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A BRIEF STUDY OF THE LEGAL AREAS GOVERNING THE MENTALLY ILL

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I. ABSTRACT:

Mental health as a discipline can be rightly called the pivot of the existence of a society without which the economic, social, and political health of the society deteriorates holistically. There has been an almost dramatic paradigm shift in case of mental health laws since its inception from segregating the mentally ill from the society more like a bunch of dangerous creatures to the present times where the law recognises and seeks to protect the rights and interests of the mentally ill. The advent of British brought several new perspectives and legislations to govern the area of mental health, most of which were retained even after the Independence. This paper seeks to make an analysis of the civil and criminal aspects of the law with regard to the mentally ill patients while shedding some light on the exceptional treatment governing the mentally ill in India.

KEYWORDS:

Mental Health Laws, Mentally Health, Indian Legal System

II. INTRODUCTION:

“This disease comes with a package: shame. When any other part of your body gets sick, you get sympathy”. -Ruby Wax

Mental health as a discipline, in its practical sense, is indispensable not only for the sound existence of individuals but also because of the immense loss that would have been caused to the world in every aspect, had it been non-existent. There has been an almost dramatic paradigm shift in case of mental health laws from its inception from segregating the mentally ill from the society, more like a bunch of dangerous creatures to the present times where the law recognises and seeks to protect the rights of the mentally ill. Mental health has sadly remained an anathema in India. There has been an almost unwavering reluctance to accept and freely discuss the concept of mental illness, let alone, the legal rights of the mentally ill. On a relative outlook, the development of law in the area of mental health has not been in

pari passu with that of several others. Mental patients have been on the one hand subjected to cruelty, abuse, torture, and abandonment while on the other hand mental illness is usually associated with witchcraft, sorcery, and Exorcism etc. giving it a tinge of backwardness.

Ancient India has held in it several interesting examples of identification and treatment of mental illnesses. After the British advent, Mental health system and it's laws have gone through several phases of changes where a certain amount of conflict was also seen with regard to the nature of treatment administered to the mentally ill patients as to whether it should be the traditional Indian methods as laid down by the Ayurveda, Sushruta Samhita etc. or the European techniques.

III. HISTORICAL BACKGROUND:

The developments in legal systems with regard to the mental health can be broadly classified into three heads:

A) PRE – BRITISH CONCEPTION:

India being the womb of diversity was ruled by a number of rulers who had with their belief and faith brought into prevalence the principles dictated by their respective religions Hence all the different laws not excluding laws governing mental health had been influenced by the principles of Manusmriti, Bhagavadgeetha and with the emergence of Muslim rule by the essence of the Quran, Sharia Laws etc. In the famous work “Manu Smriti”, references to insane persons (unmatta) in various areas such as marriage, inheritance etc. can be observed.¹

B) BRITISH AND POST- BRITISH CONCEPTION:

With the advent of the British and the subsequent colonization of India, the traditional laws of Hinduism and Islam were replaced by the common law. The mental hospitals were first established with an intention of cordoning the mentally ill from the rest of the community to protect the safety and the interests of the society rather than for the recuperation and protection of the mentally ill. Though there are references of mental asylums during the reign of Mohammad Khilji, Shahdaula's Chauhas at Gujrath and in Punjab. The first known system of segregation and supervision of the mentally ill was a British concept. It is believed that

¹ Rajdeep Kaur, How to deal with the stigma of mental illness, Dailypost (Oct 09, 2017) http://dailypost.in/newshealth-fitness/deal-stigma-mental-illness/?amp_markup=1.

lunatic asylums were first started to treat the mentally ill soldiers. Later with the expansion of the British Empire a number of mental asylums were built in Calcutta, Bombay, and Madras.

