

*Law of Insanity and Protection of Rights of Persons with Mental Disability in India:A
Socio Legal Study*

**BABU BANARSIDAS UNIVERSITY LUCKNOW
UTTAR PRADESH
DISSERTATION**

**Law of Insanity and Protection of Rights of
Persons with Mental Disability in India:
A Socio Legal Study**

DISSERTATION

Submitted in partial fulfilment of the requirement for the award of degree of Master of Laws

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Under the Guidance of
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DECLARATION

I hereby declare that the dissertation entitled “Law of Insanity and Protection of Rights of Persons with Mental Disability in India: A Socio Legal Study” is the outcome of my own work conducted under the supervision of Dr. GITU SINGH Professor School of Legal Studies at BBDU, LUCKNOW, (Uttar Pradesh). I declare that the content of this dissertation is an original work prepared after careful research and due acknowledgement has been made in the text to all other material used and that the same has not been submitted in any university or college or any other programmed for any other purpose.



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CERTIFICATE

This is to certify that dissertation entitled “Law of Insanity and Protection of Rights of Persons with Mental Disability in India: A Socio Legal Study” which is being submitted by Mrs. Sucheta Tiwari, for the award of the degree of Master of Laws is an independent and original research work carried out by her.

The dissertation is worthy of consideration for the award of One year LL.M. Degree of Law, BBDU, Lucknow

Mrs. Sucheta Tiwari has worked under my guidance and supervision to fulfil all requirements for the submission of this dissertation.

The conduct of research scholar remained excellent during the period of research.

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Date 24/04/21

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Chapter – 1

Introduction

Insanity as a remedy in India remains an unsolved problem in criminal law. However, it also raises several interesting questions worthy of careful analysis. Because of this, few studies have been conducted on the development of the clinical picture of cancer patients. In 2011, psychiatrists conducted a study that evaluated 5,024 inmates during semi-structured interviews for the program, resulting in 4002 (79.6%) people with such a diagnosis. The disease can be diagnosed. . Use of psychoactive substances. The philosophical basis of exemption from unrestrained and criminal liability is perhaps the functional limitations of the cruel and repellent doctrine of punishment, i.e. the emphasis on the provision of Article 84 of the Indian Penal Code, upon which the 1843 line was founded.

Another study conducted in India, backed by admirers of the need to streamline the company's strategy towards diagnosis, treatment and certification, describes forensic psychiatric patients in a very boring way.

It is the well-established principle of "actus non facit rem nisi sit mens ri", which literally means that without a sense of guilt, the offender has no decision to bear responsibility. The malice, or the guilty mind (mens re) of the offender, must have been an integral part of the time when an offense was committed. Protection against mental illness is a law that protects a person who is unable to understand the nature of the act committed by him.

The mind is flawed to the point where it is completely incapable of understanding the nature of its action. The fact that a person suffered from a mental illness is not in itself sufficient evidence that they were insane. As per Indian law, the basic principle of defense of insanity is covered in section 84 of the Indian Penal Code 1860 and is based on the McNutten Rule." The burden of proof to prove beyond any doubt is on the defendant.

The Law Commission of India in its 42nd report tried to re-examine 84 laws, but could not make any changes..

1. Origin of the Rules on the Plea of Insanity

The madness of law as a defense measure has been going on for centuries. However, this has been the legal position for the last three hundred years. The history of the Law of Madness dates back to 1700.

The first case introduced in the Insanity Act was P. Arnold (1724), in which Edward Arnold, who attempted and even attempted to injure Lord Onslow, was tried in the same way. The evidence clearly indicates that the accused was suffering from mental disorder. Tracy, J., observed:

"If you were under the judgment of God and could not distinguish good from evil, and did not know what He did, but had committed the greatest crime, however, it would be any offense against any law." cannot be guilty of."

As indicated in the above cases, there may be questions about stability in the case of a person who, because of his mental disorder, was not able to distinguish between good and evil, and did not know that Nature has worked. This test is also known as the "wild beast test". "

The second test was developed in the case of Hadfield (1800). Hadfield was discharged from the army due to his illness, and was convicted of treason in the attempted assassination of King George III. Defendant's lawyer, Sir Thomas Erskine, defended him, and it turns out that before Judge Instagram he only did this to King, and pleaded not guilty on the basis of the insane delusions that the defendant suffered needed.

The Nazis claimed that the insanity was caused by a violent-crazy illusion and a mirage, on the basis of which the defendant was and is the main cause of his crime. In this test, it was known as the "Mad Error Test". "

Finally, the third trial was based on the Magritte case (1812). In this case, Le Blanc, J. Said that the judges would have to decide whether the accused had actually committed the crime, whether he was able to separate the truth from the lie, or whether he was in control of an illusion. Since the bowler hat case, courts have noted the defendant's ability to distinguish between good and bad, but this test is not entirely clear.

1.1 McNaughton Principle

From time to time there are many trials, and such as a wild animal, a trial, a trial, a mad illusion, etc.). But most importantly, a "right and wrong" test is created in McNaughton

Mitton and his brother's hearings were the subject of debate in the House of Lords, and as a result, they were called upon by fifteen judges to decide on criminal liability in cases where the accused are unable to understand the nature of the operation and to answer questions on the advanced map. Answers can be given. Fourteen of them had the same answers over and over again. According to most, this was given to you by Tyndall, C J, in that the answers to these questions are well known, such as Mitten's law. The following main points were pointed out: If a person knows what they are doing, or it was only a partial mistake, it is a crime. There is a belief that everyone has a good idea, or is good and knows what they are doing, and that they are responsible for it. To defend on the ground of insanity, it must be concluded that the accused was in such state of mind at the time of the act and was unable to know what was the nature of the act. A person who has sufficient medical knowledge, or a doctor who is with disease insanity, may not be called upon to express his point of view and to decide on the application in accordance with the decision of the judges.

1.1 Scope of Study

This study focused on the size and scope of rights of persons with disabilities in India. Internationally, it covers a range of fundamental human rights of persons with mental disorders. India is a member of the international community, and the globally recognized rights of persons with mental disorders are important for India in developing the range and scope of rights of these groups. Therefore, this study focuses on exploring many new aspects of human rights with disabilities on a global scale. However, in Indian law, the protection requirements of these groups are also taken into account when determining the scope of this study. The role of the judiciary should also be kept in mind while studying the issues highlighted in this study. In this regard, there are many books, journals, articles, regulations, court practice, and controversies and discussions that have been studied to define analytical theory methods.

1.2 Goals

- * Determining the exact meaning of the term "mental retardation".
- * For a good understanding of the laws relating to mental retardation along with practical implications and effectiveness.
- * Analyze the relative impact of mental health disabilities on Indian society.
- To make mistakes and deficiencies regarding the legal implications of cognitive disability, I am absolutely right and with the state's approach to mental health legislation.

1.3 Hypothesis

Mental incapacity is the result of the individual's mental, manifested in the tension between desire and social rules. The role of the judiciary should also be kept in mind

while studying the issues highlighted in this study.

1.4 Methodology

In its research, it is mainly based on a theoretical research methodology—an analytical approach. The study is based on a detailed study of both primary and secondary sources of law. The analyst will mostly rely on your choice of books, magazines, articles and online resources for research. Various basic sources of scientific research, laws, rules, regulations, circulars, announcements, fees etc., developed by the researcher. Secondary sources of law include articles and works of prominent authors and lawyers and texts from books, periodicals, articles, commentaries, cases. summary, etc.

. 1.5 Scope of Research

Apart from the introduction and chapters, the report is divided into five chapters. And Chapter 1 is devoted to a discussion about the extent of rights of people with mental disorders, mental health problems most often overlooked by people in social life. Once a person is labeled as mentally ill, he goes through the pain of abandonment and neglect. It is a pity that it was precisely during the scientific and glacial period that the rights of ordinary people, for example, criminals, were strongly recognized and enforced, but the needs of the mentally ill were ignored , and they were attached to life in the non. -Human. This chapter is not just about rights, but also about focusing on their concerns. Chapter 2 discusses the concept of mental disorder as well as persons with mental disorder and the concept of mental disorder and people with mental disorder. For example, the Indian Penal Code 1860, the Mental Health Act 1987, the Rehabilitation Council of India Act 1992, and the Persons with Disabilities (Equality of Opportunity, Protection of Rights and Full Participation) Act 1995. National Social Insurance Fund for People with Autism, Cerebral Palsy, Mental

Retardation and Multiple Disabilities, 1999. But there can be problems with tests or criteria for determining dementia and mental disorders. Chapter 3 covers the protection of rights

- People with disabilities on a global scale. Insanity as a defense against a charge of insanity, it is an absolute defense against criminal prosecution, and persons suffering from mental disorder are not able to take into account all the necessary means to commit an offence. Chapter 841 of the Indian Penal Code of 1860 and seeks criminal liability of a person of mental disability against whom it is an offence. The Act provides that all must be healthy and of sufficient intelligence to be accountable for their actions in a sane state, is defined differently, and provides for persons suffering from mental disorders under Chapter 4 India. Addresses the basic and procedural aspects of security. Constitutional and criminal law. Protection of persons suffering from mental disorders under Indian constitutional and criminal law. As for the Mental Insanity Act, it is a common occurrence in many operations in India, namely the Indian Dementia Act of 1912, the Indian Penal Code of 1860 (Division 84), the Criminal Procedure Code of 1973 (Sections 328-339), etc. Chapter 5 deals with the protection of the rights of persons with disabilities in India (except by constitution and criminal law) in India (except in the state criminal justice system in the UK), as well as a framework for the protection of persons with mental disorders. The law is required, which is actively implemented. In India also, with civil rights awareness and increase among the people of the world, people with disabilities have emerged, i.e. their skills and knowledge to improve their lives, which probably contributed to a new way of thinking and helped legislators to understand the ancient Law was forced to leave. Law and invent a new one. Chapter 6 focuses on the findings and recommendations.

