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# A COMPARATIVE ANALYSIS OF MENTAL HEALTH LAWS IN INDIA AND AUSTRALIA

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## ABSTRACT

This paper undertakes a comprehensive examination of the legal frameworks governing mental health in India and Australia, shedding light on the distinct approaches these two nations employ to address the complex challenges associated with mental well-being. Mental health issues have gained significant attention globally, prompting nations to reassess and refine their legislative measures to ensure the protection, treatment, and rights of individuals grappling with mental health disorders.

The study delves into the historical evolution of mental health legislation in both India and Australia, providing insights into the cultural, social, and political factors that have shaped these legal frameworks. It scrutinizes the key principles, objectives, and scope of mental health laws in each country, emphasizing the varying emphasis on preventive measures, community involvement, and the protection of individual autonomy.

The study also investigates the legal provisions addressing the rights and privileges of individuals with mental illnesses, including issues related to involuntary hospitalization, consent, and confidentiality.

A comparative lens is applied to discern the divergences and convergences between the Indian and Australian mental health legislations, identifying best practices and potential areas for improvement. The comparative analysis aims to provide policymakers, mental health professionals, and researchers with valuable insights into the strengths and weaknesses of the existing legal frameworks in India and Australia, fostering a cross-cultural dialogue that may contribute to the global discourse on mental health legislation and advocacy.

## **Introduction**

Mental health, a vital aspect of overall well-being, has garnered increasing attention globally as societies strive to understand, address, and support individuals facing mental health challenges. The legal frameworks surrounding mental health play a pivotal role in shaping how societies approach the rights, treatment, and care of those affected.

This paper embarks on a comprehensive exploration, undertaking a comparative analysis of the mental health laws in two diverse jurisdictions—India and Australia. As nations with distinct cultural, historical, and legal landscapes, India and Australia provide intriguing case studies for understanding how legal systems grapple with the complexities of mental health. Through this comparative lens, we aim to shed light on the strengths, weaknesses, and evolving nature of mental health legislation in both countries.

This analysis encompasses a multifaceted examination, considering factors such as the legal definitions of mental illness, the procedures for involuntary commitment, the rights of individuals with mental illnesses, and the role of community and family in mental health care. By delving into the nuances of mental health laws in these two nations, we aspire to contribute to the ongoing discourse on global mental health policy and practice. This article aims to provide a comparative analysis of mental health laws in India and Australia, exploring the key similarities and differences in their respective legal frameworks.

In India, the primary legislation addressing mental health is the Mental Healthcare Act, 2017. This landmark legislation replaced the outdated Mental Health Act of 1987, emphasizing the rights of individuals with mental illnesses. The Act focuses on destigmatizing mental health issues and promoting a rights-based approach. It includes provisions for the right to access mental healthcare, the right to confidentiality, and the right to community living.

Australia's approach to mental health legislation is decentralized, with each state and territory having its own set of laws. However, a common thread among them is the commitment to promoting the rights and well-being of individuals with mental health issues. The Mental Health Act 2014 in Victoria and the Mental Health Act 2007 in New South Wales are two examples of state-specific legislation that reflect this commitment.

## Mental Health Laws in India

“Mental health conditions” is a broad term to cover mental disorders, psychosocial disabilities and other mental states associated with significant distress, impairment in functioning, or risk of self-harm. When distress or impairment reaches a clinically significant level, leading to a disturbance in cognition, emotional regulation or behaviour, it is considered a mental disorder.<sup>1</sup>

Mental health is an integral aspect of overall well-being, and recognizing its significance, countries around the world have been working towards establishing comprehensive legal frameworks to address mental health issues. In India, where a significant portion of the population grapples with various mental health challenges, the need for robust mental health laws has gained prominence in recent years. This article provides a comprehensive overview of the mental health laws in India, highlighting key legislation, provisions, and recent developments.

### The Mental Healthcare Act, 2017:

The cornerstone of mental health legislation in India is the Mental Healthcare Act, 2017. This landmark legislation replaced the outdated Mental Health Act of 1987, reflecting a more progressive and rights-based approach towards mental health.

