaviour (or all three) and that causes the person distress and difficulty in functioning.<sup>6</sup> Mental illness includes specific labels such as bipolar illness, depression, hysteria, paranoia, melancholia schizophrenia, obsessive-compulsive disorder and many more.

In case of severe mental illness individual's decision making capacity impaired to the extent the state's role become decisive for treatment. The state take responsibility of welfare of people under

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<sup>1</sup>Los Angeles county sheriff's department, USA, *available at*: <http://shq.lasnews.net/pages/PageDetail.aspx?id=1404>

<sup>2</sup> J Dina Demetrius, “Exclusive: Inside the US's largest psychiatric ward, the LA County Jail” Aljazeera America, July 28, 2014, *available at*: <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/7/25/1-a-county-jail-psychiatricward.html>

<sup>3</sup> Eric Westervelt, Liz Baker, “America's Mental Health Crisis Hidden Behind Bars” NPR, Feb 25, 2020, *available at*: <https://www.npr.org/2020/02/25/805469776/americas-mental-health-crisis-hidden-behind-bars>

<sup>4</sup> Al-Rousan, T., Rubenstein, et al. “Inside the nation's largest mental health institution: a prevalence study in a state prison system” 17 BMC Public Health, 342 (2017), *available at*: <https://rdcu.be/doBaC>

<sup>5</sup>Bethesda (MD), “NIH Curriculum Supplement Series” (National Institutes of Health (US),2007)

<sup>6</sup> *Ibid*

doctrine of “*parens patriae*,”<sup>7</sup> as well as under doctrine of police power to prevent any harm to its citizens.<sup>8</sup> This of *parens patriae* doctrine, dating back to at least the 17th century, was first applied to adults who were mentally incompetent.<sup>9</sup> The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. (John Stuart Mill, *On Liberty* (1859)). The state follows a criteria for the involuntary treatment that includes: the notion of dangerousness, danger for others or for oneself, and existence of grave disability in taking care of himself along with danger of “essential harm” to their mental health if they do not receive mental care.<sup>10</sup> The process of involuntary treatment of mental illness through court order or state intervention is called civil commitment. Civil commitment is the institutions of mental health and justice. When a patient is considered dangerous, the usual confidentiality of the doctor-patient relationship is breached.<sup>11</sup> This system, centred on the equation of treatment and control as its main function.<sup>12</sup> The process of civil commitment for the treatment is guided by mental health legislation.<sup>13</sup> Civil commitment is either in-patient treatment or assisted outpatient treatment with community involvement.

This article provides insight on civil commitment laws enacted by state of California, The Lanterman-Petris-Short Act and The Assisted Outpatient Treatment Demonstration Project Act of 2002, also known as Laura's Law. This state was chosen because of population, cultural ethnic and racial relevance. The focus is to provide an orientation on law in the United States and India as point of comparison which relates to the provisions of civil commitment of mentally ill individuals.

India and United states are two countries with different demographics and industrialisation level.

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<sup>7</sup> Black's Law Dictionary defines '*Parens Patriae*' as:-“ The State regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves.

<sup>8</sup> Anfang SA, Appelbaum PS. “Civil commitment--the American experience” 3 *IsrJPsychiatryRelatSci* 43(2006), *available at*: <https://pubmed.ncbi.nlm.nih.gov/17294986/>

<sup>9</sup>Elchanan G. Stern, “*Parens Patriae* and *Patriae* and Parental Rights: When Should the State ental Rights: When Should the State Override Parental Medical Decisions?” 33 *J.L. & Health* 79 (2019) *available at*: <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1558&context=jlh>

<sup>10</sup> Saya A, Brugnoli C, et al. “Criteria, Procedures, and Future Prospects of Involuntary Treatment in Psychiatry Around the World: A Narrative Review” 10 *Front Psychiatry* 271 (2019) *available at*: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6501697/>

<sup>11</sup> Alexander D. Brooks , “Notes on Defining the “Dangerousness” of the Mentally III” *available at*: <https://www.ojp.gov/pdffiles1/Digitization/54292NCJRS.pdf>

<sup>12</sup> Bernadette Dallaire, Michael McCubbin, et al. “Civil commitment due to mental illness and dangerousness: the union of law and psychiatry within a treatment-control system” *available at*: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1467-9566.00226>

<sup>13</sup> K. Chandrasekhar , “Involuntary Hospitalization: The Conflict Zone of Psychiatry and Law (Revisiting Section 19 of Mental Health Act 1987)”, *Indian J Psychol Med.* (2018) *available at*: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6065132/>



India is developing country and United States of America is developed country. Cross national comparison of laws can widen understanding of the prevalent laws and mental health services. In all countries multiple factors are same more or less but in developing countries some issue increases prevalence of mental health problems like poverty, malnutrition, maternal health that effect in early brain development.

