



KAUTILYA
SOCIETY, NLUO



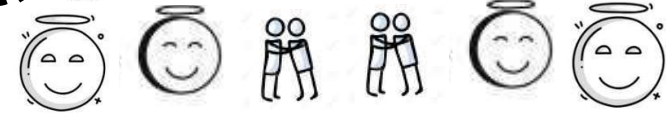
सत्ये स्थितो धर्मः

PUBLIC POLICY POST

Kautilya Society, NLUO Chapter
An initiative by Vidhi Centre for Legal Policy

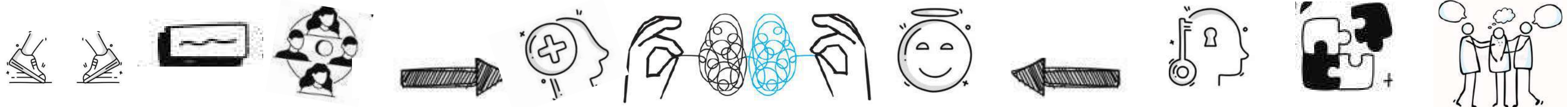


◀ सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है ▶

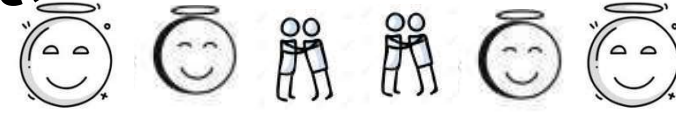


About Kautilya Society

THE KAUTILYA SOCIETY, NLUO CHAPTER WAS SET UP BY VIDHI CENTRE FOR LEGAL POLICY. THE CHAPTER IS AIMED AT WIDENING ACCESS TO LEGISLATIVE DRAFTING AND ANALYSIS AND EMPOWERING YOUNG MINDS TO EXPLORE PUBLIC POLICY AS A CAREER PATH. HAVING CONDUCTED PUBLIC TALKS AND CIRCULATED WEEKLY LEGAL UPDATES, THE CHAPTER IS PLEASED TO BRING OUT ITS FLAGSHIP NEWSLETTER TO FURTHER CONTRIBUTE TO PUBLIC POLICY DISCOURSE.



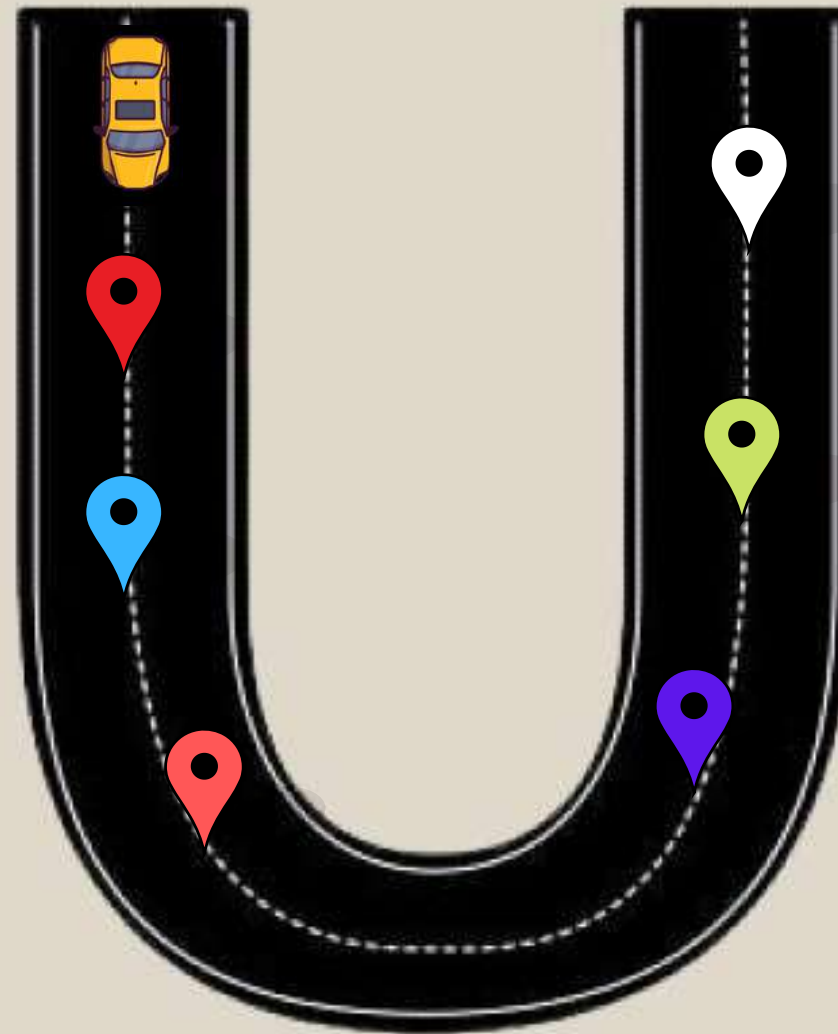
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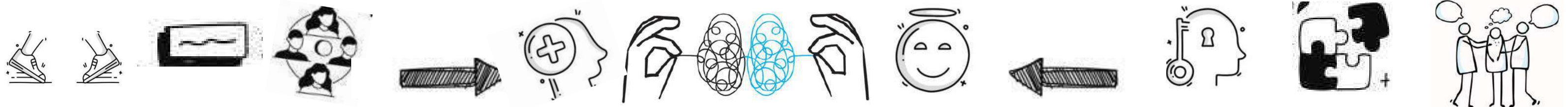
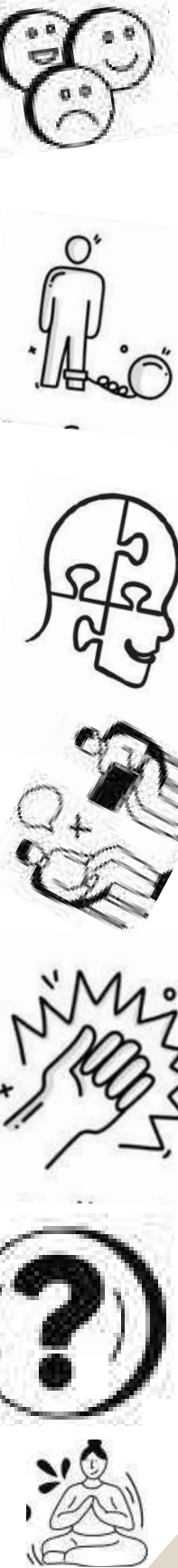
WELCOME TO THE WORLD OF PUBLIC POLICY



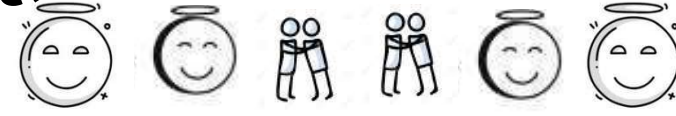
Hello, I'm Vasundhara - a member of the Kautilya Society.
Let me take you through our bi-annual publication filled with news and interviews.



<input type="checkbox"/>	FOREWORD
<input type="checkbox"/>	STATISTICS
<input type="checkbox"/>	MONTHLY NEWS
<input type="checkbox"/>	TIMELINE
<input type="checkbox"/>	SUBMISSIONS
<input type="checkbox"/>	GUEST INTERVIEW



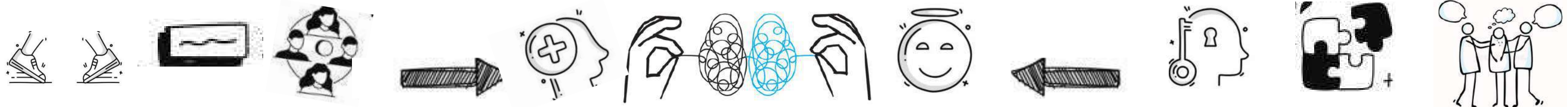
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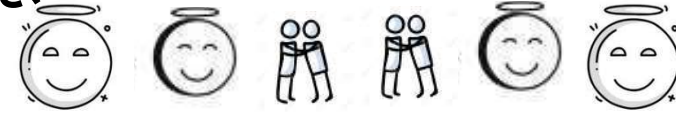
FOREWORD

Public Policy Post, the bi-annual newsletter by Kautilya Society, National Law University Odisha intends to bring to the discussion table various issues relating to policy formation and areas where policy intervention is required. With the second bi-annual edition of the newsletter, we are glad to have worked on and brought before you the topic of Mental Health and the effect of Covid-19 thereon.

With the discussion on impact, timelines of policy formation over the past century and the current need for improvement with reference to different sections of society including LGBTQIA+ members, the newsletter aims to stir up the debate on the need for law-making, focusing on mental health awareness, acceptance and institutional support for members of the society impacted thereby. I would also like to extend my heartfelt gratitude to Ms. Nanditta Batra for having contributed to the newsletter through her comment, "Assessing the Mental



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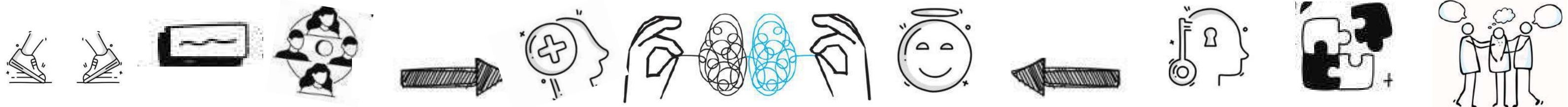


FOREWORD

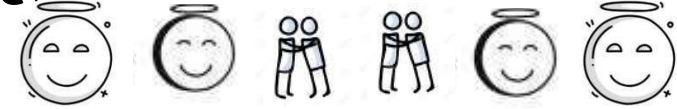
Healthcare Act, 2017 from an anti-discrimination perspective."

I would like to commend the efforts of the student body and student members of the Kautilya Society who have worked tirelessly and brought out an academically invigorating and visually pleasing newsletter. I hope the readers find it as interesting and as engaging as I did.

Ankeeta Gupta
Faculty Advisor,
Kautilya Society, NLUO Chapter



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Source: IHME, Global Burden of Disease (2019)

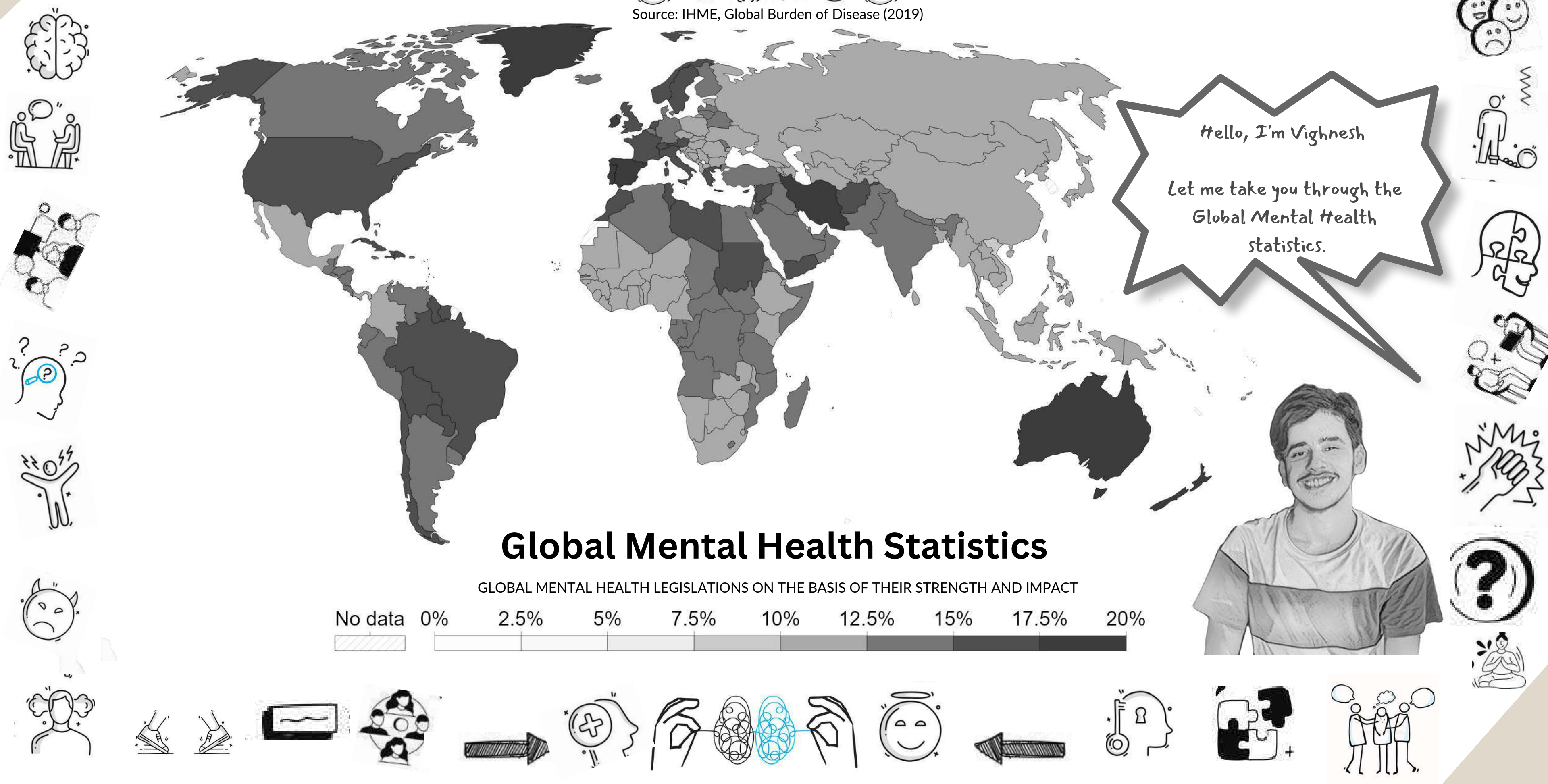


Hello, I'm Vighnesh
Let me take you through the
Global Mental Health
statistics.