### The key features of the Mental Healthcare Act, 2017 include:

1. Decriminalization: The Act decriminalizes suicide, acknowledging that individuals attempting suicide need medical and psychological support rather than legal punishment.
2. Rights of Persons with Mental Illness (PMI): The Act recognizes and upholds the rights of individuals with mental illness, including the right to access mental healthcare, confidentiality, and protection from inhuman or degrading treatment.
3. Advance Directives: It introduces the concept of advance directives, allowing

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<sup>1</sup> WHO, “Mental Disorders”, 8 June 2022, available at: [www.who.int/news-room/fact-sheets/detail/mental-disorders](http://www.who.int/news-room/fact-sheets/detail/mental-disorders). Note that, across the sectors, the terms “mental illness” and “mental disorder” are used interchangeably. This paper will use the terminology “mental disorders”, as outlined by the WHO and the American Psychiatric Association, unless referring to the specific language of a legal instrument where, for example, the term “mental illness” is used.

individuals to specify how they wish to be treated during a mental health crisis. This empowers individuals to have a say in their treatment decisions.

4. **Mental Health Review Boards:** The Act establishes Mental Health Review Boards to safeguard the rights of individuals with mental illness, ensuring proper implementation of the law.

### **The National Mental Health Policy, 2014:**

In addition to legislative measures, India also adopted the National Mental Health Policy in 2014. The policy aims to promote mental health, prevent mental illnesses, and ensure the availability of mental healthcare services across the country.

### **Key components of the policy include:**

1. **Promotion of Mental Health:** The policy emphasizes the need for mental health promotion through awareness campaigns, education, and destigmatization efforts.
2. **Integration of Mental Health Services:** It advocates for the integration of mental health services into the existing healthcare system, ensuring that mental health is treated on par with physical health.
3. **Human Resource Development:** The policy addresses the shortage of mental health professionals by focusing on the training and development of a skilled workforce in the mental health sector.

While India has made significant strides in mental health legislation, challenges persist. Stigma and discrimination surrounding mental health issues continue to be barriers to effective implementation. Additionally, there is a need for increased awareness and accessibility of mental health services, especially in rural areas.

However, opportunities for improvement exist. The focus on community-based mental healthcare, destigmatization campaigns, and the integration of mental health into the broader healthcare system are positive steps. Ongoing efforts to enhance mental health infrastructure and address the shortage of mental health professionals are crucial for the effective implementation of existing laws.

India has taken important steps in recognizing and addressing mental health issues through progressive legislation such as the Mental Healthcare Act, 2017, and the National Mental Health Policy, 2014. While challenges persist, the commitment to promoting mental health, destigmatizing mental illnesses, and ensuring the rights of individuals with mental health conditions reflects a positive trajectory. Continued efforts towards awareness, education, and infrastructure development will be vital in creating a society that prioritizes and supports mental well-being.

The impact of mental health conditions reaches many sectors of society. The impacts include high unemployment rates, homelessness, poor educational and health outcomes, and poverty; and these issues are directly linked to the Sustainable Development Goals adopted in 2015.<sup>2</sup> Positive mental health for individuals protects dignity and is linked to good development outcomes, including: improved productivity, health, academic achievement, relationships, social networks, quality of life and coping with adversity.<sup>3</sup>

### **Mental Health Laws in Australia**

Mental health is an integral aspect of overall well-being, and recognizing the importance of mental health has led to the development of comprehensive legal frameworks worldwide. In Australia, mental health laws play a crucial role in safeguarding the rights and well-being of individuals facing mental health challenges. This article delves into the mental health laws in Australia, exploring their evolution, key components, and their impact on individuals and the broader community.

Australia's approach to mental health laws has evolved over the years, reflecting a commitment to a more compassionate and rights-focused framework. Historically, individuals with mental health issues were often stigmatized and subjected to involuntary treatments. However, changes in societal attitudes and an increased understanding of mental health have led to significant legal reforms.

One landmark moment was the introduction of the Mental Health Act 1986, a pivotal legislation that aimed to balance the need for treatment with the protection of individual rights.

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<sup>2</sup> UN General Assembly, *Transforming our World: The 2030 Agenda for Sustainable Development*, General Assembly Resolution 0/1, UN Doc. A/RES/0/1, 21 October 2015.

<sup>3</sup> Ibid

Subsequent amendments and revisions have continued to shape mental health laws in Australia, emphasizing principles of least restrictive practices and patient autonomy.

