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# **MENTAL HEALTH: AN UNDERTRIAL IN CRIMINAL JUSTICE SYSTEM**

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## **ABSTRACT**

Mental Health, a term which in the recent past has cloaked the human space with innumerable facts and instances. Mental health can be delineated as a state of well-being where an individual realises his or her own abilities and is strong enough to cope with the normal stresses of life and can work productively, besides contributing to his or her community.

In the present scenario, mental instability rules the decisions and differences of the society. Law, an undifferentiated part of the society, is heavily intertwined with increasing vigilance of mental health aspects. The Indian Justice System is mild over the incarceration of mentally-ill individuals, whether children or youth. The ignorance of the issue of mental health under the judicial decisions and explanations led to the degradation of mental health of incarcerated individuals. The paper discusses the criminal liabilities of persons with mental illness or PMIs, and moral obligations of adjudicating authorities so as to highlight the rights as well as conditions of the PMIs in prisons. In the same vein, the concern over the aspects of rehabilitation of PMIs and the application and implication of the sociological jurisprudential theories of punishment has been discussed. Further, the focus of the paper is on the ever-increasing number of trials of offenders with mental instability

in the present scenario. The paper also tries to scrutinise the debatable concern of whether the prevalent examination of the course of proceedings with respect to PMIs satisfies the goals of formulating justice or not. The global reference as to the concern of punishing the PMIs is alluded to in the paper.

**KEYWORDS:** Mental Health, Criminal Justice Delivery System, PMIs, Reformation

## LITERATURE REVIEW

The contention over mental health is a recent and vehement one, cloaking almost the vast areas of human existence. For the record of evolution of mental health laws, a reference has been made in chronological order to numerous legislations being enacted and enforced in India.

Recent trends show a nexus of psychiatric and legal studies at an unprecedented rate. Research paper titled *Mental Health and Law: An Overview to develop and strengthen the discipline of forensic psychiatry in India* published under the *Indian Journal of Psychiatry* provides that the thought-bearing on primary mental health is the least concern of the people and the report concluding the same made reference to state and Union territories equally. Further, as per the Mental Health Survey Report conducted in 12 states elucidated the prevalence of mental disorders at 10.6% while the health care gap of these states varied between 70.4% and 86.3%. (Pratima Murthy, 2016)

The other literature is titled as *Indian Legal System and Mental Health* published in the *Indian Journal of Psychiatry*. The reference to the statutes and legislations has been made and intrinsic principles of the Indian Constitution have been discussed. Being dwelled on the principles of natural justice, the Indian Constitution equally eludes for the protection of prisoners and prohibit any kind of torture or discrimination against such person which is inconsistent with the laws. In this regard, Article 21, Right to Life and Liberty is the prominent one. Legislative enactments of pro-independence India have also been alluded to as a historical evolution of the gradual increment of mental health philosophy. (Lakshmi Narayan, Deep Shikha, 2013).

References have been made to the *Mental Health and Criminal Justice System in France: A Narrative Review* to give an outlook over the global prevalence of the mental health issues of incarcerated persons. (Thomas Fovet, 2020). Further, the Dutch Prison System has been discussed

with regard to the mentally-ill prisoners and a quick glance is provided. (Melissa Hogenboom, 2018).

## OBJECTIVES

The objectives of the discussing research paper are three-fold;

- To analyse the inception of mental health laws in India.
- To scrutinise the statistics of PMIs and the increment rate per se.
- To discuss the stabilising effects of Reformatory measures of punishment.

## INTRODUCTION

Mental Health and criminal liability with respect to PMIs has always been the attraction of the masses. From time immemorial, numerous judicial pronouncements, statutes and legislations have been passed to determine not only the criminal liability but also the treatment and other necessary aspects concerning a mentally ill individual. However, emphasising on the 19th century, the definition of mental health had been undertaken only in the negative terms. The focus was on the incarceration of unstable individuals rather than on compassion and treatment to such PMIs. Legislations being formulated in British India primarily focused on the threats that a mentally-ill individual possesses in the society of sane persons. However, gradually the old ways took a turn and stance over the definition can be witnessed in post-independence India. The post-independence legislative formulations focused on the PMIs but lacunas relating to rehabilitation and human rights of such individuals were still in preponderance. To overcome the same, modern jurisprudential aspects of punishment have been referred to and the reformatory measures have been adopted. Today, the aim of punishment has shifted from retribution to reformation and aided in re-living the humanistic principles. The era of *eye for an eye and tooth for a tooth* has come to an end and the fundamental aim of punishment is considered in re-cultivating the offender into an upright man and introduce him in the society as a responsible citizen.