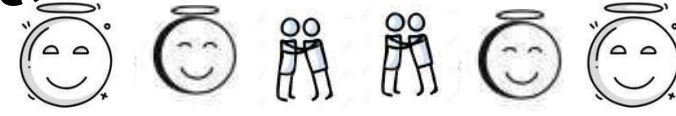


Global Mental Health Statistics

GLOBAL MENTAL HEALTH LEGISLATIONS ON THE BASIS OF THEIR STRENGTH AND IMPACT



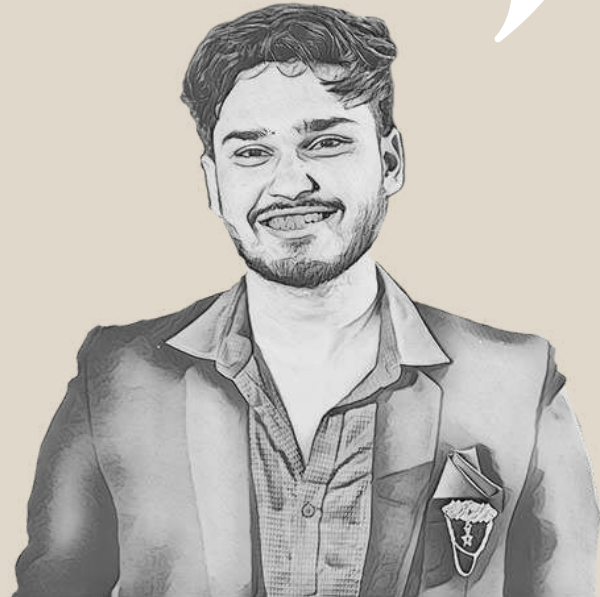
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MONTHLY NEWS

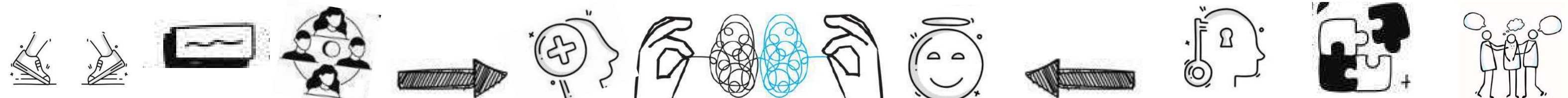
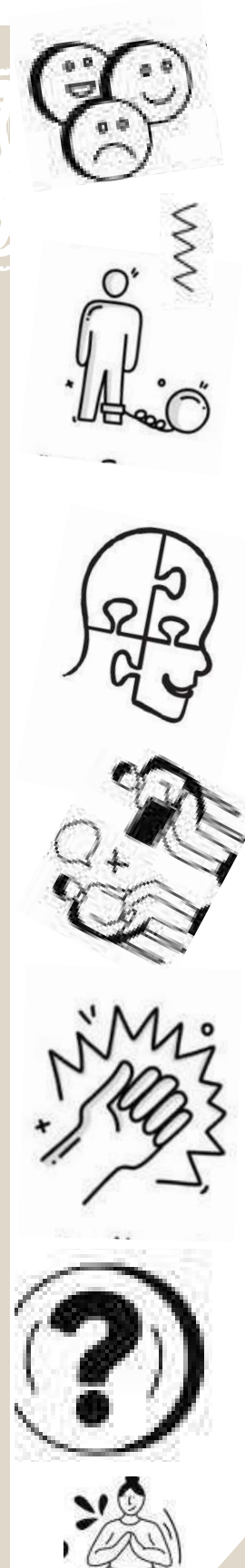
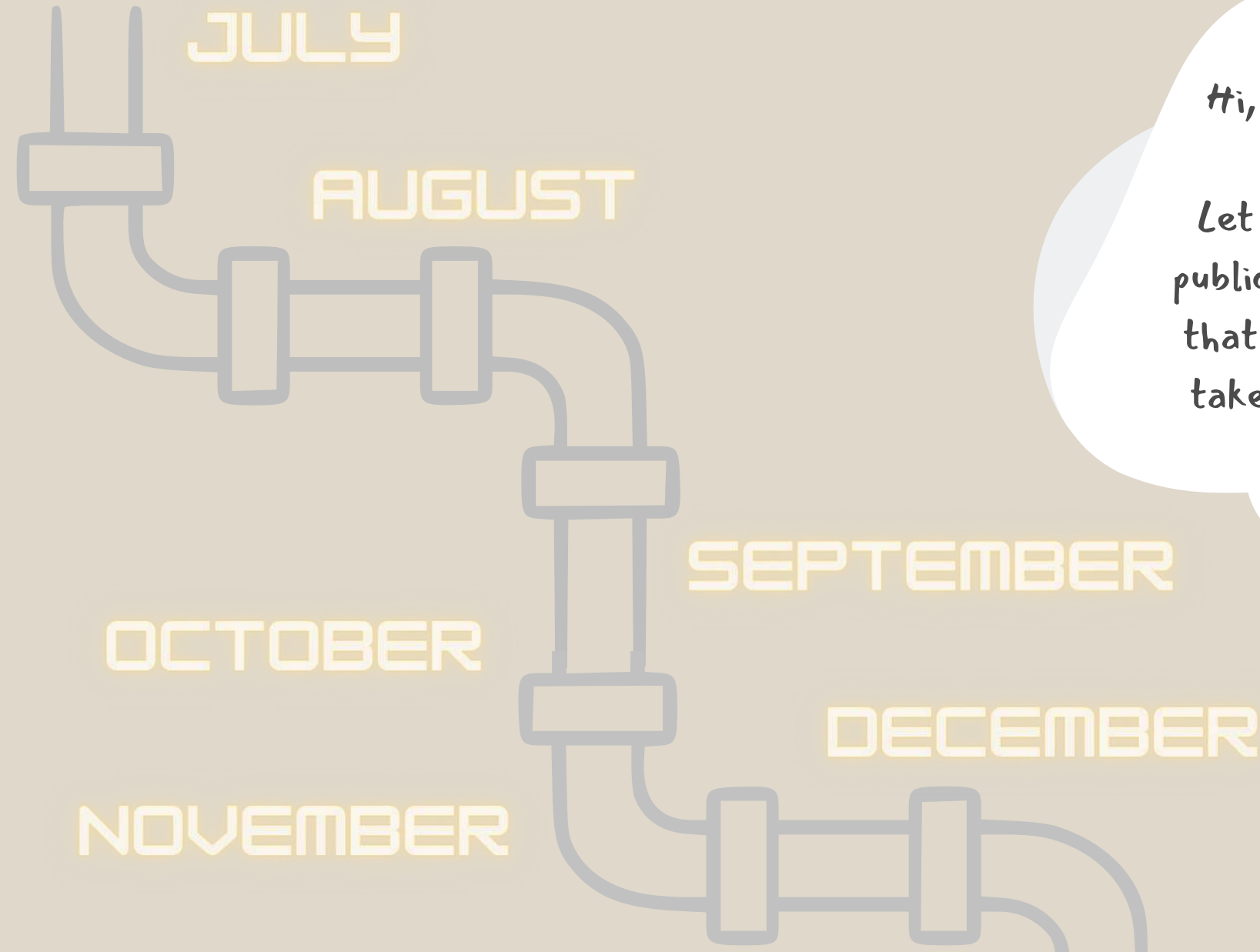
Hello, I'm Kushal.

Let me take you through our monthly news updates.

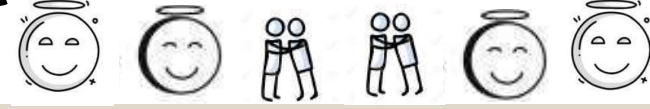


Hi, I'm Jayanti.

Let us look at the public policy updates that have recently taken place in our country.



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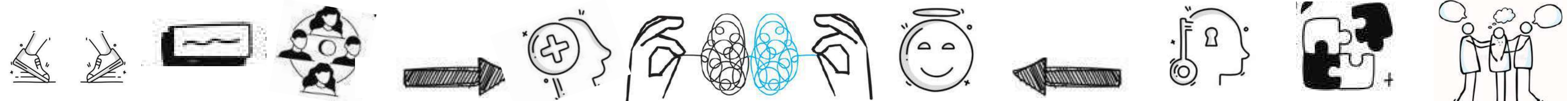


July, 2022

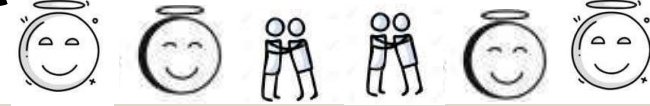
Hi, I'm Siddharth.
Let me take you
through the
updates of July,
2022

The Foreign Contribution Regulation Act was enacted during the year 1976, on grounds of the concerns raised in 1969 regarding foreign powers interfering in the Nation's internal matters by pumping funds through Indian organizations. The act sought to regulate foreign donations in a manner that is consistent with the core values of the sovereign, democratic republic. It was amended in the year 2010 and was enacted with stricter provisions. It was again amended in the year 2020, to get tighter control over the utilization of funds by NGOs. The 2020 amendment also prohibits certain persons from accepting foreign contributions such as judges, government servants, editors, publishers.

The Ministry of Home Affairs amended some provisions of the FCRA. The limit to receiving a gift from a relative who is holding citizenship of some other country has been increased to 10 lakhs per year under the amended provision which was earlier 1 lakh. The period to file form FC-1, which provides for the intimation of receipt of foreign contribution by the way of gift has also been extended from 30 days to 90 days. The amendment has also increased the time limit from 15 days to 45 days to intimate in form 6D which provides for the opening of a bank account for the utilization of foreign contributions. The amendment announced that FCRA registered associations shall not be required to furnish any intimation of quarterly receipt either on their website or on the FCRA website. The time limit for intimation has also been increased from 15 days to 45 days under Form 6A to 6E which provides for intimation of changes. The act provided for an application of revision of an order to be made to the Secretary, MHA on a plain paper along with a fee of Rs. 3000. The amendment provides for making an application for the revision of an order that shall be made electronically.



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Hi, I'm Shamil.

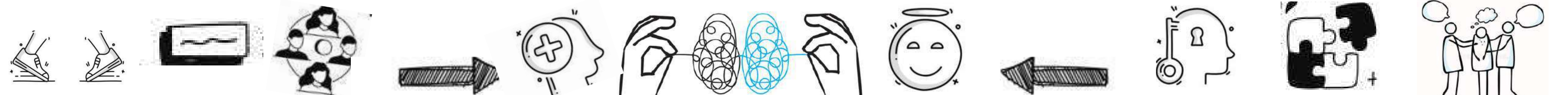
Let me take you through the updates of August, 2022

August, 2022

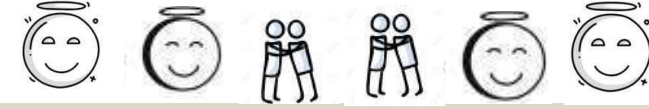
Recently, the Ministry of Power has tabled the Energy Conservation (Amendment) Bill 2022 in Lok Sabha. It proposes to amend the Energy Conservation Act 2001, last amended in 2010, to introduce changes such as incentivising the use of clean energy by issuing carbon saving certificates.

There are numerous proposed changes in the Act. Firstly, defining the minimum share of renewable energy to be consumed by industrial units or any establishment. This consumption may be done directly from a renewable energy source or indirectly via the power grid. Secondly, considering incentives like carbon credits for the use of clean energy to lure the private sector to climate action. Thirdly, strengthening institutions set up originally under the Act, such as the Bureau of Energy Efficiency; and facilitating the promotion of Green Hydrogen as an alternative to the fossil fuels used by industries. Lastly, applicability to residential buildings including larger residential buildings under energy conservation standards to promote sustainable habitats. Currently, only large industries and their buildings come under the ambit of the Act.

The objectives consist of reducing India's power consumption via fossil fuels and thereby minimize the nation's carbon footprint; developing India's Carbon market and boost the adoption of clean technology; and to meet its Nationally Determined Contributions (NDCs), as mentioned in the Paris Climate Agreement, before its 2030 target date.



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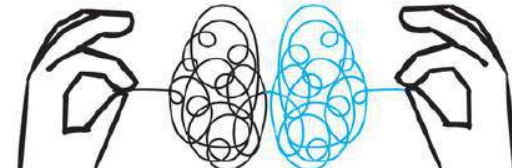
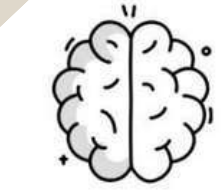


September, 2022

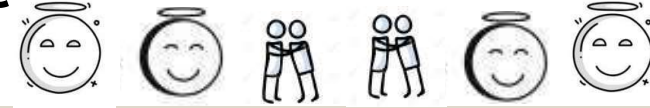
The National Council of Educational Research and Training (NCERT) has issued guidelines to schools for the “Early identification of mental health problems in school going children and adolescents”. It aims to help identify students who may be at risk of developing mental health issues and provide them with the necessary support and resources. The survey cited exams, results and peer pressure among major factors for stress and anxiety. According to NCERT, a mental health advisory panel, school-based mental health program and pedagogical support system should be established. Schools should have measures in place to detect and address behaviors related to substance use, self-harm, depression, developmental concerns and provide immediate assistance. Given that students spend a 1/3rd of a day, and around 220 days of a year in schools, it is their responsibility to ensure the physical and mental well-being of all students. This includes providing a safe and secure environment for students in residential schools where they spend more time in the school community. Teachers should address the topic of bullying and empower students by educating them about it.

Additionally, noting that as half of all mental health conditions appear by the age of 14 and three-quarters by the age of 25; the organization has emphasized the importance of training teachers in recognizing early indicators of various mental health issues in students such as attachment problems, difficulties with separation, reluctance to attend school, communication difficulties, behavioral issues, excessive internet usage, hyperactivity, intellectual and learning disabilities.