## MENTAL HEALTH GOVERNANCE IN USA

The Tenth Amendment to the U.S. Constitution vests residuary power vests in states.<sup>14</sup> The American federal system rests on two constitutional pillars: the 50 state constitutions and the United States Constitution.<sup>15</sup> State constitution are often far longer and elaborative than federal constitution. The U.S. Constitution neither mention a right to health or medical care nor it appear anywhere in the text of it.<sup>16</sup> However in January 11, 1944, then The President of United states Franklin Delano Roosevelt in his message to Congress vigorously attempted for Second Bill of Rights that includes the right to adequate medical care and the opportunity to achieve and enjoy good health.<sup>17</sup>

Congress's authority to enact health care legislation derives from the enumerated powers set forth in Article I, Section 8 of the Constitution.<sup>18</sup> Congress' power to tax and spend for the general welfare and its power to regulate interstate commerce have been the primary sources of constitutional authority for most health care legislation.

## MENTAL HEALTH IN USA: HISTORICAL PERSPECTIVE

Mental health faces critical issues of authority over others to determine social policy and legal influence. In mental health care, ethics and culture are intimately intertwined. The legal aspects of patient care are determined by country-specific regulations, which in turn are governed by medical ethics.<sup>19</sup> The four cardinal principles of biomedical ethics are beneficence-**to act for the**

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<sup>14</sup>TENTH AMENDMENT, USA, *avaialble at:* <https://www.govinfo.gov/content/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-11.pdf>

<sup>15</sup> State constitutions in federal system, Advisory Commission on Intergovernmental Relations, USA, *available at:* <https://library.unt.edu/gpo/acir/Reports/policy/a-113.pdf>

<sup>16</sup> Kathleen S. Swendiman, "Health Care: Constitutional Rights and Legislative Powers" CRS Report for Congress, July 9, 2012 *available at:* <https://sgp.fas.org/crs/misc/R40846.pdf>

<sup>17</sup> The Economic Bill of Rights, USA, *available at:* [https://www.ushistory.org/documents/economic\\_bill\\_of\\_rights.htm](https://www.ushistory.org/documents/economic_bill_of_rights.htm) (Last visted July 29, 2023)

<sup>18</sup> *Supra* note 2 at 16

<sup>19</sup> Rajshekhar Bipeta, "Legal and Ethical Aspects of Mental Health Care", Indian J Psychol Med. (2019) *available at:* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6436399/>

**benefit of the patient, no maleficence- obligation of a physician not to harm the patient, autonomy- to exercise his or her capacity for self-determination, and justice- fair, equitable, and appropriate treatment of persons** constitute the four principles of medical ethics.<sup>20</sup> Earlier only beneficence and No maleficence were prominent but with passage of time autonomy and justice as medical ethics evolved with the development of human rights. Human Rights Council in its 2017 report on mental health<sup>21</sup> reaffirmed that mental health services must respect the principles of medical ethics and human right. The passing of Insanity defence reform act after assassination attempt<sup>22</sup> on U.S. President and its verdict of "not guilty" for reason of insanity in the 1982 trial of John Hinckley, to the appointment of federal commission for mental health, the focus shifted from explicitly expelling the mentally ill for the protection of society to curing mental illness itself. To cure mental illness now focus is on community involvement that have legal backing of legislation and regulations. The rights and standard of mental health services defined with the help of psychiatric associations along with standard form of treatment which provided legal framework for mental health professionals.

## **Mental asylum: Treatment and Hospitalization**

Modern treatments of mental illness are most associated with the establishment of hospitals and asylums beginning in the 16th century.<sup>23</sup> In early American communities patients were generally cared for by family members.<sup>24</sup> To make an organized effort to care for the mentally ill, citizens of Philadelphia in year 1752 established the Pennsylvania Hospital, being the first establishment for the care and treatment of the insane, in America.<sup>25</sup> Eastern State Hospital in Virginia, was founded in 1773 with emphasis on community focused mental health care.<sup>26</sup> Dorothea Dix and Clifford W. Beers both took inspiration from their own struggle from mental disorder and become prominent advocate for treatment of mental illness. In early 1800s asylum movement began taking

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<sup>20</sup> Basil Varkey, "Principles of Clinical Ethics and Their

