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PERSONS WITH MENTAL ILLNESS IN THE INDIAN CRIMINAL JUSTICE SYSTEM: A CRITICAL ANALYSIS OF LEGAL SAFEGUARDS FOR ACCUSED PERSONS

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Abstract

The existence of mentally ill people in the criminal justice system raises serious legal and human rights issues, especially when it comes to the treatment of suspected people who might not have the mental capacity to comprehend or take part in the criminal justice system. BNS, the procedural protections of the BNSS, and the rights-based protections brought by the Mental Healthcare Act, 2017 are the primary provisions that define the legal framework governing mentally ill accused persons in India. Although there are such statutory protections, the enforcement of the law remains uneven because of insufficient medical assessment systems, deficiency of institutional facilities of specialized nature, and poor awareness among the law enforcement system and the judiciary.

In the present research paper, there is a critical analysis of the legal protections that provide protection to individuals with mental illness who find themselves at odds with the criminal justice system in India. It examines the conceptual grounds of the insanity defence, constitutional rights of fair trial and dignity in Articles 14 and 21, and the dynamic role of human rights principles in safeguarding mentally ill accused defendants. The paper also assesses judicial interpretations and points out structural issues including protracted psychiatric evaluation, custody negligence, and the complicated nature of the trial process. Through a combination of human rights approach with doctrinal examination of law, the paper points to gaps in the existing legal system and highlights the necessity of a more humanistic and rights-based approach. The paper summarizes the paper by suggesting legal and policy changes meant to enhance institutional protections, enhance the mental health assessment process, and make the criminal justice system more consistent with international human rights standards related to persons with mental illness.

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Keywords: Mental Illness, Criminal Justice System, Insanity Defence, Human Rights, Legal Safeguards

➤ Introduction

The issue of the persons with mental illness in the criminal justice system has always created a dilemma of complicated legal, ethical, and human rights issues. Traditional beliefs about criminal law are based on the assumption that people have the ability to comprehend the essence and after-effects of their actions and can, therefore, be legally responsible to commit crime. Nevertheless, the assumption turns out to be problematic when the accused individual is mentally ill, which is characterized by a considerable lack of cognitive functioning, the ability to make the decision, or reality awareness. Under these conditions, the inflexible use of criminal responsibility can destroy the very principles of justice and equality which are the main foundations of the modern law. The overlap of mental health and criminal responsibility has thus emerged as a significant field of legal discourse, especially among jurisdictions, in the context of how mentally ill accused individuals should be treated during investigation, trial, and incarceration². The problem is even greater in the Indian setting where mental health awareness, psychiatric facilities and institutional capacity is unevenly spread. Many mentally ill people have found themselves in the criminal justice system without any effective identification of their mental status leading to circumstances where these people get sent through the normal criminal process set up which fails to effectively address their mental status. Indian legal system is cognisant of this issue and therefore, there are a number of statutory provisions and judicial understandings which seek to protect the rights of such individuals. This criminal insanity defense, procedural safeguards of the trial of persons of unsound mind, and the rights-based orientation proposed by modern mental health laws combine to illustrate the changing sensitivity to the fact that mentally ill accused persons need special attention of the law. However, these protective measures are still not being infused with practice because of structural constraints, delays in the process, and the failure to coordinate between legal and medical institutions.

The mentally ill accused persons in the criminal justice system tend to be vulnerable in several levels. Other than wrongful conviction or extended detention, they can also suffer stigmatization, neglect by their custodians and restricted access to proper psychiatric care³.

² Amita Dhanda, *Legal Order and Mental Disorder* 67 (Sage Publications 2000)

³ Arlie Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law* 112 (Oxford University Press 2012).

This kind of situation is of great concern based on the constitutional law and protection of human rights. The consideration of the protection of dignity, equality before the law, and the right to a fair trial receive more importance in modern constitutional jurisprudence, and these considerations are applicable to all people, despite their mental condition. The rights of mentally ill persons cannot be considered through the prism of the criminal liability only, but rather in the context of the greater human rights principles that imply humane treatment and access to justice. The increasing global awareness of mental health as a basic constituent of human rights has also strengthened the necessity to study the way criminal justice organizations address the needs of mentally ill accused individuals.

The current research attempts to address the subject of legal protections that people with mental illness have in the Indian criminal justice system and critically evaluate the effectiveness of such protections in the fulfilment of constitutional and human rights requirements.⁴ The paper tries to examine how the law conceptualizes mental illness concerning the issue of criminal responsibility and how the current law mechanisms deal with the circumstances that emerge when an accused individual can be deemed not to have the cognitive ability to discern the nature of criminal proceedings. By so doing, the analysis also intertwines around larger questions as to whether the current legal structure has succeeded in protecting the dignity and rights of mentally insane persons who get into conflict with the law and whether the criminal justice system institutional practices can be competent to administer fair and humane treatment.