## RELATIONSHIP BETWEEN PSYCHIATRY AND LAW

The ambit of law has always cloaked various other aspects of society. Since the inception of the sovereign authority, the law has controlled the greater needs of the people. Whether it is morality, public order, inhumane behaviour, each and everything has been mentioned and defined under the laws of the land. One of such aspects that law deals with is the mental health of individuals. As may be seen, in India, the statutes and provisions related to mental health have been developed

and enacted during the British Raj. Most of the existing provisions have their birth in 20th century India. However, the foot of mental health issues in the legal arena has strengthened only after the 1990s.

However, in the recent past, the definition of mental health has taken a sporadic shift. As being delineated by WHO, mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community". It may be noted that, primarily mental health comprises three chief components; emotional well-being, psychological well-being and social well-being. These three components are intertwined and work as a catalyst to each other. The imbalance in any of the catalysts will cause havoc that directly or indirectly will prove an apocalypse to the society or state. Hence, it is not incorrect, if we say, mental health and law are like parallel lines, going together on an unending path.<sup>1</sup>

## INCEPTION OF PROVISIONS CONCERNING PERSONS WITH MENTAL DISABILITIES

In the year 1858, the British crown took control over the Indian territory and numerous laws came into existence in British India. The treatment of the mentally ill persons in the asylum was the innovation of the Britishers and the same was introduced in British India through the statutes enacted by the British officials. During the late half of the 19th century, legislations were enacted for the purpose of establishing mental asylums and the admission and treatment of PMIs. Some of these legislations were; *The Lunacy (Supreme Courts) Act, 1858*<sup>2</sup>; *The Lunacy (District Courts) Act, 1858*<sup>3</sup>; *The Indian Lunatic Asylum Act, 1858*<sup>4</sup> and *The Military Lunatics Act, 1877*.<sup>5</sup>

These Acts were not humane and focussed on the custody of the PMIs as they were seen as dangerous people who didn't need care rather imprisonment in the mental asylums. The Acts were against human rights and detained patients for an indefinite time period. These drawbacks paved the way for the introduction of a bill in 1911 that integrated the existing legislations and provided

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<sup>1</sup> Silvana Galderisi, Andreas Heinz, Marriane Kastrup, Julian Beezhold and Norman Sartorius, *Toward a new definition of Mental Health*, WORLD PSYCHIATRY (Jun. 4, 2015), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4471980/#\\_ffn\\_sectitle](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4471980/#_ffn_sectitle)

<sup>2</sup> The Lunacy (Supreme Courts) Act, 1858, No. XXXIV, Acts of British Parliament, 1858 (British India).

<sup>3</sup> The Lunacy (District Courts) Act, 1858, No. XXXV, Acts of British Parliament, 1858 (British India).

<sup>4</sup> The Indian Lunatic Asylum Act, 1858, No. XXXVI, Acts of British Parliament, 1858 (British India).

<sup>5</sup> The Military Lunatics Act, 1877, No. XI, Acts of British Parliament, 1877 (British India).

for better conditions of PMIs. The *Indian Lunacy Act, 1912*<sup>6</sup> came into existence and changed the existing definition of mental health laws in India. The enactment led to the alteration in the management of mental asylums, which were now termed as mental hospitals, but the major lacuna of considering PMIs as dangerous and system of their custody remained the same. This was vehemently criticised by the Indian Psychiatric Society that wanted reform in the mental health legislations and heavily contributed to the draft of the mental health bill in 1950.<sup>7</sup>