Application to Practice", *Med Princ Pract*(2021) *available at*: <https://www.karger.com/Article/Pdf/509119>

<sup>21</sup> UN General Assembly, "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" UN Doc A/HRC/35/21 (March 28, 2017 ) *available at*: <https://undocs.org/A/HRC/35/21>

<sup>22</sup> United States v. Hinckley, 525 F. Supp. 1342 (D.D.C. 1981) *available at*: <https://law.justia.com/cases/federal/district-courts/FSupp/525/1342/1692613/>

<sup>23</sup> Ingrid G. Farreras, "History of Mental Illness" *available at*: <https://nobaproject.com/modules/history-of-mental-illness>

<sup>24</sup> Diseases of the Mind: Highlights of American Psychiatry through 1900

Early Psychiatric Hospitals & Asylums, USA, *available at*: <https://www.nlm.nih.gov/hmd/diseases/early.html>

<sup>25</sup> Pennsylvania Hospital for the Insane, "Code of rules and regulations for the government of those employed in the care of the patients of the Pennsylvania Hospital for the Insane, near Philadelphia" (T.K. and P.G. Collins, USA 1850) *available at*: <https://collections.nlm.nih.gov/catalog.nlm:nlmuid-101560452-bk>

<sup>26</sup> <https://www.esh.dbhds.virginia.gov/>

shape the older ad hoc ways in which local communities<sup>27</sup> dealt with insanity were largely abandoned and were replaced by a policy that emphasized a novel institution —the asylum, retreat, or, mental hospital with active role of Dorothea Dix.<sup>28</sup> Dix was initially influenced by her own traumatic discovery of the conditions under which people with mental illness were kept in the United States of America<sup>29</sup> In her memorial to Legislature of Massachusetts she describes state of Insane Persons confined within this Commonwealth, “in cages, closets, cellars, stalls, pens! Chained, naked, beaten with rods, and lashed into obedience!”<sup>30</sup> By 1850, with her efforts she successfully persuaded the US government to establish almost 20 institutions to care for the mentally ill.<sup>31</sup> The model of care that Dix supported, “moral treatment,” was developed from the work of French psychiatrist Philippe Pinel and from new practices used at hospitals such as England’s York Retreat.<sup>32</sup> In 1908, Clifford W. Beers’ biography *A Mind That Found Itself*, where he describes his struggle with mental disorder, aroused the people to reform mental health treatment and it helped to launch the mental hygiene movement.<sup>33</sup> Later on Beer created an organisation National Mental Health Association currently known as the Mental Health America. In 1953 Mental Health America melted down metal from chains used to restrain people with mental illnesses to create the Mental Health Bell to recast them into a sign of hope.<sup>34</sup>

On July 3, 1946, the National Mental Health Act<sup>35</sup> came into effect with broad purpose of improving "the mental health of the people of the United States"<sup>36</sup> It also established National Institute of Mental Health (NIMH) for conducting research for the ultimate goal of prevention, recovery and cure of mental illness. The NIMH is the branch of the National Institutes of Health (NIH) that focuses on the brain, behaviour, and mental health.<sup>37</sup>

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<sup>27</sup> Government and Mental Health Policy

<sup>28</sup> Dix Legacy Committee (Aug 28, 2018) *available at:* [https://dixpark.org/sites/dixpark/files/2018-11/Dix%20Park\\_Full%20Legacy%20Report\\_2018.pdf](https://dixpark.org/sites/dixpark/files/2018-11/Dix%20Park_Full%20Legacy%20Report_2018.pdf)

<sup>29</sup> Smark, C, “Dorothea Dix: A social researcher and reformer”, Accounting & Finance Working Paper 06/15, School of Accounting & Finance, University of Wollongong, 2006 *available at:* <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1030&context=accfinwp>

<sup>30</sup> I Tell What I Have Seen”—The Reports of Asylum Reformer Dorothea Dix, <https://iowaculture.gov/sites/default/files/history-education-pss-reform-dorothea-transcription.pdf>

<sup>31</sup> *Supra* note 4 at 28

<sup>32</sup> Manon S. Parry, “Dorothea Dix (1802–1887)” *Am J Public Health* (April, 2006) *available at:* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470530/>

<sup>33</sup> Hierholzer R, “A Mind That Found Itself” *BMJ.* (May 12, 2007) *available at:* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1867897/>

<sup>34</sup> <https://www.mhanational.org/mental-health-bell>

<sup>35</sup> <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/60/STATUTE-60-Pg420.pdf>