The study explores the wider implication of protection of law in order to put two conflicting ends of criminal law into consideration. On the one hand, the justice system has to hold to account and to uphold the state order by attending to the criminal activity properly. Conversely, it should also be aware that persons with a serious mental condition might lack the mental capacity to develop criminal intent and be relevant in criminal proceedings. This is the antagonism of punishment and protection that lies at the core of the debate on mentally ill accused persons⁵. Through a critical examination of the current statutory provisions and practices in the Indian criminal justice system, the analysis tries to see whether the Indian criminal justice system is able to balance these conflicting issues and at the same time be compatible with the constitutional values and human rights standards.

⁴ Michael L. Perlin, *International Human Rights and Mental Disability Law* 54 (Oxford University Press 2012).

⁵ Jill Peay, *Mental Health and Crime* 89 (Routledge 2011).

The research falls largely in the category of doctrinal research and is based on the analysis of the provisions under the constitution, statutory laws and case laws that regulate how mentally ill accused individuals should be treated in India. The scope and constraints of the current legal regime are investigated by looking at the relevant legislative provisions pertaining to the criminal responsibility, procedural protection in the trial and the mental health protection provision laws. Courts have also been playing a key role in determining how the law should be applied in practice, and therefore judicial statements on the interpretation of these provisions also constitute a significant aspect of the analysis. The study also interacts with the scholarly literature, political reports, and scholarly debates on the intersection of criminal law and mental health to put the legal framework into context in relation to the larger theoretical and human rights approach.

The study will be looking at these legal and institutional aspects; the research is also aimed at establishing some of the major issues that make it difficult to enforce the protection of mentally ill accused individuals⁶. These obstacles encompass the problem of time lapses in the psychiatric examination, absence of specialized mental care institutions in the correctional facilities, the lack of education programs of the law enforcers, and the long-standing stigma of mental illness. Learning these structural barriers is critical in analyzing whether the current legal provisions can provide meaningful protection in practice or they are still generally symbolic in character. The research problem is therefore not limited to a simple description of the statutory provisions but is also intended to offer a critical analysis of their efficacy when applied in practicing the criminal justice system.

The paper is still limited to the Indian legal environment, as the topic of mental illness and criminal responsibility is an international legal issue. It is through this analysis that the Indian experience is placed in the context of the wider discussion of human rights protection and evolving international standards in mental health and criminal justice⁷. Through this, the study will serve to add to the current academic and policy debate on the necessity of a more humanitarian, rights-based and institutionally responsive approach to the treatment of mentally ill accused individuals. But at the end of the day, it is necessary that a better insight into these legal and institutional processes should be applied so that criminal justice system does not

⁶ Christopher Slobogin, *Minding Justice: Laws that Deprive People with Mental Disability of Life and Liberty* 76 (Harvard University Press 2006).

⁷ Bruce J. Winick & David B. Wexler, *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* 41 (Carolina Academic Press 2003).

simply punish those who are mentally ill but works in a way that safeguards their rights, upholds their dignity and that it propagates justice in its most substantive sense.

➤ **Conceptual and Theoretical Framework of Mental Illness and Criminal Responsibility**

The issue of mental illness and criminal responsibility has traditionally taken a leading position in criminal jurisprudence and posed complicated questions concerning the culpability, moral blameworthiness, and the ability of a particular person to comprehend the nature of his or her actions. The conventional principle in criminal law is that one is only liable once he or she has done something wrong with the conscious state of mind. This was the principle doctrine which is commonly known as mens rea that assumes that people have the capacity of reason and view right and wrong and regulate their actions⁸. But when a suspected individual has a serious mental condition that renders cognitive functions or the capacity to value the outcome of the actions, the use of the common principles of criminal responsibility becomes highly controversial. The theoretical framework of the role of mental illness in criminal law is thus the realization that any form of punishment is only warranted when the criminal is acting in a wilful and rational manner. When, due to the mental condition of a person, he has been denied this ability, the establishment of criminal responsibility can be a violation of not only a legal reasoning but also of more general postulates of justice.