In the year 1987, the bill got the President's assent and was implemented later in 1993. *The Mental Health Act, 1987*<sup>8</sup> gave new speculation about the mental health legislations in India. Unlike the past statutes, it provided for the best care and treatment of mentally ill persons, along with keeping in mind their human rights. The Act focussed primarily on the treatment of the PMIs, rather incarcerating them in mental asylums. However, after being applauded for its aims and objectives, it had specific and major drawbacks that led to the enactment of another Act of 2017. The Act of 1987 didn't delineate about the management of rehabilitation of the discharged PMIs from the hospital. It was also not specific on the question of licensing, admission and guardianship of the mentally disturbed persons and was also criticised by human rights activists for the non-providance of adequate provisions regarding human rights.

## LEGISLATIVE PROVISIONS REGARDING MENTAL DISABILITY IN INDIA

The earliest statute concerning mental health is the *Persons With Disabilities (Equal Opportunities, Protection of Rights, Full Participation) Act, 1995*<sup>9</sup>. This Act was implemented in 1995 in order to provide for the extending opportunities to the PMIs. Its aim is to remove the discrimination and prevent the abuse and exploitation of persons with disabilities (PWDs). The Act makes the government liable for the development of PWDs and make sure to include them into the social milieu with equal opportunities and participation. It also recognized mental retardation and mental illness as a disability, hence PMIs are also given the benefits available to PWDs under the Act.

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<sup>6</sup> The Indian Lunacy Act, 1912, No. IV, Acts of British Parliament, 1912 (British India).

<sup>7</sup> Choudhary Laxmi Narayan and Deep Shikha, *Indian Legal System and Mental Health*, INDIAN J. PSYCHIATRY, S177 – S181 (2013).

<sup>8</sup> The Mental Health Act, 1987, No. 14, Acts of Parliament, 1987 (India).

<sup>9</sup> Persons with Disabilities (Equal Opportunities, Protection of Rights, Full Participation) Act, 1995, No. 1, Acts of Parliament, 1995 (India).

Another prolific step taken by the government is the *National Trust Act, 1999*<sup>10</sup>. The Act is concerned with the treatment and care of persons who are dealing with autism, mental retardation and cerebral palsy, to protect and empower them so as to make them capable of living in the society to which they belong and grow and shine in their own glorious way. The umbrella objective of the Act is to provide equal opportunities and participation to the PMIs.

*The Mental Health Act, 2017*<sup>11</sup> is the latest step in the light of mental health administration.

In the year 2008, the Indian Government had ratified the *United Nations Convention for Rights of Persons with Disabilities, 2006* and has been obliged by the same to enact and enforce legislations in consonance with the provisions of the Convention as well as take necessary steps to harmonise the issues of mental health in the country. In the same alignment, the Mental Health Act, 2017 came into force. The Act of 2017 replaced the Mental Health Act, 1987 and took the concerns of mental health into a new spectrum. Latest statute provides for the rehabilitation and treatment of the PMIs at affordable cost as well as with latest technologies.

Chapter V<sup>12</sup> of the Act provides for the Rights of persons with mental illness. *Section 18*<sup>13</sup> of the Act says that every person has a right to go to mental healthcare services to opt for mental health care and treatment. It also says that access to mental healthcare means services provided at an affordable cost and of good quality that are geographically available to the concerned persons without any discrimination on the basis of gender, caste, colour and religion.

*Section 19*<sup>14</sup> of the Act has concerns over the Rehabilitation rights of the PMIs. The provision provides that a mentally ill person has a right to live in the society and not to be segregated from it. Also, a person cannot live in mental healthcare establishments because his family or relatives abandoned him due to the existing state of his mind. The provision has given the responsibility to the appropriate government to provide for legal aid and assistance to the person who has been abandoned by his family or society.

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<sup>10</sup> The National Trust for Welfare of Persons With Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, No. 44, Acts of Parliament, 1999 (India).

<sup>11</sup> The Mental Health Act, 2017, No. 10, Acts of Parliament, 2017 (India).

<sup>12</sup> The Mental Health Act, 2017, Ch. V, No. 10, Acts of Parliament, 2017 (India).