Hi, I'm Teesha.
Let me take you
through the
updates of
September, 2022



सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है



October, 2022

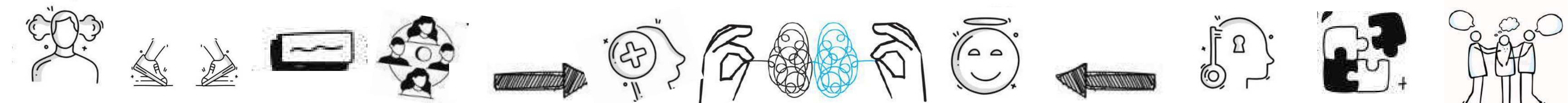
Every 1 in every 8 individuals worldwide suffers from a mental disorder, urging for immediate action to change mental healthcare as estimated by World Health Organisation in June 2022. India has one of the largest populations in the world suffering from Mental Health. In 21st century, Mental Health is not just related to psychological or emotional well-being but has large impact on physical health which has a potential to create a burden on the family's income.

Every year 10th October has been celebrated as Mental Health Day. The theme of this year is "Make mental health and wellbeing for all a global priority". The theme envisions a world where Mental Health is valued, promoted and protected; where everyone has an equal opportunity to enjoy mental health.

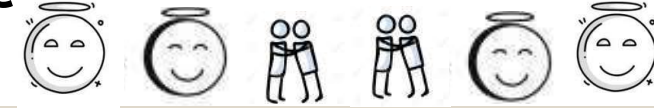
"The Mental Health Act, 2017, which lays the foundation for insurance for psychological disorders, defines "mental illness" as "means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs." For the uninitiated, the Mental Healthcare Act (MHC Act) 2017 states that every insurer needs to make a provision for medical insurance for the treatment of mental illness. While the extent of the coverage varies with the insurer, some of the disorders whose treatment will be insured are bipolar disorder, acute depression, schizophrenia, panic disorders, hyperactivity/attention deficit disorder, post-traumatic stress disorder, personality disorders, eating disorders, and dissociative disorders.

Hi, I'm Mandar.

Let me take you through the updates of October, 2022



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Hi, I'm Paavanta.

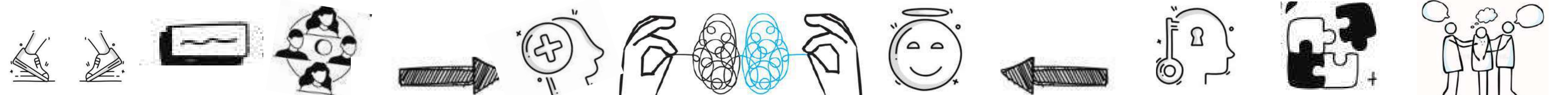
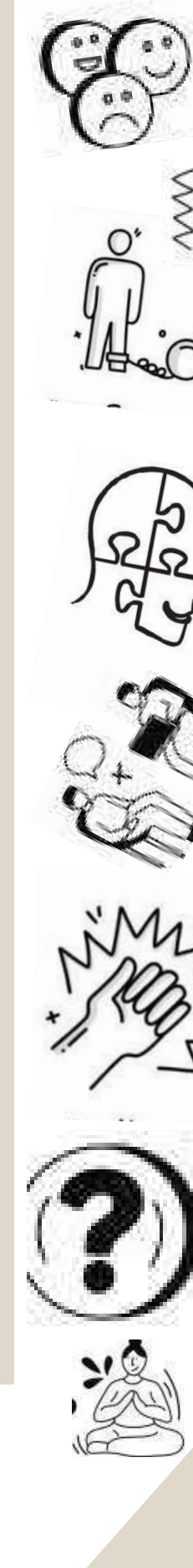
Let me take you
through the
updates of
November, 2022

November, 2022

On 21st November 2022, the Ministry of Health and Family Welfare rolled out India's first suicide prevention policy - National Suicide Prevention Strategy. The main aim of the national strategy is to reduce suicide mortality by 10% in India by 2030. It aims to achieve this through multisectoral collaboration, effective and sustainable action, inclusiveness and innovations. The Ministry conducted extensive research on the situation of suicides in the Indian scenario, finding that suicide has become the primary cause of death among those aged 15-29. It was found that the most common reasons for suicide were family problems and illnesses, while the most common methods of suicide were hanging and poisoning. The strategy also acknowledged national and international suicide prevention initiatives and proposed to work along the broad outlines of these initiatives. The strategy aims to achieve the following objectives:

- To establish effective surveillance mechanisms for suicide within the next 3 years.
- To establish psychiatric OPD that provide suicide prevention services, through the DMHP in all districts within the next 5 years.
- To integrate mental well-being curriculum in all educational institutes within the next 8 years.

To achieve these objectives, the Ministry has laid down an action plan, which contains how the envisioned strategy can be achieved, the steps that need to be undertaken, key benchmarks which would signal progress, stakeholders and the timeline towards which efforts need to be put in.



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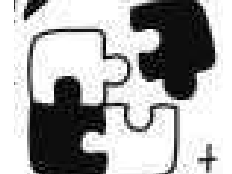
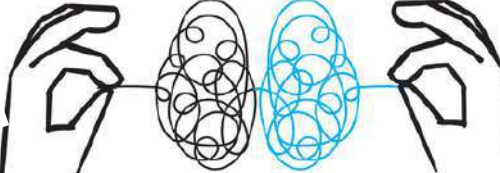
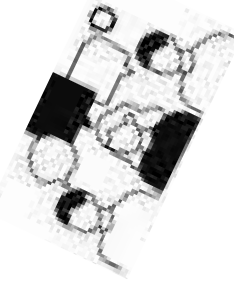
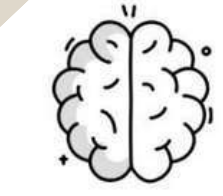
Hi, I'm Sparsha.

Let me take you
through the
updates of
December, 2022

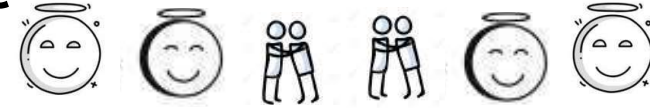
December, 2022

Recently, a progressive step was undertaken by the Tamil Nadu government to prevent harassment of persons belonging to the LGBTQIA+ community and for those working for their welfare. The State Government made an amendment to the Tamil Nadu Subordinate Police Officers' Conduct Rules by adding a provision which impeded police authorities from indulging in any act of harassment against the community and the people who are involved in the welfare of the community. However, it came with certain exceptions. The explanation of the added provision stated that harassment in this context would not stop the police from making an inquiry as per the due process established by the law. The amendment followed a direction from the Madras High Court on a protection plea filed by a lesbian couple who faced harassment from the police. The court stressed on the need of two important aspects; first being the need to insert a specific clause in the Police Conduct Rules to treat such harassment as misconduct, and second being the need to penalize such offences.

The judiciary asked the State to take due cognizance on the matter, following which, the state home department made a number of internal changes over the span of two months. The Madras High Court's decision to outlaw conversion therapy in June 2021 was a significant action towards creating a safe space for the LGBTQIA+ community and facilitating their inclusion in the mainstream social structure.



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TIMELINE

Mental Health in India

Late 18th Century
FIRST ASYLUM ESTABLISHED IN BOMBAY (1745) & CALCUTTA (1784).

1912
INDIAN LUNACY ACT, 1912 WAS ENACTED WITH THE ALLEGED PURPOSE TO PROTECT PEOPLE FROM MENTALLY ILL PATIENTS

1980
PILOT STUDY CONDUCTED IN BELLARY DISTRICT FAMOUSLY KNOWN AS BELLARY MODEL

2007
INDIA RATIFIED THE UNITED NATIONS' CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) AND THIS PROVIDED FURTHER IMPETUS FOR UPDATING THE LEGISLATION..

2016
THE PASSAGE OF THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 HAD SIGNIFICANT IMPLICATIONS FOR PEOPLE WITH PSYCHOSOCIAL DISABILITIES, OWING TO THE INCLUSION OF MENTAL ILLNESS IN THE DEFINITION OF DISABILITY.

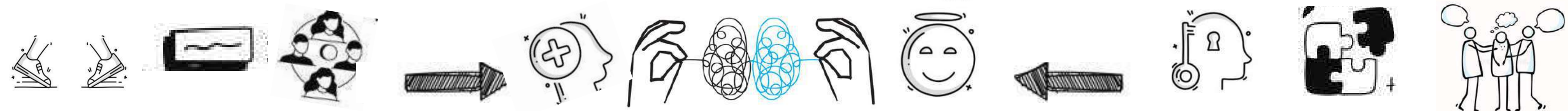
1851
THE FIRST LAW IN RELATION TO MENTAL ILLNESS IN BRITISH INDIA WAS THE LUNATIC REMOVAL ACT, 1851

1946
BHORE COMMITTEE REPORT FINDINGS HIGHLIGHTED THE UNSATISFACTORY CONDITION OF MENTAL HEALTHCARE IN INDIA

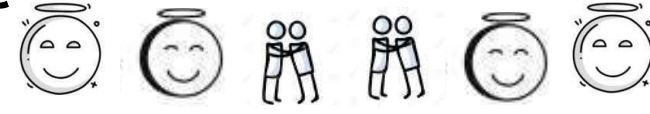
1982
THE NATIONAL MENTAL HEALTHCARE PROGRAMME INITIATED TO DEVELOP COMMUNITY BASED MENTAL HEALTH SERVICES

2013
INSUFFICIENT TREATMENT FACILITIES POSED FINANCIAL, SOCIAL & EMOTIONAL BURDENS ON CARERS AND FAMILY LED TO AN AMENDMENT IN THE FORM OF MENTAL HEALTH CARE BILL 2013.

2017
MENTAL HEALTHCARE ACT WAS IMPLEMENTED WHICH DECRIMINALISES ATTEMPTS TO COMMIT SUICIDE AND PROHIBITS INHUMANE FORMS OF TREATMENT

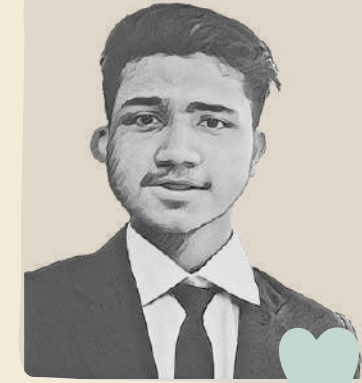


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ARTICLES

Hello,
I am Manas Shrivastava.
Let me take you through
the article submissions.

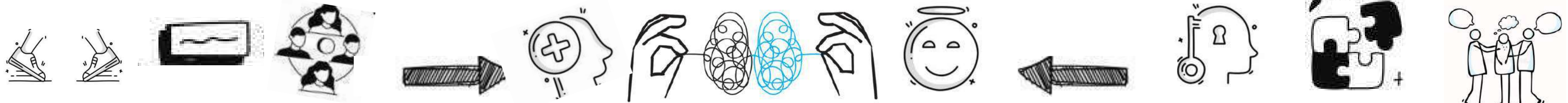


Mental Health of the LGBTQIA+ and the Lack of Policy to address it in India

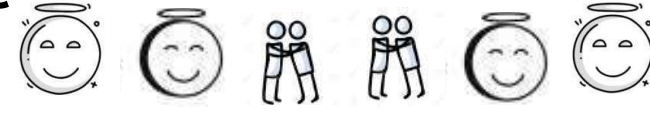
~ Anjali Pande

TRACING THE DEVELOPMENT OF MENTAL HEALTH LAWS IN INDIA

~ Ansh Gupta



सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है

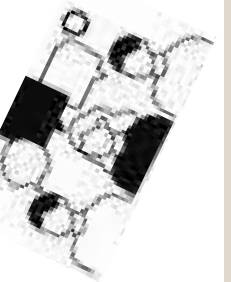
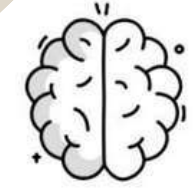


Mental Health of the LGBTQIA+ and the Lack of Policy to address it in India

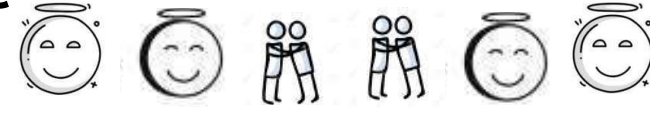
From treating the mentally ill as criminals and keeping them in asylums (a fancy word for prisons),[1] to understanding and being more accepting of mental health issues, society as we know it today has come a long way. Mental health cannot be defined in narrow terms of psychology as it sweeps under itself the overall well-being of the person. Physical, social, cultural, biological, etc., are all factors contributing to the mental health of a person. Good mental health broadens the growth prospect of an individual at the micro level, and of society collectively at a macro level.

The identity of a person also reflects on mental health, and social acceptance of this identity is an important aspect. Not everyone identifies themselves with norms set and bifurcated in society, and the acronym LGBTQ and its variants are used by people who do not fit into these norms. Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and Asexual, or LGBTQIA+ in short is the umbrella term used by people with different sexualities and gender identities. Belonging to this community, while also originating from different cultures and races, people are bound to face challenges, and trying to process it is a challenge on its own. In this article, we will be looking at the reasons why the LGBTQ community is more prone to mental health issues and disorders than the rest of the population, the lack of policy to address this issue, and how the existing policies can be made more inclusive.

