# THE ROLE OF MENTAL HEALTH IN CRIMINAL RESPONSIBILITY AND SENTENCING

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## INTRODUCTION

The term "Indian Legal Systems" denotes the well-established legal structure prevailing in the nation of India. In ancient times, there was a distinctive legal tradition characterised by the existence of a historically independent school of legal theory and practice.[1] India possesses a long and illustrious legal heritage, which can be understood as a topic of religious principles and philosophical discussion. The Manu smriti and the Artha shastra are both authoritative legal treatises in India. The Manu smriti was composed in 100 AD, while the Artha shastra dates back to 400 BC.[2] Each of these treatises had a substantial influence. Manu's philosophy, which emphasised pluralism and tolerance, made him highly regarded in Southeast Asian culture. Under Islamic rule in India, Sharia law was enforced, but it primarily applied to the Muslim population. The incorporation of India into the British Empire resulted in a disruption of the existing social hierarchy, resulting in the dominance of the common law over the legal frameworks of Hinduism and Islam. Consequently, the current legal system of the country is heavily influenced by the British system and bears little resemblance to the institutions that existed before British rule. A significant proportion of the currently enforced legislation in India is derived from English Common Law, which is a legal system based on well-documented judicial precedents and demonstrates considerable influence from American and European sources. Furthermore, a significant portion of the legislation that was initially enacted by the British is still in effect today. Consequently, most of the laws regarding individuals with mental disorders (PMI) are based on events that occurred during the British colonial era.

The concept of mental illness, the treatment of individuals with mental illness, and the legal system are intricately linked in a dynamic manner. Rappeport has observed that the court differs from the psychiatrists in terms of its distinct objectives, motivations, and codes of conduct,

[1] Bar Council of India. [Last accessed 2024 Jan 27]. Available from: http://www.barcouncilofindia.org .
[2] Glenn HP. *Legal Traditions of the World.* Oxford University Press; 2000. pp. 255–76.

making it akin to a separate entity.[3] Unlike the psychiatrist, who primarily focuses on diagnosing mental disorders and ensuring the patient's welfare, the court frequently gives priority to societal welfare and evaluates whether the individuals in question are competent, dangerous, or have reduced responsibility.[4] Consequently, most of the previous laws regarding PMI in India also dealt with these aspects. In contrast, legislation developed after the 1980s generally emphasises the rights of individuals with mental illness to some extent.[5]

**The constitution of India**

According to Article 21 of the Constitution of India, it is strictly forbidden to take away someone's life or personal freedom unless it is done in accordance with legally established procedures. According to the article, the entitlement to personal freedom and existence encompasses "the ability to use resources for reading, writing, and communicating in different ways, unrestricted mobility, and social engagement with other individuals."

Section 16 of the Representation of the People Act, enacted in 1950, states that a court with the necessary expertise has the authority to determine that an individual is mentally unfit and therefore ineligible to be included in an electoral roll. Therefore, individuals who are disqualified are prohibited from holding public offices, such as the President, Vice President, Ministers, Members of Parliament, and State Legislatures, which is a violation of the Constitution.



**Indian laws regulating treatment of persons with mental disorders**

The primary context in which the intersection of psychiatry and law is commonly observed is in the management of premenstrual syndrome (PMS). Psychiatric patients receiving treatment for postpartum depression (PMI) frequently experience restrictions on their personal autonomy. The vast majority of nations worldwide have established a regulatory framework to govern the care and treatment of psychiatric patients. Despite the existence of detailed descriptions of various mental disorders in Ayurvedic treatises, mentally ill patients in India were subjected to treatment in asylums, which was introduced by the British. Shortly after the British crown took control of the administration of India in 1858, a comprehensive set of laws were quickly put in

[3] Nambi S. Forensic psychiatry revisited. *Indian J Psychiatry.* 2010;52:S306–8. [PMC free article] [PubMed] [Google Scholar]
[4] Rappeport JR. Ethics and forensic psychiatry. In: Bloch S, Chodaff P, editors. *Psychiatric Ethics.* Oxford: Oxford University Press; 1981.
[5] Agrawal AK. Mental health and law. *Indian J Psychiatry.* 1992;34:65–6.

place to regulate the care and treatment of individuals in British India who had been diagnosed with mental illness. These laws were

- The Lunacy (Supreme Courts) Act, 1858
- The Lunacy (District Courts) Act, 1858
- The Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889)
- The Military Lunatic Acts, 1877.