The mental illness and criminal responsibility relationship are based on moral philosophy and legal theory that focuses on accountability basing on autonomy and rationality. Classical criminological theorists perceived criminal punishment as a reaction to voluntary offense whereby people are the ones who exercise free will and volitional choice to perpetrate illegal activities. Challenges of mental illness make available situations when an alleged individual might be unable to apply his or her judgment rationally or to check impulses⁹. In one of these circumstances, it would be highly unethical to place the full blame on the criminal behaviour of a person especially when it occurs as a result of the act of psychological deficiency and not an intentional action. Legal systems have therefore over time come up with doctrines that acknowledge less or no responsibility in situations where mental illness plays a critical role in

⁸ Stephen J. Morse, "Mental Disorder and Criminal Law," 101 *Journal of Criminal Law and Criminology* 885 (2011).

⁹ Bernadette McSherry, "The Relationship between Mental Health Law and Criminal Law," 23 *International Journal of Law and Psychiatry* 93 (2000).

influencing the mental condition of an individual at the point of the offence.

This changing conception of mental incapability can be seen in the development of the insanity defence in criminal jurisprudence. In the past, the primitive legal systems lacked an advanced method of dealing with mental illness and victims of mental disorders were usually handled like other criminals. However, as time progressed courts and legal practitioners started to recognize the fact that mental illness may result in a person lacking the ability to develop criminal intent. This awareness consequently led to the development of the rule of law that relieved people of criminal responsibility when they cannot understand the contents of their activity or differentiate between good and bad because of a mental illness¹⁰. The most significant change in this respect happened in the nineteenth century when the M'Naghten Rules were drafted in English criminal law. Such rules created a legal test of criminal insanity based on whether the accused at the moment of the act had such a defect of reason due to disease of mind such that they did not know the nature and quality of the act or did not realize that it was wrong.

This doctrine spread to most common law jurisdictions, such as India, where the doctrine of criminal insanity became a statutory principle. The legal system that characterizes insanity in India is based on the more general theoretical assumption that a criminal should not be held responsible who is not in a position of having a mental state required to create a guilty intention. In this respect, the insanity defence is not actually an exception to criminal law but rather a recognition that justice is sixty-three percent sensitive to the psychological state of the defendant. The doctrine supports the idea behind giving punishment to only those people who are mentally capable of comprehending and controlling their actions by acknowledging that some people can act in ways without conscious thought or rational control.

➤ **Constitutional Framework for the Protection of Mentally Ill Accused Persons**

The safeguarding of mentally ill in the criminal justice system in India is well entrenched in the constitutional provisions of equality, liberty, dignity, and fair process. In the Constitution of India, a rights-based system is created such that even the person accused of any criminal

¹⁰ Christopher Slobogin, "The Integrationist Alternative to the Insanity Defense," 82 *Notre Dame Law Review* 1549 (2007).

offence is treated with humanity and equality irrespective of his mental condition¹¹. In this respect, Articles 14, 19 and 21 are very important in protecting the rights of mentally ill accused individuals by stating that all are equal before the law, protection of personal liberty and had a right to live with dignity. These constitutional principles necessitate that the criminal justice system should employ procedures that give attention to the vulnerability of persons with mental illness and make sure that they are not taken to arbitrary detention or unfair trials and inhumane treatment.

Article 14 of the Constitution relates the equality before the law and equal protection of the laws; this means that every citizen even persons with mental illnesses should be treated fairly and free of discrimination by the legal system. Equality principle does not only demand the same treatment but also the rational classification to create the special needs of vulnerable groups¹². This constitutional requirement advocates the presence of special procedural protection offered to accused persons in criminal law in the circumstances of mentally ill accused persons. Some of the provisions of BNSS, 2023 including Section 367 to 369 have been made with an understanding that where an accused individual is found to be of unsound mind and is unable to defend himself, the court shall make an inquiry and organize him to be examined by a medical professional before the trial can be conducted. These provisions represent how substantive equality is applied, i.e. by not compelling mentally ill accused individuals to pass through criminal proceedings without an appropriate evaluation of their mental capacity.

Article 21 that is the right to life and the liberty of the person has been broadly construed by the Supreme Court of India as a right to dignity, treatment human and a trial that is fair. The *Maneka Gandhi v. Union of India* landmark case¹³. In the case of *Union of India (1978)* it was laid down that any act which will deny an individual of personal liberty, should be just, fair and reasonable. This guideline has far-reaching consequences to mentally ill people who are exposed to the criminal justice system. The necessity of the fair process means that the accused should be free enough to conceptualize what the trial is all about and to engage in their defence properly. In *Hussainara Khatoon v. State of Bihar*¹⁴ (1979) stated that the period of

¹¹ Michael L. Perlin, "Human Rights and Mental Disability Law: The Emerging International Perspective," 12 *International Journal of Law and Psychiatry* 163 (2007).

¹² Vikram Patel, *Where There is No Psychiatrist: A Mental Health Care Manual* 33 (Royal College of Psychiatrists 2003).