<sup>36</sup> Section 2 of the National Mental Health Act

<sup>37</sup> <http://www.faqs.org/espionage/Ne-Ns/NIMH-National-Institute-of-Mental-Health.html>

## Community Centred Approach: Deinstitutionalization

The 1960s ushered in an era of dramatic changes in the role that the federal government would play in the organization and financing of mental health care.<sup>38</sup> The new economic policy for treatment of mental illness through insurance paved way for increased role and responsibilities of federal government. The Amendments to the Social Security Act in 1965 created the Medicare and Medicaid programs.<sup>39</sup> The Medicare program was created under title 18 of the Social Security Act. Through this Act psychiatric care covered as medical care in hospitals, this also paved way for emergence of private sector in Medicare and mental health service delivery. Now it enabled states to reduce their role as mental health service provider to a new function as payer and regulator.<sup>40</sup>

## CIVIL COMMITMENT IN THE USA

Civil commitment in transformed in last five decades from a need-for-treatment model to involuntary treatment on the basis of dangerousness model.<sup>41</sup> By 1960, civil right movement and Medicare programmes resulted into community integrated humane mental health services.<sup>42</sup> Now a new trend emerged to provide outpatient commitment within community.

Civil commitment is a protective commitment<sup>43</sup> to provide treatment of mental illness with the goal of reducing risk. The Justification in contemporary statutes for civil commitment is nevertheless to prevent injury to the public, to make sure his own survival or safety, or to ease or cure his illness. For example, the legislative intent behind the legislation of California's The Lanterman-petris-short act is to end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders.<sup>44</sup> Before 1970's, the legal determination of dangerousness can result into long term confinement of person with mental illness. With the passage of time and Supreme Court's proactive decisions in favour of civil liberties the standards for civil commitment have softened considerably.

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<sup>38</sup>Richard G. Frank, "The Creation of Medicare and Medicaid: The Emergence of Insurance and Markets for Mental Health Services", *Psychiatric Services*(April 2000) available at: <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.51.4.465>

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Megan Testa, Sara G. West, "Civil Commitment in the United States", Edgmont, *Psychiatry* (2010) available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3392176/>

<sup>42</sup> *Supra* note 1 at 8

<sup>43</sup> Cornell Law School, "The Problem of Civil Commitment." Available at: <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/the-problem-of-civil-commitment>

<sup>44</sup> CA Welf & Inst Code Sec. 5001 (2020)



In landmark case of JACKSON v. INDIANA (1972) the U.S. Supreme Court held that states may not indefinitely confine criminal defendants solely on the basis of incompetence to stand trial due to mental illness.<sup>45</sup> United States Supreme Court in O'CONNOR v. DONALDSON (1975)<sup>46</sup> held that State cannot constitutionally confine, a non-dangerous individual who can live safely in community with help of friends and family.<sup>47</sup> Lessard v. Schmidt gave importance to due process clause, the nine conclusions<sup>48</sup> of the court included that the patient must be both “mentally ill and dangerous” beyond reasonable doubt.<sup>49</sup>

Outpatient civil commitment is a relatively modern trend in the United States. In contrast to inpatient civil commitment, which involves separation of a mentally ill person from society through placement behind a locked door, outpatient civil commitment allows people suffering from mental disorders to remain in their communities. Although by the year 1999, outpatient commitment had been around for decades, the state of New York brought national attention to this issue with the passage of Kendra's Law. The benefit of outpatient commitment comes with the monitoring of committed individuals and the requirement of adherence with outpatient mental health visits. Persons who are civilly committed to the outpatient mental health system are easier to involuntarily hospitalize at earlier stages of psychiatric deterioration because they are carefully managed by the community mental health system.

## LEGISLATION IN INDIA

British introduced mental asylum in India<sup>50</sup> to segregate mentally ill from community.<sup>51</sup> The new act The Indian Lunacy Act is enacted repealing Lunatic Asylum act. This enactment paved way for opening<sup>52</sup> up of new mental asylums and improvement in the conditions of asylums. Col. Berkeley Hill of Ranchi mental asylum persuaded government and with his efforts, names of

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<sup>45</sup> George F. Parker, “An Historical Review of the Legal and Personal Background to Jackson v. Indiana” Journal of the American Academy of Psychiatry and the Law (February 2011) *available at*: <http://jaapl.org/content/39/1/86>

<sup>46</sup> O'Connor v. Donaldson, 422 U.S. 563 (1975) *available at*: <https://supreme.justia.com/cases/federal/us/422/563/>