- 1.2 Literature Review

While defining a research work, we came up with several books and other publications that are relevant to our field of research. Some of them are as follows:

- Vishnu D. Sharma and F. Woodridge. "Law governing the publication of pornography in India", *International and Comparative Law Quarterly*, Vol. 22 (1973). These journals have proved very useful for my research. And I have legal information in my subject line.
- Of. Chandrasekaran N. Pillai, "Innocence Defense in the USA and India-A Comparative Review" *The Delhi Law Review* (1981), p. 174-185. in *The Literature, Insanity and, Right, Defense of the Rights of Persons with Disabilities in India: A Socio-Legal Study of the Size and Scope of Rights of Persons with Disabilities in India*. Many human rights of the mentally ill have been recognized internationally. India is a member of the international community, and the internationally recognized rights of people with mental disabilities are critical to expanding the reach and access to the rights of one of these groups in India. The purpose of the present study was therefore to support several new aspects of the rights of mentally ill people at an international level. In addition, there are Indian cuisines aimed at protecting these groups, while defining the research area. The study of the problem identified in the present study also covers the role of the Indian judicial system, in this context Analytical Theory and Methods. This is directly related to my area of research.
- K M Sharma, "The Defense of Insanity in Indian Criminal Justice", 7, *Official Journal of the Indian Law Institute* (1965) 325 p. 376. Article 84 of the Indian Penal Code states that every offense committed by a person in a state of mental disorder while doing this act, and that person does not know the nature of that action, and that person does not understand that this act does badly or against the law. A detailed structure of such information, in which we have learned to recognize them, is provided in this book.

foundation of my research, how it can preserve an unsound mind person. My research clarifies it.

- Minal H. Upadhyay, “Disabled Persons and their Human Rights” 1 Gujarat Law Herald (2011 Feb.) pp. 18-22. Persons with disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others under all international treaties. The full participation of persons with disabilities benefits society as their individual contributions enrich all walks of life and are an integral part of the well-being of the individual and society and the progress of society for all - with or without disabilities.

The rights of persons with disabilities have generally been addressed during the development of international human rights law. The principle of the right to equality, which is addressed in the normative standards set forth by international human rights instruments, is the foundation of the rights of persons with disabilities. In order to further realize the rights of persons with disabilities, contemporary international law has increasingly recognized the need for all states to incorporate human rights standards into their national legislation. Although the means chosen to promote the full realization of the economic, social and cultural rights of persons with disabilities may vary between countries, no country is exempt from the need for better policies and laws for persons with disabilities. My research shows how steps have been taken to protect and protect the mentally challenged persons at the international level.

Chapter-2

Statement of Problem

2.1 Magnitude of Rights of Persons with Mental Disability

It was widely believed among the peoples of the ancient world that it was a type of mental incapacitation or disease, a punishment inflicted by an evil deity. According to Jewish tradition, in which disobeying God's commands will result in a terrible punishment, including who is the boss here. Modern psychiatry, however, has ruled out, and under-diagnosed, any form of mental illness, and is treated as a physical illness. In fact, there is a strong prejudice and discrimination against the mentally ill. Mental health problems are most often ignored in public life. Once a person is labeled as mentally ill, he goes through the pain of abandonment and neglect. It is a pity that it was precisely during the scientific and glacial period that the rights of ordinary people, for example, criminals, were strongly recognized and enforced, but the needs of the mentally ill were ignored, and they were attached to life in the non-human. For the mentally ill in schools, they are different, they are deprived of the basic rights and freedoms of the individual and others use in a similar conjugation. The grave violation of the protection of human rights of mentally healthy patients and the deteriorating condition in psychiatric hospitals can be seen in the horrific tragedy in which more than 25 people suffering from mental disorders died at the Irwadi insane asylum in Ramanathapuram district¹. Tamil Nadu in August 2001. After this house caught fire. Sick people could not get out of the fire, as if they were tied with sticks or beds. Tragedy of national hero Irwadi, Supreme Court of India to act by FCS MOTU on behalf of mentally ill patients running FCS MOTU, the court made several recommendations to the central government and state governments on strict compliance of rules on the basis of 'Mental Health Act' from 1987 to ensure such event.

Recently, the World Health Report (WHR) 2001 titled Mental Health: New Understanding, New Hope, was released worldwide. The report is a positive attempt to battle the neglect of mental health and mentally ill persons. According to the World Health Report, one in four families has at least one member currently suffering from a

¹ See Subhash Chandra Singh, "Neglect of the Rights of Mentally Sick in the Age of Human Rights" *Allahabad Law Journal* (2003) pp. 13-16; G. Sadasivan Nair, "Standard of Proof in Insanity Defense", *Cochin University Law Review* (1986) 103 - 149

mental or behavioural disorder, and that about 450 million people are currently suffering from neuropsychiatric conditions. The human and financial costs resulting from the major mental health problems are tremendous. Individuals suffering from mental health problems find their vocational, social, and leisure activities limited in a variety of ways, and their enjoyment of life curtailed. People with severe mental health problems who are institutionalized are relatively isolated from family, friends and familiar surroundings. Despite very discouraging situations, there are some hopeful signs with the interventions of international institutions and human rights activities in this area, and people now began to think about the importance of better mental health for human development.

It is obviously difficult to provide a definition of mental health, and so mental illness. In fact, no one criteria of mental sickness is universally accepted and different criteria are inconsistent with each other and change over time. In the Indian context, the Mental Health Act of 1987 gives no elaborate definition of mental illness. As per Section 2 (1) “mentally ill person” means a person who is in need of treatment by reason of any mental disorder other than mental retardation. Thus, under the Act those persons are mentally ill who are exposed to psychiatric treatment. In terms of it, one is considered mentally disordered person simply by reason of his or her being in need of psychiatric² care. This definition, however, is inadequate, for it excludes many people who for one reason or another, are potentially diagnosable as mentally sick, but are not seen by psychiatrists as mentally ill.

The recently enacted Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 have included mental illness within the definition of disability. Whether this inclusion will improve the rehabilitation of persons with mental illness remains to be seen. It is generally accepted that in case of “Mental Illness” people are referred to mental hospitals and hence received psychiatric care, for the convenience of society rather than because of an inherent illness. Another objection is the circular reasoning involved: a person is treated because of being abnormal and is abnormal because of having being treated. Exposure to psychiatric treatment or psychiatric care is unsatisfactory criteria because it relies too heavily on societal considerations. In criminal law, it is the psychoses that bring the Mc Naughten Rules into play. The neuroses or personality disorders do not normally affect cognitive faculties, so the McNaughten Rules

² *In Re Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu v. Union of India*, AIR 2002 SC 979: (2002) 3 SCC 31

do not apply, and the persons committing an offence under the influence of neuroses cannot take the plea of insanity defense under the criminal law.

In India, there are two types of hospitals for mentally ill persons: psychiatric hospitals or general hospitals with psychiatric wings operating under the control of general hospitals and special hospitals with special walls under the department of health. In India, psychiatric hospitals or psychiatric nursing homes work as custodial centres only. In western countries, especially in the United States, the mental patients' rights have been fully recognized and the institutions began discharging patients at a much quicker rate. The Indian experience with institutionalization has not been satisfactory. The National Human Rights Commission (NHRC) in 1999 after an empirical study of mental hospitals in the country made a damning indictment of the state of mental hospitals in India. The findings revealed that the mental hospitals (lunatic asylums) are poorly lighted, uncomfortable, overcrowded, unsanitary, inadequately staffed, and patients chained, and often suffered cruel treatment. The NHRC report said that the hospitals or mental health centres are dumping grounds for families to abandon their mentally ill member, for either economic reasons or a lack of understanding and awareness of mental illness. The living conditions of many of these hospitals are deplorable and many of them violate an individual's right to be treated humanely and thus live a life of dignity.³

Here it is important to note that, in USA, many State enacted laws are granting broader rights to mentally sick. The rights are:

1. The right to communicate freely with friends and relatives;
2. The right to seek legal counsel;
3. Right to marry;
4. The right to make a will;
5. Right to paid day job.

Mental health services in India are scant and unfairly distributed. People with lower socioeconomic status are more likely to receive lower-quality services because of the higher costs of long-term treatment programs. People living in rural areas are less likely to join the range of services in urban areas. Also, there will be no separate wing for mentally ill people in all conditions and hospitals. From the Hindu point of view, mental disorders, which can be judged by the high suicide rate among poor farmer weavers, are

³ See S. K. Verma and S. C. Srivastava (ed.), *Rights of Persons with Disabilities* (Indian Law Institute, New Delhi, 2002)

prone to violence, accidents and natural calamities. We can help everyone with this, people with better mental health. For better mental health, we must have a sufficient number of psychiatrists and mental health professionals. However, like many other countries around the world, there is an acute shortage of psychiatrists in India. The World Health Report found that all third world countries have less than one psychiatrist per 100,000 residents. India is with them. Many psychiatrists work full-time in private practice on the issue, and rarely have clinics, hospitals, or psychological assessment centers.