<sup>13</sup> The Mental Health Act, 2017, § 18, No. 10, Acts of Parliament, 2017 (India).

<sup>14</sup> The Mental Health Act, 2017, § 19, No. 10, Acts of Parliament, 2017 (India).

The right of dignity of a mentally unstable person has been secured under *Section 20*<sup>15</sup> of this Act. The provision safeguarded the right of a PMI to live in a hygienic environment where he has facilities of adequate sanitation, activities for leisure, educational and recreational opportunities and must be away from cruel and inhumane treatment, as well as physical, verbal and emotional abuse by the hands of other human beings.

The awestruck developments of the Act are the decriminalisation of attempted suicide contained under *Section 309*<sup>16</sup> of Indian Penal Code, 1860 and the establishment of Central Mental Health Authority at national level and State Mental Health Authority in every state. The reason behind the establishment of these authorities is to give training to mental health officials and executive officers over the enforcement of the provisions of this Act.

## **REFORMATIVE PUNISHMENT: A BEACON LIGHT TO CAST**

The issue of Mental Health in India is a concerning index. As per a report submitted in the year 2017, approximately 14% of the total population of India suffer from varying mental disorders and older adult females constitute a more vulnerable age group. As per a recent study, around 74% of the Indian population suffers from stress while 88% suffers from varying anxiety disorder.<sup>17</sup>

Turning the page to mental health in offenders, it has been reported by the *Prison Statistics India Report* of the NCRB, 2021 that approximately 9,180 prisoners have been suffering from some sort of mental illness, accounting for around 1.7% of the 5.54 lakh prisoners being lodged in various jails.<sup>18</sup>

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<sup>15</sup> The Mental Health Act, 2017, § 20, No. 10, Acts of Parliament, 2017 (India).

<sup>16</sup> § 309, IPC, 1860 (India).

<sup>17</sup> Sanyukta Kanwal, *Mental Health in India: Statistics and Facts*, STATISTA (Mar. 8, 2023), [https://www.statista.com/topics/6944/mental-health-in-india/?kw=&crmtag=adwords&gclid=CjwKCAjw-b-kBhB-EiwA4fvKRL1fX65FWT0oH8KAq0II3U4xjrIRKdtFNs-hTeQmrc4VQyf71\\_AwyhoC\\_xwQAvD\\_BwE#topicOverview](https://www.statista.com/topics/6944/mental-health-in-india/?kw=&crmtag=adwords&gclid=CjwKCAjw-b-kBhB-EiwA4fvKRL1fX65FWT0oH8KAq0II3U4xjrIRKdtFNs-hTeQmrc4VQyf71_AwyhoC_xwQAvD_BwE#topicOverview).

<sup>18</sup> Ambika Pandit, *22% rise in mentally ill jail inmates: NCRB*, TOI (Sep. 11, 2022), [https://www.google.com/amp/s/m.timesofindia.com/india/22-rise-in-number-of-mentally-ill-jail-inmates-ncrb/amp\\_articles/94124324.cms](https://www.google.com/amp/s/m.timesofindia.com/india/22-rise-in-number-of-mentally-ill-jail-inmates-ncrb/amp_articles/94124324.cms)



Chart 1

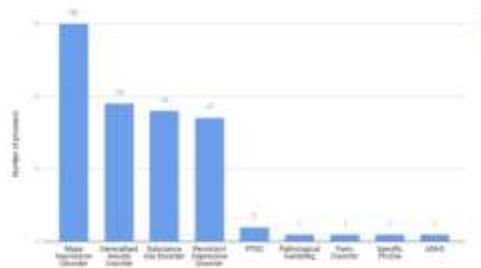


Chart 2

**Chart 1:** <https://www.weforum.org/agenda/2018/04/5-charts-that-reveal-how-india-sees-mental-health/>

**Chart 2:** <https://www.google.com/amp/s/amp.scroll.in/article/1008162/interview-why-we-should-care-about-the-mental-health-of-death-row-prisoners-and-their-families>

In its most basic form, justice entails treating everyone equally. To put it another way, it explicit the fact that one must receive what one deserves. However, it is not as straightforward as it may appear. The criminal delivery justice system is likewise strangulated at its own thrust. One among the numerous problems associated with criminal offences is the scrutinization of mental health of incarcerated persons. The mental health phenomenon associated with iron bars is two-fold, the first fold cloaks the offenders who have prior mental conditions, while the latter fold crawls through the crevices of criminal justice delivery system and entails the inception of mental conditions of prisoners solely linked with the milieu and treatment that they receive in prisons.