The Acts delineated a set of protocols regarding the establishment of mental asylums and the admission process for individuals afflicted with mental illness. The dominant British influence in India during the mid-19th century established the basis for the legislation concerning mental illness that was implemented at that time. The Acts of 1858 were bound to adhere to the legal framework that governs the treatment of mentally ill individuals. In the early 1900s, the Indian intellectual elite played a crucial role in increasing public awareness about the deplorable conditions that existed in mental hospitals. This consciousness was a constituent of the growing political awareness and prevailing nationalistic sentiments that were prevalent during that era. Therefore, the Indian Lunacy Act of 1912 was effectively enacted. The 1912 Act laid the foundation for the future development of psychiatry in India. The task of regulating and supervising lunatic asylums, which were renamed mental hospitals in 1922, was now entrusted to a centralised authority. [6]



A detailed explanation of the admission and certification process was given in relation to this particular aspect. The inclusion of the provision for voluntary admission was introduced for the first time. However, the main concerns still revolved around protecting the public from the potentially harmful effects of mental illnesses and preventing mentally healthy individuals from being admitted to these asylums. These medical facilities appointed psychiatrists as full-time officers. In addition, the Act included provisions that allowed for the implementation of judicial investigations on individuals suffering from mental illness. The Universal Declaration of Human Rights was approved by the United Nations General Assembly after the Second World War. In 1950, the Indian Psychiatric Society proposed a draft of the Mental Health Bill in order to replace the outdated ILA-1912. The Mental Health Act (MHA-87) was finally

[6] Sharma S, Varma LP. History of mental hospitals in Indian sub-continent. *Indian J Psychiatry.* 1984;26:295–300.

passed into law in 1987 after a lengthy and complex process. The Act is primarily characterised by the following features.

- A progress in the understanding of mental illness; the adoption of a contemporary approach to its treatment that emphasises care and intervention instead of imprisonment; and the formulation of a forward-thinking definition of mental illness.
- The establishment of a Central and State Mental Health Authority responsible for supervising and regulating psychiatric hospitals and nursing homes, as well as providing guidance to the Central and State governments on mental health issues.
- Admission to psychiatric hospitals or nursing homes in extraordinary situations. No changes were made regarding the provisions regarding admission through reception orders or voluntary admission.
- The role of the police and the magistrate in dealing with cases where PMI escape from captivity and are subjected to cruel treatment.
- Safeguarding the human rights of professionals associated with PMI.
- PMI assumes the responsibility of supervising and safeguarding its properties. The Act includes provisions regarding the penalties that will be enforced for any violation of its provisions.

Despite its numerous favourable attributes, the MHA-1987 has faced criticism since its inception. Claims have been made that the organisation primarily focuses on legally supervising the licencing process, as well as regulating admissions and guardianship matters related to insurance companies. The provisions of this Act are inadequate in addressing the provision of mental health care and upholding human rights. The Act is impracticable to effectively implement due to its multitude of highly intricate procedures, flaws, and absurdities. Furthermore, these problems are evident in the Regulations established in accordance with the Act. Human rights advocates have expressed concerns about the constitutionality of the MHA, 1987, due to its potential infringement on personal freedom without sufficient judicial oversight. MHA-87 is currently undergoing the process of reformation in order to ensure compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).[7]

[7] Narayan CL, Narayan M, Shikha D. The ongoing process of amendments in MHA-87 and PWD Act-95 and their implications on mental health care. *Indian J Psychiatry.* 2011;53:343–50..

**Persons with disability (equal opportunities, protection of rights, full participation) Act, 1995 (PDA-95)**

The main goals of PDA-95, enacted in 1995, were to curb the mistreatment and exploitation of individuals with disabilities and to eradicate bias in the allocation of developmental advantages against those without disabilities. The document required the government to take on the responsibility of creating strategies for comprehensive development initiatives and implementing special measures to promote the integration of individuals with disabilities into society. Furthermore, it enabled the creation of an environment without obstacles. The Public Health Act of 1995 (PDA-95) defines disability conditions to encompass mental retardation and mental illness. As a result, the PMI are eligible to receive the benefits provided by the Act that are intended for individuals with disabilities. A three percent quota is implemented for government employment; however, the PMI is excluded from availing this provision. Currently undergoing revision in compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD-2006).[8]

**National trust Act-1999**

This Act was enacted in 1999 to ensure the well-being of individuals with autism, cerebral palsy, mental retardation, and multiple disabilities. The main goal of this legislation was to give these individuals the ability and opportunity to live near their community of residence while maintaining a high level of independence. Furthermore, its objective was to foster the attainment of equitable opportunities and protect essential liberties. The Act includes a wide variety of welfare measures. Moreover, there is a current endeavour to modify this legislation in order to align it with the 2006 United Nations Convention on the Rights of Persons with Disabilities. The revised legislation mandates that properties owned by PMI must be managed according to specific guidelines.