Keeping mentally ill people in jail was an issue on which we were constantly working for legal and court expenses. In August 1993, while hearing a PIL regarding mass detention of persons identified as mentally ill and non-criminal lunatic (NCL), the Supreme Court observed that:

"It has been established that it is illegal and unconstitutional to permit a non-criminal mentally ill person to be in prison." Despite this, the Supreme Court and a large number of non-criminal mentally ill people still languish in jails in different parts of the country in the name of law and order, even though many of them are not suffering from mental illnesses. To convince them that they are being detained. The reason some non-criminal lunatics are called lunatic is that their family members or suppliers will find an easy way for them to claim their real estate or remove it from their homes. As in psychiatry, it is used for nefarious purposes. The time has come to complete the convergence and harmonization of psychiatry, law and ethics. The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health (United Nations Principles) are one of the main design documents for the protection and promotion of mental health.

Of human rights of mentally sick. United Nations principles to ensure that it is both positive and negative with respect to the rights of persons with mental illness. Affirmative rights, ensuring the best possible psychiatric care within the health system and public health. Negative Rights, emphasizing that mental illness in itself does not impair the right to self-determination, and agreeing to recognize the autonomy of choice and the rights of people with mental illnesses. The United Nations rules, which requires an integrated strategy to support and treat people with mental illnesses, and the other is to support the development of society. It is mandatory to implement the principles of the United Nations and also helps in promoting mental health in India. A modern psychiatric hospital, often referred to as a therapeutic community, has a gloomy and boring life for many subjects. A modern alternative to complete institutionalization, especially for the latest

developments, home remedies, in-home, mid-road and hospital products. Tragedy like a mental hospital, Irwadi should only be prevented by the development of comprehensive systems of responsibility and control. An innovative approach is to emphasize that the provision of mental health services as well as counseling and educational services to all who apply to them. However, the basis of any future mental health improvement plan was the continued need and need to contribute through research, that is, not only in assessing the impact of mental health and prevention programs, but also in reporting and meeting the needs of all its citizens. In doing too. . You also need to get help with all your rental properties. As in psychiatry, it is used for nefarious purposes. The time has come to complete the convergence and harmonization of psychiatry, law and ethics⁴. The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health (United Nations Principles) is one of the main design documents for the protection and promotion of human rights and the mentally ill. United Nations principles to ensure that it is both positive and negative with respect to the rights of persons with mental illness. Affirmative rights that provide the best available mental health care within the health and social care system.⁵

“However, it is to emphasize that mental illness does not infringe the right to self-determination and that autonomy and freedom of choice as well as the rights of people with mental illnesses are agreed upon in recognition of the conditions. Essential is the UN environmental protection of mental illnesses. A holistic strategy to support and treat persons suffering from depression and on the other hand to promote their community. It is very important that the implementation of the principles of the United Nations and it also contributes to the promotion of mental health in India. Modern psychiatry Hospital, in the monotonous and boring life of many companies, it is often called a therapeutic community. A modern alternative to complete institutionalization, especially for the latest trends, cash at home, at home, in the middle of the street, in the hospital, and groceries. Dramas like Irwadi, a mental health shelter, should only be stopped by developing a more responsible and controlled system. His approach was to highlight the fact that the

⁴ Srinibas Bhattacharya, *New Perspectives In Mental Retardation*, (Sterling Publishers Pvt. Ltd., New Delhi, 197

⁵ M.E. Blodgett and G.T. Warfield, *Understanding Mentally Retarded Children*, (Appleton Century Crafts, INC, 1959); M.L. Hutt and R.G. Gibby, *The Mentally Retarded Child Development Education and Treatment*, (Allyn and Bacon, Boston, 1965)

provision of services in psychiatric institutions as well as for all those consultation and Educational services that are interested in it. However, the foundation of future mental health improvement planning is the continued need for research, and that is not only to reduce the impact of mental health and prevention programs, but also to identify and address the needs of all its citizens. . I also appeal to all members of the community to provide comprehensive health care to people of all ages, improve public schools, heads of government, and groups, to facilitate the elimination of prejudice and the creation of a healthy and harmonious world.

2.2 Intellectual crime and misconduct

According to the rules of Instagram, which will form the basis of the Indian Penal Code, for insanity, which is registered in section 84 of the Indian Penal Code, and for the health condition of a person who has been in court, and who has never heard evidence , it may be necessary as a source of research. On the basis of the facts presented by the witnesses, so that in the situation, as to criminal insanity by reason of mental illness, the Indian Act? Many successes have been achieved in this area in the United States. What changes may be required in the Indian Constitution?

You should consult a specialist doctor. It is important that all matters in which the question arises are studied, relating to it. Indian law recognizes this. In insane cases, the questions are:

- 1) Whether the accused is actually sane at the time of the act; and
- 2) The reason by which you may use your knowledge of the nature of the Act or the inconsistency or illegality of the Act. What were these questions? In the UK, these issues will be resolved by a jury, while in India, they will be resolved through a court. An expert witness is the state of mind of the accused, either in his office or in the evidence of the case, if it can be heard in court. This can indicate their opinion of hypothetical situations, even if you are not personally with the accused. A mental health professional who has personally examined the defendant after the crime was committed can tell us about his state of mind at the time of the crime. It can also mean that the question about whether the respondent will be successful, or who is the boss here, can be amended. An expert who did not know the suspect, but only heard of him from trial, may be permitted to hold an opinion based on evidence that the facts are simple and indisputable, and that this is because science is only good.⁶

⁶Section. 84 of IPC: “Nothing is an offence which is done by a person who, at the time of doing it, by

The reason for this limitation is that in situations of conflict, as well as conflict of evidence for such practices, it is necessary for an expert to establish truth and value and then draw scientific conclusions from it. In this regard, it is relevant in these five questions and answers in MacNaughty. The relevant parts of the rules are as follows:-

- (1) Everyone is healthy, unless proven otherwise.
- (2) The defense of a criminal charge consists in proving to the defendant that he is within the law, that the act is only of mind, caused by a mental illness, and that also
 - (a) did not know the nature and quality of the act done by him, or
 - (b) if he knows, does not know that he has committed an evil deed.

Evidence of the accused doctor during trial, and does not leave you to prove that the act in dispute is about the state of mind of the accused; But where facts are accepted or disputed, and the question is of science alone, it may be done for reasons of convenience, but it is not a question of law.

The last two judgments of the Nagpur High Court, Devrao d. Badshah and Baswant are the same

The Emperor, although it seems that they are in conflict with each other, while the others are important in this regard. Further, the same expert level has given evidence in both the cases, but in the first case the evidence was accepted to acquit the accused, while in the second case the evidence was dismissed as irrelevant and the accused was convicted.

Judge in Basavanta Rao's case? From the Nagpur High Court, as it was referred to the fifth question, and the answer to the question, McNaughton was approved. According to him, according to experts, he can be invited to participate only in rare cases when there is a dispute about facts or their interpretation. Then, the question is whether the illness was to satisfy such a legal criterion as to whether the verification of the legal problem is that the expert witness is not competent or responsible for the verdict. It is not expert, because experts cannot assume the actions of the court. The court ruled that, in the opinion of the medical witness, the position of the accused at the time of was irrelevant, and was not final.

As a breeding ground, this species has been taken up by some authors in the past. Some contemporary writers oppose this view. The importance and practical use of expert

reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary of law”.

testimony should also be taken into account. It is from this perspective that some Indian questions ask experts to express their opinion on whether the accused distinguishes between good and evil. It can be said that in clear cases of mental disorders, the question of whether the accused is suffering from mental disorder or not can be easily explored.

There is a difficulty in which he recognizes that the defendant is doing something unusual, and questions whether he was mentally at the right time, unable to distinguish between good and evil. This is where the court needs the help of mental health professionals to find the right person. In some cases, an important role was played by the appointment of a doctor. Others don't. Set the tone for India's judicial Instagram to show that scientific evidence is not conclusive and it is not even necessary for the court to decide whether or not there is a spiritual thing. But as a matter of procedure, it is the duty of the justice of the peace or the court to refer the accused to a mental health specialist for observation if there was a claim of insanity on the part of the accused or if there is reason to believe that.

The accused is suffering from mental disorder. If the report is proof of that On the part of the spiritual counselor, the analysis of these recommendations is so precise, coherent and correct that the subject matter is important. The evidence and in the circumstances of the case, otherwise there would be grounds to doubt the mental state of the defendant, since the insanity court or police at the time of the offence, refused to undergo mental treatment to the accused, may be taken to acquit the accused. as the deciding factor.

2.2 Rights of Persons with Disabilities in India

The consonants usually reflect the values, state of mind, ambitions and principles of society of the people at a given time. This cannot be done in isolation. The Mental Health Act of 1987 (MHA 1987) was passed after much debate. However, it is not up to you to address the concerns of a significant portion of those who participate in or influence their execution. There seems to be a conflict between law enforcement agencies in the field of mental health. it's really bad. The Ministry of Home Affairs in 1987, in order to achieve the statutory intent, these parts should be taken into account. The international position of this thing is changing in terms of the preparation of the law. It is now recognized that people who are disabled, the mentally ill, in our context), are in a good position in society at par with non-disabled people. In this new context, people with disabilities are becoming more and more individual people with a wide variety of skills and inalienable rights, and each of them making the best use of their abilities.

