

**Government of India
Ministry of Health & Family Welfare**

**AMENDMENTS
TO THE
MENTAL HEALTH ACT, 1987**

DRAFT DATED 23rd May 2010

Prepared by

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on behalf of

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Government of India
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To read the proposed amendments below :

Under the column of "Amended Provision" proposed changes to the section in the Act are highlighted in bold. Changes which have been made in the first draft of the amendments are in BLACK colour while additional changes proposed in this 2nd draft of amendments are in RED colour. This is intended to make it easier for the reader to contrast and compare the 1st and 2nd draft of the amendments.

Many people responded to the 1st draft of the Amendments and sent suggestions for change. Any suggestions where the drafting team did not agree with the respondent are answered in detail. The drafting team also felt that many of these issues raised need further discussion during the planned Regional and National Consultations before changes can be finalised. This has been highlighted in the relevant sections.

General :

Explanation: Language has a role in stigma associated with any condition. It is therefore important to separate the person from the illness, hence 'persons with mental illness' is preferred to the term 'mentally ill person' where the use of the adjective, makes the illness the identity of the person.

Suggestions for changes to the 1st Draft :

1. Suggestion: Alternative terms which have been suggested include "persons living with mental illness" and "persons suffering from mental illness".

Response of the drafting team : We have no particular preferences and would be happy to change the terminology if the consultation process suggested that an alternative to the term "persons with mental illness" should be used in the Act, as long as the term keeps the person separate from the illness and the illness is not used as an adjective to describe the person.

Sec No	Existing provision	Amended provision
General	NA	1. Replace the term ' mentally ill ' with the term " person(s) with mental illness " across the entire Act

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Explanation : Mental health facility is a broader term and also includes all facilities where persons with mental illness may be treated. (see definition q below)

Sec No	Existing provision	Amended provision
General	NA	Replace the term ' psychiatric hospital or psychiatric nursing home ' with the term ' mental health facility ' throughout the Act

Description

Sec No	Existing provision	Amended provision
Description	Description An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their properly and affairs and for matters connected therewith or incidental thereto.	An Act to protect and promote the rights of persons with mental illness during the delivery of health care in institutional or community settings by : -providing treatment in the least restrictive environment and manner -setting out the procedures to be followed when persons are admitted to mental health facilities, -establishing registration, review and complaints procedures, -setting up a support system to assist persons with mental illness make decisions regarding treatment, their personal affairs, property and other matters, and -to provide for other matters connected therewith.

Statement of Objects and Reasons:

Suggestions for changes to the 1st Draft :

1. Suggestion : Can we add the term 'rehabilitation' wherever 'treatment/care' alone is mentioned in the document.

Response of the drafting team : we have added rehabilitation wherever it is appropriate in the amendments.

2. Suggestion: ACCESS TO CARE is a basic right and stressing it's importance in the ACT reminds the Government of its responsibility and obligation that it should fulfill, if all else is to be in place.

Response of the drafting team : This suggestion is implemented (see subsection 2) below

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Sec No	Existing provision	Amended provision
General	<p>Statement of Objects and Reasons</p> <p>1. The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness as it is curable, particularly, when diagnosed at an early stage. Thus the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible.</p> <p>2. The experience of the working of Indian Lunacy Act, 1912 (4 of 1912) has revealed that it has become out-moded. With the rapid advance of medical science and the understanding of the nature of malady, it has become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach.</p> <p>3. It is considered necessary -</p> <ol style="list-style-type: none"> 1) To regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained; 2) To protect society from the presence of mentally ill persons who have become or 	<p>Statement of Objects and Reasons</p> <p>1.The attitude of the society towards persons afflicted with mental illness is changing gradually and it is now being realized that no stigma should be attached to such illness. Thus persons with mental illness should be treated like other persons with health problems and persons with disability and the environment around them should be made as conducive to facilitate recovery, rehabilitation and full participation in society.</p> <p>2. The experience of the working of the current Act has shown deficiencies in implementation and the proper understanding of mental illness. With the rapid advance of medical sciences, advances in the understanding of rights of persons with mental illnesses, advances in our understanding of legal capacity, advances in the understanding of the nature of illness and disability, to create access to treatment, care and rehabilitation for all persons with mental illness and to fulfill the obligations under the Constitution of India and the obligations under the various International Conventions ratified by India, it has become necessary to amend the Mental Health Act to bring the provisions of the Act in accordance with the new approach.</p> <p>3. As persons with mental illness constitute a vulnerable section of society it is considered necessary -</p> <ol style="list-style-type: none"> 1. To regulate admission of persons with mental illness to mental health facilities and to protect the rights of such persons when admitted in a mental health facility ; 2. -(delete) To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others; 3. To protect citizens from being admitted in mental health facilities without

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<p>might become a danger or nuisance to others;</p> <p>3) To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;</p> <p>4) To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;</p> <p>5) To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;</p> <p>6) To provide for the establishment of Central Authority and State Authorities for Mental Health Services;</p> <p>7) To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;</p> <p>8) To provide for legal aid to mentally ill persons at State expense in certain cases.</p>	<p>sufficient cause;</p> <p>4. To regulate responsibility for maintenance charges of mentally ill persons who are admitted to mental health facilities;</p> <p>5. To provide facilities for establishing supported decision making systems for persons with mental illness who may need such support;</p> <p>6. To provide for the establishment of Central Authority and State Authorities for Mental Health Services and State Mental Health Commissions and to provide for the notification of Central and State Authorities for Mental Health Services and State Mental Health Commissions ;</p> <p>7. To regulate the powers of the Government for establishing, (delete) registering and regulating mental health facilities;</p> <p>8. To provide for legal aid to persons with mental illness at State expense in certain cases.</p> <p>9. To ensure that care, treatment and rehabilitation is provided in the least restrictive environment possible, and in a manner that does not intrudes on the rights and dignity of the person. Community-based solutions, preferably in the vicinity of the person's usual place of residence, are to be preferred to institutional solutions.</p> <p>10. To provide treatment, care and rehabilitation to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life.</p>
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Section 2 : Definitions

Sec No	Existing provision	Amended provision
2 (a)	"cost of maintenance" in relation to a	"cost of maintenance" in relation to a person

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<p>mentally ill person admitted in a psychiatric hospital or psychiatric nursing home, shall mean the cost of such items as the State Government may, by general or special order, specify in this behalf</p>	<p>with mental illness admitted in a mental health facility, shall mean the cost of such items as the State Government may, by general or special order, specify in this behalf</p>
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Explanation: with the changes suggested to the licensing procedure in the amendments here, there is no requirement for an Inspecting Officer

Sec No	Existing provision	Amended provision
2 (c)	"Inspecting Officer" means a person authorised by the State Government or by the licensing authority to inspect any psychiatric hospital or psychiatric nursing home;	REPEALED

Sec No	Existing provision	Amended provision
2 (d)	"license" means a licence granted under Sec.8	"Registration" means a mental health facility registered under Chapter III of the Act

Sec No	Existing provision	Amended provision
2(e)	"licensee" means the holder of a licensee	REPEALED

Sec No	Existing provision	Amended provision
2(f)	"licensed psychiatric hospital" or "licensed psychiatric nursing home" means a psychiatric hospital or psychiatric nursing home, as the case may be, licensed, or deemed to be licensed, under this Act;	"Registered mental health facility" means a mental health facility, registered, or deemed to be registered, under Chapter III of this Act

Section 2 (j) : Medical Officer in charge

Explanation: as per definition in this Act a 'medical officer' means a gazetted medical officer in the

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service of the Government or a medical practitioner declared by a general or special order of the State Government to be a medical officer for the purpose of the Act. This thus excludes almost all the medical practitioners and/or psychiatrists working outside the government sector, and thus mental health facilities in the non-governmental sector, effectively do not have a 'medical officer in charge' the way the term is currently defined in the Act. Hence amendments to the definition are proposed below

Suggestions for changes to the 1st Draft :

1. Suggestion : the term medical officer in charge should only mean a Psychiatrist registered with the MCI

Response of the drafting team: we would disagree with this suggestion because in many multi-speciality hospitals, the person in charge of the hospital is usually a medical director or medical superintendent and they are doctors, but not necessarily psychiatrists. We feel that restricting the term "medical officer in charge" to mean just psychiatrists would pose difficulties for many hospitals and mental health facilities. For information, the term "psychiatrist" is defined in the existing Act and no changes to it are proposed in the amendments.

Sec No	Existing provision	Amended provision
2 (j)	"medical officer in charge" in relation to any psychiatric hospital or psychiatric nursing home means the medical officer who, for the time being is in charge of that hospital or nursing home ;	"medical officer in charge" in relation to any mental health facility means the medical practitioner or psychiatrist who, for the time being is in charge of that mental health facility ;

Section 2 (L) : Definition of Mental Illness

Explanation The current MHA definition does not define mental illness but rather defines a 'mentally ill person'. It is important that mental illness is defined so that the boundaries are made clear. Furthermore, certain principles for definition need to be included so that the category is limited and is not abuse for political or other purposes.

There are suggestions that substance misuse should be included in the definition of mental illness, because substance abuse is included under mental health conditions in classificatory systems, psychiatrists and mental health professionals are involved in the treatment of alcohol and substance abuse conditions and de-addiction centers need to be regulated under this Act. This suggestion has been incorporated in the definition. It is hoped there will be a discussion on this issue of inclusion of substance abuse, before a consensus is reached.

Suggestions for changes to the 1st Draft :

1. Suggestion : International standards of diagnoses should be clearly defined to include either the DSM or the ICD. Another suggestion was to use the term "alcohol and substance abuse disorders" in the definition.

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Response of Drafting Team : The draft amendments define mental illness not in terms of diagnostic categories but in terms of behaviours. This is the international practice, because diagnostic criteria change over years (currently the DSM is being revised from edition 4 to edition 5), diagnostic criteria are written for a clinical & research purpose rather than a legal purpose and therefore include many conditions which may be the focus of research or treatment but do not necessarily form the basis for a legal intervention. Furthermore, diagnostic criteria are only understood by psychiatrists, while the law needs to be operationalised and used by all stakeholders including family members, other professionals such as legal professionals, users and administrative officials, who may not be conversant with diagnostic criteria such as DSM or ICD and neither are they qualified to make such diagnoses.

Mental illness is therefore described and defined here in non-technical terms and in terms of observable behaviour so that all stakeholders are able to adequately understand and interpret the concept. We have therefore also avoided the use of the phrase "alcohol and substance abuse disorders" and instead used the term "use and abuse of alcohol and drugs".

2. Suggestion: Inclusion of substance / drug abuse and its consequences as mental illness should be viewed with caution. If a person commits crime under the influence of alcohol will be have diminished criminal responsibility if it was established that he/she was indeed mentally ill at the time of committing the criminal act? Many anti-social elements take advantage of this clause.

Response of the drafting team : Mental illness has not been equated with alcohol and drug abuse disorders. The definition states clearly what 'mental illness' means and then specifies that it includes such conditions arising from use or abuse of drugs.

3. Suggestion: Definition of mental illness should include "a person who is not in a position to earn his livelihood, concentrate on his studies or career, and one who requires constant medication or therapy to make his thoughts and behaviour rational."

Response of drafting team : We disagree with this suggestion as it too broad and vague and many of the points included may be due to reasons other than mental illness (for example not in a position to earn his livelihood). We have therefore not included this in the definition.

Sec No	Existing provision	Amended provision
2 (1)	"mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation	<p>"Mental illness" for the purpose of the Act, means a substantial disorder of mood, thought, perception, orientation or memory which grossly impairs a person's behavior, judgment and ability to recognize reality or ability to meet the demands of normal life and includes mental conditions flowing from the use or abuse of alcohol and drugs, but excludes mental retardation.</p> <p>The following criteria need to be fulfilled for a legal determination of mental illness for the purpose of the Act :</p>

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	<p>(i) A determination of mental illness shall never be made on the basis of political, economic or social status or membership in a cultural, racial or religious group, or for any other reason not directly relevant to mental health status and ;</p> <p>(ii) Non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in the diagnosis of mental illness and;</p> <p>(iii) A background of past treatment or hospitalization to a mental health facility though relevant, shall not by itself justify any present or future determination of mental illness ;</p> <p>(iv) No person or authority shall classify a person as having, or indicate that a person has, a mental illness, except for purposes directly relating to the treatment of mental illness or in other matters related to the Act and;</p> <p>(v) A determination that a person has mental illness shall be made in accordance with nationally and internationally accepted medical standards.</p>
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Section 2 (m) : Prisoner with mental illness

Explanation : Jail is not normally considered a place of safety and most importantly the section 27 referred to in the definition is about transfer of persons with mental disorder from jail to a hospital.

Sec No	Existing provision	Amended provision
2 (m)	"mentally ill prisoner" means a mentally ill person for whose detention in, or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in section 27 has been made;	"prisoner with mental illness" means a person with mental illness, detained in a jail or prison , for whose detention in, or removal to, a mental health facility, jail (deleted) or other place of safe custody, (deleted) an order referred to in section 27 has been made

Section 2 (q) : Mental Health Facility

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Explanation: There is lack of clarity whether rehabilitation centers, half way homes etc, especially in the private sector, where persons with mental illness are admitted come under the definition of 'psychiatric hospital'. The proposed amendments to the PWD Act exclude rehabilitation centers from the licensing requirements of the PWD Act, because they are regulated under the Mental Health Act. (see the draft PWD amendments for same). There is also lack of clarity whether any private non-medical institutions where persons with mental illness are kept (sometimes in appalling conditions) come under the Act. The suggested changes make it clear that ALL institutions, medical or non-medical, where persons with mental illness are admitted to or reside at, come under the Act. The primary purpose of the Act is to protect the rights of persons with mental illness when they receive health care for their mental illness. Hence there is no logic in the exclusion of general hospitals and exclusion of any other facilities from the Act. Therefore all exclusions related to mental health facilities are now removed.

Suggestions for changes to the 1st Draft :

1. Suggestion : the exclusion of general hospitals or general nursing homes established or maintained by the Government should be maintained and the scope of this exclusion should be widened to also include psychiatric units in private general hospitals

It has been suggested that requirement of general hospital psychiatric units to get them registered as mental health facility will have a discouraging effect in establishment of psychiatry indoor units in general hospitals, especially in corporate hospitals. This will prove to be detrimental to growth of Psychiatry as a specialty within the modern medical science. Promotion of general hospital psychiatry units (GHPU) is of great public interest and it will be of immense help in the long run in reducing stigma attached to psychiatric illnesses. Registration as mental health facility will be a cumbersome process for medical colleges, both privately or government managed colleges.

Another suggestion was that those registered under the Mental Health Act should not have to register under another Act.

Response of the drafting team: The main purpose of the Act is the protection and promotion of rights of persons with mental illness and to promote quality mental health services, both in the public and private sector. Therefore, there should be no distinction between public and private health care services when it comes to regulating these services. Protection of rights and provision of quality services needs to be regulated in all sectors.

This approach is taken in recent health legislation in our country (for eg. see the Clinical Establishments Bill, or the draft National Health Bill). Both these bills do not make any distinction between health care establishments whether in the public sector or private sector.

The Clinical Establishments Bill makes it mandatory for ALL health establishments providing inpatient services to register with the Registrar of Clinical Establishments and does not make any distinction between the health care establishments in public and private sector.

The draft National Health Bill also does not make any distinction between publicly owned or privately owned health care establishments and is also applicable to all health establishments. The draft National Health Bill also covers all inpatient and outpatient services under the rubric of 'health care

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establishment'.

Therefore in the proposed amendments "mental health facility" includes all health facilities where inpatient care is provided. In the proposed amendments, 'mental health facility' does not include outpatient clinics, or day centres or other health facilities, where treatment is provided on an ambulatory basis and persons are not admitted to the facility.

We do not agree that requirements for registration will lead to a reluctance to establish psychiatric units. Hospitals both in public and private sector have to register with various authorities and there is no evidence to show these existing registration requirements have prevented the establishment of hospitals or health facilities. The Indian Association of Private Psychiatrists (a body representing psychiatrists working in the private sector) in their response to the amendments have not expressed any reservations or objections to registration of mental health facilities.

We also do not agree that the registration is a cumbersome process. As compared to the existing licensing requirements, the amendments have substantially simplified the registration process. The process of registration as proposed in the amendments is very similar to the process of registration in the Clinical Establishments Bill.

The amendments can add a clause that any mental health facility which is part of a hospital registered under the Clinical Establishments Act (Bill) or similar such State Act does not need to re-register with the State Mental Health Authority but have to merely inform the State Mental Health Authority of the registration. This will reduce the pressure on mental health facilities to register with multiple authorities.

However we feel this approach has some disadvantages. Firstly, there are no specific norms for mental health facilities under such Acts, and usually the norms under such Acts are more suitable for health care facilities involved in providing care for physical illnesses. Secondly, except for the Clinical Establishments Bill, most other such Acts are licensing Acts (eg Bombay Nursing Homes Registration Act (BNHRA), 1949, Andhra Pradesh Private Medical Care Establishment (Registration and Regulation) Act 2002). For example the BNHRA requires regular inspection and visits by licensing authority, the Andhra Pradesh Act covers even outpatients and polyclinics etc. This may be discussed at the regional consultation meetings before final decisions are made.

Professionals and mental health facilities have raised the issue of multiple registrations under different Acts for nearly similar purposes; it imposes additional burden (time, costs etc) on the mental health facilities and this issue needs to be addressed. We hope there is a discussion on this issue at the regional consultation meetings so that we can evolve a consensus on this issue and final draft of the amendments will reflect this consensus.

Definition of health care establishments in the Draft National Health Bill and the Clinical Establishments Bill are copied below for easy reference

Draft National Health Bill :

"health care establishment" means the whole or part of a public or private institution, facility, building or place, whether for profit or not, that is operated or designed to provide inpatient and/ or outpatient health care, and a "public health care establishment" shall accordingly refer to a health care establishment set up, run, financed or controlled by Government or Government's authority or

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instrumentality;

Clinical Establishments Bill

“clinical establishment” means—

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities with beds requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine established and administered or maintained by any person or body of persons, whether incorporated or not; or

(ii) a place established as an independent entity or part of an establishment referred to in clause (i), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether incorporated or not,

and shall include a clinical establishment owned, controlled or managed by,—

(1) the Government or a department of the Government;

(2) a Trust, whether public or private;

(3) a Corporation (including a cooperative society) registered under a Central, Provincial or State Act, whether or not owned by the Government;

(4) a local authority; and

(5) a single doctor establishment,

Sec No	Existing provision	Amended provision
2 (q)	"psychiatric hospital" or "psychiatric nursing home" means a hospital or the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services.	"mental health facility" means all facilities either wholly or partly meant for the care of persons with mental illness, established or maintained by the Government or any other person or organization, where persons with mental illness are admitted, or reside at, or kept-in, for care, treatment, convalescence and/or rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the Government or any other person or organization; and excludes a family residential place if a person with mental illness resides with his or her own family

Section 2 (v) : Mental Health Professional

Explanation: There is a shortage of psychiatrists specifically and mental health professionals in general, in the country. For certain activities in the Act, such as certifying the presence of conditions for a supported admission of a person to a mental health facility under the Act, it would be appropriate to

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increase the pool of professionals who could carry out these functions. This will help families and persons with mental illness especially in emergency situations, and in non-urban areas which have a paucity of psychiatrists, to access necessary mental health services and care. The Central and/or State Mental Health Authorities will regulate the activities of the 'mental health professional' by making the rules and regulations about qualifications and experience required to be included in the register of mental health professionals.

Suggestions for changes to the 1st Draft :

1. Suggestion : The definition of mental health professional should be widened to include psychotherapists or occupational therapists.

Response of the drafting team : We would like to point out that the term 'mental health professional' is defined under the Act to carry out certain functions under the Act. The category of 'mental health professional' is not created to identify all mental health providers. We therefore do not feel that the definition of mental health professional should be widened to include psychotherapists or occupational therapists.

