

Standing Committee Report Summary

Mental Health Care Bill, 2013

- The Standing Committee on Health and Family Welfare (Chair: Mr. Brajesh Pathak) submitted its report on the Mental Health Care Bill, 2013 on December 9, 2013.
- The Mental Health Care Bill, 2013 was introduced in the Rajya Sabha on August 19, 2013. The Bill repeals the Mental Health Act, 1987. The Act regulates the treatment, care and management of property of mentally ill persons.

Key observations and recommendations of the Standing Committee include:

- **Capacity:** The Bill provides that a person with mental illness will be deemed to have the capacity to make decisions regarding his mental health care, if he is able to (i) understand, (ii) retain, (iii) use information and is able to (iv) communicate his decision. The Committee noted that if the mentally ill person is unable to meet any of the above criteria he will not be deemed to have capacity to make decisions. This creates a presumption against the capacity of the mentally ill person. Therefore, the Committee recommended that the presumption should be in their favour. Hence, every person should be deemed to have capacity to make decision unless it is proved that such person is (i) unable to understand and (ii) unable to appreciate the foreseeable consequences of his decision.
- **Advance Directive:** The Bill provides that every person has the right to make an advance directive specifying the manner in which they wish to be treated or not to be treated for a mental illness. However, if a mental health professional, relative or a care-giver does not wish to follow the directive he may apply to the Mental Health Review Board for modification. The Standing Committee observed that the application requirement is optional. Therefore, the Committee recommended that application to the Board must be made mandatory in order to prevent exploitation of mentally ill persons.
- **Property Management:** The Committee noted that the Bill does not address issues related to

management of property of mentally ill persons. The Committee noted the Act cannot be repealed until the question of property management is settled. Therefore, it recommended that the central government may take appropriate measures by making necessary transitory schemes.

- **Decriminalising Suicide:** The Bill provides that unless proven otherwise, any person attempting to commit suicide will be presumed to be suffering from a mental illness at that time and will not be punished under the Indian Penal Code. The Committee noted that persons may attempt suicide due to a number of reasons which may not be related to their mental health. Therefore, this provision will subject every person who has attempted suicide to mental health treatment. The Committee recommended that the person should be presumed to be under severe stress instead of suffering from a mental illness.
- **Funds:** The Committee noted that as public health is a state subject, states will have to incur expenditure to implement the provisions of the Bill. However, the financial memorandum of the Bill does not provide for the necessary allocation. Therefore, the Committee recommended that as states are under financial constraint, the central government must ensure funds to states for the implementation of the Bill.
- **Use of Seclusion:** The Bill provides that in order to prevent immediate harm the psychiatrist may authorise seclusion of a mentally ill person. The Committee noted that there is no evidence establishing the effectiveness of using seclusion during treatment. Therefore, it recommended that the use of seclusion should be prohibited.
- **Insurance:** The Bill provides that the Insurance Regulatory Development Authority shall endeavour to ensure that all insurers provide insurance for the treatment of mentally illness on the same basis as available for other physical illnesses. The Committee recommended that this obligation must be made mandatory on the regulator.

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