Mental health issues and disorders are more prevalent amongst the LGBTQ when compared to their heterosexual peers, with the highest rates among bisexual individuals.[2] The sexual minority is at a higher risk of harming themselves or being suicidal due to their identity and orientation.[3] This is due to a lack of social acceptance and more often than not, people of this community face rejection not only by their peers but also by their own families. This persistent feeling of homelessness might accumulate along with various reasons, giving rise to mental illnesses.[4]



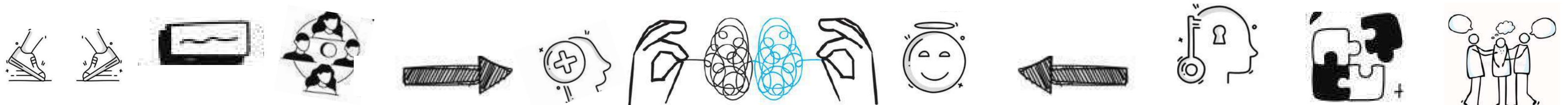
◀ सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है ▶



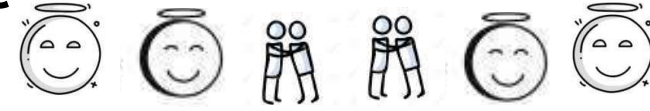
People of this community are discriminated against at schools or workplaces. Sexual violence, assault, and bullying, are faced by most members of this community.[5] Substance use amongst these people is common as it acts as a quick relief from oppression, which may lead to dependency at young ages. The approach towards the mental health of this community cannot be similar to that of the rest of the population as the experiences and encounters are quite different. Even within this community, there are various subgroups with different cultural backgrounds and ethnicities, and if they aren't understood well, the entire basis of providing facilities for improving the mental health of the LGBTQ falls flat. Addressing issues of a particular subgroup should be customised according to the needs of the people reaching out for help. Fears of being misunderstood, homophobia, transphobia, etc may be reasons why it's problematic for the LGBTQ to seek help.[6]

The hardships faced by people of the same region are contrasting with their peers due to different ethnicities, cultures, traditions, etc. The difficulties increase when it comes to the LGBTQ in India. Despite having decriminalised homosexuality in the Supreme Court judgment of 2018, the stigma attached still remains in the minds of people.[7] Mental health issues faced by the LGBTQ are often misunderstood by the health care providers and professionals as the taboo has been ingrained in society. India already lacks rules, policies and legislations when it comes to mental health with the National Mental Health Programme being one among very few of the policies enacted. Even though the National Mental Health Programme enacted in 1982 provides for access to mental health care facilities to the most vulnerable sections of society, it does not particularly address the needs of the LGBTQ.[8]

It was a good initiative, but for the 1980s. Times have changed and a new overall mental health policy is a need of the hour, with a special focus on LGBTQ and the needs of each subgroup within this community. This policy was initiated almost forty years ago and yet it has made marginal progress, due to a lack of implementation. It sounds amazing in theory, but the resources, administrative issues, etc hindered its achievement. Many of the mental health policies that are thought of aren't integrated into the larger health and welfare rules, making it more difficult to implement them as stand-alone policies. Awareness in the medical field pertaining to mental health is also missing, and grossly absent when it comes to the LGBTQ.



सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है



True oppression of the LGBTQ shall end only when they are treated as normal in society. The key to achieving that is through understanding and validating their experiences and issues. A LGBTQ-specific mental health policy is indeed a step towards growth for India and this article throws light upon the presence of existing policies and how they could be modified to be made more inclusive for the LGBTQ in the country. The stigma and taboo can be erased when it is normalised in the current and future generations that seeking help and belonging to the LGBTQ are both normal, nurturing a healthy environment

ENDNOTES

[1]Albert Deutsch, *The Mentally Ill in America: A History of Their Care and Treatment from Colonial Times* (2nd edn, Read Books 2007).

[2]Georgina H Gnan et al, 'General and LGBTQ-specific Factors Associated with Mental Health and Suicide Risk Among LGBTQ Students' (2019) 22(10) *Journal of Youth Studies* 1393.

[3]Martin Plöderl et al, 'Mental health of sexual minorities A systematic review' (2015) 27(5) *International Review of Psychiatry* 367.

[4]Kari McDonald, 'Social Support and Mental Health in LGBTQ Adolescents: A review of the literature' (2015) 39(1) *Issues in Mental Health Nursing* 16.

[5]David Huebner et al, 'Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual Men' (2004) 94(7) *American Journal of Public Health* 1200.

[6]Elizabeth McDermott et al, 'Explaining Effective Mental Health Support for LGBTQ+ Youth: A Meta-Narrative Review' (2021) 1 *SSM - Mental Health* <<https://www.sciencedirect.com/science/article/pii/S2666560321000049>> accessed 25 December 2023.

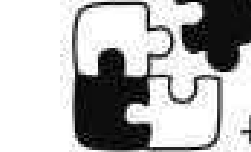
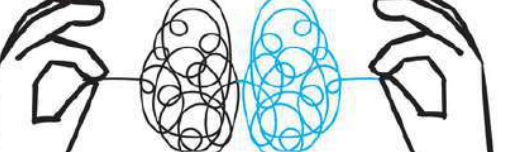
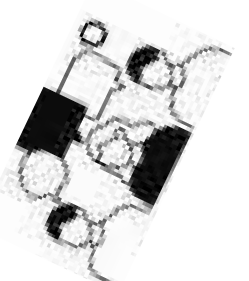
[7]Navtej Singh Johar v Union of India [2018] 1 SCC 791.

[8]'National Mental Health Programme' (Government of India, 1982) <https://www.nhp.gov.in/national-mental-health-programme_pg> accessed 25 December 2022.

[9]The Mental Healthcare Act 2017, s 18(2).

[10]Bikas Singh, 'Meghalaya Cabinet on Tuesday passed its first ever Mental Health & Social Care Policy' (The Economic Times, 29 November 2022) <<https://economictimes.indiatimes.com/news/india/meghalaya-cabinet-on-tuesday-passed-its-first-ever-mental-health-social-care-policy/articleshow/95860203.cms>> accessed 25 December 2022.

[11]Williams institute, 'Global Acceptance Index' (Williams Institute's Website, 2021) <<https://williamsinstitute.law.ucla.edu/projects/gai/>> accessed 25 December 2022.



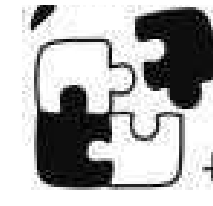
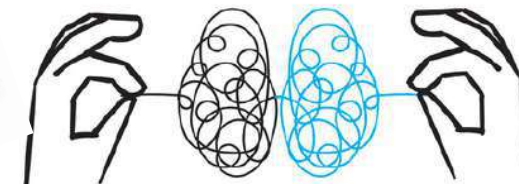
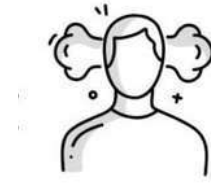
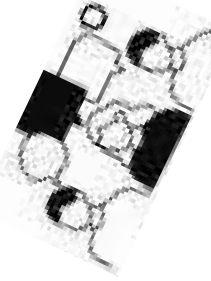
सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है



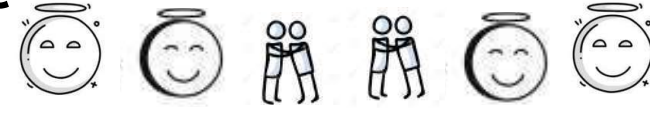
TRACING THE DEVELOPMENT OF MENTAL HEALTH LAWS IN INDIA

Health is often defined taking into consideration only the physical aspect of the body and neglecting the mental well-being. Health, in fact, is an absolute state in which there is no presence of ailment and addition to that, there is something positive. Mental health is an optimal psychological state that becomes a necessary goal to be obtained by the populace in all the societies.[1] It includes individual satisfaction, emotions of the person, relationships with others and aspiration in life. In India, the sensitivity towards the topic of mental health has increased gradually which was the need of the hour as WHO estimates that in India, the burden of mental health problems is to the tune of 2,443 Disability Adjusted Life Years per 100,000 population, and the suicide rate per 100,000 population is 21.1.[2] The numbers clearly suggest that although people are aware of mental health problems, yet there still are some prejudices in our society that are dragging us backwards and the issues are not being resolved which is worsening the condition day by day and increasing the risk of being the most depressed country in the world. In this article, we will analyze the steps taken by the Government of India in purview of mental health and what more can be done regarding this aspect.

The condition of mentally-ill people earlier was even worse. They were considered inferiors and alienated by the society on allegations of being influenced by evil powers and kept them at a distance to protect their sanctity. The remedies for such afflictions were in the form of ceremonies, rituals punishments, and sacrifices.[3] The first major step against the issue of discrimination with mentally-ill people can be traced back in 1851 during the British colonial rule, when an act was passed by the Britishers named, the Lunatic Removal Act 1851 with the objective of returning the British criminals with mental illness to their country of origin.[4] Although, the act was not of much significance as it mostly focused on the Britishers only, still, it holds some water as it was the first ever legislation passed in India in purview of mental health. The 1851 act was followed by a string of acts that were passed for the Lunatics starting from The Lunacy (Supreme Courts and District Courts) Act 1858, The Indian Lunatic Asylum Act 1858 followed by The Military Lunatic Act 1877. One act that drew a lot of criticism and dissention was The Indian Lunacy Act 1912 as it was too retrogressive in nature and followed the same old stereotypical thinking of isolating the individual suffering from mental sickness.

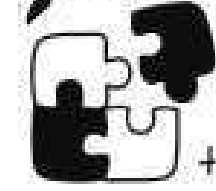
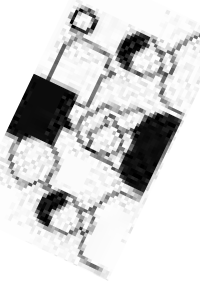
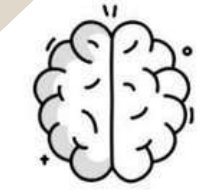


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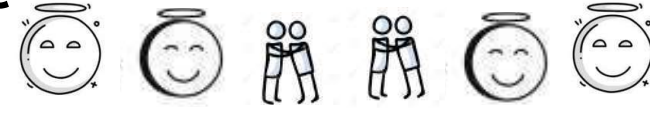


The act provides for the arrest and isolation of the person of unsound mind to protect the society from them.[5] Shortly after Indian independence in 1947, new mental health act was drafted that took many years to be adopted which later came to be known as Mental Health Act, 1987.[6] It took almost 40 years for Independent India to bring an act for the regulation of mental health affairs in the state and the elongated time period speaks volumes about the importance given to mental health in our country. Although the arrival of the act was quite delayed but it served the right purpose as it was imperative for the country to take a progressive route for improving the mental health conditions. The act was not ignorant of the freedom of the person with mental illness unlike the previous acts and protected and shielded basic individual rights. It also provides for health facilities required for a mentally unfit person but the problem of rehabilitation remained untouched in this legislation which was seen as a shortcoming of the act.

In this digital age, children often become victims to stress, anxiety and depression which results in the unsoundness of the mind and often leads to committing crimes heinous in nature. The Juvenile Justice Act 2015 endures the fact that children alleged for a crime should not be treated as an adult criminal. According to section 15 of this Act states that in case of a heinous offence alleged to have been committed by a child, who had completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.[7] Even though, the act has been misused in a few cases, it is imperative to note that The Government of India's reformatory approach towards the juveniles is really commendable. The Government still needs to be more liberal-minded and abstain from anything too deterrent. Section 309 of the Indian Penal Code criminalizes the attempt to commit suicide and punishes the person with imprisonment. The National Mental Health Policy 2014 suggests the eradication of this section from the Indian Penal Code as it was a topic of immense debate and criticism. This policy is meant to guide all actions to scale up the mental health programs and provisions in the country.[8]



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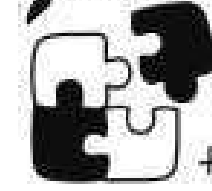
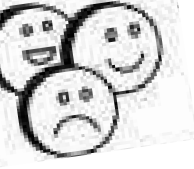
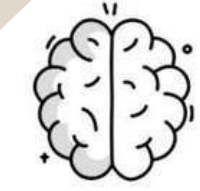


Role of The UN

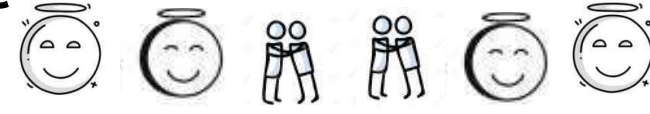
A pivotal moment in the development of mental health laws in India came in 2006, when the United Nations published the Convention on the Rights of Persons with Disabilities (UN-CRPD) and fully implemented it in 2008. It emphasizes on dealing with the issue of mental health in a more humane way and tries to reduce the emotional vacuum that has been created in the society against the mentally-ill. The UN-CRPD appears strongly opposed to involuntary treatments and affirms the legal capacity of individuals at all times.[9] The UN made it compulsory for all the signatory countries of this convention to reform their mental health acts and make it concurrent with the UN-CRPD. Since India was a signatory of this convention (India ratified UN-CRPD in 2007), certain revisions in the law of the state was inevitable. The Mental Health Act of 1987 was thus amended and a Mental Health Care Bill was proposed in 2013 and 4 years later, the act was passed as Mental Health Care Act 2017. In between, the Government enacted legislation for the disabled persons in the nation, i.e. Rights of Persons with Disabilities Act 2016 as was mandatory under the UN convention. The act encompasses a wide range on mental health conditions and disorders mainly autism, mental retardation, specific learning disabilities and spectrum disorders.[10]

The Mental Healthcare Act 2017

The Mental Health Act 1987 simply defines a mentally-ill person as a person who is in need of treatment by reason of any mental disorder other than mental retardation.[11] The 2017 act presents a clearer picture of how the term "mental illness" should be defined. Section 2(s) of the Mental Health Act defines "mental illness" as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence.[12] The act is more progressive in nature and tries to meet the international human rights standards set by the United Nations and the World Health Organization by giving more freedom and securing the basic rights of the individual. It gives the freedom of choice to the mentally-ill to decide how he wants to be treated and grants unrestricted access to the health services provided by the government.