¹³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁴ *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 532.

detention without fair and prompt trial contravenes the Article 21 and this was especially pertinent where there were mentally ill suspects who were left to serve longer terms in custody because of the necessity of procuring further investigation into their mental state or placement in an institution¹⁵.

The dignity and humane treatment guaranteed in the constitution has also been facilitated by the judiciary intervention in matters on the rights of the mentally ill individuals. In *Sheela Barse v. Union of India*¹⁶, The Supreme Court was aware of the vulnerability of the persons in custody institutions since 1986 in the case of *Union of India*, the Supreme Court ordered the authorities to provide a proper medical care and protection of mentally ill prisoners. Likewise, the case in *Shatrughan Chauhan v. Union of India*¹⁷ (2014) recognised that implementing a mentally ill individual who is severely ill would be a contravention of the constitutional right to dignity in Article 21. These rulings underscore the changing court knowledge that mental illness should be given as a key component in defining the fairness and lawfulness of criminal punishment.

The protection of mentally sick suspected individuals is also indirectly upheld by Article 19 that ensures some fundamental freedoms, but focuses on the larger constitutionalizing of personal liberty and human dignity¹⁸. In spite of the fact that the liberties provided by Article 19 should be limited by reasonable restrictions, the philosophy of the given provision supports the opinion that the state should use its powers in such a way that will not affect the feelings and mental health of a person negatively. Together with the statutory provisions like the Mental Healthcare Act, 2017, which acknowledges the right of persons with mental illness to access mental healthcare and live with dignity under Section 18, the provisions of the Constitution as a whole constitute a full-fledged framework of protection of mentally ill accused persons. The joint action of Articles 14, 19, and 21 therefore makes the criminal justice system so sensitive to the rights and dignity and human treatment of mentally ill persons.

➤ **Statutory Legal Safeguards in the Indian Criminal Justice System**

The protection of mentally ill people in the Indian criminal justice system is facilitated as well by the provisions of the constitution as well as by certain special statutory provisions, which

¹⁵ Vikram Patel & Alex Cohen, "Mental Health Services in India," 371 *The Lancet* 991 (2008).

¹⁶ *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

¹⁷ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

¹⁸ Soumitra Pathare & Laura Shields, "Supported Decision-Making for Persons with Mental Illness," 42 *Health and Human Rights Journal* 115 (2015).

govern criminal responsibility, procedures governing trial, and mental health provision. Such legal protections are mainly projected in the Bharatiya Nyaya Sanhita, 2023¹⁹, Bharatiya Nagarik Suraksha Sanhita, 2023²⁰ and the Mental Healthcare Act, 2017. Collectively, these laws establish a legal system that aims at striking a balance between the goals of criminal responsibility to the human treatment and protection of persons whose mental status can lead to their inability to comprehend or regulate their actions. Section 22 of the Bharatiya Nyaya Sanhita, 2023 reflects the principle that the severely mentally ill person should not be criminally liable for the acts he or she does not commit with rational understanding²¹. This clause creates the legal defence of insanity where it is acknowledged that an act committed by a person who is not in a mind condition of knowing the nature of the act or even whether the act was wrong or otherwise of the law is not an offence because of unsoundness of mind. The clause is indicative of the larger principle that the existence of criminal liability should be supplemented by a guilty state of mind. In cases where the accused has a mental illness that greatly impacts the mental capacity, the law recognizes the impossibility of establishing the vital component of criminal intention. Section 22 is thus a substantive law protection which does not allow one to be punished due to his/her mental disorder that does not allow him/her to appreciate his/her actions.

Besides the substantive protection afforded by criminal law, the procedural protections are offered by the Bharatiya Nagarik Suraksha Sanhita, 2023 to make sure that the mentally ill accused citizens are not exposed to unfair trial measures. The Sanhita provides in section 367 to 369 that an elaborate process be followed when handling investigation or trial of the alleged persons who are suspected to be of unsound mind. Section 367 also directs the court to make an investigation where the accused is deemed to be unsound and unable to make a defence.²² The court will have the obligation of organizing a medical check-up by a qualified psychiatrist or clinical psychologist to establish the mental health of the accused. In case the medical examination proves that the accused is not able to defend himself/herself, the trial can be delayed until the person is able to proceed with the legal process. More protection is provided in the Section 368 which enables the court to direct the suspected to be provided in a mental facility or under supervision care depending on the severity of the mental disorder. This is a

¹⁹ Bharatiya Nyaya Sanhita, 2023, § 22.

²⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 367–369.

²¹ Pratima Murthy & Soumitra Pathare, “Mental Health Law in India: Current Status and Future Directions,” 55 *Indian Journal of Psychiatry* 109 (2013).