In the existing Act, all certification required for the purposes of the Act is carried out by only one mental health professional - the psychiatrist. There is a shortage of psychiatrists in the country and frequently psychiatrists are not available to do the certification functions under the mental health Act. We have therefore widened the category of professionals who can carry out some of the assessments required under the Act, so as to increase the pool of professionals available to do these tasks.

2. Suggestion : It has been suggested by a few respondents, that only psychiatrists should carry out the certification process required in the Act (primarily for section 19 and section 20) and other professionals such as psychologists, psychiatric social workers etc should not be involved in providing certification.

Response of the drafting team : We have explained our justification for creating this category of mental health professionals (see explanation above). We would like to point out that in none of the certification process, psychiatrists are being excluded. Whenever two medical certificates are required, the Amendments require that at least one of these certificates should be from a psychiatrist. In procedures where only one medical certificate is required, the Amendments state that it has to be a psychiatrist and in one specific procedure, both certificates have to be from a psychiatrist.

We would like this issue to be discussed at the Regional and National Consultation meetings so that we can finally arrive at a consensus.

3. Suggestion: Clinical Psychologists are currently only registered with the Rehabilitation Council of India (RCI). This is the only statutory registering agency for Clinical Psychologists. The RCI also lays down guidelines and criteria for recognizing the qualifications of clinical psychologists.

4. Suggestion : Many mental health nurses have only a diploma qualification and at least B.Sc. (Nursing) qualification for registered mental health nurse should be made mandatory.

Response of the drafting team : we have incorporated these suggestions with respect to clinical psychologists and mental health nurses in the proposed amendment. Psychiatric social workers are not included in the RCI Act which has a category for rehabilitation social workers.

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5. Suggestion : Only the Psychiatrist having a qualification recognized by the MCI , by virtue of his 2 to 3 yrs of training after his MBBS, is competent to make a psychiatric diagnoses which may include the Co- morbid or Primary medical diagnoses in a patient with mental illness. Hence, he will only be able to evolve a comprehensive treatment plan that might include pharmacotherapy, psychotherapy, etc., besides for the general medical problems of the patient.

Inclusion of Non-psychiatrists under the banner of Mental health professionals in the proposed Registry of mental health professionals will only pave the way for the “quacks” to enter in large numbers in the field of mental health that will result in exploitation of our ignorant & illiterate patients. Already there is mushroom growth of colleges & universities that offer various degree courses in MA/M.Phil in Psychology, Clinical psychology, Psychotherapy, Counseling, Rehabilitation, Social work, Psychiatric Nursing etc. To add to the confusion, such degrees are offered through Correspondence Courses also. Even the Rehabilitation Council of India, that was set up for strengthening rehabilitation, has been appraised about the concerns over the actual capability and claim of the clinical psychologists in view of establishment of their departments independently in Medical Colleges. None of these courses or the capability of personnel having these degrees are monitored by MCI. Because of their lack of medical background and inadequate training, such personnel can neither make out the diagnoses with reasonable accuracy nor institute a comprehensive treatment.

Response of the drafting team : We agree that only the psychiatrist should make a clinical diagnosis. However the category of 'mental health professional' has not been created for making diagnosis. Please also refer to the definition of term 'mental illness'. We have deliberately not used diagnostic terms here and mental illness is described in behavioural terms. The category of mental health professionals has been created for the purpose of the Act to carry out specific activities under the Act, none of which include making diagnoses or to make a comprehensive treatment plans. We do not think that allowing registered licensed professionals to perform actions under the Act, will result in promoting "quacks" as described by this respondent.

7. Suggestion : mental health professionals should include general practitioners with specific training in mental health care recognized by the State or Central Mental Health Authority

Response of drafting team : The definition of "psychiatrist" in the existing Act (sub-section R of the existing Act), does cover general practitioners with specific training in mental health who are recognized as psychiatrists for the purpose of the Act. Hence they are not separately included in the definition of mental health professional. However we have clarified that "psychiatrist" means a person as defined in sub-section R of the Act.

Sec No	Existing provision	Amended provision
2 (v)	New provision	‘Mental health professional’ for the purpose of the Act, means, a psychiatrist as defined in sub-section (r) above, a registered mental health nurse with minimum qualification of a bachelors degree in nursing registered with the relevant nursing council in the state, clinical psychologists registered as such with

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		the Rehabilitation Council of India or any statutory body or Council that may be established by law in the future for recognizing and monitoring the profession of clinical psychology, and psychiatric social workers whose names are included in the Register of mental health professionals maintained by a State Mental Health Authority and/or Central Mental Health Authority.
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Section 2 (w) : Carer

Explanation : the Act does not recognize care-givers who may not be relatives as defined in the Act. Many persons with mental illness may live with persons who do not necessarily get included in the definition of relative but do provide the bulk of the care and need to be recognised in the Act. Hence it is suggested that this category be included in the Act and also be adequately defined.

Suggestions for changes to the 1st Draft :

1. Suggestion : Question has been raised whether organization caring for person affected with mental illness is also included in the definition of 'carer'

Response of drafting team : The term 'carer' refers to an individual and not to organizations. A particular individual from any organization providing care can be recognized as the 'carer' but the organization is not the 'carer' .

Sec No	Existing provision	Amended provision
2 (w)	New Provision	"carer" includes any person who is not a "relative" (as defined in (t) above), but who normally resides with a person with mental illness and/or is predominantly responsible for providing care to that person.

Sec No	Existing provision	Amended provision
2 (x)	New Provision	"nominated representative" means a person as defined in Section 2.1 of the Act

Sec No	Existing provision	Amended provision
2 (y)	New Provision	"Special Personal Representative means a person as defined under Section 52 of the Act

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Sec No	Existing provision	Amended provision
2 (z)	New provision	Mental Health Review Commission means a body established under Chapter II Section 4.1 of the Act

Section 2.1 Nominated Representative

Suggestions for changes to the 1st Draft :

1. One respondent wanted to know if the Nominated representative has a power of attorney

Response of drafting team : The nominated representative does not have a power of attorney. The draft amendments do not suggest this at all at any point.

2. Suggestion : Nominated Representative should be only for those who are not in a position to represent themselves, or episodic state, those in stable state do not need a nominated representative. Mere fact of having MI does not mean there should be a nominated representative.

Response of drafting team : All persons with mental illness are entitled to appoint a nominated representative. Thus this is a right as opposed to an obligation on the person. The purpose of having the nominated representative is manifold. Firstly, the nominated representative is available to provide support to the person with mental illness when they have to deal with the mental health system. Secondly, the nominated representative by law is being recognized as someone who has the right to be involved in the care and treatment of the person with mental illness. In most instances in our country the nominated representative is likely to be a family member, a care-giver or a friend. The law now formally recognizes the role of the family member or friend in the care and treatment of the person with mental illness. This will address a common problem faced by family members and care-givers, that the mental health professionals are reluctant to involve them in the care and treatment of persons with mental illness. The person with mental illness has the right to appoint a nominated representative and thus ensuring that the nominated representative who is involved is someone of their choice. It is only when the person with mental illness is unable to appoint a nominated representative, that alternatives are being put in place in an order of preference as given in sub-section 2.1 (b) (ii) to (v).

3. Suggestion : Respondents wanted a clarification of the duties of the nominated representative.

Response of the drafting team: The duties of the nominated representative under different sections are outlined under that particular section. A brief description of the duties of the nominated representative has also been added see subsection 2.1 (j)

4. Suggestion : The Act should clearly state, that for any one not a minor, consent by proxy is not an option and that doctors will "treat" the patient in keeping with the principles of "best interest" and "provisions within the Act". As good practice, doctors will consider views of the carer / relatives but it can't be presumed and taken for granted that the practitioner will in act in accordance of the expressed wish of the nominated person when it comes to treatment of the

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mental illness.

Response of drafting team : We are not in agreement with the above suggestion, that doctors should decide unilaterally on the treatment using the 'best interest' principle, as the UN CPRD wants countries to move to a regime of supported decision making rather than using the 'best interests' principle. Hence the nominated representative is formally recognised in the amendments to the Act as a community based resource, of the persons' choice, from within the person's family and friends to assist the person in making treatment decisions. The vast majority of persons with mental illness in the country live with their families. It is important to recognise the role of families and other non-professional caregivers in providing care and support.

5. Suggestion : the category of Nominated Representative is not necessary and definition of relative in section 2 (t) of MHA 1987 appears adequate for implementation of the Act. With Section 2.1 the mental health professionals and the Mental Health Review Commission will be unnecessarily spending time and resources in matters, which are not the primary concern and any controversies regarding the relatives of mentally ill persons can be left to the other civil or criminal laws of the land.

Response of Drafting Team: Nominated Representative is a category of individuals who are available to the person with mental illness as a support mechanism for making decisions. It also gives the person with mental illness the choice in deciding who they want to choose as their primary support figure (the nominated representative). Secondly Nominated Representative category includes all support figures including but not limited to relatives as defined in section 2 (t). Thirdly the Mental Health Review Commission will not have to spend time and resources in this matter. It is anticipated that in most cases the person with mental illness himself/herself will name the nominated representative ; less frequently the hierarchy as laid down in the Act will have to be used. The involvement of the MHRC is limited and as the body of last resort for appointing the nominated representative.

Clarification from the Drafting Team :

Concern has been expressed about the use of the nominated representative to assist the persons in making health care decisions and whether this is truly a supportive decision making process. We have reproduced below section 17 (which deals with informed consent) of the Draft National Health Bill. The Draft National Health Bill is currently undergoing consultation process. The proposed amendments to the Mental Health Act (with respect to consent and supported decision making) are in harmony with what is proposed in the National Health Bill. (we have highlighted in bold typeface the relevant parts of section 17 which apply to persons with mental illness)

Draft National Health Bill

Section 17 Right to autonomy/ self determination and prior voluntary informed consent:

- (a) Every user has a right to consent as a prerequisite for any health care proposed for him/ her, such consent being a prior and fully informed consent formed without the exercise of any influence, duress, coercion or persuasion by the service provider proposing it;
- (b) Every user has a right that the service provider empowers and facilitates the exercise of his/ her right to consent in the above manner;
- (c) Every user has the right to refuse or to halt a medical intervention and on his/ her exercising such right, the implications of refusing or halting such an intervention must be carefully explained by the service provider to the user, provided that the refusal or halting comes to the knowledge of the

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provider;

(d) When a user is unable to express his or her consent due to medical reasons and a medical intervention is urgently needed in the user's interest, the consent of the user may be presumed, unless it is clear from a previous declared expression of will within the knowledge of the provider that consent would be refused in the situation;

(e) **Every user who lacks the full capacity to give consent, due to his/ her being a minor or due to any mental disability, temporary or permanent, shall, to the extent of incapacity, have the right to supported (or substituted, only where absolutely necessary) decision-making on his/ her behalf, through a *de jure* or *de facto* guardian, next friend or personal representative, whose bonafides and credentials are clear to the service provider;**

Provided that the service provider shall personally assess in each case if a user lacks the full capacity to consent, by assessing his/ her evolving capacity and intellectual maturity in the case of a minor; and his/ her state of mind at the relevant time of decision-making in the case of person with mental disability, such that there is no *per se* loss or denial of right to self-determination and voluntary informed consent in all cases of minors and persons with mental disabilities; (emphasis added by us)

Provided further that when a person lacks full legal capacity to consent, and it is not possible to get substituted/ supported consent in time, or the person who can give such consent on behalf of the user unreasonably withholds such support or consent, but the proposed intervention is urgently needed, the service provider may proceed without any consent, to the best of his professional competence and judgment, if he/ she is of the opinion that the intervention is in the interest of the user; alternatively, in cases where there is no urgency, the

service provider shall refer the matter to the head of the institution who shall take the decision in consultation with the service provider or through another mechanism that may be duly established at the institutional level for such purposes;

Provided further that even where he/ she lacks full capacity to consent, the user (whether minor or adult) has a right to be involved by the service provider in the decision-making process to the fullest extent and in proportion to which their capacity allows;

Sec No	Existing provision	Amended provision
2.1	NEW PROVISION	Nominated Representative (a) A person with mental illness who has attained the age of eighteen years and is competent to do so, shall have the right to appoint a nominated representative. Such appointments shall be made either in writing; or communicated verbally to the person in charge of the person's medical care, who shall note the appointment in the person's clinical record and shall get signature or thumb impression of the person on this record. (b) The Nominated Representative" for a person with mental illness, under this Act shall be the individual in the order of precedence below : i) the individual appointed by the person with mental

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illness who fulfills criteria as noted under subsection (a) above, as nominated representative; or, if none

ii) the individual named as the nominated representative in an Advance Directive under section 50 sub-section 1 of the Act subject to Section 50 sub-section 6 below; or if none,

iii) **a** relative as defined in Chapter 1, Section 2 (t) above ; or if none,

iv) **a** carer as defined in Chapter 1, Section 2 (w) above ; or if none,

v) **a** person appointed as nominated representative by the Mental Health Review Commission. In case of persons who are homeless or otherwise, and do not have a nominated representative under (i), (ii), (iii) or (iv) above, any member of the public, or a representative of organizations working with homeless or a representative of organizations working with persons with mental illness, may **undertake to** temporarily perform the duties of a nominated representative and will be recognized as such under this Act, pending appointment of a nominated representative by the Mental Health Review Commission.

(c) Notwithstanding subsection (b) above, the nominated representative for a person **with mental illness** under the age of eighteen years ("minor") shall be the legal guardian of that person, unless a Mental Health Review Commission orders otherwise under subsection (d) below

(d) Upon application by a mental health professional and based on evidence presented before it, a Mental Health Review Commission may order that the legal guardian of a person **with mental illness** under the age of eighteen years ("minor") **shall** not be the nominated representative of **such minor** person on the grounds that either :

- (i) the legal guardian is not acting in the best interests of the person; or
- (ii) the legal guardian is otherwise unsuitable to act as the nominated representative.

When the Mental Health Review Commission makes an order under paragraph (d), it shall designate another individual to act as the nominated representative of the person. The provisions of Chapter 1 section 2.1 **shall** apply to appointments under this sub-section.

(e) In deciding who should be appointed as the nominated representative for a person under subsection (b)(v) or subsection (d) above, the Mental Health Review Commission shall consider –

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- (i) the current and past wishes of the person **with mental illness**, insofar as these can be reasonably ascertained;
- (ii) the knowledge of the proposed nominee of the life history, values, cultural background of the person;
- (iii) the views of the family members and carers of the person **with mental illness**, and in particular of the individual(s), who, but for an appointment under this section, would be the nominated representative of the person;
- (iv) the ease with which the proposed nominee **is available to perform** the role described in this Act.
- (v) such other factors as the Mental Health Review Commission may deem appropriate in determining whether the proposed nominee is a suitable person to fulfill the role described in this Act
- (f) The person nominated to be representative must be at least eighteen years of age, must be competent to fulfill the role as described in this Act, and **must** signify, in writing, his or her willingness to perform the role.
- (g) Anyone who has made an appointment under this section may revoke the appointment if **he or she is** competent to do so. Such revocation **shall** be in writing, or by direct communication with the psychiatrist or medical officer in charge of the mental health facility, who will note that revocation in the patient's clinical record and get signature or thumb impression of the person **with mental illness on** this record.
- (h) The Mental Health Review Commission may in writing revoke an appointment made under this section, and may appoint a different representative under this section when appropriate to do so.
- (i) Applications to the Mental Health Review Commission to make, revoke, alter, change, or modify an appointment under this section may be made by the person with mental illness, or by a relative of such person, or by the **psychiatrist** responsible for the care of such person, or by the medical officer in charge of the mental health facility where the individual is or is proposed to be admitted.
- (j) **While** fulfilling his or her duties under this Act, the nominated representative shall consider the **current and past** wishes, the life history, values, cultural background and the best interests **of the person with mental illness**. The

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	<p>nominated representative shall give particular credence to the views of the person to the extent that person understands the nature of the decisions under consideration. The duties of the nominated representative are outlined below :</p> <p>i) to assist the person with mental illness in making decisions regarding admission to hospital and treatment of their mental illness.</p> <p>ii) to make appeals to the Mental Health Review Commission, when necessary, on behalf of the person with mental illness</p> <p>iii) to assist the person with mental illness to make application to the Mental Health Review Commission for appointment of a special personal representative when necessary</p> <p>(k) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, does not presume or shall not be taken to presume a lack of legal capacity. All persons with mental illness have legal capacity but may require varying levels of support from their nominated representative to make decisions. The level of support required may vary in amount from little support to very high support over time.</p>
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**Chapter II
Section 3 & Section 4**

Suggestions for changes to the 1st Draft :

1. Suggestion : do not delete "including places where persons with mental illness may be detained or kept" under subsection 3 (3) (b) below

Response of the drafting team : this suggestion has been implemented

2. Suggestion : Add a sub-section "Maintain a complaint mechanism and 24 hr helpline to register complaints against violation and abuse of human rights of mentally ill persons"

Response of the drafting team : this suggestion has been implemented. This sub-section has been added to both the central and state mental health authority (section 3 and section 4).

2. Suggestion : to add that CMHA and SMHA should conduct courses, certification and training programs to increase the number of mental health workers.

Response of the drafting team : the SMHAs have training responsibilities related to the implementation of the Mental Health Act (see subsection 4 (3) (h) below). However the Central and State MHA's are

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not training organizations per se and we do not feel that it is appropriate to impose a general training responsibility to increase mental health workers, on these Authorities.

3. Suggestion : There should be a provision in the law to govern educators of mental health since anyone starts a course to provide such services and medication.

Response of the drafting team : This suggestion is slightly confusing as it refers to law to govern education in the field of mental health (starting courses etc) but also then mentions providing services and medication. We presume the respondent means legislation to govern the starting of educational courses in the field of mental health. We would like this discussed in the Regional consultations because we feel this will vastly increase the scope of the Mental Health Act and need a consensus from the mental health community on this issue. At present the educational courses are regulated by different legislation (and this includes all educational courses). What is being proposed by this respondent would mean that these courses would now also have to be regulated by the Mental Health Act.

4. Suggestion : The state should have a licensing body for mental health workers as there are many individuals who are not trained to provide these services but are doing so. This is highly dangerous and damaging to consumers of mental health services

Response of the drafting team : For the purpose of the Act, the Central MHA and State Mental Health Authorities (see section 4 subsection (3) (g) and section 3 subsection (3) (f)) have to maintain a register of all mental health professionals in the state. This is not a licensing process and the purpose of the register is restricted to the activities under the Mental Health Act. What is being suggested here is a much broader concept of licensing body for all mental health workers to work with persons with mental illness. We would like this to be discussed in the regional consultations before this is included in the mental health Act.

5. Suggestion: There should be penalty for those claiming to be mental health professionals without a minimum qualification in the field.

Response of the drafting team: This is related to suggestion 4. At present psychiatrists are registered with the medical councils, Nurses who are registered with the nursing councils and some psychologists and social workers are registered as rehabilitation specialists with the Rehabilitation Council. These licensing councils have norms for minimum qualifications and standards and do have penalties for misrepresentation. For other mental health professionals such as counselors, therapists etc, there are no registration/licensing procedures. In the absence of such registration/licensing procedure, it is difficult to envisage how a penalty can be applied.

Both points 4 & 5 need to be discussed in the consultation meetings with all stakeholders. Implementing these two suggestions will require significant changes to this and other Acts and also co-ordination with regulatory bodies such as the MCI, Nursing Council of India and the Rehabilitation Council of India.

6. Suggestion :State should appoint Disability Commissioner in District Level instead of only one per State.

Response of drafting team: The Disability Commissioner is an Authority created under the Persons

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with Disabilities (Equal Opportunities, protection of rights and full participation) Act, 1995. The Disability Commissioner is not an Authority created under the Mental Health Act and hence we cannot make any amendments to the appointment of this Authority in the Mental Health Act.

