



## HUMAN RIGHTS FOR CHILD MENTAL HEALTH WITH SPECIAL REFERENCE OF MENTAL HEALTH CARE ACT 2017.

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**ABSTRACT** This paper examines the intersection between youth justice and mental wellness, advocating for a paradigm shift towards integrating mental health support within the juvenile justice system through a human rights framework. Recognizing the disproportionate prevalence of mental health issues among juvenile delinquents, this research underscores the necessity of addressing mental wellness as a fundamental component of the legal process and rehabilitation efforts. Utilizing a qualitative research methodology, the paper reviews existing literature, legal documents, and case studies to analyze the current state of youth justice systems, the mental health challenges faced by young offenders, and the potential human rights violations inherent in the lack of mental health support. The findings reveal a significant gap in the incorporation of mental wellness considerations within juvenile justice procedures and highlight the positive impacts of mental health interventions on legal outcomes and the overall well-being of juvenile delinquents. Furthermore, the paper proposes a set of policy recommendations aimed at integrating mental health services into youth justice systems, guided by international human rights standards. As far protection and promotion of mental health rights of Indian people is concerned protection, state has come up with a new legal provision i.e., the Mental Health Care Act, 2017 popularly known as MHCA 2017. This law has replaced the Mental Health Act, 1987 in order to strengthen the rights and wellbeing of mentally ill people and making mental healthcare services more humane and complying to human rights of those people including children. This article also aims to identify and analyze various sections of MHCA 2017 that protect the human rights of Indian children suffering from mental health issues.

**KEYWORDS :** Mental Wellness, Human Rights Framework, Juvenile Delinquents, Legal Safeguards, Mental Health care .

### Mental Health And Human Rights Under International Law.

Mental health is an integral component of overall health, yet it often receives less attention than physical health. Human rights, on the other hand, form the bedrock of international law, protecting individuals from abuses and ensuring dignity and equality. The intersection of mental health and human rights under international law is a critical area that addresses how global frameworks recognize and protect the mental well-being of individuals. This paper explores the international legal instruments, their application, and the challenges in the context of mental health and human rights.

### International Legal Frameworks

#### 1. Universal Declaration of Human Rights (UDHR).

The UDHR, adopted by the United Nations General Assembly in 1948, lays the foundation for human rights globally. Article 25 states that everyone has the right to a standard of living adequate for health and well-being, including medical care and necessary social services. This provision implicitly includes mental health as part of overall health.

#### 2. International Covenant on Economic, Social and Cultural Rights (ICESCR).

Adopted in 1966, the ICESCR explicitly mentions health in Article 12, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This covenant obliges state parties to take steps to achieve the full realization of this right, including the improvement of all aspects of environmental and industrial hygiene, and the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases.

#### 3. Convention on the Rights of Persons with Disabilities (CRPD).

The CRPD, adopted in 2006, marks a significant advancement in recognizing the rights of individuals with mental and physical disabilities. It emphasizes the need to respect inherent dignity, individual autonomy, and independence. Article 25 focuses on health, mandating that persons with disabilities have access to health services, including mental health care, without discrimination.

#### 4. Convention on the Rights of the Child (CRC).

The CRC, adopted in 1989, underscores the importance of mental health in children. Article 24 recognizes the right of the child to the enjoyment of the highest attainable standard of health and mandates that state parties strive to ensure that no child is deprived of their right

of access to health care services.

### Implementation and Challenges

#### 1. National Legislation and Policy.

Implementation of international standards into national law varies widely. Many countries have adopted mental health legislation in line with international human rights instruments. However, the effectiveness of these laws often depends on political will, resources, and societal attitudes towards mental health.

#### 2. Stigma and Discrimination.

One of the major challenges is the pervasive stigma and discrimination associated with mental health issues. This stigma can lead to social exclusion, abuse, and neglect, making it difficult for individuals to seek help and receive adequate care. International law calls for the elimination of discrimination, but enforcement at the national level remains inconsistent.

#### 3. Access to Mental Health Services.

Access to mental health services is another significant challenge. Many countries lack the infrastructure, funding, and trained personnel necessary to provide comprehensive mental health care. This lack of access is particularly pronounced in low- and middle-income countries, exacerbating health disparities.

#### 4. Rights of Individuals with Mental Health Conditions.

Protecting the rights of individuals with mental health conditions involves ensuring their freedom from inhumane treatment, involuntary confinement, and discrimination in all spheres of life, including employment and education. International bodies like the United Nations Committee on the Rights of Persons with Disabilities monitor compliance, but enforcement mechanisms can be weak.

### Case Studies

#### 1. Mental Health Reform in South Africa.

Post-apartheid South Africa has made significant strides in aligning its mental health policies with international human rights standards. The Mental Health Care Act of 2002 reflects principles from the CRPD, emphasizing deinstitutionalization and community-based care.

#### 2. The Mental Health Act in India.

India being a largest democracy in the world, has also time and again

stood for the child rights, thus have come up with different constitutional and legal arrangements to protect and care the children. Mental Health Care Act 2017 is one such an act that encompasses the mental health rights of all the Indian citizens including the children. A rights-based approach is the basic premise of the evolution of the MHCA 2017 that came into existence after the assent of the Honourable President of India on 7<sup>th</sup> April 2017. Mental Health Act 1987 had various types of lacunae with respect to International Conventions. The MHCA-2017 is, thus a new mile stone, in concordance with the United Nations Convention on Rights of Persons with Disabilities that India ratified in 2007 and the act includes a dedicated chapter on the rights of persons with mental illness.

Children and adolescents constitute approximately 40% of the population of India. Recent studies have reported high rates of psychiatric morbidity in this age group. Access to mental health care for children and adolescents is a sensitive indicator of the level of the development of a country. There is a significant gap in addressing the mental health needs of children.

#### **Some of the important features of the Act are as:**

There is a greater clarity on the range of issues pertaining to mental health care of children within MHCA-17. Elaborated version of on inpatient admission procedures and treatments such as the use of electroconvulsive therapy.

Clear description on the role of nominated representative (NR) (typically parents/guardians or state-appointed persons) in all aspects of decision making for mental health care of minors.

The NR can also make advance directives for minors. The NR must accompany a minor during an inpatient admission. The act makes it mandatory to ensure non-separation of infant and toddlers from mothers getting treatment for mental illness unless there is any risk posed to the child. This is a welcome move since separation at this young age can interfere with the nutritional, growth, and attachment needs of the child, with long-term consequences on physical and mental development.

Another positive move is the decriminalization of suicidal behaviors. This is especially relevant in the case of adolescents who have high rates of self-harm and suicidal behaviors, which indicate the presence of serious psychological distress that requires urgent medical, including psychiatric, intervention.

#### **CONCLUSION**

The recognition of mental health as a human right under international law represents a critical step towards ensuring dignity, equality, and justice for all individuals. While significant progress has been made through various international instruments, challenges remain in the form of stigma, discrimination, and inadequate access to services. Continuous efforts are required to strengthen national laws, improve access to mental health care, and eliminate societal barriers to uphold the rights of individuals with mental health conditions.

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