A number of legislations were passed by the British to regulate the establishment of mental hospitals ,admission and discharge of the mentally ill and such other matters including The Lunacy (Supreme Court) Act of 1858 , The Lunacy (District Court) Act of 1858 , The Indian Lunatic Asylum Act of 1858 (amendments in 1886 & 1889) , The Military Lunatics Act of 1822 , Indian Lunacy Act of 1912 . A number of Englishmen strived for the betterment of the mentally ill including Lord Cornwallis, Robert Clive, and Berkeley Hill.²

C) INDEPENDENT INDIA'S SCENARIO:

There was hardly any research data available on mental health in India at the time of independence.³The Indian Psychiatry Society was founded after Independence – the society drafted a bill and submitted it to the Government of India in 1950 which was subsequently adopted by Rajya Sabha and Lok Sabha in 1986 and 1987. The Mental Health Act (1987) was enforced in 1993, thus replacing the Indian Lunacy Act (1912). Since then, a number of programmes, policies, and legislative initiatives have been undertaken.⁴

IV. LEGAL DEFINITION OF A LUNATIC OR A MENTALLY ILL PERSON:

According to Blackstone's Legal Dictionary, Lunacy is defined as "Lunacy is that condition or habit in which the mind is directed by the will, but is wholly or partially misguided or erroneously governed by it; or it is the impairment of any or more of the faculties of the mind accompanied with or inducing a defect in the comparing faculty".⁵

V. MENTAL HEALTH AND LAWS:

1. CRIMINAL LAW AND MENTALLY ILL PERSONS:

If an offence is committed by a person who, at the time of doing it, is in incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to the law by reason of unsoundness of mind.⁶ This defence is successful only when it can be proved

² Shridhar Sharma & L .P Verma, History of Mental Hospitals in Indian Subcontinent, 26IJPsy.295, 296 (1984).

³ Dr.Bela Shah et al, Mental Health Research in India, Indian Council for Medical Research 1, 1(2005).

⁴Reetinder Kaur & R K Pathak, Treatment gap in mental health care, 31Econ Political Wkly.34, 35(2017).

⁵ 5 Henry Campbell Black,Black's Law Dictionary;855(5ed,1979)

⁶ Indian Penal Code, 1860, §84, Acts of Parliament, 1860(India).

satisfactorily that the accused was mentally ill during the commission of an act to such an extent, that he/she was unable to understand the nature and consequences of his/her action and that it was illegal in nature. The defence is different from other defences and if successful, it will result in a special verdict which says that they are not guilty by reason of insanity and hence they need to be admitted and treated in a Mental Hospital.⁷

A) AUTOMATISM & CRIMINAL LIABILITY:

Automatism is a condition which is often found to last for a brief period of time where actions are performed instinctively without any conscious intention or thought. Epilepsy, Hypoglycaemia etc. are some examples which are found to constitute in the instances of Automatism. Automatism can be used as a good defence in criminal cases.

B) ALCOHOLISM, DRUG ADDICTION, AND CRIMINAL LAW:

If the person was intoxicated while committing an offence to the extent of being incapable of knowing the nature and consequences of his/her own action and that is illegal in nature. However, the thing which resulted in the intoxication of the person should have been administered to the person without his/her knowledge or against his/her own will.⁸ However, such an exception would not be applicable if a person voluntarily intoxicated himself in order to commit a particular act intentionally. The requirement is that the influence of alcohol must have incapacitated the said person from forming an intention to commit the crime.⁹

C) MENTALLY ILL PERSON AS A WITNESS:

Though , generally speaking ,an insane person is not a competent witness , yet , if such a person has a personal knowledge about the occurrence of an incident and if the person can understand the meaning of taking an “ Oath ” and if he can narrate the incident properly, then the presiding officer of the court can allow his disposition.

D) SUICIDE AND THE MENTALLY ILL:

Suicide is an act of self-annihilation or killing oneself. For a very long time, it was held that suicide was a criminal act and the Right to Life granted under the Article 21 of The Indian

⁷Raveesh BN et al, Law & Psychiatry in India: An Overview, 2JFSCI.1, 2(2013).

⁸ Ratanlal & Dhirajlal, Indian Penal Code, 142(34ed, 2014).

⁹ Basdev v. State of Pepsu, A.I.R.1956 S.C 488(India).

Constitution did not include in its purview the right to take one's one life but it has now been scrapped down.

E) THEFT AND MENTAL ILLNESS:

Intending to take any moveable property out of the possession of any person without the said person's consent with a dishonest intention is said to amount to theft.¹⁰ The element of dishonest intention is a primary ingredient for an act to amount to theft. If a person suffering from Kleptomania commits an act which would have otherwise amounted to theft, then he should not be punished as prescribed in the Penal Code but instead must be sent for a treatment so that the mental condition can be cured.