Sec No	Existing provision	Amended provision
Chapter II and Sec 3	<p>Chapter II: Mental Health Authorities</p> <p>Section 3 : Central Authority For Mental Health Services</p> <ol style="list-style-type: none"> 1. The Central Government shall establish an authority for mental health with such designation as it may deem fit. 2. The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government. 3. The authority established under sub-section (1) shall - <ol style="list-style-type: none"> a. be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government. b. supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service 	<p>Chapter II : Mental Health Authorities and State Mental Health Review Commissions</p> <p>Central Authority For Mental Health Services</p> <ol style="list-style-type: none"> 1. The Central Government shall establish an authority for mental health with such designation as it may deem fit. 2. The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government. 3. The authority established under sub-section (1) shall - <ol style="list-style-type: none"> a. be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government. b. supervise mental health facilities and other Mental Health Service Agencies including places in which mentally ill persons may be kept or detained directly under the control of the Central Government. c. Advise the Central Government on all matters relating to mental

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Agencies (including places in which mentally ill persons may be kept or detained) directly under the control of the Central Government.

c.

advise the Central Government on all matters relating to mental health; and

d.

discharge such other functions with respect to matters relating to mental health as the Central Government may require.

health **care/services**;

d.

discharge such other functions with respect to matters relating to mental health as the Central Government may **decide**.

e.

co-ordinate programs run by different ministries in the Central Government which **have** impact upon persons with mental illness, such as social justice programs, employment programs, and other such programs that may be for the benefit of persons with mental illness, and also to co-ordinate activities in the field of mental health between Central and State Governments.

f.

maintain and publish an all India register of mental health professionals as defined under the Act, which **shall be** an amalgamation of the registers maintained by the State Mental Health Authorities.

g.

maintain and publish an all-India register of registered mental health facilities in the country which **shall be** an amalgamation of the registers maintained by the State Mental Health Authorities; and

h.

set up a complaint mechanism and in particular, a helpline to register complaints regarding violation of rights of persons with mental illness.

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Sec No	Existing provision	Amended provision
4	<p>State Authority For Mental Health Services</p> <ol style="list-style-type: none"> 1. The State Government shall establish an authority for mental with such designation as it may deem fit. 2. The Authority established under sub - section (1) shall be subject to the superintendence, direction and control of the State Government. 3. The Authority established under sub - section (1) shall - <ol style="list-style-type: none"> a. be in charge of regulation, development and co-ordination with respect to Mental Health Service under the State Government and all other matters which, under this Act , the concern of the state Government or any officer or authority subordination to the State Government : b. supervise the psychiatric hospitals and psychiatric nursing homes and other Mental health Services Agencies (including places in which mentally ill persons may be kept or detained)under the control of the State Government : c. 	<p>State Authority for Mental Health Services</p> <ol style="list-style-type: none"> 1. The State Government shall establish an authority for mental health with such designation as it may deem fit. 2. The Authority established under sub - section (1) shall be subject to the superintendence, direction and control of the State Government. 3. The Authority established under sub - section (1) shall - <ol style="list-style-type: none"> a. be in charge of regulation, development and co-ordination with respect to Mental Health Service under the State Government and all other matters which, under this Act, are the concern of the state Government or any officer or authority subordination to the State Government : b. supervise mental health facilities and other Mental health Services Agencies (including places in which mentally ill persons may be kept or detained) (delete) in the State under the control of the State Government : c. Advise the State Government on all matters relating to mental health care and services. d. discharge such other functions with respect to matters relating to mental health as the State Government may decide.

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<p>advise the State Government on all matters relating to mental health ; and</p> <p>d. discharge such other functions with respect to matters relating to mental health as the State Government may require.</p>	<p>e. co-ordinate all activities of the State Government which are relevant for the benefit of persons with mental illness.</p> <p>f. be in charge of registration of mental health facilities in the State under Chapter III of the Act and maintain a register of such facilities.</p> <p>g. make rules, criteria and regulations for the registration of clinical psychologists mental health nurses and psychiatric social workers as mental health professionals in the state and to maintain a register of such mental health professionals as defined in the Act.</p> <p>h. maintain all relevant persons including judicial officers, law enforcement officials mental health, other health professionals and others, in the use of the Act and;</p> <p>i. set up a complaint mechanism and in particular, a helpline to register complaints regarding violation of rights of persons with mental illness.</p>
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Section 4.1 Mental Health Review Commission

Explanation : The establishment of a independent, competent, judicial review body is necessary under Constitutional requirements as well as international obligations under binding conventions signed by India.

Suggestions for changes to the 1st Draft :

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1. Suggestion : It is suggested that 50% of the persons in the Commission should be full time. It is also suggested that the disqualifications mentioned should not apply to the two members who are user survivors as they may have been dismissed after a fight. And finally it was suggested that at least one user survivor should be there in the Commission and panels.

Response of the drafting team: We feel these points should be discussed in the regional and national consultation meetings and final decision can be taken. We have not made any changes to the draft amendments on the above suggestions. We feel it may be practically difficult to ensure one user survivor on all panels in all parts of the country.

2. Suggestion : One respondent questioned why the nominated representative should be always there at a hearing. Also it has been questioned why the hearings are not open to the public and media.

Response of the drafting team: The nominated representative has the right to be present at the hearing. This is not the same as saying the nominated representative should be always there at a hearing. The nominated representative is directly involved in the care and treatment of the person with mental illness and thus has an interest in being present at such hearings. We have tried to restrict the right to be present at such hearings to people who directly have an interest in the care and treatment of the person with mental illness and to exclude the general public (see below).

The hearings are not open to the public generally because issues of confidentiality are involved. However there is a provision for making the hearing open to the public with the consent of the person with mental illness. This provision is made to protect the confidentiality of the person with mental illness. At the same time the person with mental illness has the right to make the hearing open to the public if they so desire, with the consent of the chairperson of the panel.

3. Suggestion: Each mental health facility should allow Advocacy workers to visit the wards regularly. The MHRC should employ and train such advocacy workers. MHRC should also be responsible for producing information in rights which as suggested above ought to be read out by default to all involuntary and voluntary patients (sic).

Response of the Drafting Team : We welcome the suggestion that the MHRC should employ and train advocacy workers and the MHRC should produce information which is then read out by default to all persons admitted to mental health facilities. We feel however that this should be left to the MHRC to decide rather than write it into legislation. This point can be discussed at the regional and national consultation meetings and if the overwhelming opinion is that it should be in the Act, rather than left to the MHRC, then we can include it.

4. Suggestion: Panels of the the MHRC should consist of 5 members, including a judicial member, a psychiatrist, a mental health professional, a representative of family members, and a person from civil society.

Response of the drafting team: We want this issue discussed at the regional consultation meetings. There are advantages and disadvantages in increasing the size of the Panels of the MHRC. The advantages are that the Panels will have a better representation of all stakeholders and thus get a more informed view of the subject. The disadvantages are that larger panels will increase the administrative

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difficulties of managing such panels and finding appropriately qualified persons to serve on such panels may be difficult in all parts of the country.

5. Clarification : many stakeholders wanted to know the purpose of Subsection (4) (I) below pertaining to certificates about mental illness being produced in court proceedings and the need for the State Mental Health Review Commission to be involved in this process.

Response of the drafting team : Anecdotal evidence suggests that sometimes in court proceedings especially related to matters such as divorce and property matters, a prescription of medicines by a psychiatrist may be produced to prove that a person has mental illness and then that is used as grounds to deprive that individual of some rights eg. divorce may be granted on this basis, or property rights may be affected.

The sub-section (4) (I) has been introduced to prevent such occurrences. If in any Court matter there is any questions being raised about the mental health of any of the parties to the dispute, then the Court must refer this to the Mental Health Review Commission for opinion. We believe this will provide protection to persons with mental illness, especially women with mental illness involved in divorce proceedings.

6. Suggestion: The expression "Representative of persons with mental illness" might allow ingress of wrong person in the panel(s). It must be protected for a person with severe mental illness (survivor) or a caregiver, preferably a parent of a person with severe mental illness.

Response of the Drafting Team : we have made the necessary change see section 4.1 (2) (b) (iii) below

7. Suggestion: At least one member of the Panel should be a Psychiatrist

Response of Drafting Team : Same as for point number 4 above. This may be discussed in the Regional and National Consultations. Implementing this suggestion will require either a) specifying that the professional member should be a psychiatrist or b) increasing the size of the Panels to five, as suggested in point 4 above

8. Suggestion: Remove requirement that members should possess a bachelor's degree

Response of the drafting team: necessary changes have been made to sub-section 2 (c)(i) below

9. Suggestion : It is important for the mental health review commission to review the mental health scenario in the respective state and issue directive to the local government to strengthening the mental health services.

Response of the Drafting team : This function has been given to the Central Mental Health Authority and State Mental Health Authorities rather than to the MHRC.

10. Suggestion/Question : Do we need a lawyer to talk to the MHRC. Will that not be expensive?

Response of drafting team : A lawyer is not required to approach the MHRC. There are no fees to be paid for appealing to the MHRC.

Sec No	Existing provision	Amended provision
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4.1	NEW PROVISION	<p>Mental Health Review Commission (alternative term suggested is : Mental Health Review Board)</p> <p>1. The State Government shall establish a State Mental Health Review Commission (referred to as the Commission subsequently) within 6 months of notification of the amendment to this Act. The State Mental Health Review Commission shall have jurisdiction over all mental health facilities which are geographically located within the State.</p> <p>2. Composition of the Commission</p> <p>The Commission shall consist of</p> <p>a) President, who shall be a person who is or has been or is qualified to be appointed, as Judge of a High Court. This appointment shall be made by the State Government in consultation with the Chief Justice of the High Court in the State.</p> <p>b) Members :</p> <p>i) Judicial members : persons who are, or have been, or are qualified to be appointed as District Judges</p> <p>ii) Professional members: persons who are recognized and registered as mental health professionals for the purpose of this Act in the Register maintained by the Central or State Mental Health Authority</p> <p>iii) Representatives of users and carers and their organizations and representatives of non-governmental organizations working in the field of mental health: persons who have experienced severe mental illness, or a caregiver or family member of persons with severe mental illness or organizations representing such persons and also non-governmental organizations working in the field of mental health</p> <p>c) Provided that all members shall have the following qualifications :</p> <p>i) should have basic literacy skills (able to read and write) and;</p> <p>ii) be persons of ability, integrity and standing;</p> <p>d) A person shall be disqualified for appointment as President or as a member if he or she :</p> <p>i) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or</p>
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- ii) is an undischarged insolvent; or
- iii) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- iv) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- v) has such other disqualifications as may be prescribed by the State Government;

e) Every appointment as Member to the Commission shall be made, following public advertisement, by a Selection Committee comprising of the President of the Commission, who shall be the Chairperson of the Selection Committee, and Secretary (or a suitable person nominated by the Secretary to carry out this function) of Law Department of the State and Secretary (or a suitable person nominated by the Secretary to carry out this function) of Health Department of the State .

f) The President and members of the Commission shall hold office for a term of five years or up to the age of **seventy** years, whichever is earlier. The President and members shall be eligible for re-appointment for another term of five years or up to the age of **seventy** years, whichever is earlier, subject to the condition that they fulfill the qualifications and other conditions for appointment mentioned in sub-section 2 (b) and (c) above and such re-appointment is made on the basis of the recommendation of the Selection Committee. The President may resign his office in writing addressed to the State Government, while a member may resign his office in writing addressed to the President of the Commission and on such resignation being accepted, his office shall become vacant and shall be filled by appointment of a person, possessing any of the qualifications mentioned in sub-sections 2 (b) and 2 (c) above in relation to the category of the member who is required to be appointed, in place of the person who has resigned.

g) The President of the Commission shall be a full time appointment. The appointment of members on a full-time or part time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State

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Commission.

h) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the President and members of the State Commission shall be such as may be prescribed by the State Government.

3. Panels of the Commission

a) The jurisdiction, powers and authority of the Commission shall be exercised by the Panels of the Commission;

b) A Panel shall be constituted by the President of the Commission for a duration as specified by the President and shall consist of 3 members namely a judicial member, a professional member, and a member **representing users and carers and their organizations or representing non-governmental organizations working in the field of mental health**; The President of the Commission **shall have** the power to change, alter or modify appointment of members of any Panel.

c) A Panel **shall** be chaired by the judicial member of the Panel ;

d) If the members of the Panel differ in opinion on any point, it shall be decided according to the opinion of the majority;

e) The State Commission shall function from the Capital of the State but shall appoint as many Panels in each district of the State depending on the workload in the district, and in as many Districts of the State taking into account the presence of mental health facilities in the district and the convenience of persons with mental illness, their families and the professionals involved in providing care in mental health facilities in the district.

4. Hearings and Process

a) All proceedings before a Panel of the Commission shall be deemed to be a judicial proceeding within the meaning of section.....of the Indian Code and the Panel shall be deemed to be a civil court for the purposes of the Act.

b) Any matter before the Panel shall be heard as expeditiously as possible. An endeavor shall be made to dispose of applications for appointment of nominated representative under section 2.1 of the Act and applications challenging admissions under section 19 of the Act within a period of 7 days from the filing of the application, and applications challenging admission under section 16 and section 20 of the Act within a period of 30 days from filing

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of the application. With respect to all other applications under other sections of the Act, an endeavor shall be made to finally dispose of the appeal within a period of ninety days from the date of filing of the application.

c) With respect to review to be carried out by the Commission under Section 16 and Section 20 of the Act, the Panel shall endeavor to complete such review within a period of 30 days from the time it is due. The Panel may decide to hold a hearing in this regard if it **considers** it necessary to do so.

d) No adjournment shall be ordinarily granted by the Panel unless sufficient cause is shown and reasons for grant of adjournment have been recorded in writing by the Panel.

e) The parties to the hearing **shall** be the person with mental illness, his or her nominated representative, and the medical officer in charge of the mental health facility or the **psychiatrist** responsible for the care of the person as the case may be. The parties may be represented by a counsel or another representative of their choice, or may appear in person.

f) The hearing shall not be open to the public. Persons other than those directly involved may be admitted with the permission of both the person with mental illness and the chairperson of the Panel.

g) The person with mental illness about whom the hearing relates shall have the right to give oral evidence to the Panel, if he or she wishes to do so. The Panel shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate under the circumstances.

h) All parties **shall** have the right to see any document relied on by any other party in its submissions to the Panel.

i) The decision of the Panel **shall** be communicated to the parties in writing with reasonable promptness within **five** days of the termination of the hearing.

j) Where it is brought to the notice of the Commission that a mental health facility is willfully neglecting the orders of the Commission, the Commission may, without prejudice to any other action that the Commission may take against

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the facility, recommend to the State Mental Health Authority to cancel the registration of the mental health facility.

k) Where it is brought to the notice of the Commission that a mental health facility is persistently violating the rights of persons with mental illness, the Commission shall direct the State Mental Health Authority to conduct an inspection and inquiry under section 7 subsection 22 of the Act below, and submit a report of such inspection and inquiry to the Commission, and the action taken or proposed to be taken by the State Mental Health Authority under section 7 subsection 21 and sub-section 22, to protect the rights of persons with mental illness in such mental health facility. Notwithstanding anything else in the Act, the Commission may take any action as it deems appropriate, to protect the rights of persons with mental illness in mental health facilities.

l) If in any judicial process before a competent court in the State, a certificate about mental illness is produced and is challenged by the other party, the court shall refer the certificate for further scrutiny to the State Mental Health Review Commission and the Commission after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, shall certify its opinion to the relevant court.

5. Appeals

Any party may appeal against the decision of the Panel of the Commission on any question of fact or law to the High Court of the State.

6. The Commission may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act. The salary and allowances payable to and the other conditions of service of the officers and other employees of the Commission appointed under this section shall be such as may be determined by regulations.

7. The State Government shall, after due appropriation made by State Legislature by law in this behalf, make to the Commission grants of such sums of money as are required to pay salaries and allowances payable to the Chairperson and the members and the administrative

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		<p>expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Commission.</p> <p>8. The Commission may, from time to time, make Regulations for the purpose of carrying out the provisions of this section.</p>
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CHAPTER III MENTAL HEALTH FACILITIES
Section 6, 7, 8, 9

(also see comments and suggestion under section 2 (q) definition of mental health facilities)

Explanation: The current licensing procedure has been shown to be unworkable. This amended procedure for registration of mental health facilities is largely based on the Clinical Establishments Bill which is currently in Parliament and when it becomes law, requires registration of all health establishments in the country. Because mental health facilities have special requirements, which are not the same as those for other clinical establishments, it would be advisable, to have a registration procedure for mental health facilities within the Act.

Suggestions for changes to the 1st Draft :

1. Suggestion: Rehabilitation centers should be regulated under the PWD Act and should be excluded from registration under the MH Act.

Response of drafting team to suggestion : PWD amendments being discussed at present, specifically exclude registration of psychiatric rehabilitation centers under the PWD Act and indicating that rehabilitation centers for persons with mental illness should be covered under the MH Act. (see chapter X section 51 of the proposed amendments to the PWD Act).

2. Suggestion : The Act should clarify what the basic requirements are for such a facility in terms of - 1) location 2) needing to comply with town planning act, development control rules, building regulations, 3) staffing ratios 4) standards of clinical care etc. Another suggestion was that all mental health facilities should be equipped with an ambulance.

Response of the drafting team: In the existing Act, the norms for mental health facilities have to be laid out by each State Mental Health Authority as part of the State Mental Health Authority Rules. We have made no change to the same. There is wide variation in the availability of mental health resources in the country and hence it would not be appropriate to have one set of norms for the entire country outlined in the Act. Secondly norms may need to change with time as more resources become available and/or more evidence for effective services is available. It is therefore appropriate that norms are set through the State Mental Health Authority Rules, rather than written into the Act.

Sec No	Existing provision	Amended provision
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6	<p>Chapter III : Psychiatric Hospitals and Psychiatric Nursing Homes</p> <p>Establishment or maintenance of psychiatric hospitals or psychiatric nursing homes only with licence</p> <p>1. On and after the commencement of this Act, no person shall established or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid licence granted to him under this Act:</p> <p>Provided that a psychiatric hospital or psychiatric nursing home (whether called asylum or by any other name) licensed by the central government or any state Government and maintained as such immediately before the commencement of this Act may continue to be maintained, and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be, under this Act,-</p> <p>a. for a period of three months from such commencement,</p> <p>b. if an application made in accordance with Sec. 7 for a licence is pending on the expiry of the period specified in CI. (a) till the disposal of such application.</p> <p>2. Nothing contained in sub-section (1) shall apply to a psychiatric hospital or psychiatric nursing home established or maintained by a Central Government or a State Government.</p>	<p>Chapter III : Mental Health Facilities</p> <p>Registration and standards for mental health facilities</p> <p>1. It shall be the responsibility of the State Mental Health Authority to compile and update a register of mental health facilities in the State.</p> <p>2. No person or organization shall establish or carry on a mental health facility unless it has been registered with the State Mental Health Authority under the provisions of this Act</p> <p>3. For registration and continuation of registration, every mental health facility shall fulfill :</p> <p>a) the minimum standards of facilities and services as may be prescribed ;</p> <p>b) the minimum qualifications for the personnel as may be prescribed ;</p> <p>c) provisions for maintenance of records and reporting as may be prescribed ;</p> <p>d) and any other conditions as may be prescribed.</p> <p>4. Categories and standards</p> <p>a) Mental Health facilities shall be classified into such categories, as may be prescribed by the Central Mental Health Authority, from time to time.</p> <p>b) Different standards may be prescribed for classification of different categories referred to in sub-section (a) above.</p> <p>c) In prescribing the standards for mental health facilities, the State Government shall have regard to local conditions.</p> <p>d) Notwithstanding anything in this section, the State Government in consultation with the State Mental Health Authority shall publish standards for different categories of mental health facilities within a period of two years from this amendment to the Act, coming into force.</p>
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Suggestions for changes to the 1st Draft :

1. Suggestion: The particulars of all such facilities should be in the public domain

Response of drafting team : see sub-section (6) below and section 3 (3) g related to functions of CMHA above.