**Key Components of Mental Health Act 1986:**

1. **Involuntary Treatment:** Mental health laws outline the circumstances under which involuntary treatment can be administered. Typically, this involves situations where an individual poses a serious risk to themselves or others due to their mental health condition.
2. **Rights and Advocacy:** Central to mental health laws in Australia is the protection of individual rights. This includes the right to dignity, privacy, and the right to participate in decisions regarding one's treatment. Advocacy services play a crucial role in ensuring these rights are upheld, providing support to individuals navigating the mental health system.
3. **Community Treatment Orders (CTOs):** Some jurisdictions in Australia have implemented Community Treatment Orders, allowing individuals to receive treatment while living in the community. CTOs are designed to strike a balance between ensuring treatment compliance and promoting community integration.
4. **Crisis Intervention and Detention:** Mental health laws provide mechanisms for crisis intervention, enabling authorities to detain individuals for a limited period when urgent treatment is required. This is often referred to as involuntary or emergency detention.
5. **Capacity and Consent:** Mental health laws also address issues of capacity and consent, recognizing the importance of involving individuals in decisions about their treatment whenever possible. Where capacity is in question, legal processes are in place to determine the most appropriate course of action.
6. **Impact on Individuals and the Community:** The impact of mental health laws extends beyond individuals to influence the broader community. By prioritizing human rights and dignity, these laws contribute to reducing stigma associated with mental health issues. Moreover, they promote early intervention and community-based care, aligning with a recovery-oriented approach to mental health.

However, challenges persist, including ensuring that mental health laws are consistently applied and that individuals receive the necessary support and resources for rehabilitation and recovery. Continued efforts are essential to address gaps and enhance the effectiveness of mental health legislation in Australia.

Mental health laws in Australia represent a crucial aspect of the nation's commitment to promoting the well-being and rights of individuals facing mental health challenges. As society's understanding of mental health continues to evolve, so too will the legal frameworks designed to support those in need. By fostering a balance between treatment and individual rights, Australia's mental health laws strive to create a system that is compassionate, responsive, and conducive to the recovery of individuals experiencing mental health issues.

## **Comparative Analysis of Mental Health Laws of India and Australia**

### **India: Mental Health Care Act, 2017**

#### **Overview:**

The Mental Health Care Act, 2017, is a comprehensive legislation in India that replaces the Mental Health Act, 1987.

It focuses on protecting the rights of individuals with mental illness and promoting their access to mental healthcare services.

#### **Key Provisions:**

**Decriminalization:** The new law decriminalizes suicide attempts and ensures that individuals who attempt suicide are not treated as criminals.

**Advance Directives:** It allows individuals to provide advance directives for their mental healthcare, specifying the treatment they wish to receive or refuse.

**Rights-based Approach:** The Act emphasizes the rights of individuals with mental illness, including the right to access mental healthcare, live in the community, and be free from cruel or inhuman treatment.

### **Treatment and Admission:**

**Informed Consent:** The Act emphasizes obtaining informed consent from individuals before starting any treatment.

**Supported Admission:** It allows for supported admission, where a nominated representative can make decisions on behalf of the person with mental illness.

### **Australia: Mental Health Acts (Varies by State/Territory)**

#### **Overview:**

Australia has different mental health acts in each state and territory, resulting in variations in legislation across the country.

The acts generally aim to balance the rights of individuals with mental illness, the need for involuntary treatment, and protection of public safety.

#### **Key Provisions:**

**Involuntary Treatment:** The acts outline the circumstances under which involuntary treatment can be administered, often involving a risk to the person or others.

**Review Mechanisms:** There are provisions for regular reviews of involuntary treatment orders to ensure their continued necessity.

**Advance Statements:** Some jurisdictions allow individuals to create advance statements, similar to India's advance directives, outlining their preferences for treatment.

#### **Legal Mechanisms:**

**Guardianship and Advocacy:** Australian mental health acts often involve guardianship and advocacy services to protect the rights and interests of individuals with mental illness.

**Consent and Capacity:** The legislation typically addresses issues related to informed consent and the capacity to make decisions regarding treatment.



## Key Comparative Analysis

### 1. Rights-Based Approach:

India: The Mental Healthcare Act, 2017, explicitly emphasizes the rights of individuals with mental illnesses, promoting a rights-based approach to mental health.

Australia: Similar rights-based principles are evident in Australian mental health laws, with a focus on respecting the dignity and autonomy of individuals receiving mental health treatment.

### 2. Involuntary Treatment:

India: The Mental Healthcare Act, 2017, allows for involuntary admission and treatment but places significant emphasis on the least restrictive alternatives and safeguards against misuse.

Australia: Involuntary treatment is permitted in Australia, but the process is subject to rigorous review by Mental Health Tribunals to protect the rights of individuals.

### 3. Community-Based Care:

India: The Mental Healthcare Act, 2017, encourages community-based rehabilitation and treatment, recognizing the importance of social support in the recovery process.

Australia: Community-based care is a central theme in Australian mental health laws, aligning with a recovery-oriented approach that emphasizes integration into the community.

### 4. Advance Directives:

India: The Mental Healthcare Act, 2017, allows individuals to create advance directives, enabling them to express their preferences for treatment in advance.