¹⁰Indian Evidence Act, 1872, Section 45. Relevant part of the provision reads: "When the court has to form an opinion upon a point ... of science... the opinion upon that point of persons specially skilled in ... science... are relevant fact.

2.2 Mental Health Act, 1987

The Mental Health Act, 1987 (MHA 1987) is definitely a much more progressive legislation than its predecessor, the Indian Lunacy Act, 1912. The MHA 1987 was⁷

It aims to strengthen and amend the law relating to the treatment and care of persons suffering from mental illness.

Experience in the application of Lunacy's law in 1912 showed that with the rapid development of medical and surgical science, technology, and improvements in a better understanding of the causes of mental illness and methods of dealing with them, the old law had to be abandoned. . In addition, it is to increase awareness of civil rights and to improve the quality of their own lives in terms of the growth of people with disabilities, acquiring skills and knowledge, these are some of the factors that contributed to the new way of thinking. Have given. which was created to replace the old law, and to come up with a new one which is more progressive and Strengthening⁸ the role of medical personnel, simplifying admission and discharge rules and protecting patient rights, along with some of the most important aspects of the law, provide basic and/or public provision of mental health care in a psychiatric hospital. Quality control is included. protection of mental health, on providing treatment for violations of the law, and that "care" is the ultimate goal, not a "right".⁹ This law looks as good on paper as any black letter law. However, we still need to see the smooth functioning of the existing systems. Apart from the performance aspect, this is because there has been much discussion about the effectiveness of the 1987 MHA provisions.

⁷ Mc Naughten's case, 10 C. & F. 200 (1843): 8 E.R. 718

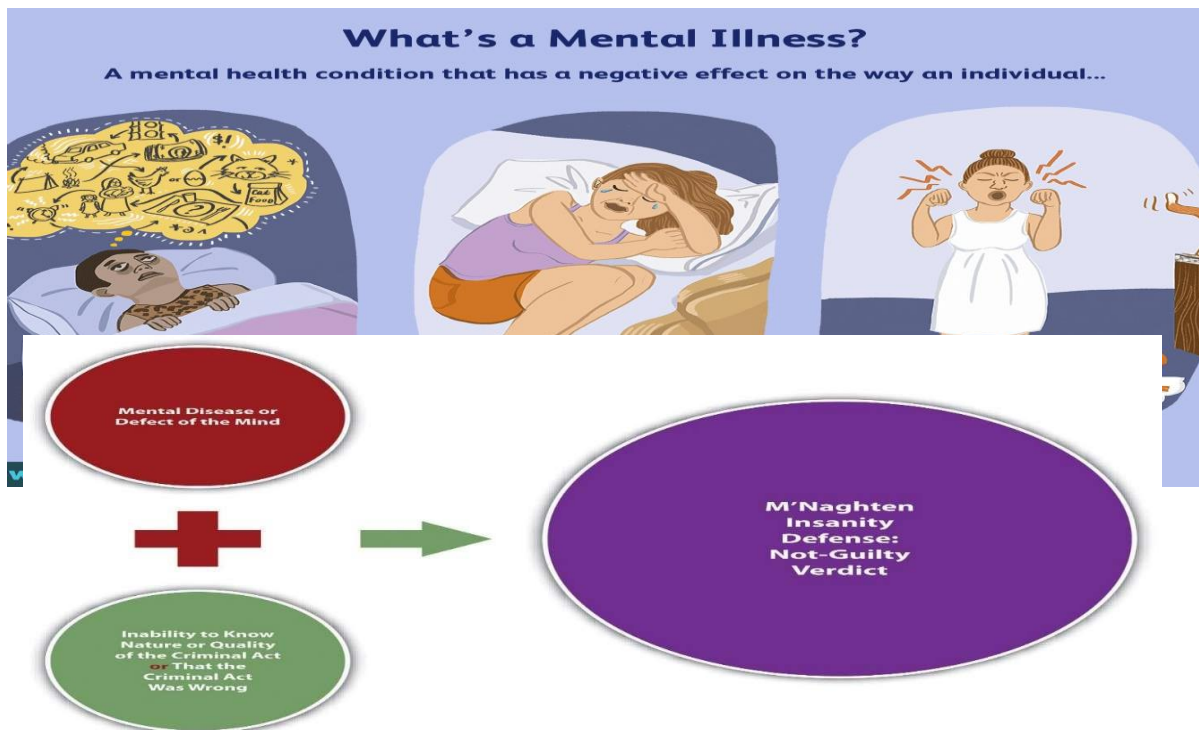
⁸ AIR 1946 Nag. 321.

⁹ These legislations are: the Mental Health Act 1987; the Rehabilitation Council of India Act 1992; the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, the National Trust for Welfare of Person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 19

National mental health Act- 1987

- The Act is related to the **treatment and care of mentally ill persons**, to make better provision for them and treat them with respect
- There are 10 chapters and 98 clauses in the Act .
- The components are -
- Definition of mental illness
- Rules and Licence for Psychiatric hospitals and Nursing homes,
- Formation of Central and State Authority for Mental Health Services ,
- Set up rules for Admission And Detection, Inspection, discharge, Leave of Absence and removal of cases in hospitals, penalties and prosecutions , custody of mentally ill patients

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Chapter-3

Concept of Insanity and Persons with Mental Disability

3.1 The Important Issues

The concept of persons with mental disorders and intellectual disabilities has been applied in many initiatives. For example, the Indian Penal Code 1860; Mental Health Act of 1987; Rehabilitation Council of India Act 1992; and the Persons with Disabilities (Equality of Opportunity, Protection of Rights and Full Participation) Act 1995 and the Law on National Social Insurance Fund for People with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities of 1999. But in testing, or criteria for determining dementia and mental disorders, problems can occur. One of the recurring problems faced by those making, enforcing or enforcing criminal law relates to the mental capacity of the alleged offender. Now the question arises whether he has the mental capacity to commit a crime? Is he mentally already in a legal position to bear criminal responsibility? Considering their spiritual level, they should be treated as people deserving of punishment. Is there a difference between general insanity and medical insanity? Is there any similarity between people with unsound mind and people suffering from mental illnesses? Which mental disorders are characteristic of poisoning? You Can Have Multiple Personality Disorder, Right? Mad? The 1995 Law "On Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PNP Law) defines the term "disability". does falling under the concept of a mental disorder? The issues listed above pertain to the alleged offender's maturity, health or spiritual level of health, not issues that society imposes upon itself, but higher than human considerations. They are terms related to basic rules and justification of punishment..

In the context of criminal law, "punishment" means causing pain or injury, as it is a violation of currently applicable laws. If it seems superficial, the punishment being victimized and their personal liberty, material damage or private, or loss, or (in extreme cases, loss of life, but

²⁶ The term "persons with disabilities" has been defined in the United Nations (UN) *Convention on the Rights of Persons with Disabilities* (2007). According to Article 1,

That is, we are talking only about the external manifestation. The pain or discomfort caused by the last sentence is an intention to act in your child's spirit, so that he or she is not inclined to repeat the offense, or so that he or she may regret his actions. Regardless of whether compensation (by society for a person committing a mistake or a general strike, i.e. restraining members of society), the object is equally important because we cannot completely rule out the possibility that a child's state of mind will be punished. The reason for this is that in every civilized society, it would be like writing a criminal law based on the incident of taking revenge on the offender, or other members of the society involved in a criminal case. In this chapter, we will discuss these issues.

3.2. Insanity the cause of protection and rejection

The consideration of the spirit of the true criminal and therefore, if necessary, is relevant here. In fact, it is the state of mind of the alleged offender, it is relevant (in criminal law) - with reference to the concept of mens re, etc. Of course, when it comes to Mains Re, it mainly deals with the state. The matter of the mind of a person who is not mentally abnormal or damaged, which is different from the subject matter of the spiritual realities of a person's deviation. The first concerns the timing of the crime, while the second concerns, in general, a very interesting period of time. Both show the correctness of the assumption about the general view of criminal law, namely that the action of the Holy Spirit must be taken into account, and is not limited to the physical behavior of the offender.

It is against this background that the criminal law defense of insanity has long been recognized in all jurisdictions. However, in terms of these measures, they differ from jurisdiction to jurisdiction. Even within the same jurisdiction, and they changed from time to time, as was the case with the United States and the title. The irresistible impulse theory was adopted in 1954 in Durham, DC, but was defeated by the same court in 1972.

This variation from time to time and from place to place, primarily owes itself to the fact, that in formulating one or other test, the lawmakers or the judges have been adopting a selective approach and have preferred to concentrate on particular aspects

²⁷ persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. However, in India the term "disability" has been defined in a narrower sense through the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act* (1995). Section 2(1) of the Act provides that "disability" means: (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness. See, *Govt. of India through Secretary v. Ravi Prakash Gupta*, (2010) 7 SCC 626; 2010 AWC 5920 SC; *Suchita*

Holy Soul. Progress in psychology, as in the future, you can tell us that the soul is one and indivisible, and cannot be divided into parts or divided into groups. Until a resolution is reached, MPs are likely to take an approach focusing on a particular aspect of the mind..