²² Andrew Ashworth, *Principles of Criminal Law* 212 (Oxford University Press 2013).

provision that enables people who are mentally ill not to just be relegated to the normal custodial facilities but they are offered medical care that will see them healed. Section 369 also allows the court to allow the accused to be released on bail using sufficient arrangements to take care of the treatment and supervision to ensure that a person is not wasteless kept behind bars and instead rehabilitative measures are adopted in the criminal justice system. In addition to these criminal law provisions, the Mental Healthcare Act, 2017 has a rights-based legal regime of persons with mental illness and strengthens their protection in the custodial and institutional context²³. The right of all persons with mental illness to mental healthcare and treatment is acknowledged under section 18 of the Act as a result of the government-run or government-funded services. This is especially relevant to those who fall within a criminal justice system because it requires the authorities to make sure that there is a proper psychiatric care when in the detention or trial process. Section 20 also ensures the right to dignified life and it outlaws' discrimination of persons with mental illness on healthcare and institutional treatment issues. Also, Section 103 offers protection to mentally ill individuals who are roaming or unable to take care of themselves and authorities are required to bring these individuals before a magistrate and provide the required medical care instead of incarcerating them.

➤ **Procedural Safeguards for Persons with Mental Illness during Investigation and Trial**

The protection of mentally ill individuals during the investigation and trial is a vital part of the humane and fair criminal justice system. Such measures are meant to make sure that the mentally ill are not subjected to criminal justice in a way that infringes upon their right to dignity, fair trial, and access to justice²⁴. The criminal procedure presupposes that an accused individual must be able to comprehend the character of the charges, use the services of a lawyer and play a significant role in his/her defence. In cases where an individual is mentally ill and some mental functions or capacity to understand a trial process are compromised, the normal criminal processes might be rendered prey to injustice. This is why procedural laws have put in place measures to detect the presence of mental illness at an earlier stage as well as to make sure that proper medical evaluation and treatment is taken before the trial is carried out.

²³ Glanville Williams, *Textbook of Criminal Law* 585 (Sweet & Maxwell 2012).

²⁴ Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* 118 (Hart Publishing 1998).

In the investigation phase, the law enforcer agents have more than just the task of collecting evidence. The police officers should also be sensitive to signs that could be showing an accused individual to be mentally ill especially when one exhibits abnormal behaviour, and confusion or failure to express him/herself coherently. Where such case occurs, the investigating authorities are supposed to report to the court and help in carrying out medical assessment by certified psychiatrists²⁵. Mental illness requires early diagnosis since this helps to avoid the prolongation of investigation processes, which would otherwise overlook the mental state of the accused. Without these protections, mentally ill people can be taken into custodial interrogation or even detained without knowing their legal rights or the repercussions of the statements.

Upholding the procedural rights of the mentally ill accused individuals. The court must ascertain whether the accused is within the Mental capacity to stand trial or not. In case the accused proves to be not of sound mind, and therefore, not in a position to follow the proceedings up to the point of hiring a lawyer, the trial process cannot go on till the suspect is examined and cured. This protection is such that the criminal process is not just a mere form with no regard to the mental inability of the accused. Courts can also direct psychiatric tests to be conducted by the designated medical practitioners in a bid to define the nature and scope of the mental illness and whether the accused is competent to stand trial. There is another freedom that is essential in protection, and this is that a person can delay the legal action until the accused is stable mentally to comprehend the charges and then help in their defence²⁶. This strategy acknowledges that the criminal justice system should not place speed in the process, but rather on fairness. The accused might as well be allowed to hospitalize in a mental health facility instead of spending time in the normal custodial arrest in some circumstances. These measures represent a change in attitude of penal reactions to a more treatmental and rehabilitative one.

➤ **Judicial Interpretation of Mental Illness in Indian Criminal Courts**

The Indian courts have made a great contribution to the legal interpretation of mental illness on criminal law, and clarified the application of the principles of criminal responsibility in the circumstances where an alleged offender has been psychologically impaired. In its interpretation of the law, the court has always insisted on the fact that the criminal responsibility

²⁵ Tony Ward & Shadd Maruna, *Rehabilitation: Beyond the Risk Paradigm* 57 (Routledge 2007).