**United Nations convention for rights of persons with disabilities-2006 and Indian laws**

The UNCRPD was formally ratified in December 2006. The Indian Parliament granted its approval in May 2008. Nations that have ratified and signed the United Nations Convention on the Rights of Persons with Disabilities are obligated to ensure that their legislation and policies align with the provisions of the UNCRPD. Currently, the legislative framework regarding disabilities in India is being revised. In relation to disabilities, the convention represents a

[8] Dutta AB. *The Long March of Mental Health Legislation in Independent India; Dr.L.P.Shah Oration delivered at IPS-WZ Conference at Goa.* Goa Psychiatric Society; 2001.

fundamental change in perspective, shifting them from being seen as a social welfare issue to being recognised as a matter of human rights. The fundamental tenets of the new paradigm are based on the principles of dignity, equality, and presumption of legal capacity. According to the stipulations stated in Article 2 of the convention, individuals with disabilities have the right to the same legal capacity as everyone else in all aspects of life. Article 3 mandates that the state must guarantee individuals with disabilities have access to the requisite assistance to exercise their legal capacity. Article 4 requires the establishment of measures to prevent the abuse of the assistance system that people with disabilities depend on. Although the UN Convention on the Rights of Persons with Disabilities does not explicitly prohibit coercive interventions, it does not approve of the mandatory provision of mental health care. [9]

The process has been initiated to amend MHA-87 and draft the Mental Health Care Bill - 2011 (MHCB). The process of obtaining a licence for mental health establishments will be replaced by a registration system, which will comply with the regulations set by the Mental Health Care Board. Additionally, a Mental Health Review Commission, consisting of state panels, will be established. Significant alterations have been made to the admissions procedures. An important aspect of the Mental Health Care Bill (MHCB) is its requirement for the government to establish and provide mental health services to all citizens, while also implementing appropriate measures in this regard. A specific segment of the PMI is dedicated to the topic of human rights and consists of numerous provisions that are remarkably thorough.

In addition, an initial iteration of the "The Rights of Persons with Disabilities Bill, 2011" (RPWD Bill) has been presented to the Ministry of Social Justice and Empowerment (MSJE), while the PDA-95 is currently being modified. According to Section 18 of the proposed legislation, individuals with disabilities must have the same legal rights as the general public in all areas. Moreover, it states that any law, rule, decree, tradition, or habit that requires the exclusion of individuals based on their disabilities will be considered invalid and without legal effect. Persons with disabilities (PWD) have the right to receive the necessary support to exercise their legal capacity, but they also have the freedom to change, adjust, or remove any support system they create. A system of limited guardianship has been established to replace the abolished plenary guardianship principle. Alongside the proposed distribution of 7% of government positions for individuals with disabilities, a 1% quota has been designated for PMI.

[9] Dhandha A. Status Paper on Rights of Persons living with Mental Illnessin light of the UNCRPD, in Harmonizing Laws with UNCRPD, Report prepared by the Centre of Disability Studies. *Human Right Law Network.* 2010 May.

The RPWD Bill and the provisions of the MHC Bill have a paradoxical relationship. The majority of the drafting team of the RPWD consisted of human rights advocates. A group of human rights advocates argues that all individuals with mental illness (PMI) should have full legal capacity. In addition, they strongly oppose any involuntary confinement of individuals with psychiatric and mental health issues and advocate for the complete dismantling of psychiatric hospitals. According to their comprehension, the MHCB refrains from making assumptions about individuals' abilities and has no intention of assisting individuals in making informed decisions about their personal affairs. In addition, they have advocated for the complete elimination of MHA-87 and have emphasised the need to address the issue through a thorough and revised RPWD bill, which falls under the jurisdiction of MSJE.