3.2 Constituent Elements of the Defense of Insanity

In any case three conditions must be met for the defense of insanity. Initially the accused was suffering from mental illness. The term "disease of the soul") is a legal term, not a medical one. Because the law raises the question that the defendant is responsible for his actions. It depends upon their mental state and the reason for fulfilling the criteria defined in the law. Overall, it depends on how "a mental illness that manifests itself in violence and encourages recurrence is a mental illness. In any case, it is the kind of illness in which a person should find himself in the hospital, and not a clear opinion, dispensation is given. Recommendations Often what is a disease of the soul will be decided by the person and the case in which the distinction is made between a lunatic and a lunatic. , he shall be applied. Automatically. Lord Diplock defined a disease of the mind and spirit, the McNutten Principles, which are used in the medical sense of the faculties of mind, memory and understanding. If disease results, such faculties Victims of serious consequences, discussed in the last part of the Rules, are not significant, or whether the impairment is derivation of the impairment, in the form of Instagram, epilepsy, or functional, or that the impairment is not an impairment permanent or temporary in nature, and intermittent⁶²,

Provided that it shall continue its operation at the time of commission of the Act.

Secondly, this disease has given rise to the defect of the mind. Where the prevention of insanity has to be successful, it is the disease of the mind that gives rise to speech defects. The accused must prove that he suffered from such deficiency that he did not know the nature and quality of the act he was doing, or if he did, did not know that his behavior was wrong. It's bad here, which means something goes against the law.

Third, the fact that a person knows the nature and quality of the act, and that he knows what he has done, except that he acted on impulse, will not be eligible for the same in the Ministry of Defense as per rules and regulations The insanity defence is an affirmative defence, in that the defendant, who usually carries the subsequent burden of proof at trial must raise it¹⁰

¹⁰ R. P. Kathuria, Law of Crimes and Criminology (Vinod Publication, New Delhi, 2005) p. 583.

3.3 Legal Insanity and Medical Insanity: Distinction

A distinction must be made between legal insanity and medical insanity. The judge is a legal entity that has gone insane, not a medical one. According to medical science, DVD is another name for mental disorders resulting from various causes and can come in various degrees of rotation. Even in an uncontrolled impulse to make or injure any person within its range. But for someone engaged in medical science, it would be insanity, and not necessarily a discharge from their feelings and emotions. Hope, ambition, revenge etc. you can still put in his mind. Fear will have an effect on them, and threats can have a deterrent effect. If you are looking for powerful people to participate then these people, although insane, refrain from committing acts of violence or evil. It is not any form of mental illness or insanity that has been recognized by law to be of sufficient justification. In fact, anything less than the degree of insanity established in section 84 of the Indian Penal Code shall lead to the exclusion of situations where mental ill health of any kind, and some slight deviation of the spirit known to medical science, as well as In the amount of insanity, would be incapacitated in the eyes of the law..

here may or may not be legal insanity, except that the cognitive abilities of the mind, as a result of the imperfection of the mind so that it is not completely unobstructed, the thief may not have knowledge of the quality of the action or the quality of what he is doing. whether it is wrong or contrary to law. A person is a suitable subject for imprisonment in a psychiatric hospital, but this fact alone does not allow him to enjoy exemption from punishment. Restlessness of the chair, Weakness of mind and spiritual need, Merchant himself, Emotional balance, Fever, Passion, Uncontrollable anger, Jealousy, Intense hatred and vengeance, Moral degradation and cut-off of mind, as well as life-threatening, distortions, reactive Irritability, getting out of control, anger and stupidity, stupidity, lack of self-control, gross eccentricity and folly and other similar phenomena, which in themselves do not exempt from criminal status by deterioration of mental functions. Responsibility.

These are forms of mental deficiency which will not excuse the commission of the crime. It is only unsoundness of mind, which materially impairs the cognitive faculties of the mind, that can form a ground of an exemption from criminal responsibility. For purposes of the criminal law, *the* emphasis is, therefore, on unsoundness of mind which incapacitates the person from knowing the nature of the act or that he is doing what is either wrong or contrary to law.

3.4 Concept and Meaning of Mental Illness

The Mental Health Act (1987) gives no elaborate definition of mental illness. As per section 2(1) mentally ill person means a person who is need of treatment by means of any mental disorder other than mental retardation. Thus under the act only those persons are mentally ill who are exposed to psychiatric treatment. In terms of it, one is considered mentally disordered person simply because he or she is in need of psychiatric treatment or one who receives psychiatric care. This definition however, is inadequate, for it excludes many people who for one reason or another are potentially diagnosable as mentally ill. Moreover, as Thomas Szasz has shown “people are often committed to mental hospitals and receive psychiatric care, for the convenience of society rather than because of an inherent illness” The illness and treatment criteria of mental disorder are least satisfactory. They depend heavily on the correct interpretation of terms foreign to lawyers. Their usefulness in the court can be questioned, and they are virtually meaningless elsewhere. Many people with mental abnormalities do not receive medical help; treatment may seem inaccessible to some of them. Some people seek help for reasons other than having an abnormality. Most people are diagnosed as mentally ill by clinicians such as fear of failure, worry, hypochondria, depression and agitation in this category of cases; people are aware of their distress and are able to express it. All these people may be categorized as mentally ill on the basis of their receiving treatment as per the definition of mental illness. Apart from this, psychiatric diagnosis as a criterion of mental illness has several flaws, we shall mention three: first mental health specialists do not always agree on diagnosis. Secondly, as with psychiatric

⁴¹R v. Windle, (1952) 2 QB 826.

⁴²Rene J. LeBlanc-Allman, Guilty But Mentally Ill: A Poor Prognosis, 49 South Carolina Law Review 1998) p. 1095 at 1099.43 21 American Jurisprudence (2d.): Criminal Law (2006)

⁴³United States v. Reed, 997 F. 2d 332, 334 (7th Cir. 1993).

⁴⁴D.N. Rou v. State, 1970 Cr LJ 529(532).

⁴⁵Jinnappa v. State of Mysore, (1962)2 Cr LJ 250; 1961 Mys LJ 288.

⁴⁶Pancha v. Emperor, AIR 1932 All 233(235).

⁴⁷Durga Charan Barik v. State, AIR 1963 Ori 33; (1963)1 Cr LJ 213

⁴⁸United States v. Reed, 997 F. 2d 332, 334 (7th Cir. 1993).

⁴⁹D.N. Rou v. State, 1970 Cr LJ 529(532).

⁵⁰Jinnappa v. State of Mysore, (1962)2 Cr LJ 250; 1961 Mys LJ 288

treatment, only a limited number of persons from among the sick population are diagnosed as mentally ill; thirdly, although mental health professional decide who is to be hospitalized, the individuals' family and community decide who is to be diagnosed. In this sense, the psychiatric diagnosis and treatment criterion shares the short comings of clear definition of mental illness. The definition of mental illness does not include mental retardation, sleep walkers and epileptics. In a broader sense disability includes both mental illness and mental retardation. Mental illness is a condition, which is considered amenable to treatment. Mental retardation however, is a developmental disability. The Mental Health Act (1987) excluded mental retardation from the definition of mental disorder, and so the protected benefits.

3.5 Concept of Disability and Disabled Person

A. Concept of Disability

The question of definition of 'disability' is very complex. In some cases disability may be an externally visible factor such as, person using a wheel chair or else may be invisible such as, learning disabilities. The legal definition of disability has the responsibility of integrating the disabled person with nondisabled persons so that the disabled, like the nondisabled may actively participate in all activities of their lives. The lawmaker's task is, therefore, to frame and implement policies that offer same range of choices for the disabled as are available to the non-disabled. Further, in defining disability, care should also be taken to ensure that:

- (a) the definition of disability should not include any moral judgments about how the disability is acquired; and
- (b) a definition needs to have a clear relationship to dysfunction or impairment as well as to social environment.

⁵¹ Subhash Chandra Singh, "Legal and Ethical Rights of Persons with Mental Disability: An Overview" 32 *Indian Socio-legal Journal* (2006) pp.27-40.

⁵² Scott describe the following criteria in determining the question of mental illness: 1. Exposure to psychiatric treatment; 2. Social maladjustment; 3. Psychiatric diagnosis; and 4. Objective testing. Among these, the most frequently used definition of mental illness is exposure to psychiatric treatment. In terms of it, one is considered mentally sick because one receives psychiatric care. For details, see William A. Scott, *Research Definitions of Mental Health and Mental Illness*, 55 *Psychological Bulletin* (1958) pp. 1-45.

The legal definition of ‘disability’ has been provided under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) the said statute has been enacted with a view to implement the proclamation on the Full Participation and Equality of people with Disabilities in the Asian and Pacific Region, which was adopted at the meeting to launch the Asian and Pacific Decade of Disabled Person 1993-2002 convened by the Economic and Social Commission for Asia and Pacific at Beijing on 1st December 1992 and to which India was a signatory.