²⁶ Michael L. Perlin, *The Jurisprudence of the Insanity Defense* 92 (Carolina Academic Press 1994).

should be determined against the context of the mental state of the defendant during the time when the crime was being committed. The boundaries of the application of Section 22 of the Bharatiya Nyaya Sanhita, which perceives that an individual who is unsound of mind and has no ability of comprehending the nature of the act or differentiating between right and wrong cannot be held liable as a criminal have been tested severally by the courts. In their decisions, Indian courts have been largely conservative in the exercise of this defence and the need to prove a medical evidence and circumstances that prove that the accused had no mental capacity at the time of an act²⁷. Meanwhile, the courts have taken notice that mental illness cannot be construed in a strict or mechanical way especially where the accused has been found to have exhibited persistent instances of mental disorder. In a number of cases, the courts have focused on the point that the insanity defence is not to be used to enable criminals to get off with their crimes but to make sure that they get penalized once the mental aspect of the crime is realized. Courts have equally emphasized the relevance of the psychiatric examination and expert witness in the process of finding out whether an accused individual was experiencing an issue of mental condition that impacted him or her in criminal responsibility. It is through such interpretations that the judiciary has tried to balance between the society against criminal behaviour and the individuals with real mental illness against receiving unfair punishment²⁸. Judicial review has also pointed out procedural protection at trial time whereby an accused person who is not able to follow the proceedings during the court session as well as not being able to effectively communicate with his or her legal practitioner cannot be tried fairly. The Indian courts have over time evolved a more refined approach to the crossroads of criminal law and mental health by making a condition that the accused be examined properly through medical examination, evidence analysis, and the mental condition that the accused is in.

➤ Human Rights Perspective on Mentally Ill Accused Persons

The issue of the treatment of mentally ill accused persons in the criminal justice system has become more often considered in the context of human rights, especially in the context of the dignity, equality, and access to justice. The mental illness tends to put individuals in a vulnerable situation where they are more likely to face discrimination, neglect and abuse in the custodial institutions. According to human rights approach, individuals with mental disorders should be treated as human beings who have equal rights of protection under the law and due

²⁷ Bernadette McSherry & Penelope Weller, *Rethinking Rights-Based Mental Health Laws* 64 (Hart Publishing 2010).

²⁸ N. R. Madhava Menon, *Criminal Justice in India: A Reform Agenda* 134 (Oxford University Press 2007).

process of the law just like any other citizen. The right to dignity provides that mentally ill accused people must not receive degrading treatment, an unwarranted confinement, or worsened mental health²⁹. Protection of justice is another important element of such view because mentally ill individuals can be subjected to severe limitations of comprehending legal processes, communication with lawyers and even effective interaction in their defence. Unless proper protective mechanisms are in place, such people might not be given a fair opportunity to defend their case in a court of law. Another critical issue through Human rights prism is the danger of custodial abuse or neglect that has previously been seen to be a problem among mentally ill prisoners. The high population in jails, unavailability of psychiatric care and proper medical care may result in gross infringement of basic rights. The idea of human rights thus entails that the authorities are to provide the mentally ill prisoners with regular medical checkups, proper treatment and humane living conditions. The criminal justice system should also be keen to realize that mental illness does not mean that a person should be kept indefinitely or shunned by the society. Instead, the law should turn to rehabilitation, medical treatment and reintegration in the society whenever possible. A rights-based approach thus does not only place the focus on punishment but rather places it on protection of human dignity and respect to the mental health needs of the accused individuals.

➤ **International Human Rights Standards and Comparative Perspectives**

The international human rights law has played a major role in the way mentally ill individuals are handled or treated in the wider world when they clash with the law. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is one of the most significant international documents in this respect as it also acknowledges that individuals with mental and psychosocial disabilities should have equal recognition before the law and that they should not be arbitrarily denied their liberty³⁰. The Convention touches on the principles of non-discrimination, dignity, autonomy, and access to justice and states must implement legal frameworks to meet the unique needs of mentally ill individuals. State Parties to the UNCRPD are supposed to make available to persons with mental disabilities the means to engage in the legal process effectively by providing them with the necessary support, such as legal assistance, medical examination, and procedural modifications. The principles have motivated most nations to revise their criminal justice system to make the domestic law consistent with the

²⁹ Roger Smith, *Justice: Redressing the Balance* 102 (Legal Action Group 1997).

³⁰ John Gunn & Pamela Taylor, *Forensic Psychiatry: Clinical, Legal and Ethical Issues* 144 (CRC Press 2014).

international human rights standards. Other countries have had similar experiences related to the application of comparative legal practices in regions like the United Kingdom, United States, and Canada, where there is an evolving practice that adopts a combination of criminal law and mental health care³¹. Most of these jurisdictions have developed specialized procedures which include psychiatric assessment programs, mental health courts and diversion options that enable persons with mental illness to be treated rather than given sanctions that are punitive in nature. These practices are indicative of a wider acknowledgment that traditional model of criminal justice might not be equivocal to deal with cases that are associated with mental illness. These systems seek to strike a balance between society and human rights by ensuring the inclusion of both therapeutic approach and legal protection to ensure the safety of people. The international standards thus offer a significant platform to assess the domestic legislation and also seek to motivate the states to come up with more human and effective methods to handle mentally unwell accused individuals.