2. Suggestion : The Authorities should have the authority to conduct surprise inspection of the facilities. It was also suggested by another respondent that there should be a "civil society committee" who can access mental health facilities any time without any prior notice to check on the food, sanitation, cleanliness, violations or may be just interact with the patients.

Response of drafting team : See section 7, sub-section 22 below (Inspection and Inquiry). This subsection gives the state mental health authorities to visit any mental health facility at any time without prior notice.

3. Suggestion: Sub-section 8 below, the time period should not be 1 year as this is too long once the norms have been published.

Response of the drafting team: We have reduced this time period to 6 months.

Sec No	Existing provision	Amended provision
7	Application for licence	<p>Procedure for Registration, Grant of Registration, Refusal of Registration, Renewal of Registration, Cancellation of Registration and Inspection of mental health facilities</p> <p>1. For the purpose of registration of the mental health facility, an application in the prescribed proforma accompanied by such details as may be prescribed, along with the prescribed fee shall be furnished to the State Mental Health Authority</p> <p>2. The application may be furnished in person or by post or online.</p> <p>3. If any mental health facility is in existence at the time of amendment to this Act coming into force, an application for its provisional registration shall be made within one year from the date of the amendment coming into force.</p> <p>4. The Authority shall within a period of ten days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such</p>

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form and containing such particulars and information as may be prescribed ;

5. The Authority shall not be required to conduct any inquiry prior to grant of provisional registration

6. The Authority shall within a period of 45 days from the grant of the provisional registration, cause to be published, in print and in digital form online, all particulars of the mental health facility to be registered.

7. Every provisional registration shall be valid for a period of 12 months from the date of issue of the certificate and such registration shall be renewable.

8. Where standards for particular categories of mental health facilities have been notified by the State Government, under section 6 sub-section 4 above, the mental health facilities in that category will have to apply for and obtain permanent registration within a period of 6 months from notification of these standards. The Authority shall publish these standards in print and online in digital format.

9. Where standards for particular categories of mental health facilities have not yet been notified by the State Government, under section 6 sub-section 4 above, the mental health facilities in those categories may apply for a renewal of provisional registration 30 days before the expiry of the validity of certificate of provisional registration. If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such enhanced fees, as may be prescribed.

10. Application for permanent registration by a mental health facility shall be made to the Authority in such form and be accompanied by such fees, as may be prescribed.

11. The mental health facility shall submit evidence that the facility has complied with the prescribed minimum standards in a manner as prescribed by the Authority

12. As soon as the mental health facility submits the required evidence of the mental health facility having complied with the prescribed minimum standards, the Authority shall cause to be displayed for information of

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the public at large and for filing objections, if any, in a manner prescribed by the Authority, all the evidence submitted by the mental health facility for a period of 30 days before processing for grant of permanent registration. Such information shall at the minimum be displayed on the website to be maintained by the Authority for this purpose.

13. If objections are received within the period referred to in sub-section 12 above, such objections shall be communicated to the mental health facility for response within a period as prescribed by the Authority.

14. Permanent registration shall be granted only when a mental health facility fulfills the prescribed standards for registration by the State Government.

15. The Authority shall pass an order within a period of 30 days after expiry of the prescribed period, either
a) allowing the application for permanent registration or
b) disallowing the application

Provided that the Authority shall record its reasons, if it disallows an application for permanent registration. The Authority may also grant a period of time, not exceeding a period of 6 months to the mental health facility for rectification of the deficiencies which have led to disallowing the application.

16. Notwithstanding anything said above, if the Authority has not communicated any objections received by the Authority to the mental health facility under sub-section 13, nor has the Authority passed an order under sub-section 15 above, within a period of 90 working days from the date of application for permanent registration by the mental health facility, it will be deemed that the Authority has allowed the application for permanent registration.

17. The Authority shall issue a certificate of permanent registration in such form and containing such particulars as it may prescribe, if the Authority has allowed an application under sub-section 15 or sub-section 16 above.

18. Every permanent registration shall be valid for a period of 36 months from the date of issue of the certificate and such registration shall be renewable. The mental health facility may apply for a renewal of

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permanent registration 90 days before the expiry of the validity of certificate of provisional registration.

19. The disallowing of an application for permanent registration shall not debar a mental health facility from applying afresh for permanent registration under sub-section 10 above and after providing such evidence of having rectified the deficiencies on which grounds the earlier application was disallowed.

20. If at any time after the mental health facility has been registered, the Authority is satisfied that :

- a) the conditions of the registration are not being complied with ; or**
- b) the person or persons or entities entrusted with the management of the mental health facility have been convicted of an offence under this Act; or**
- c) the mental health facility is found to be persistently violating the rights of persons with mental illness,**

it may issue a show cause notice to the mental health facility as to why its registration under this Act should not be canceled for the reasons to be mentioned in the notice.

21. If after giving a reasonable opportunity to the mental health facility under sub-section 20 above, the Authority is satisfied that there has been a breach of any of the provisions of conditions for registration or any Rules made under this Act, the Authority may without prejudice to any other action that it may take against the mental health facility, cancel its registration. Where the Authority is satisfied that the mental health facility is persistently violating the rights of persons with mental illness and where the mental health facility does not, within a reasonable, time, take action to the satisfaction of the Authority to protect the rights of persons with mental illness, the Authority may without prejudice to any other action it may take against the facility, cancel its registration.

Every order made under this sub-section shall take effect

- a) where no appeal has been made against such order, immediately on the expiry of the period prescribed for such appeal and ;**
- b) where such appeal has been preferred against such an order and the appeal has been dismissed from the date of the order of dismissal**

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The Authority after cancellation of the registration for reasons to be recorded in writing, may restrain immediately the mental health facility from carrying on if there is imminent danger to the health and safety of the persons admitted in the mental health facility.

22. Inspection and Inquiry

a) The Authority shall have the right to cause an inspection of, or inquiry in respect of any mental health facility, to be made by such person or persons as it may direct and that mental health facility shall be entitled to be represented at such an inspection or inquiry.

b) The Authority shall communicate to the mental health facility the view of the Authority with reference to the results of such inspection or inquiry and may after ascertaining the opinion of the mental health facility, advice the facility upon the action to be taken.

c) The mental health facility shall report to the Authority the action which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time as the Authority may direct.

d) Where the mental health facility does not, within a reasonable time, take action to the satisfaction of the Authority, it may, after consideration any explanations furnished or representation made by the mental health facility issue such directions as the Authority may deem fit, and the mental health facility shall comply with such directions.

23. The Authority or any person authorized by the Authority, may, if there is any reason to suspect that anyone is running a mental health facility without registration, enter and search in the manner prescribed by the Authority, at any reasonable time and the mental health facility shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry.

Sec No	Existing provision	Amended provision
8	Grant or refusal of Licence	Certificates, Fees and Register of mental health facilities

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		<p>1. Every mental health facility shall display the certificate of registration in a conspicuous place in the mental health facility in such manner so as to be visible to everyone visiting the mental health facility</p> <p>2. In case the certificate is destroyed, lost, mutilated or damaged the Authority may issue a duplicate certificate on the request of the mental health facility and on the payment of such fees as may be prescribed</p> <p>3. The certificate of registration shall be non-transferable and in event of change of ownership or change of category, or change of management, or on ceasing to function as a mental health facility, the certificate shall be surrendered to the Authority and the mental health facility shall apply afresh for grant of certificate of registration.</p> <p>4. The Authority may charge fees for different categories of mental health facilities, as may be prescribed.</p> <p>5. The Authority shall maintain in digital format a register of mental health facilities, registered by the Authority, to be called the State Register of Mental Health Facilities and shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner as may be prescribed.</p> <p>6. The Central Mental Health Authority shall maintain in digital format an all-India register of mental health facilities that shall be an amalgam of the State Register of Mental Health Facilities maintained by the State Mental Health Authorities.</p>
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Sec No	Existing provision	Amended provision
9	Duration and renewal of licence	Appeal Any mental health facility or person, aggrieved by an order of the Authority refusing to grant or renew a certificate of

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		registration or revoking a certificate of registration may appeal to the High Court in the State.
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Sec No	Existing provision	Amended provision
10, 11, 12, 13, 14		REPEALED

Chapter IV : Admission to a Mental Health Facility, Treatment in a Mental Health Facility and Discharge from Mental Health Facility

Explanation: The presumption in all admissions to mental health facility is that the person with mental illness has legal capacity and they may or may not require support to exercise their legal capacity. The level of safeguards provided is based on the level of support needed. The level of safeguards is least for those who need no support or need minimal support to make decisions (as in Section 15) and the level of safeguards is highest for those who have high support needs, such that those persons who need very high or nearly 100% support are provided with substantial protection including judicial review. This is in harmony with the recommendations of the CRPD.

Thus there are two types of admissions for adults proposed in the amendments: independent admission, where the person can decide for himself or herself, without support or requires minimal support, and supported admissions where the person's needs substantial or high support approaching 100% support. Supported admissions are further divided into short term supported admission (section 19) and long term supported admission (section 20) and persons admitted under section 20, because of their vulnerability and the longer duration of admission, are provided with the highest level of safeguards, as recommended in international conventions.

High levels of support bordering on 100% support is also viewed as a temporary phenomena. As soon as the person is judged to be able to make independent decisions, he or she is allowed to decide for himself or herself. Alternatively, at the end of the prescribed period, the need for such high level of support has to be reviewed and continued only if considered absolutely necessary.

Sec No	Existing provision	Amended provision
15		Chapter IV : Admission to a Mental Health Facility, Treatment in a Mental Health Facility and Discharge from Mental Health Facility Section 15 : Independent (without support) Admission and Treatment of persons in a mental health facility An Independent patient or an Independent admission refers to the admission of persons

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to mental health facilities who can independently (i.e. without support) make decisions or require minimal support in making decisions.

(1) Any person who is not a minor and who considers himself to have a mental illness and desires to be admitted to any mental health facility for treatment may request the medical officer in charge of the facility to be admitted as a Independent patient.

(2) On receipt of such a request under subsection (1) the medical officer in charge of the facility will admit the person to the facility if he is satisfied that

(a) the person has a mental illness of a severity requiring admission to a mental health facility

(b) the person with mental illness will benefit from admission and treatment to the mental health facility

(c) the person has understood the nature and purpose of admission to the mental health facility and has made the request for admission of his own free will, without any duress or undue influence and can independently make decisions without support or requires minimal support from others in making such decisions.

(3) Every person admitted to a mental health facility shall be bound to abide by such rules and regulations of the mental health facility.

(4) An Independent patient shall not be given treatment without his or her informed consent. If a person is unable to understand the purpose, nature, likely effects of proposed treatment and of the probable result of not accepting the treatment and requires a very high level of support approaching 100% support, in making decisions, he or she **shall** be deemed unable to understand the purpose of the admission under subsection (2) and therefore **shall not be** admitted under this section of the Act.

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	<p>(5) Subject to section 18 subsection (3) below, an Independent patient may discharge himself from the mental health facility without the consent of the medical officer in charge of the facility. The medical officer in charge of the facility shall ensure that the individual is informed of this right at the time of admission.</p> <p>(6) A person admitted under this section of the Act may appoint a nominated representative under s 2.1 of this Act.</p>
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Section 16

Explanation : This section relates to admission of minors and is self explanatory. Sub-section 7 has been added as an extra layer of protection as minors are considered especially vulnerable. In the case of minors, the nominated representative is the legal guardian under normal circumstances (see section 2.1 above) and the nominated representative will in almost all circumstances be the legal guardian which in almost all circumstances will be the natural or adopted parent.

Suggestions for changes to the 1st Draft :

1. Suggestion: Two medical practitioners needing to certify in case of minors being admitted by parent is not necessary.

Response of the drafting team: Two mental health professionals, atleast one of whom is a psychiatrist, have to certify the need for admission of a minor. Thus it is not two medical practitioners as suggested above. However the respondent is probably questioning the need for two certificates for admission of minor.

Admission of a minor at the request of a guardian is not an independent admission and is more like a supported admission under sec 19 or sec 20. Hence the admission under section 16 has been provided with the same level of protection as is afforded to adults under section 19 (supported admission). If we reduce this to one medical certificate for admissions under section 16, we will paradoxically provide a lesser level of protection to minors as compared to adults, when in reality, minors are likely to require a higher level of protection from the state and legislation.

Sec No	Existing provision	Amended provision
16	<p>Request by guardian for admission of a ward</p> <p>Where the guardian of a minor considers such minor to be a mentally ill person and desires to admit such minor in any psychiatric hospital or psychiatric nursing home for treatment,</p>	<p>Admission of a minor to a Mental Health Facility</p> <p>Any individual under the age of eighteen years (minor) shall be admitted to a mental health facility only in exceptional circumstances and following the procedure as</p>

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he may request the medical officer in charge for admitting such minor as a voluntary patient

laid down in this section.

1. The nominated representative for the minor as defined in Section 2.1 above, shall apply to the medical officer in charge of a mental health facility for admission of the minor to the facility.

2. Upon receipt of such an application, the medical officer in charge of the mental health facility may admit such a minor to the facility, **if two psychiatrists, or one psychiatrist and one mental health professional or a psychiatrist and a medical practitioner,** have independently examined the minor in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others, that :

(a) the minor has a mental illness of a severity warranting admission to a mental health facility and;

(b) admission is in the best interests of the minor, with regard to his or her health, well-being or safety, taking into account the wishes of the minor if ascertainable and the cultural, religious and social background of the person, and the reasons for reaching this decision and ;

(c) the mental health care needs of the minor cannot be met unless he or she is admitted as proposed and in particular, all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor and ;

(d) the admission is supported in writing by the nominated representative of the minor.

3. Any person under the age of eighteen years so admitted shall be accommodated separately from adults, in an environment that takes into account their age and developmental needs and is of the same level of quality as is provided to other persons of their age admitted to hospitals for medical conditions.

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	<p>4. A minor shall be given treatment with the informed consent of his or her nominated representative appointed in accordance with the provisions of section 2.1 above.</p> <p>5. If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health facility, the minor shall be discharged by the mental health facility.</p> <p>6. Notwithstanding anything else in this Act, no irreversible treatment shall be provided for the mental illness of a minor.</p> <p>7. Any admission of a minor which continues for a period of 30 days or more shall be immediately informed to the Mental Health Review Commission. All admissions of minors continuing beyond 30 days and every subsequent 30 days shall require approval from the Mental Health Review Commission. Before granting such approval, the Mental Health Review Commission shall carry out a minimum review of the clinical records of the person so admitted. The Commission may interview the minor if it is deemed necessary.</p>
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Sec No	Existing provision	Amended provision
17		REPEALED (this has been covered under the amended section 15 above)

Section 18

Explanation: The discharge provisions have been simplified to promote discharge of persons from mental health facilities. Sub-section 18 (3) allows for a limited restriction of the right of independent patients to discharge themselves under exceptional circumstances.

Sec No	Existing provision	Amended provision
18	Discharge of voluntary patients (1) The medical officer in charge of a psychiatric hospital or psychiatric nursing home shall, on a request made	Discharge of independent patients (1) The medical officer in charge of a mental health facility shall discharge from the mental health facility any person admitted under

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in that behalf -

(a) by any voluntary patient

(b) **by the guardian of the patient if he is a minor voluntary patient,**

discharge subject to provisions of sub-section (3) and within twenty-four hours of the receipt of such request, the patient from the psychiatric hospital or psychiatric nursing home.

(2) Where a minor voluntary patient who is admitted as an inpatient in any psychiatric hospital or psychiatric nursing home attains majority, the medical officer in charge of such hospital or nursing home, shall, as soon as may be, intimate the patient that he has attained majority and that unless a request for his continuance as an inpatient is made by him within a period of one month of such intimation, he shall be discharged and if, before the expiry of the said period, no request is made to the medical officer in charge for his continuance as an inpatient, he shall subject to the provisions of sub-section (3) be discharged on the expiry of the said period.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) where the medical officer in charge of a psychiatric hospital or psychiatric nursing home is satisfied that the discharge of a voluntary patient under sub-section (1) or sub-section (2) will not be in the interests of such voluntary patient, he shall, within seventy two hours of the receipt of a request under sub-section (1) or, if no request under sub-section (2) has been made by the voluntary patient before the expiry of the period mentioned in that sub-section, within seventy-two hours of such expiry constitute a Board consisting of two medical officers and seek its opinion whether such voluntary

section 15 of the Act immediately on request made by such a person or if the person disagrees with his or her admission under section 15 of the Act, subject to sub-section (3) below.

(2) Where a minor has been admitted to a mental health facility under section 16 of the Act, and is now no longer a minor (i.e. completes eighteen years of age), the medical officer in charge of the mental health facility will classify him/her as a Independent patient under section 15 of the Act and all provisions of the Act as applicable to persons who are not minors will apply ;

(3) Notwithstanding anything else contained in the Act, a mental health professional may prevent discharge of a person admitted under section 15 of the Act and now seeking discharge, for a period of 24 hours, to allow assessment necessary for admission under section 19 of the Act, if the conditions below are met :

(a) The mental health professional is of the opinion that the person cannot understand the nature and purpose of their decisions without substantial or very high support from their nominated representative and ;

(b) either one or all of the following

(i) has recently threatened or attempted or is threatening or attempting to cause bodily

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patient needs further treatment and if the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home, the medical officer shall not discharge the voluntary patient, but continue his treatment for a period not exceeding ninety days at a time.	<p>harm to himself or herself and/or</p> <p>(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; and/or</p> <p>(iii) has recently shown or is showing a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;</p> <p>At the end of the period of 24 hours or earlier if the necessary assessments have been completed, the person can no longer be kept admitted in the mental health facility under this section of the Act.</p>
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Section 19

Suggestions for changes to the 1st Draft :

Question has been raised whether provisions of section 19 and section 20 are in harmony with UN CRPD.

Response of the drafting team: We believe the provisions of section 19 and section 20 are in harmony with the UN CRPD. While interpreting the UN CRPD we have also relied upon the Interpretive Declaration entered by Australia in July 2008 upon ratification of CRPD by Australia. For information we have copied Australia's interpretive declaration below:

"Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;

Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards;"

1. Suggestion :One respondent wanted to know how a patient in a mental health facility could apply to the Mental Health Review Commission without help from relatives or others who may not be available. This respondent also suggested that the Mental Health Review Commission (MHRC) should visit the hospital every day or atleast have an office in the main state hospital.

1. Response of drafting team : We appreciate the concerns expressed by this respondent regarding access to the Mental Health Review Commission for patients in mental health facilities. However we

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are not convinced that the solutions suggested by this respondent are practically feasible way to address this problem. It will be impossible for the MHRC to visit every hospital every day or to maintain an office at every hospital. We have suggested that the mental health facilities should (a) prominently display in the facility the contact details for the local MHRC panel and (b) give free telephone access to patients to contact the MHRC.

2. Suggestion : There is need to ensure rights of the patients are read out on admission and periodically as only then will they know that they have recourse to an appeal process. Further, the patient, nor the family nor the service provider should have to pay to appeal.

Response of drafting Team : We have included the earlier suggestion that mental health facilities should prominently display the details of the MHRC and facilities should give free access to contact the MHRC. There is no provision in the Act to make the person/family/service provider pay to appeal to the MHRC. Access to the MHRC is freely available to all persons.

3. Suggestion : the second certificate may be from a mental health professional or a medical practitioner as two mental health professionals may not be available in many parts of the country.

Response of the drafting team : This suggestion has been implemented below.

4. Suggestion : One respondent felt that the entire description of the need for admission for a person with mental illness is 'very wrong and frightening'. The criteria for admission should be focused on the nature and symptoms of the illness being severe and not on overt attention only to a particular symptom (violence).

