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Psychiatric Advance Directives as Instruments of Autonomy and Dispute Prevention: Assessing State Efforts under the Mental Healthcare Act, 2017

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Abstract: Psychiatric Advance Directive (PAD) is a recovery-oriented care provision proposed by the Indian Mental Health Care Act, 2017 that a person can create with their nominated representative. Once written, it provides preferable options a person wishes to opt for treatment of mental health. This is specifically useful when their capacity is restricted due to a crisis episode. PADs since their inception have faced barriers for implementation. Factors limiting its applicability are lack of human resources, inadequate infrastructure in mental health and attitude and beliefs of mental health service providers (MHSP). This paper seeks to examine through critical literature review the preparedness of Mental Health Service Providers (MHSPs) for the implementation of Psychiatric Advance Directives (PAD). Drawing on existing literature, policy documents, legislative provisions, and evidence from national and international contexts, the study reviews the measures and initiatives undertaken by the State to strengthen readiness for PAD implementation carving its historical evolution and current relevance. The review finds that, despite nearly a decade since the enactment of the Mental Healthcare Act, 2017, the implementation of Psychiatric Advance Directives remains uneven and insufficiently documented across India. While the legal framework has firmly recognised PADs as instruments of autonomy and supported decision-making, corresponding institutional preparedness, administrative guidance, professional training, and monitoring mechanisms have not developed uniformly across States. The study identifies a significant implementation gap between legislative intent and practice and argues that strengthening governance, institutional capacity, and evidence-based monitoring is essential for translating PADs from a statutory entitlement into an effective component of recovery-oriented mental healthcare.

Introduction

Globally mental health conditions are highly prevalent. WHO in its World Mental Health Report, 2022 has mentioned that about 1 in 8 people in the world have a mental disorder. They are the leading cause of years lived with disability (YLDs), accounting for one in every six years YLDs globally. Loss of productivity and other indirect costs to society often outstrips health care cost. In order to address these challenges and many others, Indian Mental Health Care Act 2017 came into being including Psychiatric Advance Directives (PAD). PADs are living-wills a person can create with their nominated representative. PAD pragmatic use has been considered because of the shift it has created from traditional clinical approach to the recent recovery-oriented approach. The provision of writing PADs provides active participation rights to individuals living with mental illness. It allows a person (not necessarily one with mental illness) to indicate their choice of treatment in case of future illness. PADs also have transformed the power dynamics of treatment provision, where it provides power to the service users in terms of choice of treatment. Increasing their autonomy in times when they are unable to make an informed decision.

Effectiveness of PAD's cannot be seen in isolated. The IMH Act, 2017 provides some tangible cushion like mental health insurance and Section 18; which requires the government to provide adequate funding to employ more human resources and improve infrastructural needs alongside.

Duffy and Kelly, 2017 point out some of the non- tangible barriers to the application of PAD are the attitudes and believes of psychiatrists that PAD will limit their ability to treat by giving too much autonomy to Persons with Mental Illness (PWMI). Whereas where Committee on the Rights of Persons with Disabilities says, it will be over restrictive for PWMI.

This research explores the role of the State in taking the additional steps.

The gap in research in the area:

Few studies provide unclear directions about training provisions & monitoring and evaluation of IMH Act, 2017 and the use of PAD in the south and west part of India. The process to implement PAD is either lacking or undocumented. Through this study, an effort will be made to bring "implementation efforts of the state to light."

According to WHO, Global Health Observatory data of 2016-in India psychiatrist working are 0.29 per 100,000 much away from the global median which is 9 per 100,000. Therefore, optimum utilization of time and resources of the health systems is one of the solutions.

In this scenario the role of the state becomes essential in preparing its human resources and institutions to deal with these

predicaments on the field. Thus, by critical analysis of the literature and bringing to light the necessary action undertaken by the state and the attitudes and challenges the human resources face, this study can further recommend preparedness and effectiveness into the resources and the roles and responsibilities of the support staff. Consequently, the study can inform practices for sustainable implementation of PAD- A way forward to recovery.

Objectives of the Study

- To trace the evolution of Psychiatric Advance Directives as a rights-based mechanism and examine their incorporation into the Mental Healthcare Act, 2017.
- To examine the legislative and administrative measures undertaken by the Central and State Governments for implementing Psychiatric Advance Directives.
- To analyse the challenges affecting the implementation of Psychiatric Advance Directives, particularly institutional preparedness, human resources, awareness, and monitoring mechanisms.