The word ‘disability’ is defined in Section 2(i) of the PWD Act so as to mean (i) blindness, (ii) low vision (iii) leprosy-cured, (iv) hearing impairment, (v) loco motor disability, (vi) mental retardation, and (vii) mental illness. Further, according to Section 2(t) of the PWD Act a person with disability means ‘a person suffering from not less than forty percent of any disability as certified by a medical authority’. As can be observed from the above, the criterion for classification of disability is the medical model of disability. By defining disability in an inclusive manner the Indian Law has avoided considering of persons with disabilities as abnormal or inferior. Section 32 of the PWD Act gives effect to the direction under Article 41 of the Indian constitution. Under Section 32 of the PWD Act, the social model/functional model mandates the appropriate authorities to identify posts to be held by persons with disabilities in governmental establishment. The government in identifying the posts has to take into account the job requirements, essential physical functions and the peculiarities of the environment in which the job has to be performed. In order to safeguard the rights of persons with disability and monitor implementation of disability related laws, rules and regulations, the institution of chief commissioner in the center and commissioner for persons with disabilities in states has been provided in the act. The disability law in India is framed in a manner so as to consider the disabled medically and provide for their welfare.

53 Act No. 1 of 1996, brought into force with effect from February 7, 1996.

54 V. Sudesh, “National and International Approaches to Defining Disability” 50 *Journal of the Indian Law Institute* (2008 April-June) pp.220-229.

B. Concept of Disabled Person

According to the definition contained in the Declaration on the Rights of the Disabled Persons,¹⁴² the term “disabled person” means “any person unable to ensure by himself or herself, wholly or partly, the result of deficiency either congenital or not, in his or her physical or mental capabilities.” The International Labour Organization (ILO) on its Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 and Recommendation No. 99 concerning vocational Rehabilitation of the Disabled and Recommendation No. 168 on Vocational rehabilitation and Employment (Disabled Person) states that “Disabled Person” means “an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment.”

World Health Organization (WHO) defines “handicap” as a disadvantage for a given individual resulting from an impairment or disability that limits or prevents the fulfilment of a role that is normal (depending on age, sex, social and cultural factors) for that individual of “Impairment” is any loss or abnormality psychological, physiological or anatomical structure or function. “Disability” indicates any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

This classification of disability made by World Health Organization is also known as the medical approach as it focuses on medical treatment and treats disability as inherent personal characteristic.

In India, under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, “disability” are those who suffer from

- (i) blindness;
- (ii) low vision;
- (iii) leprosy cured;
- (iv) hearing impairment;
- (v) loco motor impairment;
- (vi) mental retardation; and
- (vii) mental illness. Blindness means total absence of sight or visual activity not exceeding 6/60 or 20/200 shelled limiting field of vision subtending 20 degree. Low Vision means a person suffering from impairment of visual functioning even after treatment.

⁵⁵V. Sudesh, “National and International Approaches to Defining Disability” 50 *Journal of the Indian Law Institute* (2008 April-June) pp.220-229.

⁵⁶The 1975 Declaration on the Rights of Disabled Persons adopted by the General Assembly on 9th December 1975, Resolution 3447

Leprosy Cured means loss of sensation in hands, feet or pores in the eye, deformity which prevents him from taking gainful occupation. Hearing Impairment means loss of sixty decibels of frequency.

Locomotor Disabilities means disabilities of bones, joints or muscles restricting movements. Mental Retardation means arrested or incomplete development of mind.

Mental Illness means mental disorder.

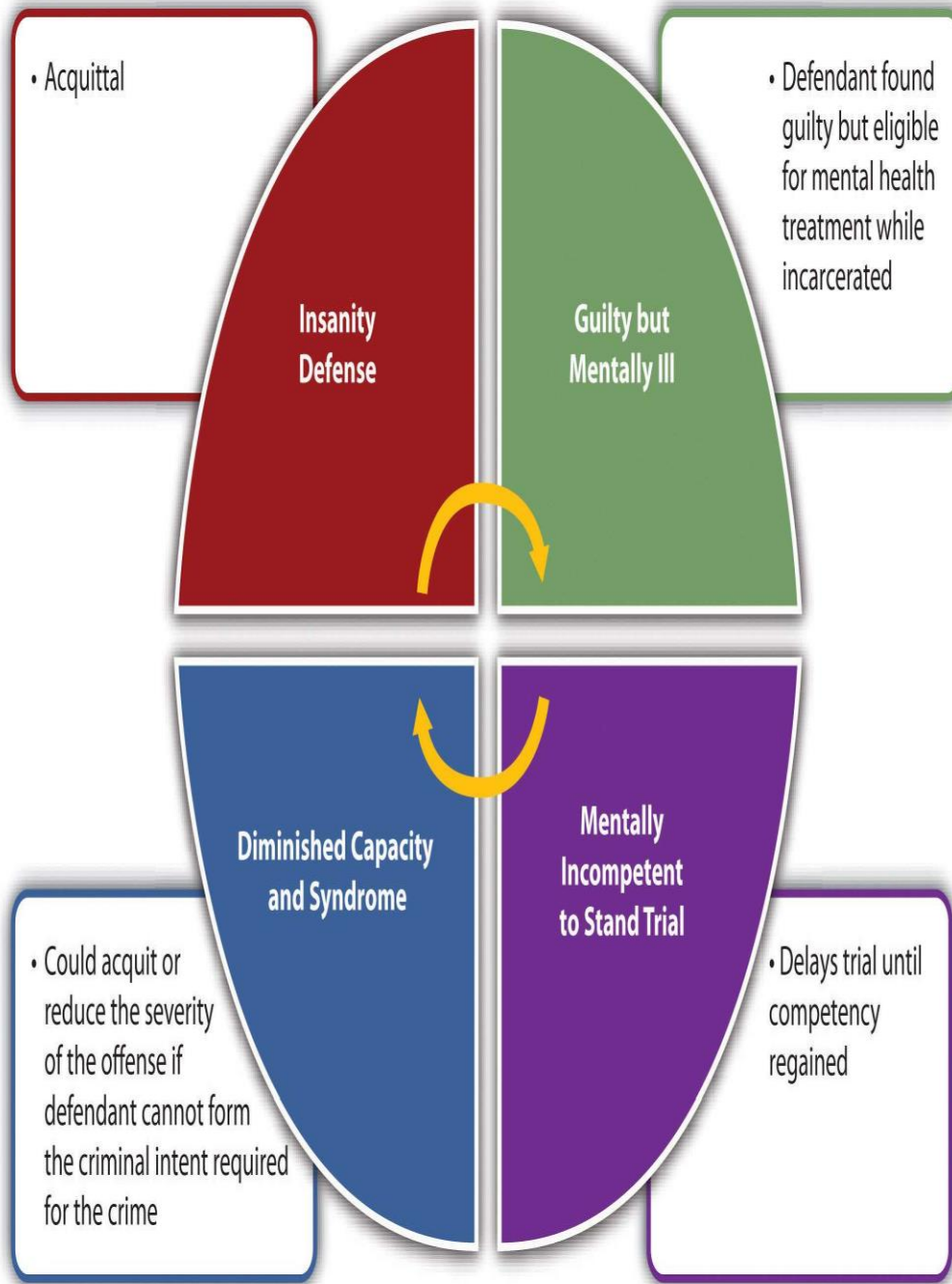
It emerges from the foregoing discussion that a person is not criminally responsible, if, at the time of committing the act, he was labouring under such a defect of reason from disease of mind, as not to know the nature and quality of the act he was doing or (if he did know it), that he did not know that he was doing what was wrong. This test of insanity emphasises mental capacity of knowledge. It does not concern itself with the will, but is preoccupied with cognition. Further, the defect of reason must arise from a disease of the mind. Mental disorders comprise a range of conditions that affect a person's behaviour, mood, thought, perception and cognition, resulting in distress to the sufferer, to those around or to both. Mental illness may be due to conditions that may follow from mental shock, physical illness or adverse psychological circumstances or from combination of these factors. Mental illness may present at birth, in early childhood, adolescence or early adulthood or during physiologically critical periods. Subnormal mental capacity whether arising from innate mental defect or deficiency or from mental disorder or illness. A variety of terms have been used such as, frenzy, madness, non compos mentis, idiocy, unsoundness of mind, lunacy, insanity, etc. The modern classification of mental disorder is into severe sub normality, sub normality and psychopathic disorders. Mentally ill persons are disabled. The word 'disability' is defined as blindness (ii) low vision (iii) leprosy-cured (iv) hearing impairment (v) locomotor disability (vi) mental retardation and (vii) mental illness.¹⁴⁸ Mental illness completely impairs the cognitive faculty of mind to such an extent that the person is incapable of knowing the nature of his act.

