

ROLE OF MAGISTRATE/CJM UNDER MENTAL HEALTH CARE ACT, 2017

**Mohd Yusuf
Chief Judicial Magistrate
Udham Singh Nagar**

OBJECT OF MENTAL HEALTH CARE ACT, 2017

- ◆ to provide for mental healthcare and services for persons with mental illness, and
- ◆ to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services, and
- ◆ for matters connected therewith or incidental thereto.
- ◆ India has signed and ratified the Convention on Rights of Persons with Disabilities on the 1st day of October, 2007;
- ◆ it is necessary to align and harmonise the existing laws with the said Convention.

ENFORCEMENT

It came into force on 29th May, 2018,

vide Notification No. S.O. 2173(E), dated 29th May 2018.

PARADIGM SHIFT

Indian Lunacy Act, 1912- Custodial care of person with mental illness.

Mental Health Act, 1987- Treatment of person with mental illness .

Mental Health Care Act, 2017- Protect human rights during mental illness .

MAGISTRATE

SECTION 2(L)

(i) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974), a **Metropolitan Magistrate**;

(ii) in relation to any other area, the **Chief Judicial Magistrate, Sub-divisional Judicial Magistrate or such other Judicial Magistrate of the first class** as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act .

STATE MENTAL HEALTH AUTHORITY

SECTION 45

Every State Government shall establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority (SMHA).

State Mental Health Authority, Uttarakhand came into existence by Government order No. 156(1)/XXVIII-4-2019-16(writ)/2018 dated 12-03-2019.

Director Medical Care, Department of Health and Family welfare was nominated as CEO under Section 52(1) of MHCA.

COMPOSITION OF STATE MENTAL HEALTH AUTHORITY SECTION 46

(1) The State Authority shall consist of the following chairperson and members:—

(a) Secretary or Principal Secretary in the Department of Health of State Government— chairperson ex officio;

(b) Joint Secretary in the Department of Health of the State Government, in charge of mental health—member ex officio;

(c) Director of Health Services or Medical Education—member ex officio;

(d) Joint Secretary in the Department of Social Welfare of the State Government—member ex officio;

(e) such other ex officio representatives from the relevant State Government Ministries or Departments; and

12 other experts/doctors/social workers/members nominated by the State Government

MENTAL HEALTH REVIEW BOARDS

SECTION 73

The State Authority shall, by notification, constitute Boards to be called the Mental Health Review Boards, for the purposes of this Act.

Seven mental health review boards have been formed by notification 778(1)/XXVIII-3-2021-28/2019 dated 6.07.2021.

1. MHRB Haridwar- catering to district Haridwar.
2. MHRB Dehradun- catering to district Dehradun.
3. MHRB Rudrapur- catering to district Udham Singh Nagar.
4. MHRB New Tehri - catering to district Tehri Garhwal and Uttarkashi
5. MHRB Srinagar- catering to districts Pauri Garhwal, Rudraprayag and Chamoli.
6. MHRB Nainital- catering to districts Nainital and Almora.
7. MHRB Pithoragarh- catering to districts Bageshwar, Pithoragarh and Champawat.

COMPOSITION OF BOARD

SECTION 74

Each Board shall consist of—

- (a) **District Judge/Retired District Judge- chairperson**
- (b) Representative of the District Collector/District Magistrate/Deputy Commissioner
- (c) Two members- one psychiatrist and other medical practitioner.
- (d) Two members who shall be persons with mental illness or care-givers or persons representing NGO.

RESPONSIBILITIES
OF
OTHER AGENCIES

CHAPTER XIII

Duties of Police Officers in respect of persons with mental illness Section 100

Officer In charge of a Police Station can take person into protection, if there is risk of harm to self or others by reason of mental illness.

Within 24 hours such person should be taken to nearest public healthcare establishment and should never be kept in lock-up or prison.

If on examination by mental health professional there is no need of admission then police shall take the person back to home or to establishment for homeless persons.

If admission is needed then admitted as supported admission.

Missing Person FIR in case of
homeless person with mental illness
Section 100(7)

In case of a person with mental illness who is homeless or found wandering in the community,

a First Information Report of a missing person shall be lodged at the concerned police station and

the station house officer shall have a duty to trace the family of such person and

inform the family about the whereabouts of the person.

Report to Magistrate
of person with mental illness in private residence
who is ill-treated or neglected
Section 101

If Police Officer believes that any patient with mental illness is being improperly in private residence , he may produce such person before Magistrate .

Magistrate then send the person to Mental Health Establishment for 10 days for assessment.

Following the report of assessment the Patient will be dealt accordingly .