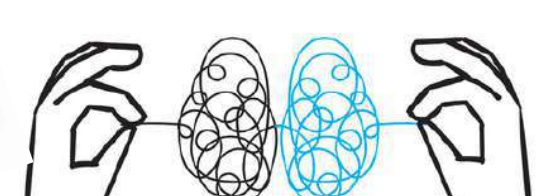
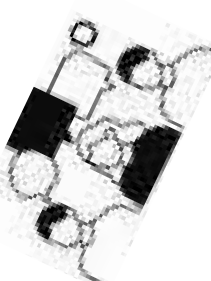
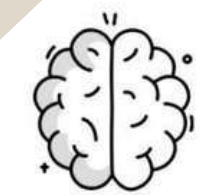
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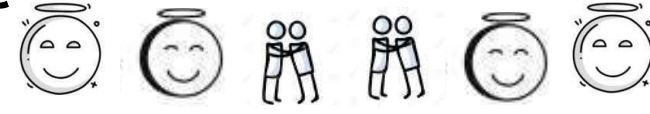
The act gives the right to not to be alienated from the society and reaffirms that living in the society is a basic human right and that cannot be taken away from the person. If the person is segregated from the family and the financial conditions of the person is not good, the government will provide legal aid to that person. The act also safeguards the dignity of the person by protecting against any inhumane treatment. It also directs the hospitals and doctors to keep the confidentiality intact of the patient, thus guarding the right to privacy. The silver-lining in this act which was thoroughly discussed by many, was the decriminalization of attempt to suicide. It acknowledges the mental state of the person at the time of attempting suicide and states that the person at that point of time was in immense stress and he should not be punished under section 309 of IPC. Even though the new act tried to add positive features but it did invite a lot of criticism on grounds that the Act did not implement a National Mental Health Policy across all states and also that the Act ignores the presence of mental health illness programs in the country.[13]

International Legislation

The United Kingdom and the United States both have ratified the UN-CRPD and both the countries present themselves as harbours of human rights. It has led to rigorous development in the health sector in their respective nations. In the U.S. the development of various systems of managed care, both public and private are underway and heated debates are occurring both at conferences and in the professional literature regarding the efficacy of these initiatives.[14]The situation in the US was not too favourable until 1970s as the condition of the government-operated mental health care institutions were petrifying. The inhumane treatment and the sheer inadvertence of the government institutions towards mentally-ill people gave a push to the emergence of mental health laws in the country and then the UN-CRPD played an important role in the making of mental health laws in the US. The story of UK is also more or less in the same lines. Before the Mental Health Act 1959, there was no such law in UK that can be recognised as mental health legislation. This act gave freedom to the doctors and the mental patients from all restrictions so that they can cure or get cured in the same way as any other patient. Mental health reviews in England and Wales are now carried out by the same chamber of the unified tribunal system which deals with the special educational needs of children with learning difficulties and disabilities.[15] Germany has done considerably well in the field of mental health.



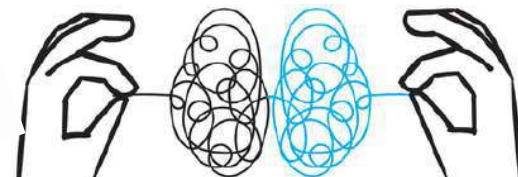
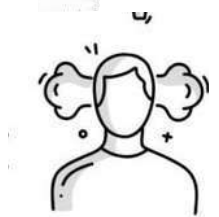
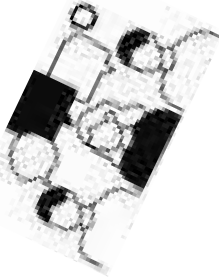
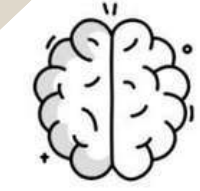
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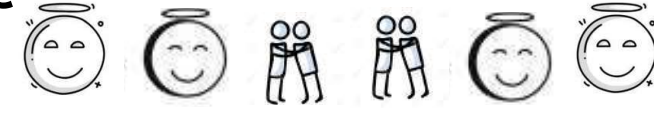
They acknowledged the importance of mental health in the 19th century itself by developing numerous health care institutions. Germany has covered the mental healthcare finances of its citizens by providing insurance for the same. The western countries still fare well but for the African and the under-developed countries, mental health is still a virtual term written on papers as no such legislation can be traced which holds some water. However, South Africa has given a glimmer of hope by making access to health care services a right, a constitutional one and hopefully, right to access to mental health care services is in the horizon. Our neighbor, Pakistan has been reluctant in the implementation of mental health laws in a strict manner. A silver lining in the Constitution of Pakistan is that it states that all of the persons living in the state are equal before the eye of the law, and hence mentally-ill people shall not be treated as second class people, and they should be treated equally as all citizens of Pakistan are.[16] Although, the Government of Pakistan brought Mental Health Act 1992 to replace the old and rigid Lunacy Act of 1912, the act has failed to serve its purpose. Also, it is a fact that the act was not strictly implemented and the functioning was malfunctioned by the inadvertence of the government towards mental health conditions in the state.

Reformative Suggestions

The repeal of section 309 of the Indian Penal Code is the need of the hour as it provides for the punishment to the person who attempts to commit suicide. The number of suicide cases per year is increasing rapidly in India and it is mostly due to the mental health conditions of the people. Criminalizing attempt to suicide, as discussed earlier is a deterrent approach to the problem and it has also proved ineffective in curbing the increasing suicides per year. Rather than treating the person as a criminal, mental assistance and counselling should be given to him which is the right path to take. The Mental Health Act 2017 did lay some provisions for the decriminalization but they were very ambiguous in nature and created a lot of confusions. Mental health in prisons has absolutely been neglected by the Government till now as no proper care is taken of the prisoners' conditions. No regular check-up facility is provided and mental assistance is provided to only those prisoners who have serious mental issues. There is a dire need of gigantic steps towards this long-existing problem as things have been stagnant till now.



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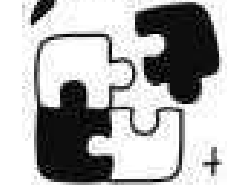
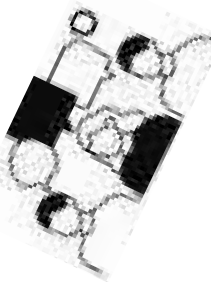
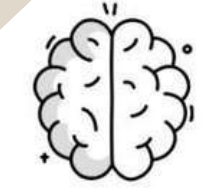


The teenagers of this country are extremely vulnerable to mental-illness as studies have shown that the mental health of the youth is gradually dilapidating in the teenagers and the situation should be handled with extreme care to avoid further depredations. It is very important to take care of our youth as we all know that India has a young population with the median age being 28.4. If the youth is prospering, the country will definitely prosper

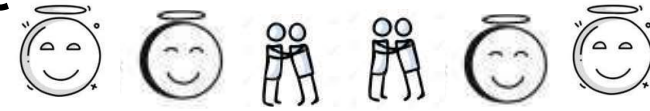
Challenges we face

The glaring issue in India is that the issue of mental health has always been side-lined by the government and by the people in general. The government has completely ignored the mental aspect in all its health schemes and has restricted it mainly to the mental health act of 2017. The health facilities available to the mentally-ill are also very poor in the country. The dearth of skilled manpower in this field is also alarming as the number of mental health experts available per thousand persons is also very less as compared to other countries. The budgetary allocation even to the health sector is alarmingly less, let alone the mental health sector. From whatever the health sector gets, it allocates an even more meagre amount to counter mental health issues. For a population of around 1.4 billion people, the total amount that should be assigned should be at least 1000 crores, but this seems like a utopian vision in the present scenarios. The COVID-19 Pandemic has made the condition even worse as people have lost jobs which indeed, did put a lot of pressure on the people for survival that affected their mental well-being. Being away from the family and having no social life further assisted in the dilapidation of the mental health of the people. The pandemic has now eased-off in the country, but many people still can't recover fully which can be seen as the after-effect of the pandemic.

Mental Illness is a very sensitive matter and it should not be seen or treated as any other illness and must not be used as comic relief in movies as done by many Bollywood films. Although, the awareness regarding mental health has increased in the country, it is the government that has to take the cognizance of the seriousness of the matter and provide more assistance for the mentally-ill. The situation in the country regarding mental health is still not even satisfactory but we can hope for a gradual change in the framing of policies for the betterment of the mentally-disabled in the country.



सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है



The Mental Health Act of 2017 has given a hope to the citizens of a better future but we are still lagging behind when compared to our western counter-parts. Clearly, there are a lot of glaring issues to deal with, be it the budgetary allocation to mental health or the inclusion of mental health in different health schemes launched by the government, but we have seen a positive change from the times of the Indian Lunacy Act 1912 to the Mental Health Act 2017 and will be hoping for some more positive results in the upcoming times with a more rapid and steady approach.

ENDNOTES

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[9]Richard M Duffy and Brendan D Kelly, 'Concordance of the Indian Mental Healthcare Act 2017 with the World Health Organization's Checklist on Mental Health Legislation' (2017) 11 International Journal of Mental Health Systems' 48.

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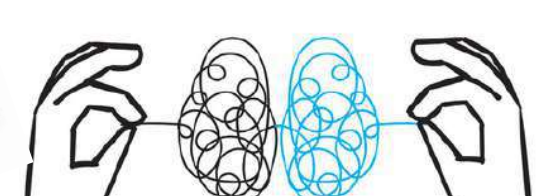
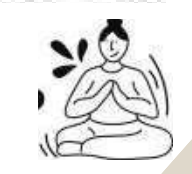
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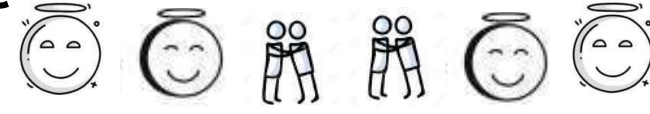
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[15] Brenda Hale, 'Rethinking Rights-Based Mental Health Laws' (2014) 10 Intl J L Context 140.

[16]The Constitution of The Islamic Republic of Pakistan, art 25



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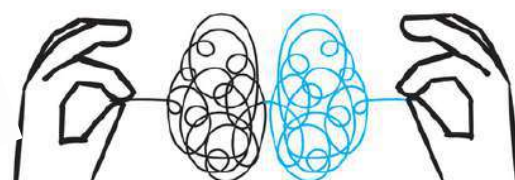
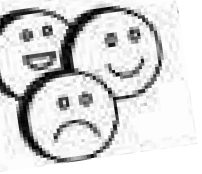
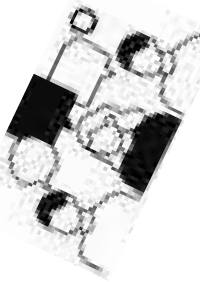
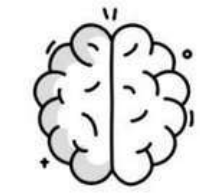


In conversation with Prof. Warren Burke and Dr. Monique Soileau-Burke

Prof. Warren Burke is currently a practising attorney in the United States House of Representatives. He is a Visiting Professor at National Law University Odisha, and provides nonpartisan legal analysis and drafting services to Members and Committees of the House at all stages of the legislative process. He is skilled in the areas of food, drugs, medical devices, public health, and clean air. We are thrilled to have him on board, expressing his views on the legislative and legal aspects of mental health and its provisions vis-à-vis India and abroad!



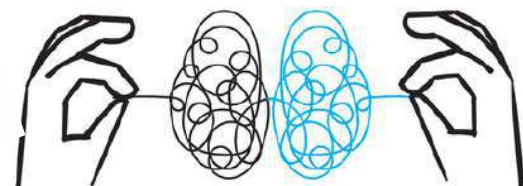
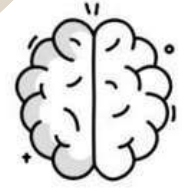
Dr. Monique Soileau-Burke is currently serving as the President of the American Academy of Paediatrics, Maryland Chapter. She is a general paediatrician at the Paediatric Center in Columbia, with over 20 years of practice. In addition to that, she also serves as a Clinical Instructor at the John Hopkins School of Medicine. Having quality experience in the health sector in her time dealing with patients, we are sure that her insights will help the readers to learn more about mental health



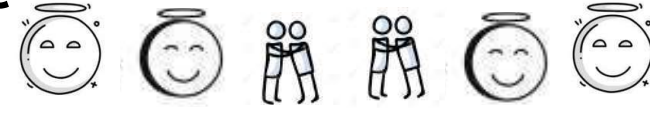
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Q: The four essentials of a policy are: clear vision and objective, design to achieve the goal, quantum resources and monitoring for course correction. Clearly, India has achieved the first essential of the policy, but is yet to achieve the other three essentials of an effective policy in terms of mental health. How can India achieve the remaining essentials with regard to mental health policy?