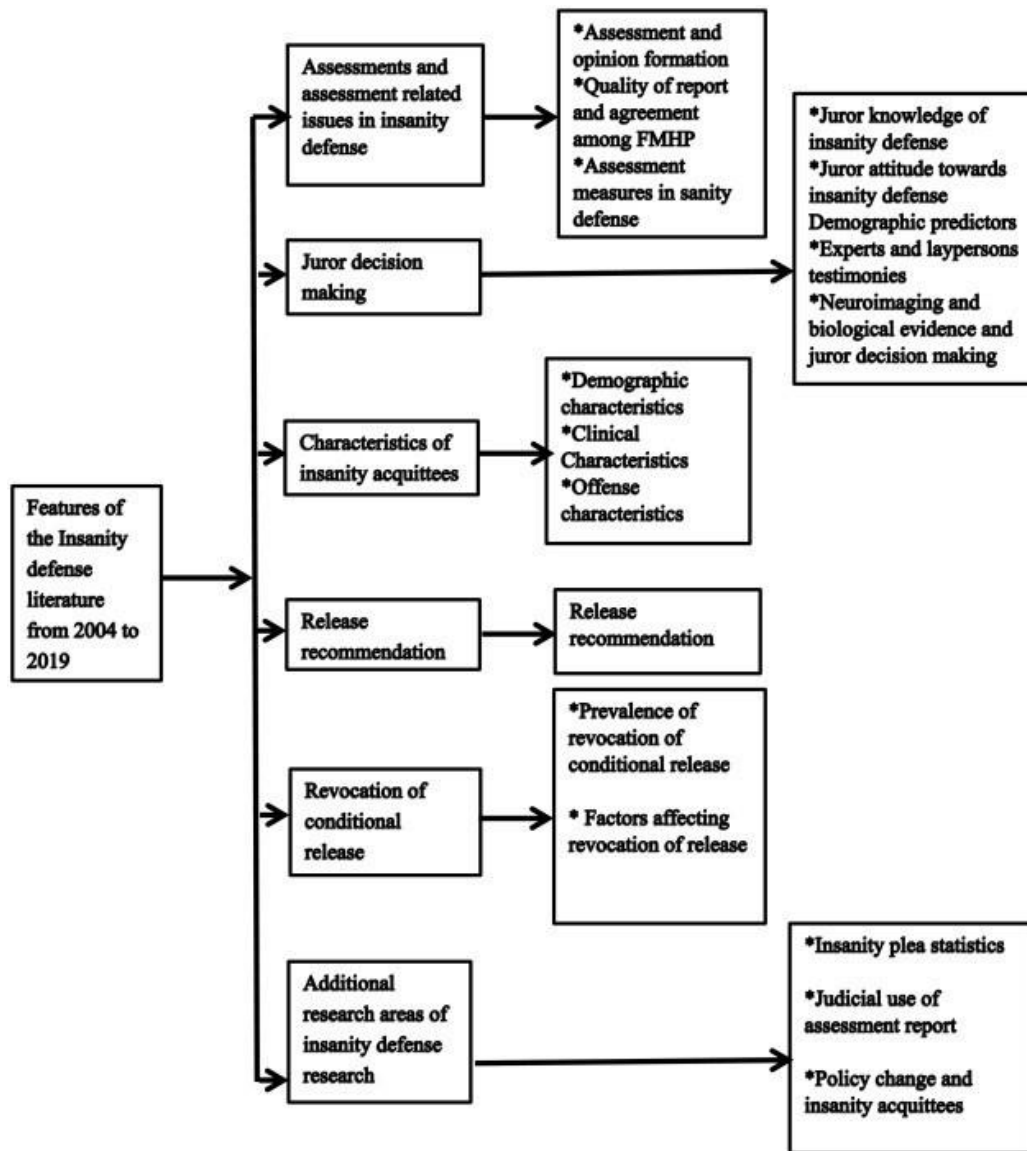
⁵⁷ The 1975 Declaration on the Rights of Disabled Persons, Para 1.

⁵⁸ International Classification of Impairments, Disabilities and Handicaps, Geneva, WHO, 1

⁵⁹ See, Section 2 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which came into force on February 7, 1996.

⁶⁰ Kaumudhi Challa, "Protection of Rights of Disabled Persons: International and National Perspective" 9 *Journal of the Institute of Human Rights* (2006) pp. 25-4





3.6 A New Approach?

The inability of American Courts to agree on the use of one specific approach and the inadequacies of the approaches themselves has led to popular belief in the proposal that a multiple should be held responsible only when all the alters know about and acquiesce in the crime, unless only a trivial number of very fragmentary alters do not acquiesce. Thus in cases where a defendant pleads not guilty by reason of insanity, even if the alter in control at the time of the crime was not legally insane, the defendant will not be guilty if the other alters were not present and thus unaware of the criminal act. Though this “innocent alter” approach has not enjoyed wide application, the court in *Hawaii v. Rodrigues* did note that “one personality often cannot control the actions of another personality” and “since each personality may or may not be criminally responsible for its acts, each one must be examined under the American Law Institute- Model Penal Code competency test”.

This is not to say that all persons with MPD will go scot-free just because medical science maintains that often alters are unaware of each other’s existence, let alone each other’s actions. There are cases where the alters are not only acquainted with each other, but actively participate in the commission of the offence.

In *New Jersey v. Moore*, the defendant, in her Billy Joel alternate personality, held hostage and terrorized a group of children and was even party to the fatal beating up of one. However, the Marie Moore personality herself was no stranger to the crime, for she would place phone calls to herself pretending it was Billy Joel calling her with the children’s daily instructions and discipline. Further, the Marie Moore personality avoided the police. Had the Marie Moore personality not been aware of the existence and acts of the Billy Joel personality, she would not have averted the police.

Thus, since both personalities knew about and acquiesced in the crime, Moore’s plea of not guilty by reason of insanity was rightly rejected. This approach supports Blackstone’s maxim that it is better to let ten guilty may go free than send one innocent man to jail in that it advocates that it is not correct to punish the multiple for a crime even if *one* alter did not know of and acquiesce in the crime. In this sense,

⁶¹ 679 P 2d. 615 (Haw. 1984)

⁶² 550 A 2d 117 (N.J. 1988)

⁶³ Stephen S. Marmer, “A Theory of Command and Control; A Reply to Elyn Saks,” 10 *Southern California Interdisciplinary Law Journal* (2001) p. 27

it is an improvement over the alter and host approaches, where the state of mind of only one entity is assessed. The approach also does not advocate that mere diagnosis of MPD constitutes sufficient grounds for an insanity defence because it looks into and assesses the state of mind of every alter.

There is, however, a fundamental problem with this approach in that there has to be a line drawn between alters and fragmentary alters. Deciding the criteria for differentiating alters and seemingly insignificant fragmentary alters is a difficult proposition. Another problem is the difficulty of assessing the state of mind of every alternate personality present in the multiple. The psychiatrist conducting the evaluation must depend on the word of the alters alone. However, this limitation is not restricted to MPD alone, for in most psychiatric evaluations, there is dependence on the word of the accused.

To examine the conformity of this approach with the Mc Naughten Rules, it can be rephrased as - “if any nonfragmentary alters either did not know the nature, quality, or wrongfulness of the act *as it was occurring*, or with reasonable effort and without undue danger, were not able to intervene or attempt to prevent the act of another alter”. The significance of “as it was occurring” is that the approach aims to assess whether there was knowledge of the wrongfulness of the conduct at the time of the act. In this sense, it can be said to be reasonably consistent with the Mc Naughten Rules. However, the second part of the approach seems to indicate “control” which is clearly inconsistent with the Mc Naughten’s Rules. Hence, there does exist a conflict between the proposed approach and the accepted test of insanity in India.

It is thus clear that if the new “innocent alter” approach is to be followed in India if and when a case arises, then certain changes will have to be made to Section 84 of the Indian Penal Code. First and foremost, the legal standard of insanity must be altered so as to accommodate newly diagnosed and recognized mental disorders. But to say that the legal standard of insanity should be brought closer to the medical standard is not to say that every accused suffering from a mental disorder should be allowed to plead insanity and be set free.

⁶⁴In fact the test laid down in *Durham v. United State*, 214 F 2d 862 (D.C. Cir. 1954), where the court state that a defendant was not criminally responsible “if his unlawful act was the product of mental disease or mental defect” was widely criticised and ultimately overruled.

⁶⁵G. Sadasivan Nair, “Defence of Insanity: Need for Reform”, 12(2) *Cochin University Law Review*, (1988) p. 158

There is a need to appreciate that the human mind does not exist in the form of independent compartments and the effect of mental disorders is not restricted to cognitive abilities. In the specific context of MPD, there is a need for recognition that alternate personalities most often exist independently and thus there is a need to evaluate their states of mind separately. In the United States, efforts have been made towards reforming the legal test of insanity. In India, in spite of admitting that in light of advances in medical science, especially psychiatry, there is a need to approach the issue of criminal responsibility differently. Section 84 remains the same.

Considering the flaws in the Mc Naughten Rules, many American jurisdictions supplemented them with the irresistible impulse test which recognizes volitional impairment. As stated in *Parsons v. State* even if a criminal defendant can distinguish right from wrong, he could be excused from legal responsibility “if by reason of the duress of such mental disease, he has so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was destroyed”. In 1962, the American Law Institute’s Model Penal Code put forth another test - “a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law.” This test recognized that total incapacity is not necessary, it acknowledged the relevance of scientific knowledge and rebutted the belief that the human mind is compartmentalized.

Thus, in order to effectively facilitate a plea of insanity, Indian law needs to acknowledge the developments in the field of psychiatry- The case of MPD illustrates how outdated Section 84 of the Indian Penal Code is and it has become inevitable that changes should be introduced for the term “unsoundness of mind” to be applied to a wider range of recognized mental disorders. Further, ‘since modern science does not consider the intellect as separate from the rest of the human mind, volitional and emotional factors must be taken into account alongside cognitive factors.