**Indian contract laws**

Any mentally competent person may enter into a contract, as stipulated by the Indian Contract Act of 1872. As per Section 12 of the Act, an individual is considered to have mental capacity and the capability to rationally evaluate how a contract will affect their interests when they are mentally sound at the time of entering into the contract. Consequently, an individual is considered to possess a sound mental state when it comes to entering into a contractual agreement. An individual who consistently suffers from mental instability but occasionally exhibits mental clarity may engage in a contractual agreement during periods of lucidity. An individual who occasionally exhibits unsound judgement, despite generally having sound judgement, should not enter into a contract during those instances, but rather when they are in a state of good judgement. This indicates that a person who is currently not showing signs of psychosis but is experiencing a prodromal mental illness (PMI) is able to enter into a legally binding agreement. On the other hand, a person who is currently under the influence of alcohol or experiencing extreme confusion is unable to engage in a legally binding agreement.[10]

**Marriage and divorce**

The prerequisites for solemnising a marriage in accordance with the Hindu Marriage Act of 1955 are as follows. These conditions are pertinent to matters concerning mental disorders.

1. Both parties lack the mental capacity necessary to give valid consent to the agreement.

[10] Rao TS, Nambi S, Chandrashekhar H. Marriage, Mental Health and the Indian Legislation. In: Gautam S, Avasthi A, editors. *Clinical Practice Guidelines on Forensic Psychiatry.* Indian Psychiatric Society; 2009. pp. 113–28.

2. The person must not have any mental disorders that make them unsuitable for marriage and having children, regardless of their ability to give informed consent, regardless of the nature or severity of the disorders.
3. The person in question should not have a history of recurring episodes of insanity.

The term "mental disorder" encompasses a range of conditions and diseases, such as psychopathic disorders, mental illness, and impaired or arrested mental development. Furthermore, schizophrenia falls under this definition. The term "psychopathic disorder" denotes a chronic mental disorder or impairment (excluding sub-normal intelligence) that leads to the affected individual displaying highly irresponsible or abnormally aggressive behaviour. This expression is applied regardless of the necessity of medical treatment or the susceptibility of the disorder to treatment.[11]

Marriages that violate the requirement regarding mental disorders are considered invalid. Vacateable marriages, as defined in section 12, are marriages that can be legally declared null and void by issuing a decree of nullity, on the basis of specific grounds. Nevertheless, these documents will continue to be legally binding until a court with the appropriate jurisdiction declares them invalid.

A divorce or judicial separation can be obtained under section 13 of the Act if the person in question has an incurable mental disorder or a mental disorder that is so severe and impractical that the petitioner cannot be expected to live with the respondent.



The term "incurably" in reference to a "unsound mind" should not be interpreted as encompassing individuals who are feeble-minded or intellectually dull, but still possess the ability to comprehend the nature and consequences of their actions. Such individuals are capable of exercising control over their affairs and reactions in a conventional manner, as established in the cases A.I.R. 1969 Guj-48 and 78 CLT 1994 561. According to the A.I.R, 1982 CAL 138, if the court determines that the husband's ability to live with his wife is not significantly affected by her mild mental disorder, a divorce cannot be granted. Given the conditions specified in the aforementioned case, this was the situation. Each instance of schizophrenia must be evaluated according to its distinct merits.

The criteria for establishing the basis for marriage, divorce, and judicial separation are fundamentally identical to those outlined in the Hindu Marriage Act of 1955. Due to the

[11] Jiloha RC. Mental Capacity/Testamentary Capacity. In: Gautam S, Avasthi A, editors. *Clinical Practice Guidelines on Forensic Psychiatry.* Indian Psychiatric Society; 2009. pp. 20–34.

enactment of the Special Marriage Act in 1954, this is the current situation. The Special Marriage Act of 1954 is designed to be universally applicable in India, encompassing all individuals, including Indian nationals residing outside the country, regardless of their religious affiliations. This legislation establishes regulations for the registration of matrimonial unions conducted through non-traditional methods.