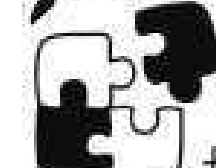
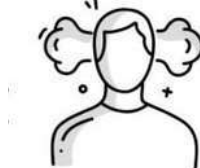
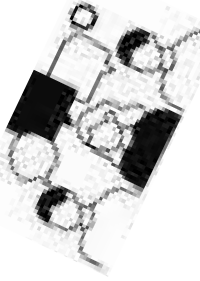
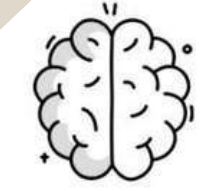


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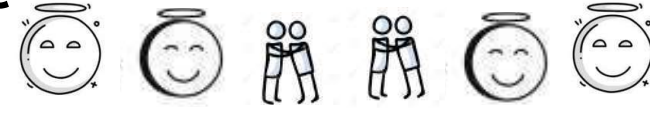


Prof. Warren: The Mental Health Act of India is a well-written, somewhat extensive policy that aims to address a variety of issues and cover more area. The Act is a comprehensive text overall; the implementation mechanism is the only other part that allows for inspection. In my opinion, the legislative oversight is the only significant distinction between the States and India when comparing the implementation strategies that could be employed. Legislative Oversight is the time period when After the executive implements, the legislative branch receives feedback on the performance and any implementation-related difficulties in the States. In the States, there is also a concept of Re-Authorization cycle and Appropriation cycle, In re-appropriation there is a revision of the act after a particular time period and in appropriation cycle the legislative justifies the cycle of expenditure to date. Thus, the provide for regular update in policy to the changing times and also provide accountability by enabling executive answerable to legislative over expenditure and budgeting. In India, the question of cooperation and collaboration of the states and the centre also poses issues in regard to the implementation. Thus, this system requires additional mechanism through legislative to effectively provide the benefits of the Act. The share of duties, budget and accountability effectively provides clear gaps for exploitation or even general seepage, thus, there must be an emphasised correction or overlook on these areas for India to make its Mental Health policy effective.

Dr. Monique: There is a huge difference between the Legislation and the ground realities. Generally speaking, how the Act is received by the populace and whether it addresses their common problems is what matters most. As a result, it is critical to examine the gap between governmental authorities and the general public. the notion of what is being done and what is being regulated. The practical inequality and representation are crucial to the reassessment notion. Therefore, it must be integrated into the Indian policy to address and create system to connect with the primary workers or stakeholders who are affected by the policy.

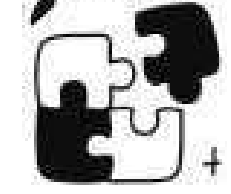
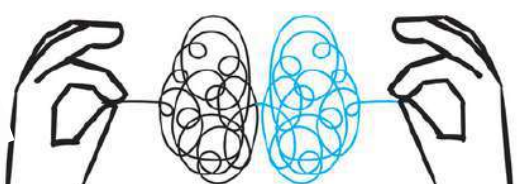
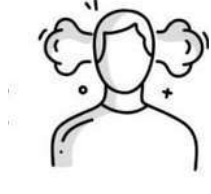
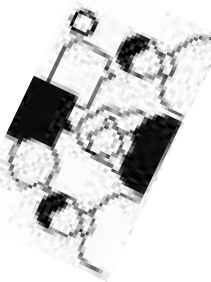
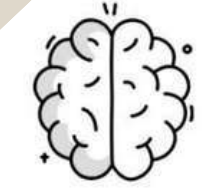


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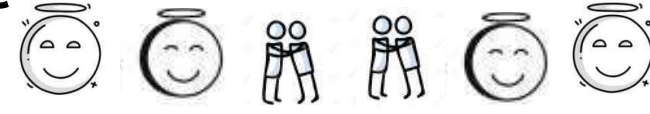


Q: COVID-19 caused a lot of mental health problems across the world.

Could you elaborate on the importance of an established framework addressing mental health in emergency and disaster situations like COVID-19?



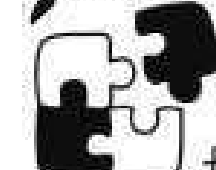
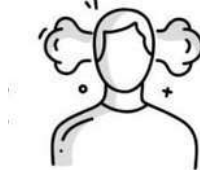
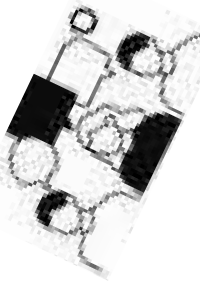
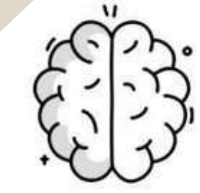
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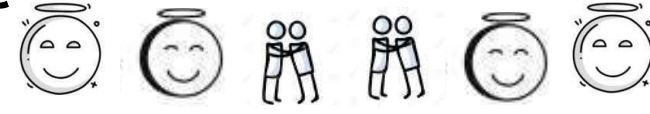
Prof. Warren:

I believe the pandemic reported increased mental health concerns, especially in adolescents and children, due to the given remote learning and social distancing. Coupled with the unaddressed mental illness of people and the isolation that was created by pandemic provided the wider scope of improvement. Other Extreme issues such as death of primary and secondary providers also aggravated these issues. The mental health framework was not ready to handle such grave and aggravated situations, but this also provides us with necessary inputs on the importance of mental health and policy framework for the current world as well as the unexpected future.

Dr. Monique: We can all agree that the pandemic disclosed the pandora box of mental illness. But to understand the Pandemic and mental health or even before discussing mental health over the past years, it is best to start questioning about this through two spectrum: the pre-pandemic and the post-pandemic era. This is crucial because it enables us to comprehend the variations and actualities between before and after the pandemic. As a practitioner, I would say that these issues especially in adolescents and children was existent. The pandemic only magnified these issues. In America, Even though there is a robust legal system, the most common issue was with the availability of resources in both America and the rest of the world. Legislation is therefore only a component of the solution. The current bill also aims to include a mental health examination in insurance is beneficial, but it does not again deal with the issue of resources, which includes the doctors, therapists, and other healthcare professionals. Therefore, there is a need for long-term structured planning of resources along with policies. There needs to be an implementation of emergency toolkit to combat situations which arose in pandemic. The next essential element in a varied society is the local government. This especially applicable to India, as the local government plays a major role in promoting awareness and also providing the benefits of the policy.

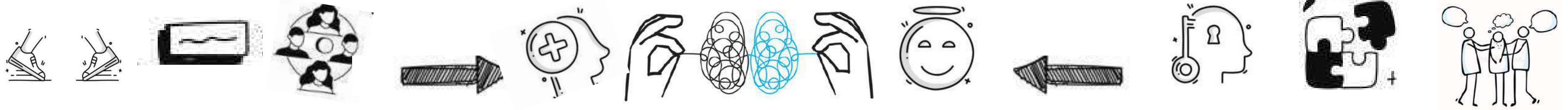


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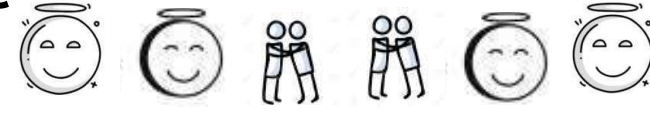


Q: How can India, with a fragile public healthcare system, effectively work on sensitive issues like mental health, considering the dearth of institutional support and space for this evolving issue in the country?

CONCLUSION



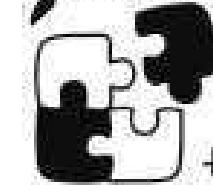
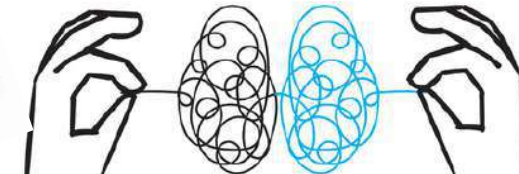
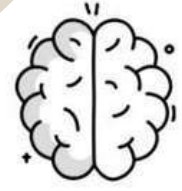
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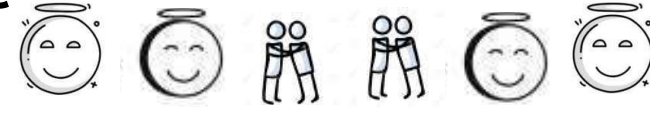
Prof. Warren: There's a big difference between the Indian government and the US government in terms of how the federal system is set up. In India, there are a lot of regulations that are formulated through the Central government, whereas in the US, the federal government handles the financial part, the state governments have most of the power with respect to the regulatory functions and the local government does most of the work. India is a diverse land, and it might be very difficult for the Central government to craft a policy that might suit everyone's needs. The US government's mental health agency doesn't have regulatory powers, but provides leadership, coordination, education, guidance and funding. It makes grants to the states and local health departments. The people in charge of implementing these policies and programmes are more local, which gives them the latitude to decide how to implement these policies according to jurisdictional requirements, thereby making the overall job a lot easier.

There are two things that need to be looked at, to solve this issue – the first being cultural competency and secondly, diversifying the mental health workforce. Cultural competency is achieved by diversifying the mental health workforce. There are various mechanisms which can be put to use for the same, such as scholarship programmes, loan repayment programmes, incentives for recruitment into the workforce and so on.

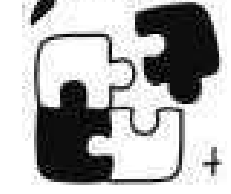
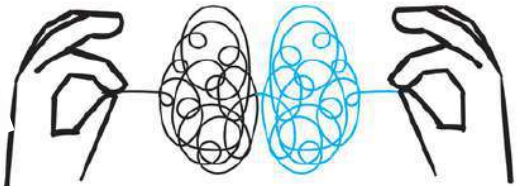
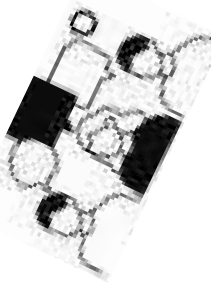
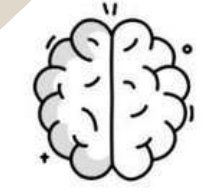
Dr. Monique: My opinion is that there needs to be a focus on training of younger mental health professionals in order to raise awareness – things like how to provide mental healthcare services and how to sensitize people to have more open conversations about mental health is the way to go.



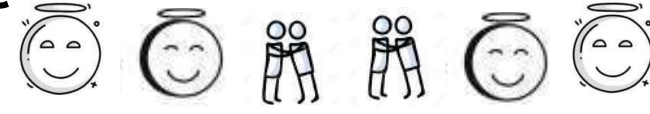
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Q: What do you think, are the essentials of mental health infrastructure? How are they similar or different from the existing public health infrastructure systems?

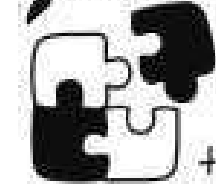
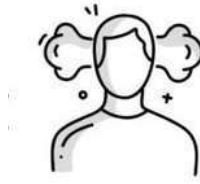
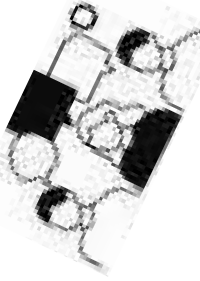
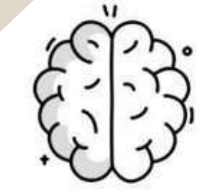


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Prof. Warren: Talking about infrastructure, one is obviously the professionals themselves. The people are a key part of the infrastructure and we have a lot of federal programmes like scholarships, loan repayment programmes, recruitment programmes, placement programmes which also play a part. For example, we also have a public awareness campaign going on, known as National Suicide Prevention Lifeline, which is a three-digit dialling code (988). The idea is, anyone can call 988 from anywhere in the country and have a counsellor on the phone, if the person is in crisis. There is funding for this programme to make people aware that such a programme exists. One of the pillars of SAMHSA is integrating behavioural and physical healthcare. The demand for mental health services especially went up during COVID-19, as anxiety and depression rose to a high among people. Thus, it became important that mental healthcare and physical healthcare be integrated. I'm sure Monique can talk about the initiatives taken by her organisation on integrating physical and mental healthcare.

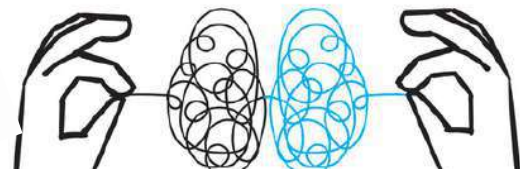
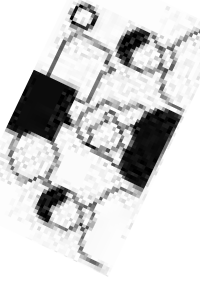
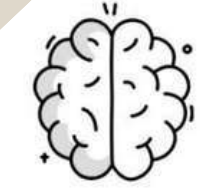
Dr. Monique: As Warren was saying, it has gone to a point now, that 25% of my day as a paediatrician is providing mental healthcare. I think that training and sensitization becomes very important so that the number of people providing such services go up. We were able to integrate a full-time psychologist into our practice, because there arose a need for it. I can now send my patients to the psychologist, so that there can be seen to, if there arose a need for emergency intervention in terms of providing mental healthcare. We are also trying to inculcate a mental healthcare programme into schools here. I do think that for families, and in general as well, having an integrated healthcare system is ideal.



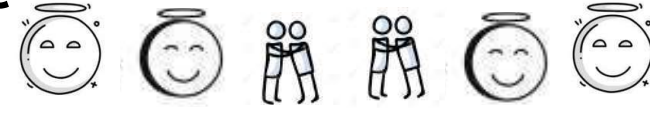
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Q: The NCRB data provided that the daily wage workers topped the list of suicide. However, the government released posters to paint rangoli, adopt a hobby, clap hands while the daily wage workers struggled to make the ends meet. They did not have shelter or food to survive or even stable job. Thus, we can see that Mental health become an elitist concept and does not address the lowest socio-economic strata. So, how do we bridge the gap in our policy to make it inclusive and connected to the ground reality and not just legislative policy or guideline?