Response of the drafting team : The grounds for admission have been made restrictive so that apart from the severity of symptoms there should be an additional risk of either self-harm, harm to others or self-neglect. These are internationally accepted criteria for admission in most countries. The criteria for admission are made restrictive to reduce the likelihood of admission to institutions and to promote provision of care and treatment in community settings.

5. Suggestion: include a requirement for the nominated representative to be included in the discharge planning. Discharge plan should be discussed with the user and the nominated representative/care-giver/family member with whom the person will reside with on discharge from the mental health facility.

Response of the drafting team: Discharge planning is included in section 20.5 which is a new section. The suggestion has been implemented by including a specific statement that care-giver/family member to be involved in the discharge planning (see section 20.5 below). This is applicable to all discharges and not necessarily only to discharge under section 20. We have now clarified this in section 20.5 below

Sec No	Existing provision	Amended provision
19	Admission of mentally ill persons under certain special circumstances	Admission and treatment of persons with mental illness, with high support needs, in a mental health facility, upto 30 days

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(Supported Admission)

1. The medical officer in charge of a mental health facility shall admit a person with mental illness to the facility, upon application by the nominated representative of the person, under this section if :

(a) The person has been independently examined in the preceding 7 days by one psychiatrist and the other being a mental health professional or a medical practitioner and both conclude based on the examination and, if appropriate, on information provided by others that the person has a mental illness of a severity that the person :

(i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself and/or ;

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; and/or

(iii) has recently shown or is showing a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

and

(b) the mental health professionals and/or the medical practitioner as the case may be, certify that admission to the mental health facility is the least restrictive care option possible in the circumstances ;

and

(c) the person is ineligible to receive care and treatment as a independent patient because the person needs very high support from his or her nominated representative, in making decisions.

2. Admission of a person with mental illness to a mental health facility under this section shall be limited to a period of 30 days. At the

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end of this period, or earlier, if the person no longer meets the criteria for admission as stated in sub-section (1) above, the patient will forthwith cease to be admitted in the facility under this section of the Act. At the end of the 30 day period, if the conditions under Section 20 of the Act are met, the person may continue to remain admitted in the mental health facility in accordance with the provisions of Section 20 of the Act. If the conditions under Section 20 of the Act are not met, the person may continue to remain in the mental health facility as a independent patient, and the medical officer in charge of the facility will ensure that the person is told of his or her new status, including his or her right to leave the facility.

3. Treatment shall only be provided taking into account any existing Advance Directive as per section 50 of this Act or if the person, with the support of his nominated representative has given his informed consent to the treatment plan. The person may require a very high level of support from the nominated representative, approaching 100 % support, where the nominated representative temporarily consents to treatment on behalf of the patient. In all instances where the level of support required is of a such a high degree that the nominated representative has temporarily consented to treatment on behalf of the person, the medical officer in charge of the facility **shall** record this in the notes and this **shall** be reviewed every 7 days.

4. Any person admitted under this section may apply to the Mental Health Review Commission for review of the decision to admit him or her to the mental health facility under this section and the decision of the Mental Health Review Commission shall be binding on all parties. **All mental health facilities shall prominently display within the facility, the contact details including address and telephone numbers of the local Panel of the Mental Health Review Commission. The**

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	<p>mental health facility shall provide the person with necessary forms to apply to the Mental Health Review Commission and also give free access to make telephone calls to the Mental Health Review Commission to appeal against being admitted to the facility. The Mental Health Review Commission shall treat an appeal in the same manner whether it is made verbally over the telephone or in writing.</p> <p>(5) Notwithstanding anything else in this Act, the medical officer in charge of the facility is under a duty to keep the condition of the person under ongoing review. If the medical officer in charge of the facility becomes aware that the conditions in subsection (1) are no longer met, the medical officer in charge will terminate the admission under this section of the Act, and inform the person and his or her nominated representative accordingly. Such a change of status does not preclude the person remaining as an independent patient, in appropriate circumstances.</p>
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Section 20

Suggestions for changes to the 1st Draft :

1. One respondent wanted to know why the 90 day period had been increased to 180 days.

Response of drafting Team : In the existing Act, admission under Section 19 (special circumstances) was for a period of 90 days. In the proposed amendments we have reduced this period from 90 days to 30 days. Also in the existing Act, admission under Section 20 had no time limits. We have now limited admission under section 20 to 180 days.

Sec No	Existing provision	Amended provision
20	Application for reception order	<p>Admission and treatment of persons with mental illness, with high support needs, in a mental health facility, beyond 30 days (Supported Admission beyond 30 days)</p> <p>1. Upon application by the nominated representative of a person with mental illness, the medical officer in charge of a mental health facility shall continue admission of a person with mental illness in the facility under this section if :</p>

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a) The person is already admitted in a mental health facility under section 19 of the Act and ;

b) Two psychiatrists have independently examined the person in the preceding 7 days and both conclude based on the examination and, if appropriate, on information provided by others that the person has a mental illness of a severity that the person :

(i) has consistently over time threatened or attempted to cause bodily harm to himself or herself; and/or

(ii) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him or her; and/or

(iii) has consistently over time shown a lack of competence to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

and

c) both psychiatrists certify that admission to a mental health facility is the least restrictive care option possible in the circumstances and ;

d) the person continues to remain ineligible to receive care and treatment as a independent patient because the person needs very high support from their nominated representative, in making decisions.

2. All admissions under this section and any renewal of admission under this section must be approved by the Mental Health Review Commission within a period of 60 days from the date that such admission or renewal becomes effective. In case the Mental Health Review Commission refuses to approve initial admission or renewal of admission under this section, the person must be immediately discharged from the mental health facility. When reviewing applications for renewals

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under this section of the Act, the Mental Health Review Commission should critically examine the need for institutional care, in particular, why such care cannot be provided in less restrictive settings based in the community. The mere absence of community based services cannot by itself, provide sufficient justification for continued treatment in the mental health facility. In all cases of application for renewal of admission under this section, the Mental Health Review Commission may demand that those in charge of treatment of the person with mental illness present a plan for community based treatment and the progress made, or is likely to be made, towards realizing this plan for community based treatment.

3. Admission of a person with mental illness to a mental health facility under this section will be limited to a period of 180 days. Further admission beyond this period, can be renewed for 180 days at each instance, upon application by the nominated representative of the person, to the medical officer in charge of the mental health facility and by following the procedure laid out in sub-section (1) and sub-section (2) above. If the Mental Health Review Commission refuses to approve admission or renewal under this section as stated in sub-section (2) above, or at the end of this period and no renewal has been made, or earlier if the person no longer meets the criteria for admission as stated in sub-section (1) above, the person will forthwith cease to be kept admitted in the facility under this section of the Act.

4. Treatment shall only be provided taking into account any existing Advance Directive as per section 50 of this Act or if the person, with the support of his nominated representative has given his informed consent to the treatment plan. The person may require a very high level of support from the nominated representative approaching 100 % support, where the nominated representative temporarily consents to treatment on behalf

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of the patient. In all instances where the level of support required is of a such a high degree that the nominated representative has to temporarily consent to treatment on behalf of the person, the medical officer in charge of the facility should record this in the notes and this should be reviewed every 15 days.

5. Any person admitted under this section may apply to the Mental Health Review Commission for review of the decision to admit him or her in the mental health facility under subsection (1) above and the decision of the Mental Health Review Commission shall be binding on all parties. **All mental health facilities shall prominently display within the facility, the contact details including address and telephone numbers of the local Panel of the Mental Health Review Commission. The mental health facility shall provide the person with necessary forms to apply to the Mental Health Review Commission and also give free access to make telephone calls to the Mental Health Review Commission to appeal against being admitted to the facility. The Mental Health Review Commission shall treat an appeal in the same manner whether it is made verbally over the telephone or in writing.**

6. Notwithstanding anything else in this Act, the medical officer in charge of the facility is under a duty to keep the condition of the person under ongoing review. If the medical officer in charge of the facility becomes aware that the conditions in subsection (1) are no longer met, the medical officer in charge will terminate the admission under this section of the Act, and inform the person and his or her nominated representative accordingly. Such a change of status does not preclude the person remaining as an independent patient, in appropriate circumstances.

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Sec No	Existing provision	Amended provision
20.1	NEW PROVISION	<p>Emergency Treatment</p> <p>1. Notwithstanding anything else in this Act, medical treatment, including treatment for mental illness, may be provided by any registered medical practitioner to a person with mental illness either at a health facility or in the community, where it is immediately necessary to prevent –</p> <p>a) death or irreversible harm to the health of the person or</p> <p>b) the person inflicting serious harm to himself or herself or to others; or</p> <p>c) the person causing serious damage to property belonging to himself or herself or to others where such behaviour is believed to flow directly from the person's mental illness.</p> <p>2. Nothing in this section shall be taken to permit medical treatment that is not directly related to the emergency identified in subsection (1). Electro-convulsive therapy and irreversible treatments shall not be provided under this section.</p> <p>3. The nominated representative of the person if available, has given consent to such treatment.</p> <p>4. Nothing in this section shall be taken to permit treatment of more than 72 hours duration or till the person has been assessed at a mental health facility, whichever is earlier.</p>

Section 20.2 Prohibited Treatments

Suggestions for changes to the 1st Draft :

1. Suggestion : Prohibited treatments should include other non-recognised treatments such as Magnetic healing/Laser therapy/Regression/Rebirth therapy.

Response of the drafting team : We would like this question to be discussed in the regional and national consultation meetings. Whether we should have a list of prohibited treatments included in the Act, or

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whether we should have a list of approved treatments or whether the SMHA should be empowered to make a list of such prohibited or permitted treatments, these are all debatable issues. We need more discussion on this issue and a consensus needs to be evolved before this is included in legislation.

Sec No	Existing provision	Amended provision
20.2	NEW PROVISION	Prohibited treatments Notwithstanding anything contained in the Act, the following treatments shall not be performed on any person with mental illness, whether he or she is admitted to a mental health facility or is living in the community : a) Electro-convulsive therapy without the use of muscle relaxants and anesthesia or b) Sterilization of men or women, when such sterilization is intended as a treatment for mental illness or c) Persons with mental illness shall not be chained in any manner or form whatsoever.

Section 20.3 : Restriction on Psychosurgery for persons with mental illness

Suggestions for changes to the 1st Draft :

1. Suggestions and clarification : Many respondents have inquired why a section has been introduced on psycho-surgery in the draft amendments.

Response of the drafting team : Anecdotal evidence suggests that psycho-surgery is being performed at various medical institutions in the country. These surgeries are performed by neurosurgeons. A recent book published by the Ministry of Health and Family Welfare in 2004 (Mental Health : An Indian Perspective, 1946-2003, Agarwal et al. Directorate General of Health Services / Ministry of Health and Family Welfare Nirman Bhawan, Maulana Azad Road, New Delhi-110 011) also has an entire chapter entitled "Funcional Neurosurgery for Psychiatric Disorders".

Currently the practice of psychosurgery is not regulated by any Act and there are concerns about the ethical and medical basis for these types of surgeries.

The draft amendments therefore attempt to bring this practice under regulation of the MHA by insisting on a high level of protection - informed consent plus permission from the SMHA. We have also made provision for the SMHA to make detailed rules and regulations regarding these procedures.

The purpose of the amendments is not to promote the practice of psychosurgery but rather to regulate it. However, if the consensus of the stakeholders is that it should be left out of the amendments, then this particular provision can be removed from the amendments.

We hope this is discussed at the regional and national consultation meetings before a final decision is made on this particular amendment.

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2. Suggestion/Question : Can the State Mental Health Authority decide on behalf of the person to consent for surgery ?

Response of drafting team : No the SMHA cannot decide on behalf of the person. The person has to give informed consent AND the SMHA has to give its approval. The SMHA approval is additional protection rather than a dilution of protection. We have also now reframed this section in terms of a restriction on the procedure for psychosurgery rather than an enabling provision.

Sec No	Existing provision	Amended provision
20.3	NEW PROVISION	Restriction on Psychosurgery for persons with mental illness Notwithstanding anything contained in the Act psychosurgery cannot be performed as a treatment for mental illness unless the following conditions are met : a) informed consent of the person on whom the surgery is being performed and ; b) approval from the State Mental Health Authority to perform the surgery. The State Mental Health Authority may, from time to time, make regulations for the purpose of carrying out the provisions of this section.

Section 20.4 : Restraints and Seclusion

Suggestions for changes to the 1st Draft :

1. Suggestion/Question: The nature of the isolation room within any facility should be defined (eg safety, toilets, ventilation etc).

Response of drafting team : This will be decided by SMHA through rules and regulations wherein norms for mental health facility are decided by the SMHA. We feel that it is inappropriate to write the norms for mental health facilities into the Act, but should be done through the rules and regulations made by the SMHA, depending on local conditions and depending on the state of medical knowledge and availability of human and financial resources.

Sec No	Existing provision	Amended provision
20.4	NEW PROVISION	Restraints and Seclusion 1. Physical restraint or seclusion may only be used when it is the only means available to prevent imminent and immediate harm to person concerned or to others. 2. Physical restraint or seclusion may only be used if it is authorized by the psychiatrist in

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	<p>charge of the person's treatment at the mental health facility.</p> <p>3. Physical restraint or seclusion shall not be used longer than is absolutely necessary to prevent the immediate risk of significant harm.</p> <p>4. The medical officer in charge of the mental health facility shall be responsible for ensuring that the method, nature of restraint or seclusion, justification for its imposition and the duration of the restraint or seclusion are immediately recorded in the person's medical notes.</p> <p>5. In no case will restraint or seclusion be used as a form of punishment, nor shall restraint or seclusion be used because of lack of staff at the mental health facility.</p> <p>6. The nominated representative of the person with mental illness shall be informed about every instance of seclusion or restraint within a period of 24 hours.</p> <p>7. A person who is placed under restraint or seclusion shall be kept under regular ongoing supervision of the medical personnel at the mental health facility.</p> <p>8. All instances of restraint and seclusion at the mental health facility shall be included in a report to be sent to the State Mental Health Authority on an monthly basis.</p> <p>9. The Central and State Mental Health Authority may from time to time, make regulations for the purpose of carrying out the provisions of this section.</p> <p>10. The Central and State Mental Health Authority may order a mental health facility to desist from applying restraint and seclusion if the Authority is of the opinion that the mental health facility is persistently and willfully ignoring the provisions of this section and/or the regulations made by the concerned Authority.</p>
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Section 20.5 : Discharge Planning

Sec No	Existing provision	Amended provision
20.5	NEW PROVISION	Discharge Planning

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		<p>Whenever a person undergoing treatment for mental illness in a mental health facility is to be discharged into the community or to a different mental health facility or where a new psychiatrist is to take responsibility of the person's care and treatment, the psychiatrist who has been responsible for the person's care and treatment shall consult with the person with mental illness, the nominated representative, the family member or care-giver with whom the person with mental illness will reside on discharge from the hospital, the psychiatrist expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or services would be appropriate for the person. The psychiatrist responsible for the person's care shall in consultation with the above mentioned persons ensure that a plan is developed as to how these services shall be provided. Discharge planning applies to all discharges from mental health facilities, including discharge under section 15, section 16, section 19 and section 20. This section creates no right to impose treatment without consent.</p>
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Sec No	Existing provision	Amended provision
21		REPEALED IRRELEVANT ONCE SECTION 20 IS AMENDED
22		REPEALED IRRELEVANT ONCE SECTION 20 IS AMENDED

Section 23 : Duties of police officers in respect of persons with mental illness

Suggestions for changes to the 1st Draft :

1. One respondent wanted to know why the magistrate is not involved when Police officers take into protection a person with mental illness found wandering on the streets.

Response of the drafting team: We feel that it is in the best interests of the person that they are

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immediately taken to a hospital and assessed for presence of mental illness, rather than the existing provision where they are taken into custody, then produced by the police before a magistrate over the next few days, and the magistrate then may send them for assessment to a mental health facility. This has resulted in unfortunate association of criminality with mental illness and many instances persons with mental illness have been languishing in prisons rather than receiving the treatment they need.

We have tried to make this simple : the police have a duty to convey people who appear mentally ill and are wandering in the streets to the nearest mental health facility for assessment. Once the person has been taken to a mental health facility, the involvement of the police ends. We hope this will divert people from the criminal justice system into the health care system.

The amendments also reduces the powers of the police and magistracy to arbitrary detention of persons with mental illness. The police now have a duty (as opposed to a power) to convey people with mental illness to a hospital for assessment. We expect this amendment to also help families requiring assistance in certain situations.

Taking into account concerns being expressed about arbitrary Police powers, we have now added a limitation of time i.e. 24 hours for police protection

2. Suggestion : Police should take the person to the nearest public mental health facility and not to a private mental health facility

Response of drafting team: The suggested change has been made. see below

Sec No	Existing provision	Amended provision
23	<p>Power and Duties of police officers in respect of certain mentally ill persons</p> <p>(1) Every officer in charge of a police station -</p> <p>(a) may take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself and</p> <p>b) shall take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness</p> <p>(2) No person taken into protection under sub-section (1) shall be detained</p>	<p>Duties of police officers in respect of persons with mental illness</p> <p>(1) Every officer in charge of a police station -</p> <p>(a) has a duty to take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe has mental illness and is incapable of taking care of himself or;</p> <p>b) has a duty to take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be a risk to himself or others by reason of mental illness.</p> <p>(2) Any person taken into protection under sub-section (1) shall be informed of the grounds for taking him or her into such protection or if in the opinion of the officer taking the person into</p>

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<p>by the police without being informed, as soon as may be, of the grounds for taking him into such protection or where, in the opinion of the officer taking the person into protection such person is not capable of understanding those grounds without his relatives or friends, if any, being informed of such grounds.</p> <p>(3) Every person who is taken into protection and detained under this section shall be produced before the nearest Magistrate within a period of twenty four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate</p>	<p>protection, the person has difficulty in understanding those grounds, his nominated representative, if any, is informed of such grounds.</p> <p>(3) Every person who is taken into protection by a police officer under this section shall be taken to the nearest public mental health facility within a period of 24 hours for assessment of the person's health care needs. The medical officer in charge of the mental health facility will be responsible for arranging the assessment of the person at the mental health facility. At the mental health facility, the needs of the person with mental illness will be addressed as per other provisions of the Act as applicable in the particular circumstances. The duty of the Police Officer ends once the Officer has conveyed the person to a public mental health facility or at the end of 24 hours from the time they are taken into protection, whichever is earlier.</p>
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Sec No	Existing provision	Amended provision
24		REPEALED IRRELEVANT ONCE SECTION 23 IS AMENDED

Section 25 : Order in case of person with mental illness who is cruelly treated or not under proper care

Suggestions for changes to the 1st Draft :

1. Suggestion: Concerns have been expressed about holding carers and family members responsible for the care of persons with mental illness. One respondent wrote " families may not be supported adequately by the system for eg- no mental health services in the local area, elderly carers with no support to care for the person with severe mental illness or no access to mental health care and so on. How can families continue to care for their sick relative? Fine for burnout and neglect because of helplessness is not justified."

Response of Drafting team : We have made only minor changes to sec 25 in the proposed amendments, largely to do with terminology and left the existing section 25 intact. Taking the above points into consideration it may be appropriate to repeal Sec 25 totally. On the other hand, there are genuine concerns that persons with mental illness suffer neglect and abuse from caregivers and protection may be required.

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We would like this issue to be discussed at the Regional consultation meetings before a final decision is made regarding this section.

2. Suggestion : One respondent felt this procedure is too elaborate and suggested that any police officer who comes across such a case should be empowered enough to intervene and help the person in need and not wait for procedures to take place.

Response of drafting team : We disagree with this suggestion as we do not want to give the Police officers arbitrary powers to intervene without supervision from judicial authorities.