<sup>47</sup> *Ibid*

<sup>48</sup> *Lessard v. Schmidt*, E.D. Wis. 1972, *available at*: <https://law.justia.com/cases/federal/district-courts/FSupp/349/1078/1501673/>

<sup>49</sup> Michael J. Remington, “Lessard v. Schmidt and its Implications for Involuntary Civil Commitment in Wisconsin” 57 Marq. L. Rev. 65 (1973) *available at*: <http://scholarship.law.marquette.edu/mlr/vol57/iss1/4>

<sup>50</sup> Mishra A, Mathai T, Ram D. “History of psychiatry: An Indian perspective” Ind Psychiatry J. (2018) *available at*: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6198594/>

<sup>51</sup> Daund M, Sonavane S, et al. “Mental Hospitals in India: Reforms for the future” 2 Indian J Psychiatry (2018) *available at*: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5836345/>

<sup>52</sup> Indian Lunacy Act, 1912. (Act No 4 of 1912) *available at*: [https://www.indiacode.nic.in/bitstream/123456789/11080/1/indian\\_lunacy\\_act\\_1912.pdf](https://www.indiacode.nic.in/bitstream/123456789/11080/1/indian_lunacy_act_1912.pdf)

mental asylums changed to mental hospital. The Indian Lunacy Act, 1912, provided for Reception, Care and Treatment of Lunatics in mental asylums. This act vested courts with judicial powers over person and estate of lunatic. It also vested state government to supervise and make rules for the mental asylums. This act authorise involuntary admission of criminal lunatics in mental asylums without the order of magistrate thus the intent was to isolate criminal lunatics from community. This act also authorise<sup>53</sup> magistrate to commit lunatics to mental asylum in case of lunatic cruelly treated or not under proper care and control.

Humanitarian approach is evident in the new terminology used in the Mental Health Act 1987. Government Mental Hospitals are brought under the authority of the Mental Health Authority. Family involvement in mental health and treatment was a key provision in inpatient care.

The Mental Health Care Act (MHCA) 2017 was adopted taking into account the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). It is a right based law. It has made mental health a legal right. The Mental Health Care Act 2017 (MHCA) now governs the apprehension and treatment of people with mental health issues. This law is patient centred. It lays down advance directives, allows for an appeal against or for admission. Unlike in the USA, where the appeal procedure involves a hearing before the court with a guaranteed legal representative, in India, the MHRB will do the review and make the decision. The process that will be adopted to implement such reviews is yet to be framed.

## **ADMISSION AND TREATMENT UNDER MENTAL HEALTH LEGISLATION**

In California, The Lanterman-Petris-Short Act sought to provide prompt evaluation and treatment of persons with serious mental disorders to protect public safety, and safeguard individual's rights. During the process of getting evaluation or treatment in mental health facility, this act gives right to choose physician or other mental health professional for treatment to the patient.<sup>54</sup> However this act does not bar treatment through spiritual means.<sup>55</sup> It also protects all the rights and responsibilities of individual during treatment which are guaranteed to ordinary citizens under relevant laws.<sup>56</sup>

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<sup>53</sup> Indian Lunacy Act, 1912. (Act No 4 of 1912), s.15

<sup>54</sup> CA Welf & Inst Code Sec. 5009

<sup>55</sup> CA Welf & Inst Code Sec. 5006

<sup>56</sup> CA Welf & Inst Code Sec. 5325.1.

## **Voluntary Admission**

In case of voluntary admission<sup>57</sup>, a patient or a conservatee through conservator<sup>58</sup> can apply in writing to the medical director of a state hospital<sup>59</sup> or in-charge of private hospital<sup>60</sup> or the superintendent or person in charge of the county psychiatric hospital<sup>61</sup> for admission into hospital for care and treatment. In case of minor, authorisation from parents or guardian required. After treatment a patient can leave by giving notice to member of hospital staff complying hospital due process.

In India, the voluntary admission is included under section 86 of MHCA 2017, with an age limit set at 18. If a person admitted under this section requests discharge, he/she can be detained, against wish, for up to 24 hrs, as per section 88. This vital period provides an opportunity for the hospital to arrange a psychiatrist to evaluate this person for any risk to self or others due to the mental illness.