F) PREMENSTRUAL SYNDROME AND CRIMINAL LAW:

Premenstrual Syndrome refers to physical, emotional and psychological changes occurring during and /due to a woman's menstrual cycle. Premenstrual Syndrome can be an effective defence if the defendant can show that:

- The defendant was suffering from Premenstrual Syndrome at the time of the commission of the crime.
- Due to the defendant's condition, the criminal act was either an involuntary act or that at the time of the commission of the criminal act; the defendant did not possess the mental state required by law for the commission of a crime.

PMS has been successfully pleaded as a criminal defence in the courts of Great Britain¹¹ but has not yet been tested in Indian Courts.

G) CAPITAL SENTENCE AND THE MENTALLY AFFECTED:

There has been a dilemma, since a very long time on whether an insane, retarded, idiot guilty of a crime should be subjected to capital punishment or not. However, In A.B. Gupta case, The Supreme Court of India with regard to English Law Vis-a-Vis executing a person suffering from lunacy considered the societal safety and protection as a primary factor said that the statute law of the country on the subject is based entirely on secular considerations which place the protection and welfare of the society in the forefront".¹²

¹⁰ Indian Penal Code, 1860, § 378, 1860 (India).

¹¹ R V Craddock, (2004), VSC, 397.

¹² A.B.Gupta v. Union of India, A.I.R. 1977 S.C. 608 (India).

H) MENTALLY ILL AND CODE OF CRIMINAL PROCEDURE:

If a Magistrate holding an enquiry has the reason to believe that the person against whom the enquiry is being held is suffering from an unsound mind and as a result is not capable of making an effective defence, then the said Magistrate has to look into the matter through the medical examination of such a person either by a Civil Surgeon of the District or such other medical officers as directed by the State Government. Also, the said civil Surgeon or the Medical Officer has to be examined and his statement shall be recorded.

After the statement has been recorded, if it is found that the said person is incapable of an effective defence, then, the Magistrate is required to record his findings for the enquiry to be postponed.¹³ During the course of trial either by a Magistrate or Court of Sessions, if it appears either to the Magistrate or to the Court that the person is suffering from an unsound mind and as a result is not capable of making an effective defence, then the Magistrate / Court has to make an inquiry into the matter and if it is found that the said person is incapable of defence, The Magistrate / Court has to record his findings in order to postpone further proceedings in the case.¹⁴ If a person is found to be suffering from an unsound mind by the Magistrate / Court, as the case may be, such a person can be released on parole after obtaining sufficient surety,¹⁵ and if such a surety is unavailable, he/she has to be detained in safe custody.¹⁶ The trial or inquiry of a person is to be resumed in a normal manner, only on the recovery of such a person suffering from unsoundness of mind and not otherwise.¹⁷ When a person who has been detained in a jail or a lunatic asylum is said to be capable of making his defence, then a certification from the Inspector General of Prisons or all or any three of the visitors including at least one social worker¹⁸ appointed by Central or State Government¹⁹ is required.

I) JUVENILE JUSTICE AND MENTALLY ILL:

A Juvenile Crime is defined as any crime committed by a person under the age of eighteen years. According to Section 58 of Juvenile Justice Act (Care and protection of children)

¹³ Criminal Procedure Code, 1973, § 328, 1973 (India).

¹⁴ Criminal Procedure Code, 1973, § 329, 1973 (India).

¹⁵ Criminal Procedure Code, 1973, §.330(1), 1973 (India).

¹⁶ Criminal Procedure Code, 1973, § 330(2), 1973 (India).

¹⁷ Criminal Procedure Code, 1973, § 331, 1973 (India).

¹⁸ The Mental Health Act, 1987, § 39, Acts of Parliament, 1987 (India).

¹⁹ The Mental Health Act, 1987, § 37(1), Acts of Parliament, 1987(India).

2000, If it appears to the competent authority that any juvenile or the child kept in a special home or in an institution is suffering from leprosy or from unsoundness of mind or is addicted to any narcotic drug or psychotropic substance, then, the competent authority has to order his/her removal to a leper asylum/mental hospital/treatment centre for drug addicts or to such a place of safety for being kept there for such a period of time as directed by the order of the competent authority or as certified by the medical officer as required for the proper treatment of the said juvenile/child²⁰. It is equally applicable to a child who is not in conflict with the law but suffers from unsoundness of mind.