Australia: Some Australian jurisdictions have provisions for advance directives, although the specifics may vary. The emphasis is on respecting the wishes of individuals regarding their mental health treatment.

While both India and Australia aim to protect the rights of individuals with mental illness, India's Mental Health Care Act, 2017, takes a more uniform, national approach with a strong emphasis on a rights-based framework, decriminalization, and advance directives. In contrast,

Australia's mental health legislation varies across jurisdictions but generally balances the rights of individuals with the need for involuntary treatment and public safety.

## **Case Laws regarding Mental Health Laws in India**

### **1. Ravinder Kumar Dhariwal v. Union of India<sup>4</sup>**

In this case, the petitioner sought exemption from appearing in court, citing Bipolar Affective Disorder, Generalized Anxiety Disorder, depression, and anxiety, with regular medical supervision. The court noted that reports from Fortis Memorial Research Institute indicated Bipolar Affective Disorder.

The petitioner challenged warrants of arrest issued by the Metropolitan Magistrate, leading to an appeal dismissal by the Additional Sessions Judge. The petitioner argued that Section 105 of the Mental Healthcare Act, 2017, mandated the court to refer mental illness-related documents to a medical board. The respondent contended that the reports were produced after eight years and were inconclusive.

Referring to the 2017 Act, the court highlighted its rights-based framework for mental healthcare, recognizing the legal capacity of individuals with mental illness. Section 105 was deemed mandatory, requiring the court to refer claims of mental illness to the concerned medical board. The court observed that both the Metropolitan Magistrate and the Additional Sessions Judge overlooked the CIMBS report, focusing on the petitioner's physical health. Section 105 did not specify document requirements for mental illness claims, emphasizing the responsibilities of agencies to address individuals with mental illness.

Considering the petitioner's claim of Bipolar Affective Disorder and the non-prejudicial nature of Section 105 determinations, the court allowed the petition, setting aside orders from the lower courts. The case underscores the importance of proper consideration of mental health reports in legal proceedings and adherence to the provisions of the Mental Healthcare Act, 2017.

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<sup>4</sup> (2023) 2 SC 209

## **2. Sampurna Behura v. Union of India<sup>5</sup>**

The case, Writ Petition (Civil) 473 of 2005, was filed against the Union of India to draw attention to the state of juvenile justice in India. The petitioner, Sampurna Behura, emphasized the constitutional duty to protect children's rights and sought enforcement of the Juvenile Justice Act 2000, citing the failure of state governments to implement its provisions.

The issues of the case revolved around whether state governments neglected to enact various provisions of the Juvenile Justice 2000 Act, including the establishment of Child Welfare Commissions, Juvenile Justice Boards, and Special Juvenile Police Units.

The petitioner argued that international conventions, such as the Convention on the Rights of the Child, and national legislation, like the Juvenile Justice Act 2000, mandated the protection of children's rights. Recommendations were made to improve the lives of children in care institutions. Legal aspects involved Article 21 and 32 of the Constitution, the Juvenile Justice (Care and Protection of Children) Act 2015, and the Commissions for Protection of Child Rights Act 2005.

The court recognized the significance of the National Policy for the Welfare of Children and stressed the need for a child-friendly environment in Juvenile Justice Boards. It urged the optimal functioning of child protection commissions, police, and civil society involvement. The court highlighted the importance of technology in administrative processes and called for regular inspections and reviews to ensure the enforcement of the Juvenile Justice Act nationwide. The judgment emphasized the timely appointment of staff in child protection commissions, prompt filling of seats in Juvenile Justice Boards and Child Welfare Committees, and the necessity of regular meetings to provide justice to children in conflict with the law. The court also called for time-bound investigations by the National Commission for the Protection of Children's Rights and State Commission for the Protection of Children's Rights on various issues.

In conclusion, the court's judgment outlined comprehensive measures to address the shortcomings in juvenile justice, emphasizing the proactive role of government bodies, child

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<sup>5</sup> (2018) 4 SCC 433

protection commissions, and the need for continuous oversight to ensure the well-being of children across the country.

### **3. Sheela Barse v. Union of India<sup>6</sup>**

The petitioner, Sheela Barse, was a social activist who filed a writ petition in the Supreme Court of India on behalf of the mentally ill and destitute prisoners in Maharashtra. She brought attention to the inhumane and degrading conditions under which mentally ill individuals were being detained in various jails and custodial institutions.

The petitioner argued that the fundamental rights of mentally ill prisoners were being violated, particularly their rights under Article 21 (right to life and personal liberty) and Article 39(e) and (f) (principles of policy directing the State to ensure that health and strength of workers, men, and women are not abused). Sheela Barse sought the Court's intervention to improve the conditions of mental healthcare and treatment within custodial institutions.