## **Involuntary Admission**

Mental illness compromises individual's decision-making capacity. The Lanterman-Petris-Short Act permits involuntary hospitalization for individuals for whom such confinement with its accompanying severe deprivation of liberty, is necessary and appropriate due to mental illness. The law requires<sup>62</sup> that the person being committed due to mental disorder must be danger to others or danger to himself or gravely disabled<sup>63</sup> for successive period of times. Initially the duration of involuntary admission is 72 hours<sup>64</sup> for observation with least restrictive settings at evaluation facility for the assessment of criteria for involuntary hospitalization. Only designated professional personnel can place a person in 72-hour hold. They can be police officers, members of a "mobile crisis team," or other mental health professionals authorized by their county. Within this 72 hours hold, the evaluation facility submit report to the state about patient with information required by law. If the patient continues to meet involuntary hold criteria, mental health official

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<sup>57</sup> CA Welf & Inst Code Sec. 6000 (2020)

<sup>58</sup> CA Welf & Inst Code Sec 5350

<sup>59</sup> CA Welf & Inst Code Sec. 6000 b - A person received in a state hospital shall be deemed a voluntary patient.

<sup>60</sup> CA Welf & Inst Code Sec. 6002

<sup>61</sup> CA Welf & Inst Code Sec. 6004

<sup>62</sup> CA Welf & Inst Code Sec. 5150 (2020)

<sup>63</sup> CA Welf & Inst Code Sec. 5008 (2020) "Gravely disabled" means a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

<sup>64</sup> Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225)

will hold the patient on 14 days of intensive treatment.<sup>65</sup> A patient can be converted to the voluntary admission if in opinion of evaluator patient no longer meets criteria for involuntary hospitalization. However additional hold required in certain situations<sup>66</sup> like patient is suicidal or pose threat to self then another 14 day<sup>67</sup>, in case of grave disability or impairment by chronic alcoholism then another 30 days<sup>68</sup> and most importantly if person is threat to others then another 180 day <sup>69</sup> hold may be placed.

The relevant provisions for involuntary admission into mental health establishments are defined in sections 89 and 90 of the Mental Healthcare Act. The grounds for admission to mental institutions are similar, i.e., danger to oneself, grave disability and danger to other persons. However, there is a slight variation in the procedure, namely the initial period of detention for assessment and treatment.

## **Review-Involuntary Admission**

The effect of involuntary hospitalization for treatment of mental disorders is subject to the due process clause of the 14th Amendment. This constitutional right protects an individual from unnecessary confinement. The Lanterman-Petris-Short have provisions which safeguard individual's right. The duration of stay can be extended for intensive treatment after certification signed by mental health professional and physician or psychologist who participated in the evaluation. The copy of certificate must be delivered personally<sup>70</sup> to the person certified and his attorney.

Certification review hearing<sup>71</sup>, to be held within four days at the hospital attended by both patient and the patient's attorney.<sup>72</sup> A certification review officer decides on the hold after hearing testimony from the hospital representatives and patient's attorney. The family of patient is allowed to be present during hearing. In case hold is upheld the patient can file a writ of habeas corpus in

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<sup>65</sup> CA Welf & Inst Code Sec. 5250

<sup>66</sup> Section 5260 Re-certification for Intensive Treatment

<sup>67</sup> CA Welf & Inst Code Sec. 5260

<sup>68</sup> CA Welf & Inst Code Sec. 5256, 5270.15

<sup>69</sup> CA Welf & Inst Code Sec. 5300

<sup>70</sup> CA Welf & Inst Code Sec. 5253

<sup>71</sup> The certification review hearing shall be conducted by either a court-appointed commissioner or a referee, or a certification review hearing officer. CA Welf & Inst Code Sec. 5256.1

<sup>72</sup> CA Welf & Inst Code Sec. 5250



county<sup>73</sup> superior court.<sup>74</sup>

Under MHCA 2017, when a person is admitted under section 89 or 90, the person's nominated representative or the family members are involved in decision-making. The act also recommends that the detained patient's capacity to treatment is assessed every 7 days. Individuals admitted under section 89 or their nominated representative or representative from a registered Non-Governmental Organization with the consent of the individual can write to the concerned MHRB for review, and the Board is required to provide its report on such an admission within 7 days of receipt. However, in case of section 90, the medical officer of the Establishment is required to inform the Board within 7 days of admission, and the Board will provide its decision either permitting admission or discharge of the patient within 21 days of the receipt of the intimation.