Sec No	Existing provision	Amended provision
25	<p>Order in case of mentally ill person cruelly treated or not under proper care and control</p> <p>1. Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.</p> <p>2. Any private person who has reason to believe that any person is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.</p> <p>3. If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be</p>	<p>Order in case of person with mental illness who is cruelly treated or not under proper care</p> <p>1. Every officer in charge of a police station, who has reason to believe that any person within the limits of his station who has a mental illness and is being treated cruelly or is not under proper care shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.</p> <p>2. Any private person who has reason to believe that any person has mental illness and is not under proper care or is ill-treated or neglected by any relative, carer or other person having responsibility for care of this person, may report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.</p> <p>3. If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any person with mental illness within the local limits of his jurisdiction is not under proper care or is ill-treated or neglected by any relative or carer or other person having the responsibility of providing care to such person with mental illness, the Magistrate may cause the person with mental illness to be produced before him, and summon such relative or carer or other person who is, responsible for providing care</p>

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<p>produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.</p> <p>4. If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.</p> <p>5. If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (4) , proceed in the manner provided in Sec.24 as if such person had been produced before him under sub-section (3) of Sec. 23.</p>	<p>to such person with mental illness.</p> <p>4. If such relative, carer or any other person is legally bound to maintain the person with mental illness, the Magistrate may, by order, require the relative or carer or the other person to take proper care of such person with mental illness and where such relative or carer or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to ten thousand rupees.</p> <p>5.(deleted - see amended section 28 which deals with this issue)</p>
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Section 26

Sec No	Existing provision	Amended provision
26	Admission as inpatient after inquisition	REPEALED IRRELEVANT IN THE AMENDED ACT

Section 27

Sec No	Existing provision	Amended provision
27	An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 111950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec.	1. An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 111950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec. 143 or Sec. 144 of the Navy Act, 1957 (62

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<p>143 or Sec. 144 of the Navy Act, 1957 (62 of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974), directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.</p>	<p>of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974), directing the admission of a prisoner with mental illness into any mental health facility, shall be sufficient authority for the admission of such person in such facility to which such person may be lawfully transferred for detention therein.</p> <p>2. The medical officer in charge of a mental health facility wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.</p>
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Section 28

Sec No	Existing provision	Amended provision
28	<p>Detention of alleged mentally ill person pending report by medical officer</p> <p>1. When any person alleged to be a mentally ill person appears or is brought before a Magistrate under Sec. 23 or Sec. 25, the Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person under proper medical custody in an observation ward of a general hospital or general nursing home or psychiatric hospital or psychiatric nursing home or in any other suitable place for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under Cl. (a) of sub-section (2) of Sec. 24.</p> <p>2. The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods</p>	<p>Conveying or admitting a person with mental illness to a mental health facility by a Magistrate</p> <p>1. When any person with mental illness appears or is brought before a Magistrate under Sec. 23 or (delete) Sec. 25, the Magistrate may, by order in writing,</p> <p>(a) that the person is conveyed to a mental health facility for assessment and treatment if necessary. At the mental health facility, the person will be dealt with as per other provisions of the Act as applicable in the particular circumstances or ;</p> <p>(b) authorise the admission of the person with mental illness under proper medical custody in a mental health facility for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to carry out an assessment of the mental illness and to plan for necessary treatment, if any. On completion of the period of assessment, the person will be dealt with as per other provisions of the Act as applicable</p>

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<p>not exceeding 10 day at a time as he may deem necessary: Provided that no person shall be authorised to be detained under this sub-section for a continuous period exceeding thirty days in the aggregate.</p>	<p>in the particular circumstances.</p>
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Sec No	Existing provision	Amended provision
29, 30, 31, 32, 33, 34, 35		<p>REPEALED</p> <p>ALL THE PROVISIONS RELATE TO A RECEPTION ORDER (SEC 20) IN THE EXISTING ACT. PROPOSED AMENDMENT OF SECTION 20 MAKES THESE SECTIONS UNNECESSARY AND REDUNDANT</p>

Sec No	Existing provision	Amended provision
36	<p>Officers competent to exercise powers and discharge function of Magistrate under certain sections</p> <p>In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under Secs. 23,24,25 and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in-charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.</p>	<p>Officers competent to exercise powers and discharge function of Magistrate under certain sections</p> <p>In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under Secs. 23,24, (delete) 25 and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in-charge of a police station under Section 23 and 25 of this Act may be discharged by any police officer not below the rank of an Inspector.</p>

Chapter V - Leave of Absence and Transfer of Persons with mental illness between mental health facilities

Sec No	Existing provision	Amended provision
37	Appointment of Visitors	REPEALED AS UNNECESSARY IN AMENDED ACT
38	Monthly inspection by Visitors	REPEALED AS UNNECESSARY IN AMENDED ACT
39	Inspection of Mentally ill prisoners	REPEALED AS UNNECESSARY IN AMENDED ACT
40, 41,42,		REPEALED

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43, 44		these sections pertain to discharge which have been now dealt with in the relevant admission sections above
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Section 45 : Leave of Absence

Explanation: Leave in the proposed amendments is restricted to the period of admission permitted under section 16, 19, 20. This will stop the customary practice of mental hospitals of sending persons with mental illness who are fit for discharge, on home leave and never formally discharging them from the hospital. In the proposed amendments, leave cannot extend beyond the period of admission and hospitals will have to formally discharge persons into the community who are well enough to be discharged.

Suggestions for changes to the 1st Draft :

1. Suggestion : If the person does not come back to the mental health facility then it should be considered as discharge.

Response of drafting team : This has been added to sub-section 3 below.

Sec No	Existing provision	Amended provision
45	<p>Leave of absence</p> <p>1. An application for leave of absence on behalf of any mentally ill person (not being a mentally ill prisoner) undergoing treatment as an in-patient in any psychiatric hospital or psychiatric nursing home may be made to the medical officer-in-charge, -</p> <p>a) in the case of a person who was admitted on the application of the husband or wife, by the husband or wife of such mentally ill person, or where by reason of mental or physical illness, absence from India or otherwise, the husband or wife is not in a position to make such application, by any other relative of the mentally ill person duly authorised by the husband or wife, or</p> <p>b) in the case of any other person, by the person on whose application the mentally ill person was admitted.</p> <p>Provided that no application under this sub-section shall be made by a person who has not attained the age of</p>	<p>Leave of absence</p> <p>1. The medical officer in charge of a mental health facility may grant leave to any person admitted under sections 16, 19 and 20 above, to be absent from the facility subject to such conditions (if any) and for a duration as the medical officer considers necessary. Such leave shall not extend beyond the period of the duration of admission permitted under section 16, 19 or 20. The medical officer shall secure the consent of the nominated representative before taking a decision granting leave.</p> <p>2. The medical officer may in writing terminate the leave of absence under this part, when appropriate to do so.</p> <p>3. When an individual does not return to the facility following the expiry or termination of his or her leave of absence, the medical officer in charge will normally first contact the person on leave and their nominated representative. If the person with mental illness and their nominated representative</p>

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majority.

2. Every application under sub-section (1) shall be accompanied by a bond, with or without sureties for such amount as the medical officer-in-charge may specify, undertaking -

- i. to take proper care of the mentally ill person,
- ii. to prevent the mentally ill person from causing injury to himself or to others, and
- iii. to bring back the mentally ill person to the psychiatric hospital, or, as the case may be, psychiatric nursing home, on the expiry of the period of leave.

3. On receipt of an application under sub-section (1), the medical officers-in-charge may grant leave of absence to the mentally ill persons for such period as the medical officers-in-charge may deem necessary and subject to such condition as may, in the interests of the protection of others, be specified in the order :

Provided that the total number of days for which leave of absence may be granted to a patient under this sub-section shall not exceed sixty days.

4. Where the mentally ill persons is not brought back to the psychiatric hospital or psychiatric nursing home on the expiry of the leave granted to him under this section the medical officer-in-charge shall forthwith report that fact to the Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situate and the Magistrate may, after making such inquiry as he may deem fit, make an order directing him to be brought back to the psychiatric hospital or psychiatric nursing home, as the case may be.

5. Nothing contained in this section

feel that continued admission in the mental health facility is not necessary, they will convey this to the Medical Officer, who will formally discharge the person from the mental health facility after following all the procedures for discharge from the mental health facility. However, if the the medical officer in charge has grounds to believe that the person will require ongoing admission to a mental health facility and the nominated representative agrees with this assessment of the medical officer in charge and the person refuses to return to the hospital following expiry or termination of his or her leave of absence, the medical officer may ask the Police Officer in charge of the police station within the limits of whose station the mental health facility is located, to convey the person back to the mental health facility. A person not returned by the Police Officer within one month of expiry or termination of his or her leave of absence, may not be returned to the mental health facility under this section and will be considered as discharged from the facility. This does not preclude re-admission otherwise, if the relevant substantive and procedural requirements are met.

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shall apply to a voluntary patient referred to in Sec. 15 or Sec. 16 and the provisions of Sec.18 shall apply to him.

Sec No	Existing provision	Amended provision
46	Grant of leave of absence by Magistrate	REPEALED this section is no longer relevant in the amended Act

Section 47 : Transfer of persons with mental illness

Suggestions for changes to the 1st Draft :

1. Suggestion: Reason for the shift must be explained to the person and their nominated representative and concerned carers.

Response of drafting team : We have added this to the appropriate clause below.

2. Suggestion : Wandering (homeless) persons should be shifted according to their geographic domicile.

Response of drafting team : we have not made this change as we feel there will be difficulties in implementing such a provision due to interpretation issues with domicile etc.

Sec No	Existing provision	Amended provision
47	Removal of mentally ill person from one psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home 1.Any mentally ill person other than a voluntary patient referred to in Sec. 15 or Sec. 16 may, subject to any general or special order of the State Government, be removed from any psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home within the State, or to any other psychiatric hospital or psychiatric nursing home in any other State with	Transfer of persons with mental illness from one mental health facility to another mental health facility 1.Any person with mental illness admitted to a mental health facility under this Act, except those persons admitted to a mental health facility under Sec. 15 or any prisoner with mental illness admitted to a mental health facility under section 27 may, subject to any general or special order of the Mental Health Review Commission in that State, be removed from any mental health facility to another mental health facility within the State, or to any mental health facility in any other State with the consent of the Mental Health Review

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<p>the consent of the Government of that other State: Provided that no mentally ill person admitted to a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under the Act shall be so removed unless intimation thereof has been given to the applicant.</p> <p>2. The State Government may make such general or special order as it thinks fit directing the removal of any mentally ill prisoner from the place where he is for the time being detained, to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in the State or to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in any other State with the consent of the Government of that other State.</p>	<p>Commission of that State:</p> <p>Provided that no person with mental illness admitted to a mental health facility under an order made in pursuance of an application made under the Act shall be so removed unless intimation and reasons for the transfer have been given to the person with mental illness and his or her nominated representative.</p> <p>2. The State Government may make such general or special order as it thinks fit directing the removal of any prisoner with mental illness from the place where he is for the time being detained, to any mental health facility or other place of safe custody in the State or to any mental health facility or other place of safe custody in any other State with the consent of the Government of that other State.</p>
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Section 48 : Absence without leave or discharge

Suggestions for changes to the 1st Draft:

1. Suggestion : Mental health professional should request the Police officer to ascertain the well being and safety of the person and not necessarily bring them back to the facility

Response of the drafting team : We disagree with this suggestion as the Police officer cannot ascertain the safety and well being with respect to mental illness and it is better that the person is brought back to the facility and the medical professionals can take a decision to discharge the person if they feel it is appropriate.

Sec No	Existing provision	Amended provision
48	<p>Admission, detention and retaking in certain cases</p> <p>Every person brought into a psychiatric hospital or psychiatric nursing home under any order made under this Act, may be detained or, as the case may be, admitted as an in-patient therein until he is removed or is discharged under any law, and in case of his escape from such hospital or nursing home he may, by virtue of such order, be retaken by</p>	<p>Absence without leave or discharge</p> <p>Any person who is admitted to a mental health facility under sections 16, 18 (3), 19, 20 and 27, if the person absents himself or herself without leave or without discharge from the mental health facility, may be taken into protection by any Police Officer, at the request of the medical officer in charge of the facility and conveyed back to the mental health facility immediately.</p>

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<p>any police officer or by the medical officer-in-charge or any officer or servant of such hospital or nursing home, or by any other person authorised in that behalf by the medical officer-in-charge and conveyed to, and received and detained or, as the case may be, kept as an in-patient in such hospital or nursing home;</p> <p>Provided that in the case of a mentally ill person (not being a mentally ill prisoner) the power to retake as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of his escape.</p>	<p>Provided that in the case of a person with mental illness (not being a prisoner with mental illness) the power to take in protection and convey as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of such absence from the mental health facility.</p>
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Sec No	Existing provision	Amended provision
49	Appeals from orders of Magistrate	REPEALED WITH THE PROPOSED AMENDMENTS, THIS SECTION IS REDUNDANT

Sec No	Existing provision	Amended provision
	Chapter VI - Judicial Inquisition Regarding Alleged Mentally Ill Person Possessing Property, Custody Of His Person And Management Of His Property	Chapter VI - Special Support Arrangements for persons with mental illness

Section 50 : Advance Directives

Suggestions for changes to the 1st Draft :

1. Question regarding Support Arrangements : Questions have been raised whether the proposed special support arrangements under Section 50 and Section 52 are in harmony with Article 12 of the UN CRPD which relates to legal capacity of persons with disability.

Response of the Drafting Team: Article 12 (4) of the UN CRPD also states : "States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be

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proportional to the degree to which such measures affect the person's rights and interests. (emphasis mine) "

While drafting these sections we have also relied upon the Interpretive Declaration entered by Australia on their ratification of the UN CRPD. The Australian Interpretive Declaration is copied below

"Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;"

The proposed section 50, 52 and section 52.1 below meets the obligations under Section 12 to provide support systems to exercise legal capacity.

2. Suggestion: Concern has been expressed that Advance Directives may be abused by unscrupulous persons and hence they should be more strictly monitored preferably by the MHRC or its panels.

Response of the drafting team: We appreciate the concerns expressed about potential abuse of the Advance Directives against the best interests of persons with mental illness. The Advance Directive does have protections built into it - each Advance Directive to be valid has to be countersigned by a medical practitioner, Advance Directives can be challenged by a relative, care-giver or a mental health professional if they feel it is not in the best interests of the person with mental illness.

A provision can be made for all Advance Directives to be registered with the MHRC. However we are concerned that such a requirement will create problems for implementation and result in the Advance Directives not being used.

We believe the current provisions provide a sufficient balance between ease of use and protecting against abuse of the Advance Directives. However to address these concerns we have added a provision for MHRC to make additional rules and regulations. This provides protection while also gives the necessary flexibility. This point can be further discussed at the Regional Consultation meetings.

3. Suggestion : Advance directive is a very good idea, but ultimately we would need the psychiatrist, can there be an alternative to this (requiring a psychiatrist)?

Response of the Drafting Team : The Advance Directive does not require a psychiatrist or a mental health professional. It is designed in the same manner as a will is designed. Any medical practitioner can countersign the Advance Directive for its validity.

4. Suggestion : All Advance directives should be countersigned by a psychiatrist who is involved in the treatment of the person with mental illness.

Response of the Drafting Team : This suggestion is the opposite of suggestion 2 above. However we are not in agreement with this suggestion that all Advance Directives should be countersigned by the psychiatrist as we believe it will create implementation difficulties. In particular we are concerned that

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users may feel intimidated by having to get their treating psychiatrists' to consent to the Advance Directives.

5. Suggestion : The Advance Directive should be consistent with Indian Constitutional provisions especially the constitutional provision regarding protection of life.

Response of drafting team : we have included this suggestion (see subsection 6 (f) below).

Sec No	Existing provision	Amended provision
50	Application for judicial inquisition	<p>Advance Directives</p> <p>1. Every person, whether they have been diagnosed as having a mental illness or not, has a right to make a written statement referred to as an 'Advance Directive' specifying any or all of the following :</p> <p>a) the way the person wishes to be cared for and treated for a mental illness and/or;</p> <p>b) the way the person wishes not to be so cared for and treated for a mental illness and/or;</p> <p>c) the individual or individuals, in order of precedence, the person wants appointed as their nominated representative under Section 2.1 above and/or;</p> <p>d) the individual or individuals, in order of precedence, the person wants appointed as their Special Personal Representative under Section 50.1 below</p> <p>in the event of his or her having a mental illness in the future.</p> <p>2. An Advance Directive may be made by a person whether or not the person has had a mental illness in the past and whether or not the person has received treatment for a mental illness in the past.</p> <p>3. An Advance Directive must be made in writing and signed by the person making such an Advance Directive. The Advance Directive should also be signed by a medical</p>

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practitioner certifying that the person is competent and aware of what he is doing, when the Advance Directive is made.

4. An Advance Directive may at any time be amended or canceled by the person who made it. All amendments or cancellations should be signed by a medical practitioner certifying that the person is competent and aware of what he is doing, when the Advance Directive is amended or canceled.

5. Medical officer in charge of a mental health facility and/or the psychiatrist in charge of a person's treatment is duty bound to follow any existing Advance Directive, subject to sub-section (6) below, when proposing treatment of a person with mental illness.

6. If a mental health professional or a relative or carer of the person wishes to over-rule an applicable Advance Directive when treating a person with mental illness, the mental health professional or the relative or carer of the person, may apply to the Mental Health Review Commission for review and cancellation of the Advance Directive. Upon such application by the mental health professional, relative or carer, the Mental Health Review Commission may either uphold, over-rule, modify, or alter the Advance Directive taking into consideration whether :

a) the Advance Directive was made of the person's free will and free of all undue influences

b) the person intended the Advance Directive to apply to the present circumstances, which may be different from those anticipated

c) the person was sufficiently well informed to make the decision

d) the person was not competent when the Advanced Directive was made as to render the Advance Directive invalid

e) the Advance Directive is in the best interests of the person concerned

f) the content of the Advance Directive is

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		<p>contrary to other laws and Constitutional provisions.</p> <p>7. Notwithstanding any provision in this section, it will not apply to any emergency treatment given under section 20.1 above.</p> <p>8. The Mental Health Review Commission shall regularly and periodically review the use of Advance Directives. In its reviews, the Mental Health Review Commission will give specific consideration to the procedure for making an Advance Directive and whether the existing procedure protects the rights of persons with mental illness. The Mental Health Review Commission may from time to time, make additional regulations with regard to the procedure for Advance Directive to ensure that the rights of persons with mental illness are protected.</p>
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Sec No	Existing provision	Amended provision
51	Issues on which finding should be given by District Court after Inquisition	REPEALED

Section 52 : Special Support Arrangements

Explanation: Plenary Guardianship is no longer permitted under the UN CRPD. Article 12 of the CRPD reaffirms that all persons have legal capacity, and State Parties should provide access to support to persons in exercising their legal capacity.

Article 12 (4) also states : "States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. **Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.** (emphasis mine) "

The proposed section 52 and section 52.1 below meets the obligations under Section 12 to provide support systems to exercise legal capacity

Suggestions for changes to the 1st Draft:

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1. Suggestion : Terms "long term" and "extended period of time" below should be defined in the Act.

Response of drafting team: We are reluctant to define these terms in number of months or years, because this will create an artificial number which does not have any clinical basis. The provisions lay down the general principles and criteria and these can be interpreted by the Mental Health Review Commission in particular circumstances as is appropriate.

2. Suggestion: One respondent questioned the need for different support agents (nominated representative and special personal representative) and whether these two support agents could be integrated into one support agent.

Response of drafting team: The two support agents perform different roles and hence they are created as different agencies. Also the appointment procedure is different for a nominated representative and a special personal representative, with higher levels of judicial oversight in the appointment of a special personal representative.

However there is nothing in the Act to prevent the same person being the nominated representative and the special personal representative. In fact, sub-section 4 below recommends that the Mental Health Review Commission should appoint the nominated representative as the special personal representative in most cases, with some exceptions which are outlined in the sub-section.