The Supreme Court, in its judgment, recognized the precarious situation of mentally ill prisoners and acknowledged that their fundamental rights were being infringed. The Court held that the right to life and personal liberty under Article 21 includes the right to live with human dignity, and this right extends to prisoners, including those suffering from mental illness.

**The Court directed the Union of India and State Governments to take immediate steps to:**

Identify mentally ill prisoners and provide them with necessary medical and psychiatric treatment. Separate mentally ill prisoners from other prisoners to ensure their safety.

Establish psychiatric wings in the jails or set up mental hospitals to cater to the needs of mentally ill prisoners.

The Court emphasized the obligation of the State to protect the rights of prisoners, especially those who are vulnerable due to mental health issues. This case laid down important guidelines for the humane treatment of mentally ill individuals in custody and contributed to the development of mental health jurisprudence in India.

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<sup>6</sup> AIR 1986

The Sheela Barse case highlighted the intersection of human rights, mental health, and the criminal justice system, setting a precedent for future cases and legislative developments in the field of mental health law in India.

#### **4. Parmanand Katara v. Union of India<sup>7</sup>**

It is a significant case in Indian legal history that dealt with the duty of hospitals to provide emergency medical treatment, including psychiatric treatment. Here is a summary of the case:

The case originated from an incident where Parmanand Katara, a lawyer, witnessed a road accident in Delhi. Two injured individuals were taken to the nearby Ram Manohar Lohia Hospital, but the hospital authorities refused to provide medical assistance, citing the absence of a police report as a prerequisite for initiating treatment.

Parmanand Katara filed a Public Interest Litigation (PIL) in the Supreme Court, contending that the right to life guaranteed under Article 21 of the Constitution encompasses the right to medical treatment, and the refusal of emergency medical services on the grounds of a police report was a violation of this right. The Supreme Court, in its judgment, unequivocally held that the right to life and liberty under Article 21 includes the right to emergency medical treatment. The Court emphasized that the duty of a medical professional is to save lives, and any refusal to provide immediate medical treatment in an emergency is a blatant violation of this duty.

#### **The Court laid down the following key principles:**

The obligation of medical professionals to provide immediate medical treatment to a person in need, regardless of whether a medico-legal case is involved. The duty of hospitals to admit and provide initial treatment to the victims of accidents without waiting for procedural formalities such as police reports. The judgment reiterated the importance of the right to life and the duty of medical practitioners to prioritize saving lives over procedural considerations. It had a far-reaching impact on emergency medical services in India, influencing subsequent cases and contributing to the formulation of guidelines ensuring prompt and essential medical care in emergency situations.

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<sup>7</sup> AIR 1989

The Parmanand Katara case is often cited as a landmark decision affirming the fundamental right to life and the duty of hospitals and medical professionals to prioritize emergency medical treatment without unnecessary delays or procedural hindrances.

## **Conclusion**

Both India and Australia have made significant strides in developing mental health laws that prioritize the rights and well-being of individuals with mental illnesses. While there are variations in the details, the overarching commitment to a rights-based, community-focused approach is evident in both legal frameworks. As mental health awareness continues to grow globally, the comparative analysis of these two countries' laws provides valuable insights into effective strategies for promoting mental health and ensuring the rights of those affected by mental illnesses.

The comparative analysis of mental health laws in India and Australia reveals both similarities and differences in their approaches to addressing the complex challenges surrounding mental health. While both countries recognize the importance of protecting the rights of individuals with mental illnesses and promoting their well-being, the specific legal frameworks and mechanisms employed differ significantly.

In India, the Mental Healthcare Act of 2017 represents a significant step forward, emphasizing the rights and dignity of individuals with mental disorders. The legislation incorporates principles of non-discrimination, informed consent, and advance directives, aiming to destigmatize mental health issues and improve access to quality mental healthcare. However, challenges remain in the effective implementation of these provisions, given the diverse cultural and socioeconomic landscape of the country.

On the other hand, Australia has a well-established legal framework for mental health, with each state and territory having its own legislation. The emphasis on community-based care, involuntary treatment, and protection of the rights of mentally ill individuals is evident in various statutes. The legal system in Australia reflects a balance between individual autonomy and the need for intervention to ensure public safety and the well-being of those with mental disorders.

While India and Australia have made strides in recognizing and addressing mental health

challenges, continuous efforts are essential to enhance legal frameworks, eliminate stigma, and promote comprehensive mental healthcare for all. The collaboration and exchange of best practices between nations can contribute to the development of more effective and inclusive mental health policies globally.