2. CIVIL LAW AND PERSONS WITH MENTAL DISORDERS:

The persons suffering from mental disorders need to bear and conquer a number of problems in their day to day life including incapacity to take decisions independently. Even if the mentally ill take decisions, it is necessary to know whether they can entirely understand the consequences of the decisions & actions they take. The Civil Law regulates power to hold, testamentary capacity, Marriage etc.

A) RIGHT TO HOLD PROPERTY AND MENTALLY ILL:

The ancient Hindu Law including authorities such as Manu, Gautama etc. were consistently against an insane/idiot holding a property though some of them had stated that the property could be separately earmarked to serve the interests of the insane/idiot. The Hindu Inheritance (Removal of Disabilities) Act 1928 though had removed the disabilities of persons to hold the property did not remove the disability of a congenital lunatic/insane person. According to Section 28 of The Hindu Succession Act 1956 disqualification based on diseases, defect or deformity is not a bar to have a property.

B) TESTAMENTARY CAPACITY AND MENTALLY ILL OR

AFFECTED:

A person who cannot understand his/her actions on account of the influence of drinks or intoxication or illness or from any other cause cannot make a will.²¹ However, if such a will

²⁰ Juvenile Justice Act (Care and protection of children), 2000, §58, Acts of Parliament, 2000(India).

²¹ Indian Succession Act, 1925 § 59, Acts of Parliament, 1925.

is made by the said person during the lucid interval where he has made the will after perfectly understanding the nature of his action and its consequence, it would be a valid document.

C) CONTRACT LAW AND MENTALLY ILL OR AFFECTED:

A person with a mental disorder with an occasional sound mind can make a valid contract during the period of time when he is of sound mind. However, a person who is usually of sound mind but has occasional disorder of mind cannot make a contract when he has the occasional disorder of the mind. Only a lawful guardian or a manager appointed by the Mental Health Act can enter into a contract to bind a ward.²²

D) TRANSFER OF PROPERTY AND MENTALLY ILL:

Only the persons who are competent to make a contract can affect a transfer of property.²³ According to Mental Health Act 1987, a manager appointed by the court on behalf of the mentally ill, with the court's prior approval could mortgage, charge or transfer by sale, gift, and exchange or otherwise transfer any of the immovable property of the person who has a mental illness. However, before granting the permission, the court shall make an enquiry to ensure the protection of the interests of the person suffering from mental illness.

If a person who holds such securities or shares becomes mentally ill or if the manager appointed for such a mentally ill dies or himself becomes mentally ill, then in order to ensure effective regulation of these stocks / shares, The District Court has the power to direct the company or the Government concerned to make such transfers or to transfer the same and receive the pay over the dividends.

E) MENTALLY ILL AND PARTNERSHIP:

According to Section 4 of The Indian Partnership Act 1932 – “ partnership is the relation between persons who have agreed to share the profit of a business carried on by all or any of them acting for all .” For a person to enter into a partnership, soundness of mind is considered to be one of the key essentials. If a person of sound mental health suffers from mental illness after becoming a partner, and then any other partner may seek file an application before the

²² Nagalakshmi v. Farook, A.I.R. 2007 KAR105 (India).

²³ Transfer of Property Act, 1882, § 2, Acts of Parliament, 1882 (India).

District Court for the dissolution of the partnership.²⁴ On such an application, if it is noticed by the District Court that the person is mentally ill after the enquiry then upon such terms and conditions a manager can be appointed who will join with other partners for the disposal of the partnership property and will perform other acts required for the dissolution of the partnership.²⁵

F) MARRIAGE AND MENTAL ILLNESS:

Almost all of the personal laws except Muslim law disqualify a person suffering from an unsound mind from getting married. Both the Hindu Marriage Act and The Special Marriage Act state that both the parties to a marriage should be of sound mind in order to get married. However, if a marriage takes place with a mentally ill person then the marriage would not be void ipso facto but voidable at the instance of the other party. However, the mental illness should be to such an extent the said person should be unfit for marriage and to procreate children.²⁶

G) DIVORCE AND THE MENTALLY ILL:

It has been laid down that merely proving that the spouse is mentally ill is not sufficient ground for divorce but it must be shown that the person is suffering continuously or intermittently from a mental disorder of such a kind and to such an extent that the other spouse cannot be reasonably expected to live with the mentally ill person in order to have the marriage dissolved by a decree of divorce²⁷.