3. Suggestion: The appointment of Special Personal Representative is done by the Mental Health Review Commission in the proposed amendments. Respondent suggested an alternative that this appointment could be done by the Commissioner for Disabilities.

Response of drafting team: We would like this discussed further in the regional and national consultations. It is important to note that the Commissioner for Disabilities is an Authority created under the Persons with Disabilities Act, which is likely to be repealed and replaced with a new Act.

Sec No	Existing provision	Amended provision
52	Provision for appointing guardian of mentally ill person and for manager of property	Special Support arrangements for persons with mental illness requiring very high support for exercise of legal capacity 1. The Mental Health Review Commission may pass an order for creation of special support arrangements in circumstances where a person with mental illness: a) has long term severe mental illness requiring care and treatment over an extended period of time and; b) needs very high support in exercising his or her legal capacity and making decisions

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regarding his or her personal matters and property and which frequently results in, or is likely to result in, a need for nearly **full** support in exercising his or her legal capacity and;

c) such high support needs as outlined in (b) above is likely to continue for an extended period of time;

2. Application for creating special arrangements :

a) A person with mental illness himself, or through his nominated representative may apply to the Mental Health Review Commission for creation of special support arrangements

b) Such application **shall** be accompanied by certificates from two mental health professionals, of **whom** atleast one **shall be** the psychiatrist involved in the care and treatment of the person with mental illness in the preceding 6 months and both mental health professionals have examined the person in the 30 days prior to issuing the certificate, and both mental health professionals certify that the person meets criteria outlined in sub-section (1) above;

3. Procedure to be followed by the Mental Health Review Commission

Upon receipt of application along with the certificates as stated in sub-section (2) above, the Mental Health Review Commission **shall** conduct a hearing to examine the person and also their nominated representative. Where appropriate, the Mental Health Review Commission may ask for evidence to be presented in addition to that presented by the parties. Such additional evidence may be either oral or in writing, and may be directed to determining whether the conditions for special support arrangements as outlined in sub-section (1) do exist, or any other matter relevant to the application. Such hearings shall normally not be open to the public. Persons other than those directly involved may be admitted with the permission of both the person with mental illness and the

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Commission.

4. Appointment of Special Personal Representative

If the Mental Health Review Commission is satisfied that all the conditions exist for making special support arrangements and that such arrangements are in the best interests of the person, the Commission may appoint the nominated representative as a **SPECIAL PERSONAL REPRESENTATIVE** to provide such level of support as outlined in sub-section (1)b above, to the person with mental illness. In exceptional circumstances, the Mental Health Review Commission may appoint a person other than the nominated representative as the Special Personal Representative, if the Commission feels that this is in the best interests of the person to do so. In all such exceptional circumstances, the Commission will set out in writing its reasons for doing so and these will be conveyed to the person and their nominated representative.

If a person with mental illness has executed an Advance Directive under section 50 of the Act outlining his or her choice regarding the appointment of a Special Personal Representative, then the Mental Health Review Commission shall appoint this person named in the Advance Directive as the Special Personal Representative under this section, unless the Advance Directive is subject to Section 50(6) above.

5. The appointment of a Special Personal Representative shall be time-limited, and may not exceed the anticipated period when a high level of support as outlined in sub-section (1) will be required. This does not preclude re-appointment of the Special Personal Representative on a subsequent application under this section if the conditions outlined in sub-section (1) above are present. The initial appointment of the Special Personal Representative shall normally not exceed six months, two subsequent appointments shall normally not exceed one year at a time, and

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appointments after that shall not exceed three years at a time.

6. An order of the Commission as outlined in sub-section (4) and (5) above does not imply or be taken to mean that the person with mental illness lacks capacity. All persons with mental illness enjoy legal capacity on an equal basis with others in all aspects of life and special support arrangements are intended to assist the person to exercise their legal capacity and are temporary in nature.

7. Decisions taken under this section must be in the best interests of the person for whom the special support arrangements are made. The assessment of best interests will include the following factors:

- (a) A person is not to be held to require **full** support unless all practicable steps have been taken to assist him or her to reach a capable decision with less than **full** support ;
- (b) the medical condition and prognosis of the person with mental illness;
- (c) the cultural, religious and social background of the person;
- (d) the wishes, feelings, beliefs and values of the person with mental illness, both at the time of the hearing and previously
- (e) the views of the **psychiatrist** having a duty of care of the person with mental illness
- (f) the views of the nominated representative of the person with mental illness
- (g) such other matters as the Mental Health Review Commission thinks appropriate.

8. A person with mental illness or their nominated representative has the right to appeal to the High Court, any decision of the Mental Health Review Commission under sub-section 4 above, appointing a Special Personal Representative or a particular individual as the Special Personal Representative.

9. Duties and Responsibilities of the Special Personal Representative

- a) The Special Personal Representative shall

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provide varying levels of support as required to the person with mental illness in making all decisions related to personal matters and matters related to the management of the property of the person with mental illness.

b) With respect to management of property of the person with mental illness, when the person requires **full** support in making a particular decision, the Special Personal Representative may make the decision on behalf of the person with mental illness, and such decisions will be as if the person with mental illness has himself or herself made the decision.

c) With respect to personal matters, when the person requires **full** support in making a particular decision, the Special Personal Representative may make the decision on behalf of the person with mental illness, and such decisions will be as if the person with mental illness has himself or herself made the decision, with the exception of the following decisions :

- i) consent to marriage and/or divorce;
- ii) consent to engage in sexual relationships and the results thereof;
- iii) matters related to voting in an election for public office;

d) The Mental Health Review Commission may set such restrictions on the duties and responsibilities of the Special Personal Representative as it deems appropriate and are in the best interests of the person with mental illness.

e) The Mental Health Review Commission may require Special Personal Representative to post such security, and to make such reports, to the Commission as it deems appropriate, at a frequency to be determined by the Commission and at the termination of their appointment as Special Personal Representative.

10. The Mental Health Review Commission

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	<p>may in writing revoke an appointment made under this section, and may appoint a different person under this section when appropriate to do so.</p> <p>11. Applications to the Mental Health Review Commission to revoke, alter, change, or modify an appointment under this section may be made by the person with mental illness, or by a relative of such person, or by the psychiatrist responsible for the care of such person.</p> <p>12. The Mental Health Review Commission may, from time to time, make regulations for the purpose of carrying out the provisions of this section.</p>
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Sec No	Existing provision	Amended provision
52.1	NEW PROVISION	<p>New forms of support arrangements</p> <p>The Mental Health Review Commission will also devise alternative forms of support arrangements and formulate regulations and guidelines for such new support arrangements, in active consultation with all stakeholders including persons with mental illness, family members of persons with mental illness, organizations of persons with mental illness, organizations of family members of persons with mental disorders, professional organizations, and representatives of governmental agencies, the judiciary and concerned members of the society at large.</p>

Sec No	Existing provision	Amended provision
53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75		REPEALED AS NO LONGER RELEVANT IN THE AMENDED ACT

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Sec No	Existing provision	Amended provision
76	Appeals An appeal shall lie to the High Court from every order made by a District Court under this Chapter	An appeal shall lie to the High Court from every order made by a Mental Health Review Commission under this Chapter.

Sec No	Existing provision	Amended provision
77	Power of District Court to make regulations	REPEALED THIS TASK IS ASSIGNED TO MENTAL HEALTH REVIEW COMMISSION

Sec No	Existing provision	Amended provision
Title of Chapter	Chapter VII - Liability To Meet Cost Of Maintenance Of Mentally Ill Persons Detained In Psychiatric Hospital Or Psychiatric Nursing Home	Chapter VII - Liability To Meet Cost Of Maintenance Of Persons with mental illness admitted to a mental health facility

Sec No	Existing provision	Amended provision
78	Cost of maintenance to be borne by Government in certain cases The cost of maintenance of a mentally ill person detained as an in-patient in any psychiatric hospital or psychiatric nursing home shall, unless otherwise provided for by any law for the time being in force, be borne by the Government of the State wherein the authority which passed the order in relation to the mentally ill person is subordinate, if - a. that authority which made the order has not taken an undertaking from any person to bear the cost of maintenance of such mentally ill person, and b. no provision for bearing the cost of maintenance of such a District Court under this Chapter.	Cost of treatment to be borne by Government in certain cases a) A person with mental illness is entitled to treatment at mental health facilities maintained by the Government subject to the following : i) If a person with mental illness is below the poverty line, he or she is entitled to free treatment at mental health facilities maintained by the Government and at other mental health facilities designated by the Government. ii) If there are no mental health facilities maintained by the Government in the district that the person with mental illness normally resides in, the person with mental illness is entitled to be admitted to any other mental health facility in the district and the costs of treatment at such facilities in that district will be borne by the Government. The Government shall frame rules regarding costs

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of treatment at such mental health facilities in this regard.

Section 79

Sec No	Existing provision	Amended provision
79	<p>Application to District Court for payment of cost of maintenance out of estate of mentally ill person or from a person legally bound to maintain him</p> <p>1. Where any mentally ill person detained in a psychiatric hospital or psychiatric nursing home has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government liable to pay the cost of maintenance of such person under Sec. 78 or any local authority liable to bear the cost of maintenance of such mentally ill person under any law for the time being in force, may make an application to the District Court within whose jurisdiction the estate of the mentally ill person is situate or the person legally bound to maintain the mentally ill person and having the means therefor resides, for an order authorising it to apply the estate of the mentally ill person to the cost of maintenance or, as the case may be, directing the person legally bound to maintain the mentally ill person and having the means therefor to bear the cost of maintenance of such mentally ill person.</p> <p>2. An order made by the District Court under sub-section (1) shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit in respect of the property or person mentioned therein.</p>	<p>Application to District Court for payment of cost of maintenance out of estate of person with mental illness or from a person legally bound to maintain him</p> <p>1. Where any person with mental illness admitted in a mental health facility has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government liable to pay the cost of maintenance of such person under Sec. 78 or any local authority liable to bear the cost of maintenance of such person under any law for the time being in force, may make an application to the District Court within whose jurisdiction the estate of the person with mental illness is situate or the person legally bound to maintain the person with mental illness and having the means therefor resides, for an order authorizing it to apply the estate of the person with mental illness to the cost of maintenance or, as the case may be, directing the person legally bound to maintain the person with mental illness and having the means therefor to bear the cost of maintenance of such person with mental illness.</p> <p>2. An order made by the District Court under sub-section (1) shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit in respect of the property or person mentioned therein.</p>

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Sec No	Existing provision	Amended provision
80	Persons legally bound to maintain mentally ill person not absolved from such liability Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a mentally ill person from maintaining such mentally ill person.	Persons legally bound to maintain person with mental illness not absolved from such liability. Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a person with mental illness from maintaining such a person.

Sec No	Existing provision	Amended provision
Title of Chapter	Chapter VIII : Protection of Human Rights of Mentally Ill Persons	Chapter VIII : Protection of Rights of Persons with Mental Illness

Section 81 : Rights of Persons with Mental Illness

Charter of Rights: It was suggested by a couple of respondents that a charter of rights should be included in the Act and the drafting team is in agreement with this suggestion. We have currently not drafted the charter of rights; we feel this should be first discussed in the Regional and National Consultation meetings, before a draft charter is prepared. Alternatively this task (of preparing a Charter of Rights) can be included in the Rules for the Central Mental Health Authority which can complete this task later.

Explanation Regarding Provisions for Research: A strict reading of International Covenant on Civil and Political Rights (ICCPR) Article 7 and CRPD Article 15, would mean no research should be permitted on people who cannot give informed consent and so sub-clause 3 (a) below is invalid. However the exception in sub-clause 3 (a) does exist in the current legislation and we have left it in here to stimulate discussion and debate on this topic to get some clarity on this issue. On one hand we have the ICCPR and CRPD which are categorically clear on this issue. and it has been argued that the ICCPR & CRPD are binding documents and so should be implemented in toto. On the other hand, it has been argued that, for example, people with certain mental health conditions such as dementia in its late stages, where *all* affected are unable, due to their condition, to give informed consent. In such circumstances, the consequence of not undertaking research with this group may be a reduced likelihood of ever finding treatments or interventions that could cure or prevent the condition.

The amendment proposed here maintains the current MHA's position of allowing research in such circumstances, but the amendment has added an extra layer of protection in asking the Mental Health Authority to authorize such research.

It is hope there is discussion and debate amongst all the stakeholders on this issue and some consensus can be arrived at.

For information, Netherlands (Holland) has entered a declaration on section 15 of the CRPD which is as follows :

"The Netherlands declares that it will interpret the term 'consent' in Article 15 in conformity with international instruments, such as the Council of Europe Convention on Human Rights and

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Biomedicine and the Additional Protocol concerning Biomedical Research, and with national legislation which is in line with these instruments. This means that, as far as biomedical research is concerned, the term 'consent' applies to two different situations:

- 1. consent given by a person who is able to consent, and**
- 2. in the case of persons who are not able to give their consent, permission given by their representative or an authority or body provided for by law.**

The Netherlands considers it important that persons who are unable to give their free and informed consent receive specific protection. In addition to the permission referred to under 2. above, other protective measures as included in the above-mentioned international instruments are considered to be part of this protection."

Suggestions for changes to the 1st Draft

1. It was suggested that Rights of Persons with Mental Illness should be a new Chapter.

Response of drafting Team : Chapter VIII of the Mental Health Act is the Rights Chapter. We would have liked to have this chapter at the beginning of the Act but since it is already present we have added to this existing chapter to include all the rights. (see Section 81 below)

2. Suggestion: One respondent suggested that services should be extend to 'wandering (homeless)' persons as a separate category

Response of drafting team : These rights are applicable to ALL persons with mental illness. We therefore see no reason to create separate categories.

3. Suggestion : Information should be provided in the regional languages understood by persons with mental illness.

Response of drafting team : this has been clarified in the relevant section below

4. One respondent suggested that there should be no restriction on personal communication (see sub-section 7 (e) below).

Response of the drafting team : we do not agree with this suggestion, and feel there should limited specific circumstances when personal communication is restricted. These restricted conditions have been outlined in sub-section 7 (e). As a matter of added protection, there is a provision for the person to appeal to the MHRC against such restriction of personal communication.

Sec No	Existing provision	Amended provision
81	Mentally ill persons to be treated without violation of human rights	Section 81 : Rights of Persons with mental illness receiving care and treatment 1. Cruel, Inhuman and Degrading Treatment No person with mental illness shall be subjected to any cruel inhuman or degrading

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treatment in a mental health facility. This includes but is not restricted to the following :

- a) there is provision of a safe and hygienic environment

- b) adequate sanitary conditions are maintained in the mental health facilities

- c) the living environment should include facilities for leisure, recreation, education and religious practices

- d) environment is structured so that persons' privacy is protected. **In particular, women's need for privacy should be respected.**

- e) persons are not forced to undertake work in a mental health facility they do not wish to do and when they do take up work in the mental health facility, this is appropriately remunerated

- f) adequate provision is made for preparing the person for living in the community

- g) **Adequate provision is made for food, space, and access to articles of personal hygiene. In particular women's personal hygiene needs should be adequately addressed by providing access to items that may be required during menstruation.**

- h) **Compulsory tonsuring (shaving of head hair) is a form of inhuman and degrading treatment and is prohibited.**

- i) **there should be provision for persons in mental health facilities to wear their own personal clothes and not be forced to wear uniforms provided by the facilities.**

- j) **Physical and sexual abuse is also a form of inhuman and degrading treatment and mental health facilities shall take all necessary steps to protect persons with mental illness from all actions which may constitute physical or sexual abuse.**

2. Non-discrimination

Persons with mental illness will be treated equal to persons with physical illness in the provision of health and health care services. This includes but is not restricted to :

- a) right to obtain medical insurance from public and private insurance providers for the treatment of their mental illness as is

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available to persons with physical illness for treatment of physical illness;

b) right to emergency facilities and emergency services of the same quantity and quality as those provided to persons with physical illness. Persons with mental health services are entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;

c) living conditions in health facilities in the same manner, extent and quality as provided to persons with physical illness;

d) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

3. Research

Free and informed consent should be obtained from all persons with mental illness for participation in all research especially that involving interviewing the person, or psychological, physical, chemical or medicinal interventions, subject to sub-section (a) below.

a) In case of research involving interviewing persons, or any psychological, physical, chemical or medicinal interventions to be conducted on persons who are unable to give free and informed consent but do not resist participation in such research, permission to conduct such research must be obtained from concerned State Mental Health Authority. The State Mental Health Authority may allow the research to proceed based on consent being obtained from the nominated representative of persons with mental illness, subject to the State Mental Health Authority having reviewed the proposed research is satisfied that :

i) the research cannot reasonably be performed on persons who are capable of giving free and informed consent

ii) the research is necessary to promote the health of the individual person and the

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- population represented
- iii) the purpose of the research is to obtain knowledge relevant to the particular health needs of persons with mental illness
 - iv) a full disclosure of the interests of persons and/or organizations conducting such research has been made and there is no conflict of interest involved
 - v) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and in particular, ethical approval has been obtained from a duly constituted ethics committee.

This sub-section does not restrict research based study of the case notes of such persons, so long as the anonymity of the persons are secured.

4. Right to Information

The primary responsibility for informing the person admitted to a mental health facility and his or her nominated representative, or the person treated for mental illness as an out-patient at a mental health facility, of his or her medical condition, legal status and rights lies with the medical officer in charge of the facility or psychiatrist in charge of the individual's care. This task may be delegated to an appropriate person. Each person must be informed :

- a) of the section of this Act under which he or she is admitted, if he or she is being admitted, and the criteria for admission under that section;
- b) of his or her rights to apply to the Mental Health Review Commission for a review of the admission;
- c) of the nature of the mental illness with which the person admitted or treated is affected, and the proposed treatment plan. **This includes information about treatment proposed and the side effects of such proposed treatments.**
- d) in a language and form that the person receiving the information can understand. **In**

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practice this means providing information in local and regional languages understood by persons with mental illness in the region where the mental health facility is situated

e) In the event that complete information cannot practicably be given to the person with mental illness at the time of the admission, it is the primary responsibility of the medical officer or psychiatrist in charge of the person's care to ensure that the full information is provided promptly when the individual is in a position to receive it. The nominated representative will nonetheless be given the information at the time of admission.

5. Right to Confidentiality

All persons providing care and treatment to a person with mental illness have a duty to keep confidential all information obtained in the context of such care and treatment with the following exceptions :

a) releasing information to the nominated representative or a special personal representative to enable them to fulfill his or her duties under the Act

b) releasing information to other mental health professionals and medical practitioners to enable to provide care and treatment to the person with mental illness

c) releasing information if it is necessary to protect any other person from harm or violence. Only such information than is necessary to protect against the harm identified may be released.

d) life threatening emergencies where such information is urgently needed to save lives

e) when ordered by the Mental Health Review Commission or High Court or Supreme Court to do so

f) in the interests of public safety and security

6. Access to Medical Records

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Persons with mental illness shall in general be given access to their medical records. The psychiatrist in charge of such records may withhold information if disclosure would result in :

- a) serious mental harm to the person with mental illness and/or
- b) likelihood of harm to other persons

When any information in the medical records is withheld from the person, the psychiatrist will inform the person with mental illness of his or her right to apply to the Mental Health Review Commission for an order to release such information.