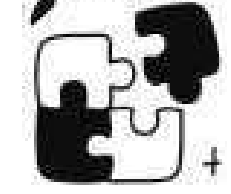
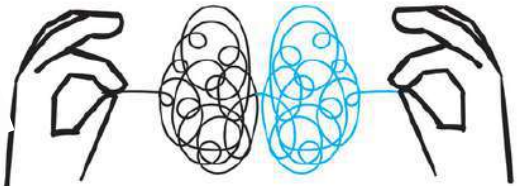
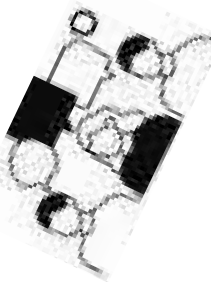
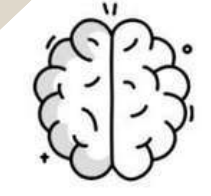


सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है

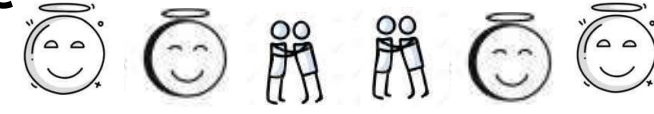


Prof. Warren: This question at its core addresses the challenges that legislators face in public health policies. Social determinants arise from various factors such as diverse housing, education, and so much more. Covid cemented this idea and proved the inevitable that the health disparity is due to the existence of social determinants. In the first year of Covid, we can observe this trend when the Blacks and Hispanic suffered more than other communities, this can be correlated to mental health as well. Therefore, it is necessary for overall development whether that is social or economic. The government should actively inculcate economic, cultural and geographical development along with other social health movements.

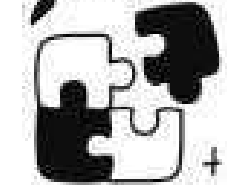
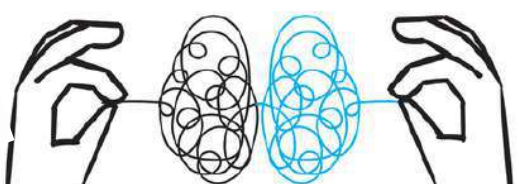
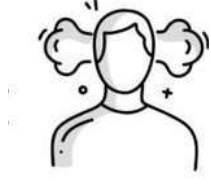
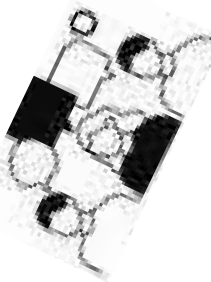
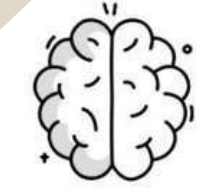
Dr. Monique: I agree that mental health is not an isolated policy matter, it includes socio-economic development. We cannot assess mental health when their basic needs are unattended. It is also important to include awareness among every strata of people through various religious, geographical, cultural means and reach out to the different strata of people among various age groups. Social determinants do dictate on the choice that may be influenced but necessary intervention that provides the importance of mental health can be inculcated among people, to at least actively promote a culture that takes cognisance of such illnesses. Therefore, appropriate agencies and people must be employed to provide socio-economic benefits and awareness. Things like surveys can be included to reach out to young mothers to understand their post-partum journey and their interaction with mental illness, it also enables us to track such assessment. As a paediatrician, we have equipped such means to reach to one sect of the people. Another approach by the government can include policies which provides social security as well as promotes conversation and implementation around mental health. One example is the Mental Health Parity Act which is regulatory and enforceable, it provides for insurance companies to cover the costs of mental illnesses. This really promotes mental health and also addresses issues such as class parity and elitism.



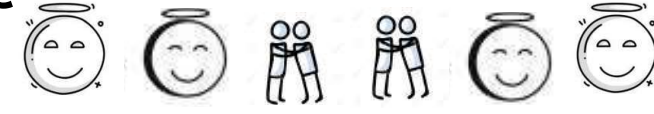
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Q: How can we make mental health a community-based initiative?



सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है



Dr. Monique:

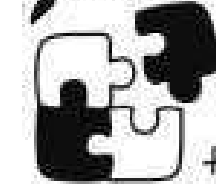
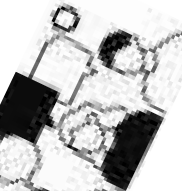
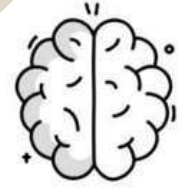
Talking about the COVID vaccine, bringing the community in, in terms of religious leaders, social clubs, etc is of paramount importance. We in the US, also stressed on the importance of social media and reaching all sections of the society.

Division of the population into age groups has also been effective. For instance, if the targeted population is the younger generation, TikTok and Instagram prove to be an effective way to reach the masses. If the targeted population is the parent-age group, apps frequently used by such parents eg. YouTube are important.

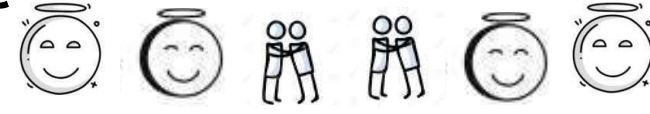
We also need to look into the family community. I'm sure it is the same case in India as well, what grandma says in a household is important. The point being, division of population makes the task of mental health being a community-based initiative much easier.

For the older generations, maybe something like religious leaders and community health fairs, where there is easy access to resources by people talking about various issues. Sporting events are also one of the ways in which promotion can be done, because a large number of people engage in such events, irrespective of culture, race, gender etc. Gatherings like these, where people come together, can be used for building on such initiatives.

Having action items is also very important, in addition to simply talking about the issues. We recently did a suicide prevention video which actually showcased local adolescents. Having local kids talking about how parents could ask and talk to their kids about mental health. We also have a QR code which can be scanned, which tells you 5 questions which can be asked about mental health to your kid. Such action items that we can take back to the community play a very important role in shaping the future of mental health in India



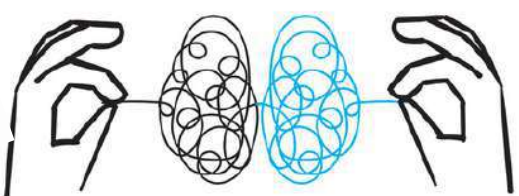
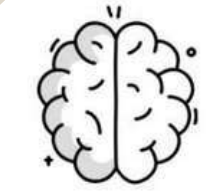
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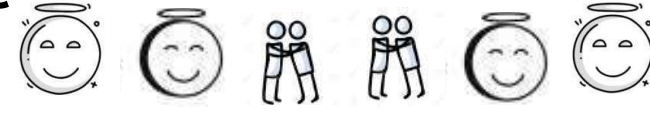
GUEST SUBMISSIONS

ASSESSING THE MENTAL HEALTHCARE ACT, 2017
FROM AN ANTI-DISCRIMINATION PERSPECTIVE

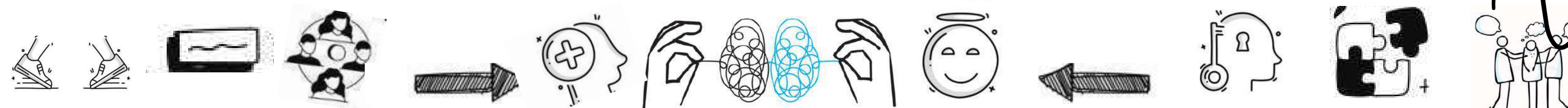
~ MS. NANDITTA BATRA,
ASST. PROFESSOR , NLSIU



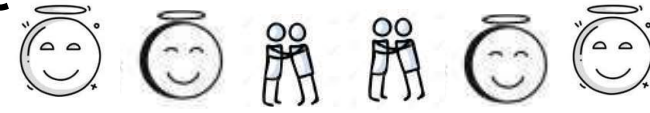
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The stigma associated with mental illness due to the stereotypical notions of Persons with Mental Illness [‘PMI’] as ‘dangerous’ and ‘violent’ has segued into discrimination over centuries. Using the medico-legal construct of ‘lunatics’, the colonial state robbed the PMIs of their personhood. The Indian Lunacy Act, 1912 authorized the magistrates to pass detention orders on petitions, by relatives, while the alleged lunatic was given no opportunity of being heard in such cases. A dangerous lunatic could be arrested and detained by the police, and segregated in a mental asylum located far off from the cities and towns. The focus of the Act, thus, clearly was not the care or well-being of lunatic but the utilitarian need of averting harm to society. The colonial perception of PMIs as aggressive, violent, anti-social continued to shape our laws and policies even after independence. The Indian Lunacy Act, 1912 was replaced by the Mental Health Act, 1987. “However, even the 1987 Act did not confer any agency or personhood to mentally ill persons. The Act did not provide a rights-based framework for mental disability but was rather restricted to only establishing psychiatric hospitals and psychiatric nursing homes, and administrative exigencies of such establishments.” It was only in 2017 that India enacted a rights-based progressive legalization in the form of Mental Healthcare Act, 2017 [MHA, 2017] purportedly to fulfill its obligation under ‘The Convention on Rights of Persons with Disabilities, 2006’.

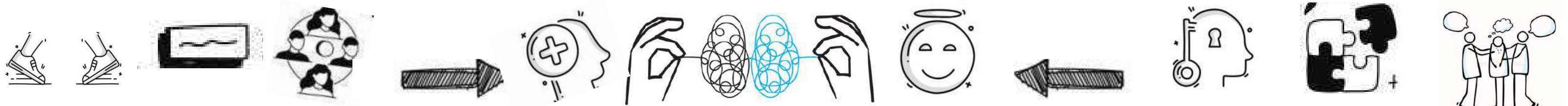


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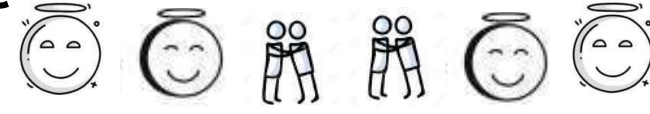


Commenting on the trajectory of laws mental healthcare field, the Supreme Court of India has noted in *Ravinder Kumar Dhariwal v. Union of India* that, “The Indian mental healthcare discourse has undergone a substantial and progressive change. Persons living with mental illness were considered as “lunatics” under the Indian Lunacy Act, 1912 and were criminalised and subjected to harassment. There was a moderate shift in the mental health discourse with the repeal of the Lunacy Act, 1912 and the enactment of the 1987 Act. However, the transformation in the mental health rights framework was profound when the 2017 Act was enacted since it placed a person having mental health issues within the rights framework.”

The MHA, 2017 seeks to destigmatize mental illness by ending various practices that dehumanize the treatment procedures and process. The Act is based on autonomy and personhood of PMIs and is phenomenal in establishing a rights-based care regime. It does so, firstly, by ensuring that a person is not unnecessarily classified as PMI for reasons not connected with the treatment; secondly, it provides a regime whereby the PMI retains autonomy over their mental healthcare decisions. They can even have directives set in advance specifying the way in which they wished to be cared or can also appoint a nominated representative of their choice.

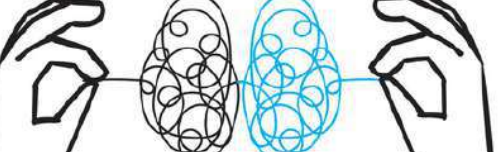
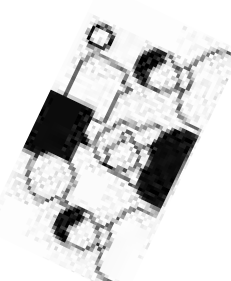
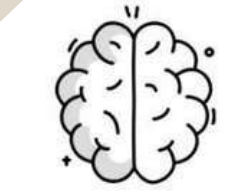


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They have the right to information regarding treatment, diagnosis and admission, and access to medical records. Thirdly, the Act prohibits forced detention in mental health establishment. It gives PMI the right to community living. In case of PMI with high support needs, admission to mental health establishment is generally restricted to thirty days. Fourthly, the Act prohibits non-consensual treatment except in case of emergency where nominated representative is not available. The concept of emergency is limited to 72 hours of treatment. Fifthly, the Act prohibits the use of certain inhumane and degrading treatments like chaining of PMIs, use of electro-convulsive therapy without anesthesia, sterilization intended as a treatment. The Act is based on inherent human dignity and gives the right against inhuman, cruel and degrading treatment like compulsory tonsuring or compulsory uniforms. Lastly, the Act gives the right to access mental healthcare and the right to equality and non-discrimination in provision of all healthcare.

Pertinently, mental illness was recognised as a disability under Section 2(i) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

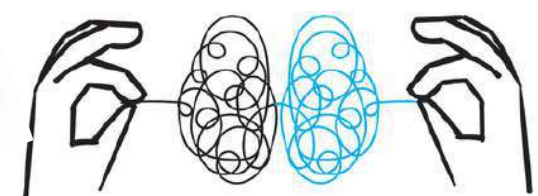
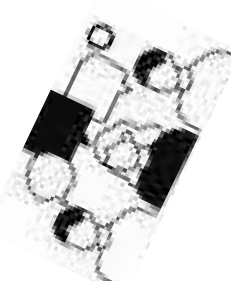
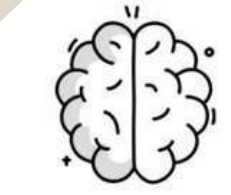


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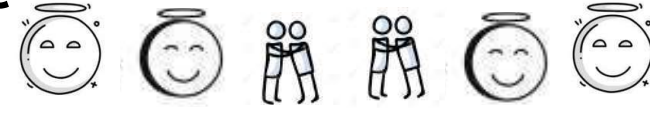


The said Act prohibited discrimination against persons with disabilities. The Act was replaced by 'The Rights of Persons With Disabilities Act, 2016' which has widened the ambit of rights and scope of non-discrimination against persons with disabilities including disability arising due to mental illness. The 2016 Act applies not only to government but also private establishments.

In *Shikha Nischal v. National Insurance Company Limited*, the question before the Delhi High Court was whether mental illness can be treated differently from physical illness for medical insurance purposes? The petitioner had a valid medical insurance from M/s. National Insurance Company Limited ['NICL'], since 2016 but it excluded the coverage for mental illnesses. In 2020 she was diagnosed with Schizoaffective Disorder (mental illness), thus, when she claimed reimbursement of the expenses incurred in her treatment, NICL rejected her claim, relying upon exclusion clause. She then filed a complaint before the Insurance Ombudsman relying upon the provisions of MHA, 2017 which also rejected her claims.