H) MENTALLY ILL AND ABORTION:

Prior to 1971, termination of Pregnancy was considered as an offence which was punishable under Sections 312 to 316 of the Indian Penal Code. The Medical Termination of Pregnancy Act 1971 is considered by many to be one of the significant landmarks of India's social legislation. To terminate the pregnancy of a woman who has not yet attained the age of eighteen years or a woman more than eighteen years but mentally ill, the consent of the guardian in writing is a mandatory requirement.²⁸

²⁴ The Mental Health Act, 1987, § 70(1), Acts of Parliament, 1987(India).

²⁵ The Mental Health Act, 1987, § 70(2), Acts of Parliament, 1987(India).

²⁶ Alka Sharma v. Abhinesh Sharma, A.I.R.1991 M.P 205 (India).

²⁷ The Hindu Marriage Act, 1955, § 13(1) (3), Acts of Parliament, 1955(India).

²⁸ The Medical Termination of Pregnancy (Amendment) Act, 2002, § 3(4) (a).

3. MENTALLY ILL AND CODE OF CIVIL PROCEDURE:

The Code of Civil Procedure mainly regulates the procedural aspects of the proceedings before a civil court. For persons who are adjudged or not before or during the pendency of a suit to be of unsound mind or incapable of understanding by reason of mental infirmity, separate provisions have been in Rule 1 to 14 except 2A of Order 32 shall be applied with such modifications as needed²⁹. Whenever a suit is brought by a person of unsound mind, it is done through a next friend. Even the persons of weak mind who are incapable of protecting their interests fall within the ambit of the said rule. If a manager is appointed under the provisions of the Mental Health Act, no person except for the said manager should act as the next friend of the mentally ill person in respect of the property. In case of an appointment of a guardian, appointment made without conducting an enquiry or credible medical certificate regarding the mental capacity would be bad.³⁰

4. MENTALLY ILL AND PUBLIC INTEREST LITIGATION:

Public Interest Litigation (PIL) is ideal for the mentally ill as it gives hopes to render justice as the mentally ill cannot afford to approach the courts directly to seek relief. In such cases, Either the advocates or the Non – Governmental Organisations etc. must file Public Interest Litigation for the benefit of the mentally ill. It must be mentioned in this context, that the present state of improvement in the area of mental health laws has been achieved due to commendable efforts put in a number of Public Interest Litigations. In the case of The Ervadi Fire Accident³¹, The Supreme Court took cognizance of the case by looking at a newspaper report. However, The said incident also brought into limelight the amount of non-adherence to the Mental Health Act 1987 and the torture and darkness lingering in the mental hospitals and facilities and led the Human Rights Commission to constitute a committee to report the conditions of Mental Health Hospitals in the country which subsequently submitted a report known as “ Quality Assurance in Mental Health.”

5. MENTALLY ILL AND JUDICIAL INQUISITION:

If an alleged mentally ill person is in possession of a property, an application can be made to undertake an inquisition into his/her mental health can be made by:

²⁹ Dr.S.B.N.Praakash, Mental Health and Law, 70, (2008)

³⁰ Thirtha Pradhan v. Balabadra Pradhan, A.I.R. 1993 Orissa 50 (India).

³¹ Death of 25 chained inmates. Union of India & Ors, A.I.R. 2002 S.C. 979 (India).

- a) Any of his relatives; or
- b) A Public Curator who has been appointed under the Indian Succession Act, 1925 or by The Advocate General of the State in which the alleged mentally ill person resides.
- c) The District Collector within whose jurisdiction the alleged mentally ill person resides.³²

On the receipt of an application, a judicious and an appropriate procedure are to be followed as prescribed in the Mental Health Act of 1987.