7. Personal Contacts & Communication

a) A person with mental illness admitted to a mental health facility has the right to receive visitors and to receive and make a reasonable number of telephone calls at reasonable times of the day.

b) The medical officer in charge may prohibit or restrict visits or telephone calls with named individuals, when the visit or telephone call is likely to interfere with the treatment of the person to be visited or cause that person undue distress, or would cause danger to any person. A person whose visits have been restricted under this section may apply to the Mental Health Review Commission for an order determining their rights to visit the person with mental illness.

c) A person with mental illness admitted in a mental health facility may send and receive mail and email.

d) Where an individual (the recipient) informs the medical officer in charge of a mental health facility in writing that he or she does not wish to receive mail or email from a named person in the mental health facility, the medical officer in charge may restrict such communication by the person with

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mental illness to the recipient.

e) Where the medical officer in charge of a mental health facility is of the view that mail or email sent to an individual (recipient) by a person with mental illness admitted in the mental health facility is sent for an illegal purpose or would cause undue distress to the person to whom it is addressed, or would cause danger to any person, the medical officer in charge may restrict such communication and make a record of the same in the medical notes. Any person whose mail or email is so restricted may apply to the Mental Health Review Commission for a review of this decision.

f) Sub-section (b) and (e) does not apply to visits, telephone calls, mail or email from

i) any Court or Judicial Officer

ii) the Mental Health Review Commission or the Central or State Mental Health Authority

iii) any member of the Parliament or State Assembly

iv) Nominated representative, special personal representative, lawyer or legal representative of the person

The contents of the mail or email to and from individuals listed in (i) to (iv) above are confidential under all circumstances and should be delivered unopened to the person with mental illness by the staff of the mental health facility.

8. Complaints

a) Any person with mental illness admitted to any mental health facility has the right to complain regarding deficiencies in provision of care, services, or regarding violation of any of their rights mentioned in this Act, to

i) the medical officer in charge of the facility and if they are not satisfied with the response,

ii) to the State Mental Health Authority and if

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	<p>the are not satisfied with the response,</p> <p>iii) to the relevant Panel of the State Mental Health Review Commission</p> <p>b) The complaints provisions in sub-section (a) above, is without prejudice to the rights of the person to seek any judicial remedy for violation of their rights in a mental health facility either under this Act or any other relevant Act.</p>
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Sec No	Existing provision	Amended provision
82	Penalty for establishment or maintenance of psychiatric hospital or psychiatric nursing home in contravention of Chapter III	<p>Penalties for establishing or maintaining a mental health facility in contravention of Chapter III</p> <p>1. Whoever carries on a mental health facility without registration shall, on conviction, be punishable with imprisonment for a term which may extend to six months and/or for first offence, be punishable with a fine upto fifty thousand rupees, for second offence with fine which may extend to two lakh rupees and for subsequent offences with fine which may extend to five lakh rupees</p> <p>2. Whoever knowingly serves in a mental health facility which is not duly registered under this Act, shall be punishable with a fine which may extend to twenty five thousand rupees.</p> <p>3. Whoever fails to pay the fine, the Authority may prepare a certificate specifying the amount of fine due from such person or mental health facility and send it to the Collector of the District in which such person owns any property or resides or carries on his business or profession or where the mental health facility is located, and the said Collector on receipt of such certificate, shall proceed to recover from such persons or</p>

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		mental health facility the amount specified thereunder, as if it were an arrear of land revenue.
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Sec No	Existing provision	Amended provision
83	Penalty for improper reception of mentally ill person	REPEALED AS NO RECEPTION ORDER IN AMENDED ACT

Sec No	Existing provision	Amended provision
84	Penalty for contravention of sections 60 and 69	REPEALED AS SECTION 60 AND 69 REPEALED IN THE AMENDED ACT

Sec No	Existing provision	Amended provision
85	General Provision for punishment of other offences Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided in the Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees.	General Provision for punishment of other offences Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided in the Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or be punishable for the first offence with a fine which may extend to ten thousand rupees, for any subsequent offence with fine which may extend to fifty thousand rupees and for any subsequent offence with fine which may extend to five lakh rupees.

Sec No	Existing provision	Amended provision
88	Provisions as to bonds	REPEALED

Sec No	Existing provision	Amended provision
89	Report by medical officer	REPEALED

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Sec No	Existing provision	Amended provision
90 TO 100		Are miscellaneous sections which can be amended once the amendments to the main body of the Act are finalised.

DRAFT

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Some amendments to the Central Mental Health Authority Rules and State Mental Health Authority Rules are proposed below. Amendments to the State Mental Health Authority Rules have only been proposed upto Rule 14. Rules 15-21 deal with licensing of psychiatric hospitals and nursing homes, Rule 22 deals with norms for psychiatric hospitals and nursing homes, Rules 25-28 deal with the procedural aspects of admission to hospital. The amendment to these rules is dependent on the exact nature of the Amendments to the Act under the relevant sections for registration, admission to mental health facilities etc. Hence these Rules can only be amended once the Amendments to the Act are finalised.

Suggestions for changes to the 1st Draft :

1. Suggestion : Membership of the Authority should include 2 Users separate from organizations and 2 family Carers

Response of the drafting team : The user representatives are separate from family members. There is also separate representation for advocacy organizations.

2. It has been suggested that the retirement age for the members should be 70 years.

Response of the drafting team : The uniform retirement age for members in almost all regulatory bodies in India is 67 years. Ministry may wish to consider this suggestion.

3. It has been questioned by one respondent why the Secretary of the Authority has to be a Psychiatrist.

Response of drafting team : we have not made any changes to the existing provision which states that the Secretary should be a Psychiatrist. This may be discussed further during the consultations. If it is felt that someone else should be the Secretary of the Authority, such change can be incorporated in the amendments. The Secretary will have to be from amongst the members of the Authority (see below). One of the suggestion was that the secretary should be a lawyer, unfortunately there are no lawyers members either in the Central or State MHA.

THE CENTRAL MENTAL HEALTH AUTHORITY RULES 1990

G.S.R. 1004 (E) DATED 20TH DECEMBER 1990.1 - In exercise of the powers conferred by sub-section (1) of Sec. 94 of the Mental Health Act, 1987, (14 of 1987), read with Sec. 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely:

CHAPTER I

PRELIMINARY

1. SHORT TITLE AND COMMENCEMENT

1. These rules may be called the Central Mental Health Authority Rules, 1990. **2010.**
2. They shall come into force on the date of **amendment** of the Act.

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2. DEFINITIONS

- In these rules unless the context otherwise requires -
 - a. "Act" means the Mental Health Act, 1987 (14 of 1987);
 - b. "Authority" means the Central Mental Health Authority established under Sec. 3 of the Act;
 - c. "**Chairperson**" means the **Chairperson** nominated under rule 5;
 - d. "Member" means member of the Authority appointed under rule 3.
 - e. "Membership" means the membership of the Authority established under rule 3.
 - f. "Non-Official Member" means a member appointed under sub-rule (2) of rule 3;
 - g. "Official Member" means a member appointed under sub-rule (1) of rule 3;
 - h. "Secretary" means the Secretary to the Authority appointed under rule 13;
 - i. words and expressions used herein and not defined but defined in the Act shall respectively have the meaning assigned to them in the Act.

CHAPTER II

CENTRAL MENTAL HEALTH AUTHORITY

3. CONSTITUTION OF THE AUTHORITY

- The Authority shall consist of the following members, namely;
 - 0. Official Member -
 - a. Secretary or Additional Secretary, Ministry of Health and Family Welfare, Government of India.
 - b. Joint Secretary, Ministry of Health and Family Welfare dealing with Mental Health.
 - c. Additional Director-General of Health Services dealing with Mental Health.
 - d. Director, Central Institute of Psychiatry ,Ranchi.
 - e. Director, National Institute of Mental Health and Neuro Sciences, Bangalaoe.
 - f. Medical Superintendent, Hospital for Mental diseases, Shahdara, Delhi.
 - 1. Non-Official Members-
 - a) **1 psychiatrist**
 - b) **1 Psychiatric Social Worker**
 - c) **1 Clinical Psychologist**
 - d) **2 members representing persons with mental illness and/or organizations representing such persons**
 - e) **2 members representing families of persons with mental illness and/or organizations representing such families**
 - f) **2 members representing non-governmental organizations providing services to persons with**

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mental illness or non-governmental organizations doing advocacy work in the field of mental health.

4. DISQUALIFICATION

A person shall be disqualified for being appointed as a member or shall be removed from membership by the Central Government if he,-

has been convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude ; or

is an undischarged insolvent ;or

is of unsound mind and stands so declared by a competent court, or

c. has been removed or dismissed from the Government or a body corporate owned or controlled by the Government.

5. Chairperson -

0. The Chairperson of the Authority shall be the Secretary/ Additional Secretary Government of India or their nominee.

1. The Chairperson shall cease to hold office when he/ she ceases to be a member of the authority.

6. TERM OF OFFICE OF MEMBERS

0. Every official member shall hold office as such member so long as he holds the office by virtue of which he was appointed.

1. Every non-official member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.

2. A non-official member may at any time resign from membership of the Authority by forwarding his letter of resignation to the Chairman and such resignation shall take effect only from the date on which it is accepted.

3. Where a vacancy occurs by resignation of a non-official member under sub rule (3) or otherwise, the Central Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-clause (2) of rule 3 and the person so appointed, shall hold office for the remainder of the term of office of the member in whose place he was so appointed.

4. Where the term of office of any non-official member is about to expire the Central Government may appoint a successor at any time within three months before the expiry of the term of such member but the successor shall not assume office until the term of the member expires.

CHAPTER III

PROCEEDINGS OF THE AUTHORITY

7. MEETINGS OF THE AUTHORITY -

0. The authority shall ordinarily meet **once every 3 months** at such time and place as may be fixed by the **Chairperson**. Provided that the **Chairperson** -

i. may call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.

ii. Shall call a special meeting if he receives a requisition in writing signed by not less than four members and stating the purpose for which they desire the meeting to be called.

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1. The first meeting of the Authority to be held in any calendar year shall be the annual meeting for that year.

8. SUBJECTS FOR SPECIAL MEETING

Where a meeting referred to in the proviso to sub-rule (1) of rule 7 has been convened, only the subjects for the consideration of which the meeting was convened, shall be discussed.

9. SUBJECTS FOR THE ANNUAL MEETING

- At the Annual Meeting of the Authority, the following subjects shall be considered and disposed of namely;-

0. review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year.

1. Other business on the agenda; and

2. Any other business brought forward with the consent of the **Chairperson** or where he is absent, with the consent of officer presiding at the meeting.

10. PROCEDURE FOR HOLDING MEETINGS

0. Every notice calling for a meeting of the authority shall -

. specify the place, date and hour of the meeting:

a. be served upon every member of the Authority not less than twenty-one clear days in the case of annual meeting and fifteen clear days in the case of other meetings before the day appointed for the meeting.

1. The Secretary shall prepare and circulate to the members alongwith the notice of the meeting an agenda for such meeting showing the business to be transacted.

2. A member who wishes to move a resolution on any matter included in the agenda shall give notice thereof to the Secretary not less than seven days before the date fixed for the meeting.

3. A member who wishes to move any motion not included in the agenda shall give notice to the Secretary not less than fourteen days before the date fixed for the meeting.

11. PROCEEDINGS OF THE AUTHORITY

0. The **Chairperson** or in his absence any member authorised by him shall preside at the meetings of the Authority.

1. The quorum for the meeting of the Authority shall be four members.

2. If within half an hour from time appointed for holding a meeting of the Authority quorum is not present, the meeting shall be adjourned to the same day in the following week at the same time and place and the presiding officer of such meeting shall inform the members present and send notice to other members.

3. If at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute the quorum.

4. In the adjourned meeting if the Chairman is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.

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5. Each member including the Chairman shall have one vote. In the case of an equality of votes, the **Chairperson** or any member presiding over such meeting shall in addition, have a casting vote.

6. All decisions of the meeting of the Authority shall be taken by a majority of the members present and voting.

12. APPROVAL BY CIRCULATION

- Any business which may be necessary for the Authority to transact except as such may be placed before the annual meeting, may be circulated and approved by a majority of members, shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

13. SECRETARY TO THE AUTHORITY

0. The **Chairperson** shall cause to be appointed a Secretary to the Authority from amongst persons possessing post-graduate degree in psychiatry and having three years' experience in the field of psychiatry.

1. The Secretary shall be a full-time or part-time servant of the Authority and shall function as the Administrative Officer of the Authority.

2. The Secretary shall be responsible for the control and management of office accounts and correspondence.

3. The Secretary shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for the efficient functioning of the Authority.

4. The Secretary shall exercise such other powers and discharge such other functions as may be authorised in writing by the Chairman for the efficient functioning of the Authority.

5. The Secretary will hold office for a period of 5 years from the date of his/ her appointment.

14. FORWARDING OF COPIES OF THE PROCEEDINGS OF THE AUTHORITY TO THE CENTRAL GOVERNMENT

The Secretary shall forward copies of the proceedings of the Authority to the Central Government **every 6 months. The Secretary shall also publish in the public domain a report of the Activities of the Authority annually.**

STATE MENTAL HEALTH RULES, 1990

1. SHORT TITLE AND COMMENCEMENT -

1. These rules may be called the State Mental Health Rules, **1990 2010**.
2. They shall come into force in a State on the date of **amendment** of the Act in the State.

2. DEFINITIONS - In these rules unless the context otherwise requires -

- a. "Act" means the Mental Health Act, 1987 (14 of 1987);
- b. "applicant" means the person who makes an application to the licensing authority for grant of a licence;
- c. "authority" means the State Mental Health Authority constituted under Sec. 4 of the Act;

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- d. **"Chairperson"** means the Chairman nominated under rule 5;
- e. "Form" means Form annexed to these rules;
- f. "licence" means licence granted under Sec. 8 of the Act;
- g. "member" means a member of the Authority appointed under rule 3;
- h. "membership" means membership of the Authority established under Sec. 4 of the Act;
- i. "non-official member" means a member appointed under sub-rule (2) of rule 3;
- j. "official member" means a member appointed under sub-rule (1) of rule 3;
- k. "secretary" means Secretary to the Authority appointed under rule 13;
- l. words and expressions used herein and not defined but defined in the Act shall respectively have the meanings assigned to them in the Act.

These definitions will need to be amended once the amendment to the Act are in place. For example, licence will need to be replaced with registration etc

CHAPTER II :STATE MENTAL HEALTH AUTHORITY

3. CONSTITUTION OF THE AUTHORITY -

The Authority shall consist of the following members, namely;

1. Official Members:

- a) Secretary, Department of Health;
- b) Jt Secretary, Department of Health dealing with Mental Health;
- c) Director of Health Services;
- d) Medical Superintendent, Government Mental Hospital or Head of the Department of Psychiatry, Government Medical College and Hospital.

2. Non-official Members:

- a) 1 psychiatrist**
- b) 1 Psychiatric Social Worker**
- c) 1 Clinical Psychologist**
- d) 2 members representing persons with mental illness and/or organizations representing such persons**
- e) 2 members representing families of persons with mental illness and/or organizations representing such families**
- f) 2 members representing non-governmental organizations providing services to persons with mental illness or non-governmental organizations doing advocacy work in the field of mental health.**

4. DISQUALIFICATION -

A person shall be disqualified for being appointed as a member or shall be removed from membership

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by the State Government, if he

a) has been convicted and sentenced to imprisonment for an offence which in the opinion of the State Government involves moral turpitude; or

b) is an undischarged insolvent; or

~~e) is of unsound mind and stands so declared by a competent court;~~ (delete) or

d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government.

5. CHAIRPERSON :

0. The Chairperson of the Authority shall be the Secretary/ Additional Secretary of the State Government or their nominee.

1. The Chairperson shall cease to hold office when he/ she ceases to be a member of the authority.

6. TERM OF OFFICE OF MEMBERS -

1. Every official member shall hold office as such member so long as he holds the office by virtue of which he was so appointed.
2. Every non-official member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.
3. A non-official member may at any time resign from membership of the Authority by forwarding his letter of resignation to the Chairman and such resignation shall take effect only from the date on which it is accepted.
4. Where a vacancy occurs by resignation of a non-official member under sub-section (3) or otherwise, the State Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-rule (2) of rule 3 and the person so appointed, shall hold office for the remainder of the term of office of the member in whose place he was so appointed.
5. Where the term of office of any non-official member is about to expire, the State Government may appoint a successor at any time within three months before the expiry of the term of such member but the successor shall not assume duty until the term of the member expires.

CHAPTER III : PROCEEDINGS OF THE AUTHORITY

7. MEETINGS OF THE AUTHORITY -

1. The authority shall ordinarily meet **once every 3 months** at such time and place as may be fixed by the **Chairperson**. Provided that the **Chairperson** -
 - i. may call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.
 - ii. Shall call a special meeting if he receives a requisition in writing signed by not less than four members and stating the purpose for which they desire the meeting to be called.

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2. The first meeting of the Authority to be held in any calendar year shall be the annual meeting for that year.

8. SUBJECTS FOR SPECIAL MEETING

Where a meeting referred to in the proviso to sub-rule (1) of rule 7 has been convened, only the subjects for the consideration of which the meeting was convened, shall be discussed.

9. SUBJECTS FOR THE ANNUAL MEETING

At the Annual Meeting of the Authority, the following subjects shall be considered and disposed of namely;-

- a. review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year.
- b. Any other business brought forward with the consent of the **Chairperson** or where he is absent, with the consent of officer presiding at the meeting.

10. PROCEDURE FOR HOLDING MEETINGS

1. Every notice calling for a meeting of the authority shall -
 - a) specify the place, date and hour of the meeting:
 - b) be served upon every member of the Authority not less than twenty-one clear days in the case of annual meeting and fifteen clear days in the case of other meetings before the day appointed for the meeting.
2. The Secretary shall prepare and circulate to the members along with the notice of the meeting an agenda for such meeting showing the business to be transacted.
3. A member who wishes to move a resolution on any matter included in the agenda shall give notice thereof to the Secretary not less than seven days before the date fixed for the meeting.
4. A member who wishes to move any motion not included in the agenda shall give notice to the Secretary not less than fourteen days before the date fixed for the meeting.

11. PROCEEDINGS OF THE AUTHORITY

The **Chairperson** or in his absence any member authorised by him shall preside at the meetings of the Authority.

1. The quorum for the meeting of the Authority shall be four members.
2. If within half an hour from time appointed for holding a meeting of the Authority quorum is not present, the meeting shall be adjourned to the same day in the following week at the same time and place and the presiding officer of such meeting shall inform the members present and send notice to other members.
3. If at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute the quorum.
4. In the adjourned meeting if the Chairman is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.
5. Each member including the Chairman shall have one vote. In the case of an equality of votes, the **Chairperson** or any member presiding over such meeting shall in addition, have a casting vote.
6. All decisions of the meeting of the Authority shall be taken by a majority of the members present and voting.

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12. APPROVAL BY CIRCULATION

- Any business which may be necessary for the Authority to transact except as such may be placed before the annual meeting, may be circulated and approved by a majority of members, shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

13. SECRETARY TO THE AUTHORITY

0. The **Chairperson** shall cause to be appointed a Secretary to the Authority from amongst persons possessing post-graduate degree in psychiatry and having three years' experience in the field of psychiatry.

1. The Secretary shall be a full-time or part-time servant of the Authority and shall function as the Administrative Officer of the Authority.

2. The Secretary shall be responsible for the control and management of office accounts and correspondence.

3. The Secretary shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for the efficient functioning of the Authority.

4. The Secretary shall exercise such other powers and discharge such other functions as may be authorised in writing by the Chairman for the efficient functioning of the Authority.

7. The Secretary will hold office for a period of 5 years from the date of his/ her appointment.

14. FORWARDING OF COPIES OF THE PROCEEDINGS OF THE AUTHORITY TO THE STATE GOVERNMENT

The Secretary shall forward copies of the proceedings of the Authority to the **State Government every 6 months. The Secretary shall also publish in the public domain a report of the Activities of the Authority annually.**

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The Ministry of Health & Family Welfare is in the process of carrying out the amendments to the Mental Health Act, 1987. A copy of the proposed amendments is available on the Ministry's website for wider consultations and for eliciting views of all stakeholders.

Responses/ views/ comments may be mailed to
amendmentstomha1987@gmail.com

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