Conveying or admitting person with mental illness to mental health establishment by Magistrate
Section 102

(1) When any person with mental illness (PMI)

appears or is brought before a Magistrate,

the Magistrate may, order in writing—

(a) that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary or

(b) to authorise the admission of the PMI in a mental health establishment for such period not exceeding 10 days to carry out an assessment.

Assessment Report to the Magistrate
Section 102(2)

On completion of the period of assessment referred to in sub-section (1),
the medical officer or mental health professional in charge of the mental
health establishment
shall submit a report to the Magistrate and
the person shall be dealt with in accordance with the provisions of this Act.

Persons in Custodial Institutions

Section 104

If it appears to the person in-charge of a State run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.

Question of mental illness in judicial process

Section 105

- If during any judicial process before any competent court,
- proof of mental illness is produced and
- is challenged by the other party,
- the court shall refer the same for further scrutiny
- to the concerned Board and
- the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts,
- submit its opinion to the court.

OFFENCES AND PENALTIES

CHAPTER XV

**Penalties for establishing or maintaining
mental health establishment in contravention of
provisions of this Act**
SECTION 107

Carrying Mental Health Establishment without Registration

For first offence – Rs. 5,000/- to 50,000/-

For second offence – Rs. 50,000/- to 2,00,000/-

For every subsequent contravention- Rs. 2,00,000/- to 5,00,000/-

**knowingly serves as a mental health professional in an unregistered mental
health establishment**

Up to Rs. 25,000/-

The penalty under this section shall be adjudicated by the State Authority.

Punishment for contravention of provisions of the Act or rules or regulations made thereunder

SECTION 108

Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder

For first offence – imprisonment up to 6 months or fine up to Rs. 10,000/- or both

For any subsequent contravention – imprisonment up to 2 years or fine Rs. 50,000/- to 5,00,000/- Rs. 10,000/- or both

Presumption of severe stress
in case of attempt to commit suicide
SECTION 115

Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860)

any person who attempts to commit suicide

shall be presumed, unless proved otherwise,

to have severe stress and

shall not be tried and punished under the said Code.

Bar of jurisdiction
SECTION 116

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Board is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

CASE LAWS STUDY

Ravinder Vs. Govt. of NCT of Delhi & Ors
2018 SCC OnLine Del 8578

The MHA is not a penal statute intended to punish a person for disorderly behaviour in a Court. It is not a penal custodial law. It is a law for the care and treatment of mentally ill persons. The MHA is not a statute for exercising power over and control people. It is essentially a statute for the care and treatment of mentally ill persons genuinely in need thereof.

The Delhi Judicial Academy (DJA) shall organise at least four exclusive orientation courses on the MHA, and its successor legislation i.e. the Mental Healthcare Act 2017 every year, for the judicial officers, the mental health professionals in the NCR of Delhi and the Delhi Police. The DJA should associate the NALSA, DSLSA, the CMHA and the SMHA in this exercise.

M.A. Nayeem Farooqui Vs State of A.P.
1997 SCC OnLine AP 857

46. The learned IV Metropolitan Magistrate, therefore, egregiously erred in sending the petitioner to the Government Hospital for Mental Care by his order dated 17-1-1997 with a direction to reproduce him after examination and treatment, which he could have done only if moved under the Act and in accordance with the provisions thereof. He seems to have made that order in a casual and mechanical manner without application of mind and without apprising himself of the law in that regard. I would only caution that Magistrates have to be very observant and vigilant in making orders under Section 167 of the Cr. P.C. and other similar provisions when discretion has to be exercised by them and personal liberties are involved.

Dr. Vijay Verma vs. Union of India & others
2018 SCC OnLine Utt 519

Every police officer in the State of Uttarakhand is directed to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself. Every person taken into protection is ordered to be taken to the nearest public health establishment forthwith.

It shall also be the duty of every police officer to report to the Magistrate if any person, suffering from mental illness, is being ill- treated or neglected.

Suresh Chandra Joshi vs. State of Uttarakhand
WPMS/2151/2019 on 5 March, 2022

4. It is unfortunate that the Mental Health Review Boards contemplated under Section 73 of the aforesaid Act have not become functional, even after five years of enactment of Mental Healthcare Act. Persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society, therefore, in order to protect and promote their rights, constitution of Mental Health Review Boards has been envisaged, which will discharge such functions as are enumerated in Section 82 of the Act.

6. (i) The Competent Authority shall ensure that members of Mental Health Review Boards are appointed, as early as possible, but not later than six weeks from the date of production of certified copy of this order.

Thank You!