## **The Informed Consent**

Bill of Rights incorporated in U.S. constitution safeguards citizens' right to freedom. It is similar to common-law principle of self-determination. An extension of self-determination includes the right to exercise control over one's body i.e. the right to accept or refuse medical treatment.<sup>75</sup> The right of an individual is protected through doctrine of informed consent. An individual who can't exercise his decision making capacity due to lack of functional abilities is referred as de-jure incompetent.<sup>76</sup>

Patient have the right to exercise informed consent to medication under U.S. law . The person designated by mental health facility has to provide written and oral information about possible effects of medication. The oral information to be provided includes nature of medication, reason for prescription and its effect.<sup>77</sup> The likelihood of improvement and reasonable alternatives including name, type and method of dispensing medication.<sup>78</sup> The person who is detained have right to refuse treatment with antipsychotic medication except in the situation of emergency or a Riese hearing has occurred and a judge has ruled that the individual lacks capacity to refuse antipsychotic medications. The Judicial decision in the case of *Riese v. St. Mary's Hospital &*

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<sup>73</sup> County is an administrative or political subdivision of a state. Similar to district in Indian states.

<sup>74</sup> CA Welf & Inst Code Sec. 5275

<sup>75</sup> Raphael J. Leo, "Competency and the Capacity to Make Treatment Decisions: A Primer for Primary Care Physicians, Prim Care Companion" J Clin Psychiatry. (1999) available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC181079/>

<sup>76</sup> *Ibid.*

<sup>77</sup> CA Welf & Inst Code Sec.5325.2

<sup>78</sup> Welf & Inst Code Sec- 5152

*Medical Center*<sup>79</sup> recognizing that persons detained have a right to give or refuse consent to prescribed medication. The core of the decision in *Riese* is the recognition that mental health patients may not be presumed to be incompetent solely, because of their involuntary hospitalization.

On correlation of the standards overseeing the ability to assent, the Indian MHCA 2017 and US regulation appear to be similar.

## **Psychiatric Advance Directive**

A psychiatric or mental health advance directive (PAD) often called living will is a legal tool by which consumer of mental health services can set their preference in advance for treatment. Potential effects are improved communication between patient and mental health service providers.<sup>80</sup> Psychiatric Advance Directive may be used to request treatment or refuse it. Both Federal and State law recognize Advance directives. The federal law The Patient Self-Determination Act<sup>81</sup> requires hospitals to inform individual's rights under State law to make decision affecting healthcare including the right to accept or refuse medical or surgical treatment. In California, California's Health Care Decisions Law<sup>82</sup> sets out the requirements for making an advance directive, including who can make an Advance Directive, who can be an Agent and what health care providers must do to comply with Advance Directives. Advance Directive includes appointment of an agent for health care decisions<sup>83</sup> or individual health care instructions.<sup>84</sup> A person may choose either one or both of these parts through power of attorney. Each part is independently binding.

The MHCA 2017 does not mention the need for conducting the mental status examination and documentation, at the time of completing Advance Directive document.

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<sup>79</sup> *Riese v. St. Mary's Hospital & Medical Center*, (209 Cal. App. 3d 1308) available at: <https://law.justia.com/cases/california/court-of-appeal/3d/209/1303.html>

<sup>80</sup> Debra S. Srebnik, "Advance Directives for Mental Health Treatment", Psychiatry online, available at: <https://ps.psychiatryonline.org/doi/10.1176/ps.50.7.919>

<sup>81</sup> <https://www.congress.gov/bills/101/st-congress/house-bill/4449/text>

<sup>82</sup> California Code Probate Code, [https://www.nrc-pad.org/images/stories/PDFs/california\\_adstatute.pdf](https://www.nrc-pad.org/images/stories/PDFs/california_adstatute.pdf)

<sup>83</sup> [https://www.nrc-pad.org/images/stories/PDFs/california\\_adstatute.pdf](https://www.nrc-pad.org/images/stories/PDFs/california_adstatute.pdf)

<sup>84</sup> Sec. 4670 Probate Code, available at: [https://www.nrc-pad.org/images/stories/PDFs/california\\_adstatute.pdf](https://www.nrc-pad.org/images/stories/PDFs/california_adstatute.pdf)

## **Outpatient Civil Commitment (OPC)**

California's state law The Assisted Outpatient Treatment Demonstration Project Act of 2002 also known as Laura's Law<sup>85</sup> is California's state law that provides community-based, involuntary outpatient civil commitment. This law, through court procedure, coercively intervenes with psychiatric treatment to get services to those who refuse voluntary treatment. This act was enacted by California after a man with mental illness fatally shot Laura Wilcox.<sup>86</sup> This event resulted in public outcry for treatment of individual with mental illness who doesn't fulfil criteria of treatment under The L.P Act.