Another undeniable fact explicit that though criminal behaviour is a reflection of an internal psychiatric condition, the disorder does not describe all aspects of crime. The trial of PMIs is one issue that puts the concept of justice and fairness to the test. The debate over the question of whether PMIs should be put to punishment or treated accordingly is a perennial one. The universe of opinion is split into two-halves, one contending the philosophy of deterrence and retribution while the other advocating the sociological jurisprudential concept of reformation.

The universal opinion alludes to the point that it is intolerable if horrible criminals are allowed to roam free under the guise of mental illness and continue to pose a threat to the society. However, another undeniable point remains that there are people in prisons all over the world who deserve to be rehabilitated rather than imprisoned.

Now the question arises as to how the issue of the right of patients to be treated and the public's right to be protected be resolved ? Unfortunately, there is no one-size-fits-all solution or straight response to the question. Each fact of each and every case must be thoroughly scrutinised and a

comprehensive diagnosis of the offender's mental condition as well as the surrounding environment must be read. The greatest method to rehabilitate the patient and safeguard society subsequently can be accomplished through unifying rehabilitative and punitive measures. To accomplish so, it is vital to create an atmosphere in which not only the offenders are properly cared for but also the security of the wider society is not jeopardised.

In the same vein, modern punishments have foundation on the Reformatory approaches that focus on reforming the offender and cultivating him in order to make him a responsible citizen of the nation. Among the offenders, reformatory theory of punishment has explicit implications that are targeted to provide curative treatment to PMIs and provide them a humane environment that suits their needs and aid in their re-cultivation. On this point, Justice Krishna Iyer has reiterated in the case of *Mohd. Giasuddin v. State of Andhra Pradesh*<sup>19</sup> that *every saint has a past, and every sinner has a future*, while delineating the fundamental importance of Reformatory theory of punishment. Further, it has been postulated that the seed of criminal behaviour lies in the deculturalization of an individual from the society and this should be combated through re-culturalization of the offender with the society. Hence, draconian and inhumane punishment or treatment will explicitly abhor the idea associated with the penology principles.

## GLOBAL OUTLOOK OVER THE ISSUE

The issue of criminal liability of mentally unfit individuals and their treatment is a global issue and many different nations are working for it. However, it is also true that the world is far beyond than it needs to be in order to reach the goal of justice and welfare. According to data, 56% of state prisoners and 45% of federal prisoners in the United States have symptoms or a recent history of mental illness.<sup>20</sup> France has comparable findings, and it recognises mental illness in its legal system after several changes and provisions for insanity defence. In its legal system, France implemented Diminished Criminal Responsibility. But the boundaries between the mental health and legal systems in France impede interactions between the two institutions, resulting in major gaps in psychiatric care for those who are detained. Because of this contrast, it is possible to preserve the patient's best interests as the primary goal of psychiatric care, while still remembering

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<sup>19</sup> Mohd. Giasuddin v. State of Andhra Pradesh, AIR 1977 SC 1926.

<sup>20</sup> Human Rights Watch Statement for the Record to the Senate Judiciary Committee Subcommittee on Human Rights and the Law, *Mental Illness, Human Rights, And Us Prisons*, HUMAN RIGHTS WATCH, (Sep. 22, 2009), <https://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons>.

that the clinician's responsibility is to give care, not to enact legislation against illegal behaviour.<sup>21</sup> The Dutch Criminal Judicial System, which has implemented a five-level justice system, is highly encouraging in this regard. It's a sliding scale that ranges from full responsibility to total absence of responsibility with three levels in between.<sup>22</sup> Mentally ill offenders' responsibility is determined with due care, and they are treated as best as possible in special facilities designed exclusively for them. However, the situation in many countries is worse than it has ever been. State jails house not only criminals, but also mentally ill people who require solitary treatment and cannot be housed in public places. It leads to a worsening of their mental health and, in some cases, a more criminal nature.