6. MENTALLY ILL AND LEGAL AID:

According to Section 91 (1) of The Mental Health Act, 1987, if a mentally ill person has not been represented by an advocate nor has enough money to engage an advocate, a legal practitioner shall be assigned at the expense of the state by the district court or the magistrate. If a person who has been detained based on an order feels that he has recovered from his mental illness. Then, he/she may make an application to the Magistrate, where necessary under the provisions of the Mental Health Act, 1987, for his discharge from the psychiatric nursing home³³ However, it has to be supported by a certificate either from the medical officer in charge of the psychiatric hospital or the psychiatric nursing home where the said applicant is undergoing treatment or from a psychiatrist.³⁴

However, such a procedure did not work out well as many patients may not be in a position to make the required application before the Magistrate nor would they be aware of their rights or the procedure for seeking discharge. In order to overcome such a problem, the apex court directed that two members of the Legal Aid board of each State to make monthly visit to such institutions and will also assist the patients and their relatives in applying for discharge from the institutions if they have fully recovered, and don't require institutional assistance or any such treatment as inpatients. The court has ruled that a team of members of legal aid along with a judicial officer will explain the rights available to the said a mentally ill person and his/her guardians in a language comprehended by them at the time of his/her admission to any institute. The person who is so taken or cause to take him shall be produced before the Magistrate within 24 hours excluding the time duration required for the journey. The Magistrate shall conduct a due inquiry after which the said person can be handed over either

³² The Mental Health Act, 1987, §50(1), Acts of Parliament, 1987(India).

³³ The Mental Health Act, 1987, §43 (1), Acts of Parliament, 1987 (India).

³⁴ The Mental Health Act, 1987, § 43 (2), Acts of the Parliament, 1987 (India).

to the custody of relative or friend on taking suitable bond for proper care and protection or may even make an order of reception for admission at a psychiatric hospital or nursing home.

7. HUMAN RIGHTS AND MENTAL HEALTH:

1. The mentally ill person shall not be subjected during treatment to any indignity (whether physical or mental) or cruelty.
2. The mentally ill person who is undergoing treatment shall not be used for purposes of research, unless-
 - i. Such a research is of direct benefit to him/her for purposes of diagnosis or treatment.
 - ii. Or the said mentally ill person, being a voluntary patient, has given his/her consent in writing or where such a mentally ill person [whether or not a voluntary patient] is incompetent by reason of minority or to give consent on his behalf, has given his consent in writing such research.
3. No letters or other communications sent by or to a mentally ill person shall be intercepted, detained, or destroyed except in cases stated by Section 94 of the said Act³⁵.

8. MENTAL HEALTH AND POLITICAL RIGHTS:

A person who is of an unsound mind and has been so declared by a competent court shall be disqualified for being chosen as, and for being, a member of the House of Parliament.³⁶ A Person who is suffering from an unsound mind shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State.³⁷ A person who is of an unsound mind and has been so declared by a competent court shall be disqualified for registration in an electoral roll.³⁸ A person shall not vote at an election in any constituency if he is subject to any of the disqualifications referred to Section 16 of the Representation of the People Act, 1950.

VI. CONCLUSION:

In spite of the developments that have already occurred, mental health laws are too backward on a relative outlook. Further, there is a need to establish and intensify the laws against the oppression and injustice done to the mentally ill. Emphasis should be laid for the holistic

³⁵ The Mental Health Act, 1987, §81, Acts of Parliament, 1987 (India)

³⁶ Constitution of India; art. 102, cl.1.

³⁷ Constitution of India; art. 191, cl.1.

³⁸ The Representation of the People Act, 1950, §16 (1) (b), Acts of Parliament, 1950 (India).

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empowerment of the mentally ill by providing a conducive and healthy sphere for them to recuperate and develop. Enforcement of existing laws effectively should be undertaken so that maximum benefit is provided to the mentally ill. However, no law can prove to be effective unless it is openly embraced by the society with a genuine view to help the weaker sections of society. Hence, by adhering to the words of the revered Mahatma Gandhi that “There is a higher court than the court of justice and that is the court of conscience. It supersedes all other courts”, the society as a whole must develop without restricting justice and help to the court of law. This would meet one of the unwritten objectives of mental health laws in specific and all other laws in general by making people conscious of their duties towards one another and thus lead to a positive step towards the success of the existence of laws in the aforesaid area.