Involuntary outpatient civil commitment (OPC), is a civil court proceeding, only accessible to individuals who meet criteria under section 5346 of The Assisted Outpatient Treatment Demonstration Project Act of 2002.<sup>87</sup>. The Section 5150 of LP ACT provide criteria of imminent danger to self/others or gravely disabled for involuntary hospitalization. However many individuals do not meet the criteria for Section 5150, yet are clearly suffering and in need of care, gap in current treatment concatenation. The commitment under this Act is preventative form of court-ordered outpatient services targeting individuals with serious mental illness, without history of repeatedly declining voluntary care and subsequent decompensation.

## **Court Ordered Involuntary outpatient Treatment**

This act allows involuntary outpatient commitment by the order of County court on verified petition. Section 5346 clearly provides that, Court after receiving petition<sup>88</sup> from specified individuals to obtain assisted outpatient treatment for the person<sup>89</sup> who is subject of petition, Court after verification of facts and requisite criteria outlined in the Act and an affidavit<sup>90</sup> by licensed

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<sup>85</sup> CA Welf & Inst Code Sec. 5345

<sup>86</sup> Sigrid Bathen, "Stronger 'Laura's law' wins Assembly approval" *Capitol weekly*, 06.09.2020, <https://capitolweekly.net/stronger-lauras-law-wins-assembly-approval/>

<sup>87</sup> CA Welf & Inst Code Sec. 5346

<sup>88</sup> Petition must be made by- Any person 18 and older with whom the person resides, Parents, spouse, sibling, child, etc, Mental health provider, Law enforcement

<sup>89</sup> Serious mental illness, 18 years old or above, History of poor treatment compliance leading to: hospitalizations or incarcerations in the last 36 months or Violent behavior at least once in the last 48 months, Offered and declined voluntary treatment in the past, Unlikely to survive safely in the community without supervision, Least restrictive measure necessary to ensure recovery and stability, Substantially deteriorating, Likely benefit from treatment, Not being placed in AOT must likely result in the patient being harmful to self/others and/or gravely disabled

<sup>90</sup> Personally examined the person 10 days prior to the submission of the petition, recommends assisted outpatient treatment for the person, persuaded that person to submit to an examination but not successful, reason to believe person meets the criteria for assisted outpatient treatment, Subject of petition have right to be represented by counsel or court appointed public defender.

mental health treatment provider, and after hearing<sup>91</sup> testimony and evidence from all the parties, if the court finds that there is no appropriate alternative then it may order<sup>92</sup> initially for up to 6 months of assisted outpatient treatment which can be extended further 180 days from the date of the order in subsequent petition.

### **Court Approved Settlement Agreement for Treatment**

Section 5347 permits, patient may waive the right to an assisted outpatient treatment hearing in case of out of court settlement. This settlement agreement must be concluded before the commencement of court hearing. The settlement agreement must be made in writing, approved by court, and with treatment plan developed by the community-based program in least restrictive manner, with both parties mutually agreed to it, for treatment of up to 180 day. Either party may request for modification in treatment plan anytime within 180 days.

The compliance of treatment is monitored through court appointed officials. If individual fails to comply, it triggers intervention which may result in 72 hours hold for treatment and evaluation of inpatient commitment criteria.

### **Assisted Outpatient Treatment Services**

Section 5348 describes about services offered by county administration. The County where patient resides will offer assisted outpatient treatment services. These services are provided by Community-based, mobile, multidisciplinary, highly trained mental health teams. Each client will have designated mental health personal services coordinator to provide needed services. The 'individual person service plan' be of such nature that it provides age-appropriate, gender-appropriate, and culturally appropriate service.

There is no provision for assisted outpatient therapy under the MHCA. However, there are community-based options accessible, such as halfway houses and group homes. In a communal setting, the person may also seek medical attention. The whole burden of care shifts on families and local institutions.

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<sup>91</sup> No order for AOT unless mental health treatment provider personally examined and reviewed treatment history, Court may order for custodial examination of person at treatment facility.

<sup>92</sup> shall not be ordered unless the licensed mental health treatment provider has submitted to the court a written treatment plan



## **CONCLUSION**

Both nations' mental health laws provide comparable protections for autonomy, such as advance directives for better care. To prevent everyone who is mentally ill from entering mental institutions, the requirements for dangerousness were relaxed. In both nations, the goal of community treatment is to relieve pressure on institutional settings for mental health. By acknowledging it via policy and legislation, the least restrictive criterion currently protects individual rights and provides mental therapy in the most effective manner. Both nations' legal systems play a significant role in ensuring appropriate and compassionate mental health care. In the modern mental health system, the idea of "recovery" has become the dominant force. In the United States, the Mental Health Parity Act expanded insurance coverage for those with mental illnesses; India too needs insurance coverage.