Research Methodology

This study employs a qualitative, approach based on a critical review of secondary literature to examine the implementation of Psychiatric Advance Directives (PADs) under the Mental Healthcare Act, 2017. As a review-based study, it is a synthesises of existing legal, policy, and academic literature to assess the role of the State in facilitating PAD implementation.

The analysis draws upon a range of secondary sources, including the Mental Healthcare Act, 2017, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), government reports, policy documents, publications of international organisations, and peer-reviewed journal articles. The selected literature was identified based on its relevance to the evolution of PADs, their legal framework, implementation measures, institutional preparedness, and challenges affecting their effective adoption.

A thematic approach was used to analyse the collected material by identifying recurring patterns relating to autonomy, supported decision-making, recovery-oriented care, State responsibility, and implementation barriers. Comparative references to international practices were also considered to place the Indian framework within a broader policy context and identify lessons for strengthening implementation.

The study is guided by a rights-based perspective, examining whether the legislative recognition of PADs has been supported by adequate institutional, administrative, and policy measures. Since the research relies solely on publicly available sources, it does not involve human participants or personal data and therefore did not require ethical approval. The methodology enables a comprehensive assessment of existing evidence while identifying gaps that may inform future policy and research on the effective implementation of Psychiatric Advance Directives in India.

This paper analyses PADs through a rights-based governance framework, wherein legislative recognition constitutes only the first stage of rights implementation. Effective realization of rights requires institutional preparedness, administrative capacity, accountability, and monitoring. Accordingly, State preparedness forms the analytical lens through which implementation of PADs is assessed.

Critical Review

The history of PAD is related to medical advance directives for end-of-life planning born out of a Supreme Court order U.S (1990), making patient's preferences a prerequisite for removal of life support- resulting into creation of U.S Patient Self Determination Act, 1990 and development of AD and later PAD as a component of recovery-oriented care. Central support was received by hospitals once the law was directed. Service providers would ask patients, if they had an advance directive or would like one, to give them information about how to create one, and to honor them.

Later, in 2006, the Center for Medicare and Medicaid Services (CMS) in their final Rule of seclusion and restraint & UN CRPD, 2006, made it clear that PAD should be part of psychiatric care in facility & quality reporting measures at the time of discharge from hospitals should include an advanced care plan. UN CRPD has developed legal provisions under article 12 & 14 for PADs and calls for the countries that have ratified to provide mental health facilities in informing about PAD to PWMI and to inquire if the person has PADs. Of the 177 countries that have ratified UN CRPD, out of 15 countries reviewed in South Asia, only 2- Philippines and

India have legislation on mental health including provisions for PAD (Poremski, Alexander & et.al, 2019). India in its IMH Act 2017 has made provision for recording PAD and appointing a representative.

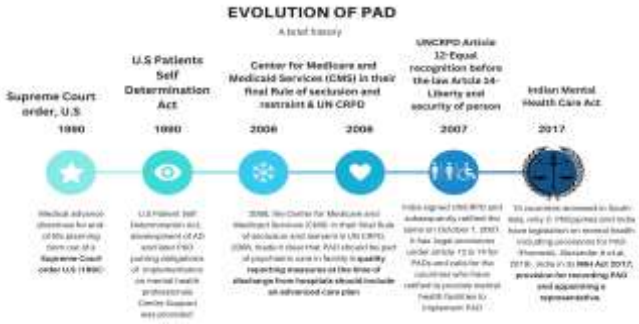

Figure1: Historical Evolution of PAD's

Impact of PADs improved therapeutic alliance, the integration of service providers, informal caregivers and service users, and enhanced autonomy of service user. (Nicaise et al., 2013). The policy implementation models of *Centre for Disease Control and Prevention, 2021* of US mentions that "…enactment of a policy will itself do not ensures implementation. Additional steps are needed to ensure the intended outcome of the policy." Thus, the role of the state towards implementing organizational needs require guidance at - educational, administrative & monitoring and enforcement levels. Consequently, to strengthen the outcomes of policy, understanding the goal of the policy, identifying inputs and resources used to implement the policy and clarity of roles and responsibilities of service providers are needed. A vast gap of literature of implementation in role of the State post enactment of PAD's exists in India. Though, some efforts by the state Education-cum-Assessment Tool are providing information regarding PAD in India, others are scattered or underreported (Philip S, Chandran D, Stezin A, et al. year 2016). In India, review of content of PAD's revealed specific and relevant information that was rated to be clinically useful and feasible, and aligned with clinical standards of care (Shield L, Pathare S & et.al, 2015). However, in another study no one used the document to refuse all treatment, which is a prevalent concern of service providers' keeping a lower uptake of PAD (Shield, Pathare, et.al 2013).