Marriage is categorised as a contractual alliance in accordance with the dominant Muslim legal framework. Thus, a mentally mature and pubescent Muslim individual is eligible to enter into marriage. On the other hand, if the guardian of a person who is unable to make decisions due to mental incapacity believes that a marriage would benefit both the individual and society, and is willing to take on all the financial obligations associated with the marriage, then the marriage can take place. A talaq, which is a divorce according to Muslim law, can only be granted if there is a valid reason and after two unsuccessful attempts at reconciliation between the parties involved. According to the provisions stated in the Muslim Marriage Act of 1939, a woman who is legally married can request a divorce if her spouse has shown signs of insanity continuously for a period of two years.[12]

A marriage can be declared null and void under Christian law if either of the parties involved was mentally incapacitated or demonstrated profound lack of intelligence. Under the Indian Divorce Act of 1869 (as amended in 2001), Christians have the right to request a divorce based on mental unsoundness. However, there are two conditions that must be met: firstly, the mental unsoundness must be incurable, and secondly, it must have lasted for at least two years before filing the petition. According to the regulations stated in the Parsi Marriage and Divorce Act of 1936, it is strictly forbidden to use mental illness as a legitimate ground for divorce. However, if the defendant was mentally incapacitated during the marriage and the plaintiff was unaware of this, a divorce may be granted if the defendant has been mentally incapacitated for a minimum of two years immediately prior to the divorce petition.

## TESTAMENTARY CAPACITY

Testamentary capacity pertains to the legal ability of an individual to create a will, which is a legally enforceable document that expresses the testator's desires regarding their assets and how they should be handled after their death. Legally, testamentary capacity is present. Section 59 of the Indian Succession Act of 1925 outlines various provisions that include the following:

[12] Jiloha RC. Mental Capacity/Testamentary Capacity. In: Gautam S, Avasthi A, editors. *Clinical Practice Guidelines on Forensic Psychiatry.* Indian Psychiatric Society; 2009. pp. 20–34.

- Any person with mental capacity can create a will.
- Even individuals who are usually insane can create a will during a temporary period of mental soundness.
- It is not possible for someone to create a will while mentally incapacitated due to reasons such as intoxication, illness, or any other factor that prevents them from understanding their actions.

Testamentary capacity requires an individual to possess full mental capacity and sound judgement when signing and validating a will. They must also understand the nature of their assets and the intentions behind their decisions regarding the distribution of their assets after death. Thanks to his high cognitive abilities, he possesses a thorough comprehension of the person he is assigning the assets to, their connection to him, and the possible future consequences of this decision.

**CRIMINAL LIABILITY**

As per the Indian Penal Code of 1860, any action carried out by an individual who, due to mental illness, is unable to comprehend the nature of the act or recognise that it is morally or legally incorrect, is not considered a criminal offence. This provision stipulates that no action can be considered a criminal offence at the moment it is committed. Our courts have fully embraced the McNaghten Rules, which outline the standards for determining criminal responsibility in individuals with mental illness. These rules have been integrated into section 84. The Supreme Court issued a significant decision stating that all adults are assumed to be mentally sound according to the law, and any defence based on insanity must be supported with evidence. The individuals mentioned above are placed in psychiatric hospitals according to subsection (i) of section 471 of the Criminal Procedure Code of 1973, if a defence of insanity is proven. There have been cases where the presence of mental illness led to a decrease in the imposed sentence. The accused woman, who jumped into a well with her children to escape the unbearable circumstances resulting from domestic conflicts, was sentenced to life imprisonment as the lesser of two possible punishments, as determined in the case of AIR 1953 MB 61.[13]

The purpose of Section 89 of the Indian Penal Code is to protect actions carried out in a sincere and well-intentioned manner for the welfare of a person who is unable to take care of

[13] Somasundaram O. Guilty But Insane: Some Aspects of Psychotic Crimes. *Indian J Psychiatry.* 1960:80–5.

themselves. These actions can be authorised by the guardian of the individual or any other person who has legal responsibility for them, or with their consent. Any individual who aids and abets another person in committing suicide, in contravention of Section 305 of the Indian Penal Code (IPC), is subject to either capital punishment or life imprisonment as a consequence.

## CONCLUSION

The Indian legal system has taken into account important legal provisions regarding the PMI. The abundance of laws that were either formulated or derived from that era of colonialism serves as a prominent indication of British influence. Currently, the PMI legislation is undergoing significant revisions to ensure adherence to the UNCRPD-2006, placing it at a crucial point. Psychiatrists endorse the maintenance of provisions for involuntary hospitalisation in exceptional circumstances, while human rights activists argue for complete legal autonomy for individuals with mental illness. Furthermore, it is crucial to emphasise that the primary goal of every legal provision should be to safeguard the well-being of the PMI as well as that of society as a whole.