



Legal, Ethical and Disability Issues in Mental Health For MO



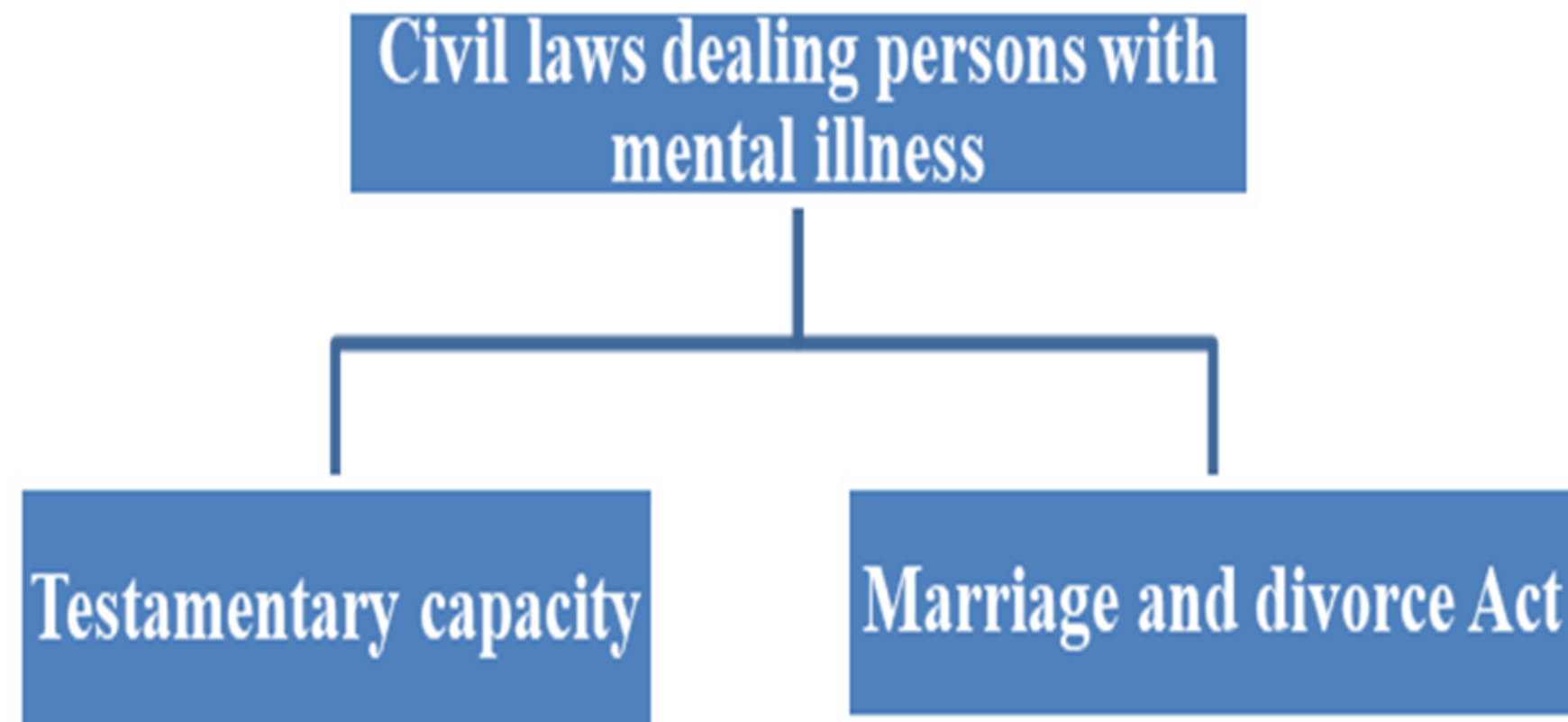
- Law refers to the rules formed by authority for regulating the behavior of the members of community or country
- Each state has their own law which regulates the care and treatment of the people who suffer from psychiatric illness.
- This law attempts to balance between protection of the mentally ill person's rights and the safety of the community.
- The Doctors should understand the basic legal aspects related to caring for person with mental illness, as legislation grow over time to meet society's needs.





CIVIL LAW AND PSYCHIATRY

- As per Indian law, a person with mental illness who is incapable of understanding what he/she is doing is right or wrong cannot enter into any contract e.g. writing a valid will, purchasing and selling, marriage, divorce so forth.
- For assessing person in civil cases, there should be consent from the person otherwise a legal order is necessary.





Testamentary capacity:

- It is an individual's legal and mental ability to make or alter a valid will such as ability to understand and respond reasonably, the extent and value of their property, natural beneficiaries etc.

Marriage and Divorce Act:

- For Hindus, divorce can be sought only if an individual is suffering from mental illness to such extent that he is not able to fulfil the obligation of the marriage for two or more years. Further, reasonable attempts to treat the mental illness of an individual and the illness needs to be treatment resistant to grant for divorce.



Hindu Marriage Act

- Marriage between two Hindus is solemnized only if at the time of the marriage.
- a) Neither party is incapable of giving a valid consent to it in consequence of mental illness.
- b) Though capable of giving consent, but has been suffering from mental illness of such a kind or extent by which individual is not fit for fulfilling obligation of the marriage.

Muslim Marriage Act

- Marriage to be solemnized only when both parties are legally competent.
- Person can seek divorce on the ground that partner has been mentally ill for a period of 2 years.

Parsi Law

- Under this law mental illness is not a ground for nullity of the marriage but however for divorce it is similar to the Hindu marriage act.