Figure 2: Obligation on Mental Health Professionals by the state in implementing PAD's

Recent literature after the initial implementation of the Mental Healthcare Act, 2017 reflects a gradual shift from debating the legal validity of Psychiatric Advance Directives (PADs) towards questioning their practical implementation within India's mental healthcare system. While contemporary analyses acknowledge that the Act established one of the most progressive rights-based legislative frameworks in South Asia, they also observe that evidence regarding the actual utilisation of PADs remains remarkably scarce. Recent commentaries on the implementation of the Mental Healthcare Act have consistently identified persistent structural constraints, including shortages of mental health professionals, uneven development of State Mental Health Authorities and Mental Health Review Boards, resource limitations, and significant interstate variations in institutional capacity. These systemic challenges have implications for all rights guaranteed under the Act, including the effective operationalisation of PADs (Gowda & Kelly, 2019; Mangalamchery & Uvais, 2026). At the same time, studies examining the implementation of the Mental Healthcare Act have largely concentrated on broader issues such as access to mental healthcare, legal capacity, community-based services, and patients' rights, with comparatively little empirical attention devoted specifically to Psychiatric Advance Directives. Consequently, despite almost a decade having elapsed since the enactment of the legislation, there remains limited evidence regarding the number of PADs executed, their use in routine psychiatric practice, compliance by mental health establishments, or their impact on treatment outcomes and dispute resolution. *This gap in the literature is itself a significant finding*. It suggests that although PADs have been firmly embedded within India's legal framework, their implementation has not been accompanied by systematic documentation or evaluation. The absence of robust empirical evidence underscores the need for implementation-focused research capable of assessing State preparedness, identifying regional variations, and informing future policy development for the effective operationalisation of Psychiatric Advance Directives.

Conclusion and Recommendations

Nearly a decade after the enactment of the Mental Healthcare Act, 2017, Psychiatric Advance Directives (PADs) continue to symbolise India's commitment to a rights-based and recovery-oriented approach to mental healthcare. Their inclusion in the Act reflects a fundamental shift from paternalistic models of treatment towards recognising the autonomy, dignity, and preferences of persons with mental illness. While the legislative framework has firmly established PADs as a legal right, the

progress achieved since 2017 suggests that implementation has not advanced at the same pace as the law itself.

The present review indicates that the principal challenge is no longer the absence of legal recognition but the absence of a robust implementation ecosystem. Although institutional mechanisms such as the Central and State Mental Health Authorities, Mental Health Review Boards, and broader mental health initiatives have evolved over the past decade, the operational integration of PADs into routine mental healthcare remains inconsistent. Variations in institutional preparedness, limited awareness among stakeholders, inadequate professional training, and the absence of systematic monitoring have collectively restricted the practical realisation of this statutory right. As a result, the availability and effectiveness of PADs continue to depend largely on local institutional capacity rather than a uniformly functioning national framework.

This gap between legislative intent and implementation highlights the need for the next phase of mental health reform to focus on governance rather than legislation. A nationally coordinated implementation strategy, supported by clear operational guidelines and greater collaboration between the Central and State Governments, is essential to ensure uniformity in practice. Capacity-building initiatives for mental health professionals, members of Mental Health Review Boards, and other stakeholders should be institutionalised to improve both legal understanding and clinical application of PADs. Simultaneously, awareness programmes targeting persons with mental illness, caregivers, and communities must be strengthened so that the right to create a PAD becomes both accessible and meaningful in practice.

Equally important is the establishment of effective monitoring and evaluation mechanisms. Periodic assessment of implementation, supported by reliable data on the creation, registration, utilisation, and enforcement of PADs, would enable policymakers to identify implementation gaps and formulate evidence-based interventions. Future research should also move beyond normative discussions to generate empirical evidence on the functioning of PADs across different States, healthcare settings, and stakeholder groups.

Nearly a decade after the enactment of the Mental Healthcare Act, 2017, the challenge is no longer whether India should recognise Psychiatric Advance Directives, but whether it can ensure that this statutory right is meaningfully realised across all mental healthcare settings. The future of PADs will therefore depend less on legislative reform and more on sustained institutional commitment, administrative accountability, and evidence-based implementation.

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