➤ **Structural and Institutional Challenges in Implementing Legal Safeguards**

- **Inadequate Mental Health Infrastructure within the Criminal Justice System**

The lack of sufficient mental health structure in the criminal justice system is one of the greatest problems facing the realization of legal protection of mentally ill accused individuals. Despite the legal provisions that have acknowledged the fact that psychiatric evaluation and treatment of mentally ill persons is necessary, the fact is that there is little practical ability of the institutions to offer the services³². Numerous prisons and detention facilities do not have special psychiatric departments, qualified mentors of mental illnesses, and proper facilities to diagnose and treat mental illnesses. This leads to the accused individuals exhibiting signs of insanity and who are usually confined in normal prison settings that are not set up to attend to their medical requirements. The lack of adequate institutional arrangements weakens the success of the law and can cause the cases with the serious mental disorders to be left unattended through investigation and trial.

³¹ Keith Rix, "Fitness to Plead and Criminal Responsibility," 18 *Medicine, Science and the Law* 219 (2010).

³² Thomas Szasz, *Law, Liberty and Psychiatry* 88 (Syracuse University Press 1998).

- **Delay in Psychiatric Assessment and Medical Evaluation**

The other significant structural issue is associated with the time lag in psychiatric test and medical check of accused individuals that are suspected to be mentally ill³³. Courts most often make reference to expert medical opinion to prove whether an accused individual has the capability to stand trial or, in some cases, the defence of insanity can be used. Nevertheless, due to the shortage of qualified psychiatrists, forensic mental health specialists, and specialized medical facilities, the process of assessment or evaluation may take long. Such delays can lead to the situation of the accused being held in judicial custody over longer periods without due establishment of their mental status. Not only does such a scenario interfere with the fairness of criminal proceedings, this could well result in a violation of the fundamental right to a fair and speedy trial.

- **Lack of Coordination between Legal and Medical Institutions**

This needs a close collaboration between the criminal justice system and the mental health care sector to ensure that the legal safeguards of the mentally ill accused are well implemented. As a matter of fact, institutional coordination between prisons, courts, and police authorities and medical institutions, however, is often weak³⁴. There can be communication lapses between legal and mental health professionals that can further delay the transfer of charged individuals to the relevant treatment center or make access to medical reports which are needed to make a court judgment complicated. This institutional fragmentation lowers the efficiency of procedural protections and brings about uncertainties as to how mentally ill people are supposed to be handled in the course of criminal procedures.

- **Limited Awareness and Training among Law Enforcement Authorities**

The insufficiency of awareness and training of police officers, the officials of prison, and other law enforcement authorities about mental illness and its legal aspects. The officers investigating the cases can either overlook behavioural signs of mental illness or incorrectly understand the signs of mental illness as non-cooperation³⁵. Without the right training, the law enforcement officials might end up subjecting mentally ill

³³ David B. Wexler, "Therapeutic Jurisprudence and Changing Conceptions of Legal Scholarship," 11 *Behavioral Sciences & the Law* 17 (1993).

³⁴ Alec Buchanan, *Psychiatric Ethics: Justice and the Mentally Ill* 63 (Oxford University Press 2000).

³⁵ Lawrence O. Gostin & Lance Gable, "The Human Rights of Persons with Mental Disabilities," 25 *International Journal of Law and Psychiatry* 245 (2004).

accused individuals to interrogation techniques or to conditions of custody that deteriorate the mental states of the accused persons. The need to improve awareness and specialized training programs can therefore be considered to be necessary in order to make sure that the legal safeguards are enforced as soon as possible and at the initial level of the criminal proceedings.

- **Social Stigma and Institutional Neglect**

The mental illness social stigma is also a factor that leads to institutional neglect in the criminal justice system. People with mental illnesses are also marginalized and do not necessarily have proper legal counsel or family care when exposed to criminal cases. Such social marginalization may lead to a long-term imprisonment, insufficient health care, and receiving of rehabilitation programs. The fact that stigma still prevails in the society and institutions most of the time demoralizes proactive detection and treatment of mental illness in accused individuals. It is necessary not only to change the laws but also to develop larger-scale social awareness campaigns aimed at raising awareness of mental health problems and helping to adopt more humane approaches in criminal justice agencies in response to this challenge.