## SUGGESTIVE MEASURES

The problem of mental health must be solved, which necessitates an understanding of the existing system's flaws and the implementation of appropriate measures. The attitude of authorities and the general public toward mental health issues is the first issue. In a country like India, mental illness is regarded as a taboo topic that is kept hidden. The first step toward a better situation is to raise awareness about the sickness and the need for treatment.

True, with legislation like the Mental Health Act of 2017, which took significant reformatory moves like decriminalising Section 309 of the Indian Penal Code and enacting a slew of new regulations to strengthen the country's mental health system. However, the legislation's implementation and the reality on the ground continue to be disheartening. According to a study conducted by India's National Institute of Mental Health and Neurosciences in 2016, the prevalence of depression is 2.7% for current depression and 5.2% for lifetime depression in 12 distinct states. According to this survey, the lifetime prevalence of mental disorders is 13.7% across the board, implying that at least 150 million Indians require immediate assistance.<sup>23</sup> With such disturbing data, the need for better conditions is considerably greater. A better infrastructure is required to create a better environment for mentally ill people and to care for their treatment

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<sup>21</sup> Thomas Fovet, Florence Thibaut, Anne Parsons, Hans-Joachim Salize, Pierre Thomas, Camille Lancelevee, *Mental Health And The Criminal Justice System In France: A Narrative Review*, SCIENCE DIRECT, (Aug. 22, 2020), <https://reader.elsevier.com/reader/sd/pii/S2666353820300217?token=4AC308B0C6E300F69F7091B29E74CA87233A5DA43A85FDED4A79229063A48294A2AAE2F71AD4865BD085A0A323BD0024&originRegion=eu-west-1&originCreation=20220211202002>.

<sup>22</sup> Melissa Hogenboom, *The Unique Way The Dutch Treat Mentally Ill Prisoners*, BBC FUTURE, (Apr. 25, 2018), <https://www.bbc.com/future/article/20180423-the-unique-way-the-dutch-treat-mentally-ill-prisoners>.

<sup>23</sup> Abhishek Mishra, Abhiruchi Galhotra, *Mental Health Act, 2017 : No need to Wait and Watch*, INTERNATIONAL JOURNAL OF APPLIED AND BASIC MEDICAL RESEARCH, (Jun., 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/>

and rehabilitation. It is critical that mentally ill people be steered away from the criminal justice system and towards the mental health system. Prisons must also stop serving as a dumping ground for PMIs. The state of the jails adds to the agony and has the potential to harm even the most stable person's mental health. The environment in jails, as well as overall living conditions, must be addressed and cared for. Human rights and mental health legislation should be advocated. The system should devote a larger portion of the money to this issue and take a rehabilitative rather than punitive approach to mentally ill offenders, as they require therapy far more than punishment. All of these activities can help to improve the situation, and we can strive toward the common good.

## **CONCLUSION**

The debate over the issue of PMIs and their human rights has always been one of a greater need of debates. On one side, the protection of the society is necessary while on the other side the care and guidance of the PMIs is not only needed but is to be enacted. Amidst the debates of what is and what not, we must not take turn from the fact, that under the Criminal Justice System, the main motive of punishment is not to punish the wrongdoer for satisfying the urge of vengeance, rather it is to reform the person. And in this light, reformation of the PMIs is the one of great importance and also a step to set the goals of humanity. However, as it has been elucidated earlier in the article, the problem of delivering justice as well as rehabilitation of PMIs is a not-so easily solved one, hence a more cautious and sensible approach is required. If PMIs continue to be treated inhumanely, it will be a failure not only of the system but also of a society as a whole. With the passage of time, the behaviour and response has undoubtedly developed and improved, but there is still more to be done.