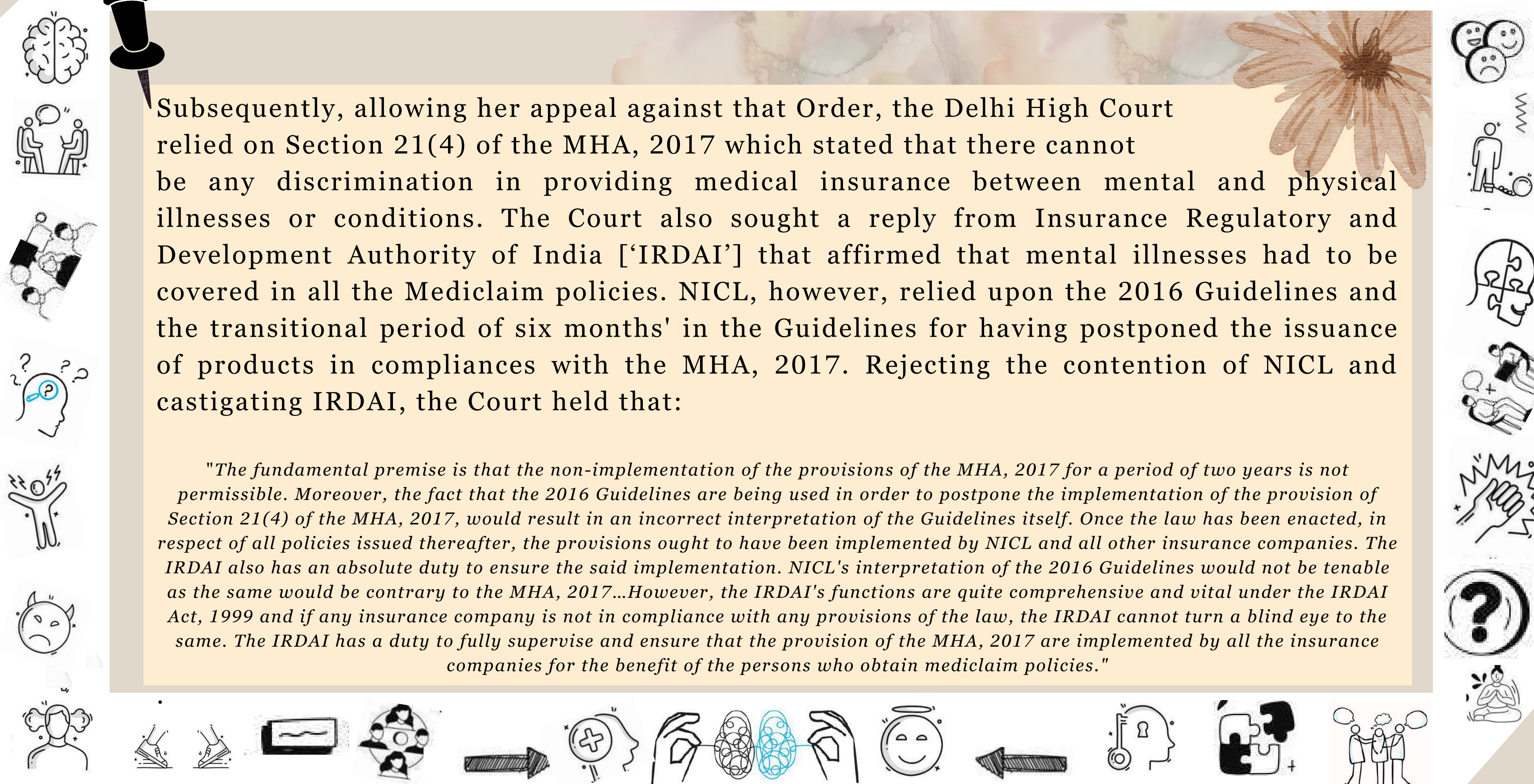


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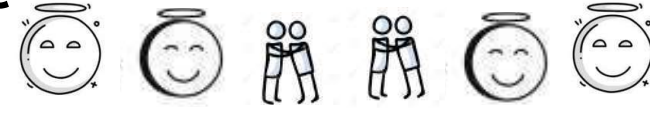


Subsequently, allowing her appeal against that Order, the Delhi High Court relied on Section 21(4) of the MHA, 2017 which stated that there cannot be any discrimination in providing medical insurance between mental and physical illnesses or conditions. The Court also sought a reply from Insurance Regulatory and Development Authority of India [‘IRDAI’] that affirmed that mental illnesses had to be covered in all the Mediclaim policies. NICL, however, relied upon the 2016 Guidelines and the transitional period of six months' in the Guidelines for having postponed the issuance of products in compliances with the MHA, 2017. Rejecting the contention of NICL and castigating IRDAI, the Court held that:

"The fundamental premise is that the non-implementation of the provisions of the MHA, 2017 for a period of two years is not permissible. Moreover, the fact that the 2016 Guidelines are being used in order to postpone the implementation of the provision of Section 21(4) of the MHA, 2017, would result in an incorrect interpretation of the Guidelines itself. Once the law has been enacted, in respect of all policies issued thereafter, the provisions ought to have been implemented by NICL and all other insurance companies. The IRDAI also has an absolute duty to ensure the said implementation. NICL's interpretation of the 2016 Guidelines would not be tenable as the same would be contrary to the MHA, 2017...However, the IRDAI's functions are quite comprehensive and vital under the IRDAI Act, 1999 and if any insurance company is not in compliance with any provisions of the law, the IRDAI cannot turn a blind eye to the same. The IRDAI has a duty to fully supervise and ensure that the provision of the MHA, 2017 are implemented by all the insurance companies for the benefit of the persons who obtain mediclaim policies."

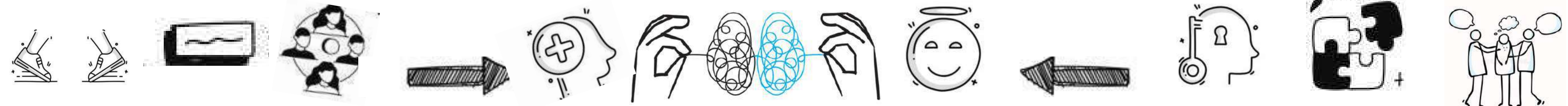


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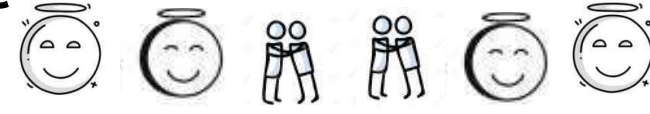


In another case before the Delhi High Court concerning mediclaim reimbursement for mental illness the question before the court was whether reimbursement for mental illness can be restricted to a fixed sum way below the premium. Relying on Section 21(4) the court was of the opinion that there can be no discrimination between mental illnesses and physical illnesses and the insurance provided in respect thereof. The Court has also sought response from IRDAI as to how did it grant approval to such insurance policies in the first place.

In *Ravinder Kumar Dhariwal*, the question before the Court was whether a challenge to disciplinary proceedings as being discriminatory where mental health disorder was one of the factors that led to the initiation of disciplinary proceedings for misconduct, required the employee to prove that his disability was the sole cause of disciplinary proceedings. Expanding the jurisprudence on indirect discrimination arising due to mental illness, the Supreme Court of India held that, "The mental disability of a person need not be the sole cause of the misconduct that led to the initiation of the disciplinary proceeding.

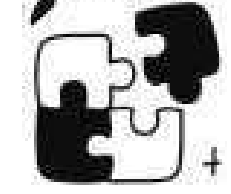
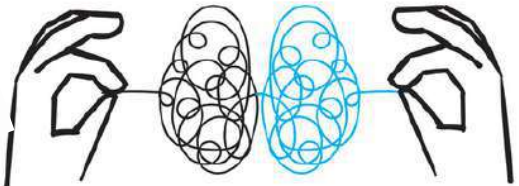
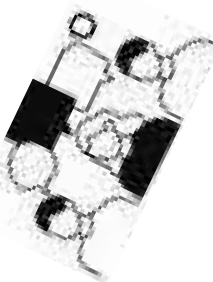
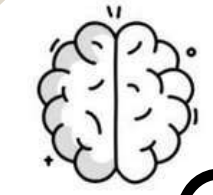


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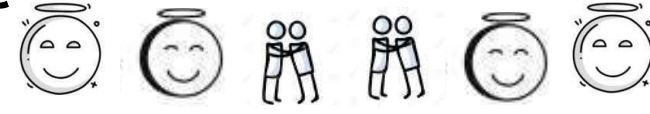


The mental disability impairs the ability of persons to comply with workplace standards in comparison to their able-bodied counterparts. Such persons suffer a disproportionate disadvantage due to the impairment and are more likely to be subjected to disciplinary proceedings. Thus, the initiation of disciplinary proceedings against persons with mental disabilities is a facet of indirect discrimination.

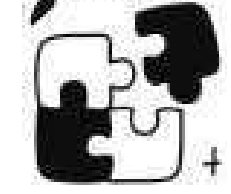
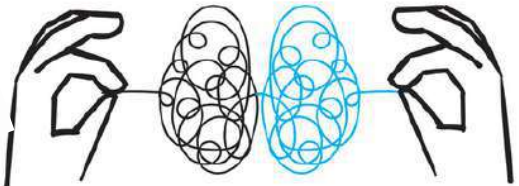
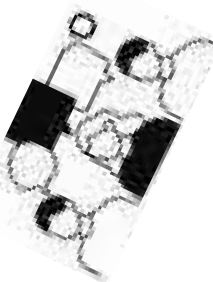
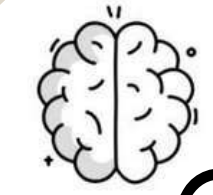
Despite the progressive shout out of the MHA, 2017 and Rights of Persons with Disabilities Act, 2016 that seek to undo the discrimination based on mental illness in public sphere, it is high time to revamp the private sphere too. Section 27 (e) of the Special Marriage Act, 1954 and section 13(1)(iii) of the the Hindu Marriage Act, 1955 that provide for mental disorders as default ground of divorce, reeks of colonial vestige and are not in tune with advances made in the field of psychiatry and the evolution of rights based regime. In *Kollam Chandra Sekhar v. Kollam Padma Latha* the question before the Supreme Court of India was “whether the marriage between the parties can be dissolved by granting a decree of divorce on the basis of one spouse's mental illness which includes schizophrenia under Section 13(1)(iii) of the Act?”.



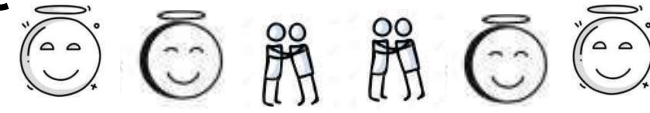
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Without answering the questions, the court ducked out by firstly placing reliance on the medical fact that although the wife suffering from “illness of schizophrenic type”, she did not show symptoms of psychotic illness and responded well to the treatment and, secondly, that divorce was not in the welfare and best interests of the child born out of wedlock. The court observed and was of the opinion that illness should not be ground for dissolution of marriage. Therefore, such situations can be avoided if the provision is deleted by the legislature or is declared unconstitutional. In 2019, leprosy was dropped as ground for dissolution of marriage due to advances in medical field. Therefore, it is the need of the hour to reconsider mental illness as ground for divorce and put an end to ensuing stigma.



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ENDNOTES

Visiting Assistant Professor of Law, National Law School of India University, Bengaluru.

The Indian Lunacy Act, 1912.

Sharma, Shridhar. "Psychiatry, colonialism and Indian civilization: A historical appraisal." *Indian journal of psychiatry* vol. 48,2 Section 13 (i): (2006): 109-12. doi:10.4103/0019-5545.31600

Ravinder Kumar Dhariwal v. Union of India, (2023) 2 SCC 209.

Ibid.

Section 3, Mental Healthcare Act, 2017.

Section 4, Mental Healthcare Act, 2017.

Section 5, Mental Healthcare Act, 2017.

Section 14, Mental Healthcare Act, 2017.

Section 22, Mental Healthcare Act, 2017.

Section 25, Mental Healthcare Act, 2017.

Section 19, Mental Healthcare Act, 2017.

Section 89 and 90, Mental Healthcare Act, 2017.

Section 94, Mental Healthcare Act, 2017.

Section 95, Mental Healthcare Act, 2017.

Section 20, Mental Healthcare Act, 2017.

Section 18, Mental Healthcare Act, 2017.

Section 21, Mental Healthcare Act, 2017.

Section 44-47, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Shikha Nischal v. National Insurance Company Limited, 2021 SCC OnLine Del 2577.

Subhash Khandelwal v. Max Bupa Health Insurance Company Limited, 2021 SCC OnLine Del 1751.

Supra note 4.

Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

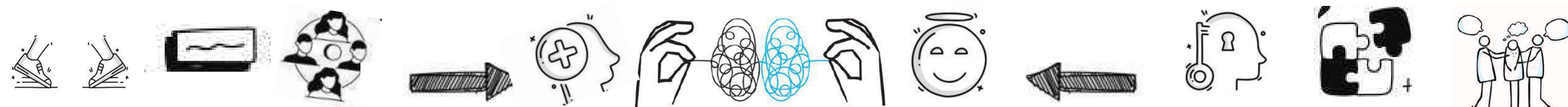
(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.-- In this clause,--

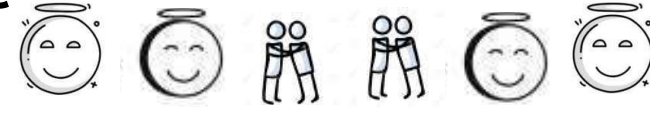
(a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

Kollam Chandra Sekhar v. Kollam Padma Latha, (2014) 1 SCC 225.



सकारात्मक सोच है, तो मानसिक बीमारी दूर है और जो शारीरिक-मानसिक रूप से स्वस्थ है वो सुखी जरूर है



The Team