MENTAL HEALTH LEGISLATION IN INDIA

- ILA -Indian Lunacy Act
- MHA – Mental Health Act, 1987
- MHCA – Mental Healthcare Act

The shift of care has given a new view to the care of persons with mental illness and led to the review of mental health legislation.

The Mental Health Care Act, 2017 (MHCA, 2017)
Rights of Persons with Disabilities Act, 2016 (RPWD, 2016)



ILA, 1912

Custodial care
of persons with
mental illness

MHA, 1987

Treatment of
persons with
mental illness

MHCA, 2017

Protect
human rights
during
treatment



THE MENTAL HEALTH CARE ACT, 2017 (MHCA))

- **The Mental Health Care Act, 2017** has been described as “An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons...”.
- **Important features** of this act are:
 - Protects rights of the mentally ill.
 - In case of future care, individual can make advance directive.



- Prescribes the minimum standards for establishing, registering, and controlling mental health establishments for mentally ill persons.
- Regulates the procedure of admission and discharge of mentally ill persons to mental health establishments either on a voluntary basis or involuntary.
- Provides every person the right to access mental health services given or funded by Government.
- Enables mentally ill persons by providing free legal aid services.
- Restrict non-professionals to discharge function with punishment for not binding to the act.



- Establish duties and responsibility for police in respect of persons with mental illness.
- Provides provisions for ambulance services use and extent the quality as provided to persons with physical illness.
- Prohibits certain procedures such as,
 - Sterilization of men or women, when meant as a treatment for mental illness.
 - Chaining a person in any manner or form whatsoever.
 - Seclusion of persons with mental illness.
 - Electro-convulsion therapy (ECT) without anesthesia (Un-modified ECT).



- MHCA, 2017 enables individuals by decriminalizing the suicide attempt and clearly states that person who attempt suicide should be referred for evaluation and treatment (Section 115).

Now, the State Government holds the responsibility to provide care to them.



THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 (RPWD)

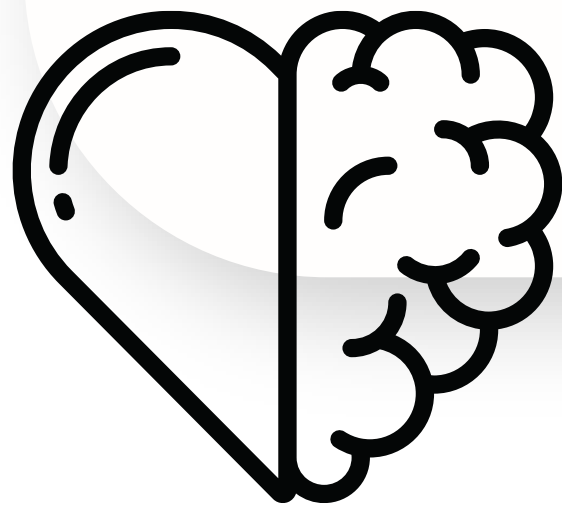


- The application for assessment of disability shall be accompanied by (a) proof of residence (b) two recent passport size photographs and (c) Aadhaar number. After receiving the application, the medical authority shall, verify the information as provided by the application and shall assess the disability and issue the certificate within one month of receipt of the application.
- The disability legislation prescribes punishment for fraudulently availing any benefit meant for person with benchmark disabilities under Sec 91



LEGAL ISSUES IN MENTAL HEALTH

Some legal issues occur frequently while providing medical care to the patient in the mental health field. It is very essential for the doctor to understand these while practicing.





Intentional tort	Unintentional tort
<p>Assault:</p> <p>Assault is a threat or an attempt to do physical harm. Assault includes physical or verbal. E.g. Telling the patient that you are going to restrain him in bed.</p> <p>verbal abuse (Scolding the patient)</p>	<p>Negligence</p> <p>Negligence is an act of doing something or not doing something which other health professionals would be doing or not doing in a particular situation. e.g. wrong dosage of Medication administration, wrong route of medication administration.</p>
<p>Battery:</p> <p>Battery is an act that results in the harmful or offensive physical contact. It is actually touching or wounding the person in an offensive manner. E.g. Punching, pushing, slapping a patient</p>	
<p>False imprisonment</p> <p>It means the limiting of someone's freedom without the authority or right to do so. E.g. Application of restraint without need for so.</p>	<p>Malpractice</p> <p>It is the failure of health professional to do his or her job with a reasonable degree of skill that results in injury or death of the client.</p>
<p>Invasion of privacy</p> <p>The act of going into someone's personal life or becoming involved in a situation where one is not permitted. e.g. Taking a picture of patient and putting in media.</p>	



ETHICS IN MENTAL HEALTH

Autonomy

- Respect for individual
- Not undermine their decision-making capacity
- Even they are disabled/prisoner of war/criminal
- Right to information and self determination
- Doctor cannot act like dictator, but can only be an advisor and facilitator
- Patient should have the freedom to choose
- Informed consent for tests/procedures

Beneficence

- Do only that which benefits patients
- Patients welfare must be the first consideration and not personal monetary gain.

Non-maleficence

- Attributed to Hippocratic Oath – “Above all do no Harm”
- Sanctity of life respected
- Risk-benefit ratio should help decide the need for intervention

Justice

- Fair distribution of benefits, risk and costs
- Patients in similar position should be treated similarly
- No discrimination-sex, race, color etc
- Equitable distribution of resources at macro and micro levels

Truthfulness and honesty

- Doctor should thrive to be truthful and honest
- This needs to be depicted in informed consent
- No hidden agenda



Thank You