➤ **Reforming the Criminal Justice System for Mentally Ill Accused Persons**

The criminal justice system has emerged as an urgent need to reform in order to have a better position to deal with mentally ill charged persons as a result of changing constitutional jurisprudence, statutory and judicial pronouncement. The Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Nyaya Sanhita have the legal systems in place, which acknowledge that persons impaired in their state of mind need special treatment during the criminal case proceedings, especially by means of the criminal responsibility provisions and the way of handling the criminal cases against persons who are incapable of pleading their defence. Nevertheless, a feasible execution has still been encountering various institutional issues such as lagging time in psychiatric review, poor communication between the judicial structures and mental health organizations, and lack of access to specialist treatment units in the correctional structures³⁶. The courts have repeatedly pointed out the necessity of fair treatment and due

³⁶ Richard J. Bonnie, "The Competence of Criminal Defendants: A Theoretical Reformulation," 10 *Behavioral Sciences & the Law* 291 (1992).

process of law to the mentally ill prisoners. In *Sheela Barse v. The Supreme Court Union of India* (1986), the case emphasized on the weakness of the mentally ill inmates in custody facilities and ordered the government to provide them with adequate medical care and supervision. This is also the case in *Shatrughan Chauhan v. The Court in Union of India* (2014) had ruled that the execution of a prisoner with a severe mental illness would amount to contravention of the constitutional right to dignity in Article 21. These judicial interventions show that criminal justice system should no longer be on simply punitive basis and it should include therapeutic and rehabilitative strategies. Much-needed reform consequently demands greater institutionalization of early mental health testing, regular psychiatric testing of accused individuals, and creation of special units in jails and hospitals to provide treatment to people with severe mental conditions. These reforms would not only prevent miscarriages of justice; but would also make the criminal law practices consistent with the constitutional principles of fairness, dignity and humane treatment.

➤ **Policy Recommendations and Legal Reforms**

The defense of mentally ill accused individuals in the criminal justice system, a number of policy implications and legal reforms are needed to correct the gap between the statutory and practical realities to protect the accused. Among reforms, the creation of the special mental health units in the prisons and judicial institutions is one of the most important reforms needed as the psychiatric assessment could be performed timely and with professionalism. The clauses of the Mental Healthcare Act, 2017, especially the right to access mental healthcare that is enshrined in Section 18, should be well incorporated in the criminal justice processes in order to make sure that the suspects in custody do not lack proper treatment. Police officers, prison officials, and judicial officials also require training and sensitization as a vital element of the reformation process since a considerable number of cases that involve mental illness remain unreported because the law enforcers are unaware of this issue. There is also need to come up with systematic policies to be adopted by courts in terms of assessing mental competence in the trial and application of medical evidence to establish criminal responsibility. Development of diversion programs and therapeutic treatment mechanism that are analogous to the mental health courts that operate in certain jurisdictions may also go further in ensuring the people with serious psychological conditions are dealt with using medical treatment and not strict punitive measures. The policy structures must also facilitate the integration of legal institutions and the mental health practitioners to allow them to extend continuous care, rehabilitation and reintegration of the mentally ill offenders into society. A legislative reform, together with

institutional capacity building and rights based policy measures will help the criminal justice system shift towards a more balanced strategy that ensures safety of the population and at the same time consider the dignity and mental health requirements of persons accused.

➤ Conclusion

The issue of mentally ill individuals in a criminal justice system has complicated legal and human rights dilemmas that are to be approached with a special emphasis on criminal accountability and human care. Although the legal structure of criminal liability acknowledges that persons with unsoundness of mind cannot be held as fully responsible of actions performed when lack of rational capacity, the actual application of the factors has been haphazard in most cases. The constitutions indicate that mentally ill accused individuals must be handled in a humane and just manner as opposed to being forced through the strict punitive systems as a result of constitutional postulates of equality, dignity and fair procedure. Courts and legislations have slowly been enhancing the acknowledgement of mental health concerns in criminal law as the true recognition of a developing appreciation of the fact that mental illness can vastly influence the ability of persons to engage in legal procedures. Meanwhile, system-wide problems like the lack of proper psychiatric facilities, the prolonging of medical examination, and the lack of awareness on the part of the law enforcement officials all still hamper the efficacy of the current protection measures. To overcome these issues, the efforts of law making, institutionalization, and the introduction of mental health expertise in the criminal justice system are to be combined. Finally, human and justice legal system should be able to provide that those with mental illnesses should not just be treated as criminals but as vulnerable individuals who should be accorded dignity, care and fair treatment by the law. Through a rights-based and rehabilitative strategy, the criminal justice system will be in a position to balance easier the goals of accountability, social protection, and respect to human dignity.

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