3.7 Mc Naughten Principle

In 1843, in *Reg v. Mc Naughten* (popularly known as Mc Naughten case) the accused Mc Naughten of Scotland killed Mr. Drummond, the private secretary of the British Prime Minister Sir Robert Peel, believing under a mistake that he was killing the Prime Minister. He pleaded insanity and the House of Lords acquitted him of the murder. This generated a lot of public sentiment and debate and the pressure was so much that ultimately the House of Lords had to constitute a special committee of its own judges to finalise the law relating to insanity. The

following answers were given by the English Judges to certain questions propounded to them by the House of Lords and the answers are known as Mc Naughten Rules.

3.8 An Appraisal

While it is true that a plea of insanity in cases involving MPD has not been very successful, this does not mean that it can never be. Unfortunately, in many parts of the United States, decisions in cases like those of Billie Milligan and John Hinckley, the ambit of the insanity defence has been narrowed down. As far as the method of application of the insanity defence to MPD is concerned, the variation over the years is clear. Using the Alter Approach, a multiple does not fall within Mc Naughten, for in most cases, the alter in control is in a position to know the nature and quality of the act being committed. Using the Host Approach, a person with MPD falls within Mc Naughten if he or she could not know the nature and quality of their act because the host personality may not have been co-conscious with the criminal alter. Since both these approaches have their inadequacies, the best way out seems to be the “innocent alter” approach which examines every alter. Though this may be a difficult and painstaking task, it gives a relatively fair chance to the accused.

It has also been argued that the problem with including MPD within the scope of the insanity defense is that multiples are both cognitively and volitionally intact at all times, the only change which occurs is in the alternate personality in control. However, MPD is a mental disorder of such gravity that the functions of the mind are taken over by an entirely new entity. Alternate personalities are often not aware that a crime is being committed and even if they are, they are frequently unable to control it. Also, the renaming of MPD as dissociative identity disorder by the American Psychiatric Association is a major step towards treating an individual with MPD as a single person. While treating alters as different persons in the legal sphere then becomes contradictory to this psychiatric opinion, it may still be possible to show how a disruption in the accused’s behaviour, sensation, identity and cognition caused him or her to lack requisite capacities at the time of the offence. The success of the “innocent alter” approach depends on the distance between the legal and medical standards of insanity. More importantly, the archaic nature of the Mc Naughten Rules has become increasingly evident.

⁶⁹(1843) 10 Clark and Finnelly 200-214 (HL): (1843) 4 St Tr (NS) 847.

⁷⁰See Estlla Baker, “Human Rights, Mc Naughten case and the 1991 Act”, *Criminal Law Review* (1994) 84 at pp. 86- 89; K. D. Gaur, *Textbook on Indian Penal Code* (Universal Law Publishing Co. Pvt. Ltd, New Delhi (2014).

⁷¹In 1981, John Hinckley Jr. shot the then U. S. President Ronald Reagan, a secret service agent, a Washington police officer, and Reagan's press secretary. In his defense, he claimed he was trying to impress actress Jodie Foster. A jury acquitted him of 13 assault, murder, and weapons counts, finding him not guilty by reason of insanity. As a result of public distaste for the verdict in the United States, many states narrowed the insanity defence while some narrowed the range of testimony psychiatric experts.

For a multiple or a person suffering from other recognized mental disorders to successfully plead insanity in India, Section 84, based on the obsolete Mc Naughten Rules will have to be modified. In order to ensure that a mentally ill person receives justice, Section 84 will have to take advances in the field of medicine into account. While it 'is true that the parameters of legal responsibility should not be defined purely by medical information, the problems presented by the case of MPD indicate that such information must at least be taken into consideration. This is not to say that an insanity plea should and will always succeed thus setting the multiple free. Further, it must be noted that contrary to popular belief, a verdict of "not guilty by reason of insanity" does not mean the accused is free to guilty.

Chapter-4

Insanity as a Defense to Criminal Charge

Unsoundness of mind is an absolute defense to any criminal charge as persons suffering from unsoundness of mind are deemed incapable of possessing the necessary *mens rea* to commit a crime. Section 84¹ of the Indian Penal Code, 1860 exonerates from criminal liability, a person of mental incapacity who does a criminal act. The settled position of law is that every man is presumed to be sane and to possess sufficient degree of reason to be responsible for his act unless the contrary is proved. The burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by section 84, lies on the accused who claims the benefit of this exemption *vide* section 105 of the Indian Evidence Act, 1872. The defense has to prove that unsoundness of mind was present to such an extent at the time of commission of the offence that the doer of the act could not know the nature of the act he was committing. The accused has to merely probabilities his defense by preponderance of probabilities.

4.1 RATIONALE BEHIND EXEMPTION

A person suffering from unsoundness of mind cannot control his will or regulate his conduct. Such persons are mentally incompetent to understand their actions or judge properly the repercussions of their acts therefore they cannot be held legally responsible for their actions. Punishment serves no purpose in case of such persons as they are incapable of understanding why they are being punished or that they are being punished at all.

The defense under section 84 of the Code is based on the principle that in order to constitute crime, the act should have been committed with 'guilty' intention, and if the doer of the act not knowing the nature of the act; the wrongfulness of the act; or the illegality of the act committed the same, he cannot be held responsible for it.

⁷² Associate Professor, Faculty of Law, University of Delhi. She may be contacted at vdeswal@lc2.du.ac.in. Inputs for this article have been taken from Vageshwari Deswal, *General Principles of Criminal Liability* (Taxmann Publications, New Delhi, 2013).

⁷³ Indian Penal Code, s. 84. Act of a person of unsound mind- "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law".

4.2 PREREQUISITES FOR CLAIMING BENEFIT OF EXEMPTION UNDER SECTION 84 IPC

Unsoundness of mind

A person suffering from unsoundness of mind is *Non compos mentis* i.e. 'not of sound mind'. *Compos mentis* means a composed mind. *Non compos mentis* means not having control or composure over one's mind. Unsoundness of mind may be temporary such as in case of lunatics, permanent (idiocy), natural or supervening, by birth or by illness, e.g., Schizophrenics, and sometimes also by extreme consumption of, or addiction to alcohol or drugs.

4.3 Unsoundness to exist at the time of the commission of the offence

Whenever a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence, the accused was suffering from unsoundness of mind or not. The crucial point of time for ascertaining the state of mind of the accused is the material time when the offence takes place. In the case of *Amrit Bhushan Gupta v. Union of India*,² it was held that "unless the Court comes to the conclusion that the accused was insane at the point of time he committed the offence he cannot be absolved of the responsibility of the offence even if it is found by the Court that he was insane either earlier or in the later point of time of the commission of offence". If the accused is at that crucial moment found to be laboring under such a defect of reason as not to know the nature of the act he was doing, or that even if he knew it, he did not know it was either wrong or contrary to law then section 84 applies. The state of mind which entitles the accused to avail the benefit of Section 84 of the Indian Penal Code is to be established from the circumstances which preceded, attended and followed the crime. There is a duty on the defence to prove the unsound state of mind of the accused at the time of commission of the offence. One who is subject to recurring fits of insanity will be entitled to exemption from criminal liability only if he was subjected to such a fit at the time of the commission of the crime. If he was capable of understanding the nature and consequences of his actions at the time when he committed the offence, he would not be entitled to the protection of Section 84 and would be liable to punishment. An inherent or organic incapacity and not a wrong or erroneous belief which might be the result of perverted potentiality.

4.4 Incapability in the accused person to know

The words 'incapable of knowing' clarifies that an accused has to prove that he was rendered incapable of understanding his actions owing to unsoundness of mind. The capacity to know a thing is quite different from what a person knows. Whether he knew the nature of his actions or not is immaterial because what is protected under Section 84.

4.5 Knowledge of nature of the act

Nature of the act refers to the physical nature and quality of the act, rather than the moral quality. It covers those situations wherein the doer does not know what he is physically doing. For example, a person who cuts another's finger under the delusion that he is chopping a vegetable; or a person who strikes another, and in consequence of an insane delusion thinks he is breaking a jar. In both these examples the accused is not aware of the nature of his act.

In the case of *Chirangi v. State*,⁴ the accused, Chirangi, Lohar, a 45-year old widower who was very much devoted to his 12-year old son, was tried for killing his son with an axe while they had gone to Budra Meta atop a hillock. In defence he pleaded that he killed his son under a delusion believing him to be a tiger who was about to attack. Medical testimony showed that it was possible for Chirangi, who was suffering from bilateral cataract prior to the relevant date, to have because of this disability mistaken 'bona fide' his son for a tiger. There was an abscess in his leg which could have produced a temperature which might well have been responsible after the fall for a temporary delirium which might have created a secondary delusion to magnify the image created by the defect in vision. Chirangi suffered from cardio-vascular disease which would have resulted in temporary confusion, and the injury to his eyebrow could have caused a state of concussion during which he might have inflicted the injuries on his son without being conscious of his actions.

All this showed clearly enough that Chirangi's fall combined with his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and was not his son. The appellant's conduct after the occurrence was in consonance with that estimate, and it was manifest that he had had no intention of doing wrong or of committing any offence. Thus he was acquitted.

4.6 Knowledge of wrongfulness of act or the act being contrary to law

Knowledge of wrongfulness of act implies the lack of substantial capacity in the accused person to know or appreciate that his conduct is wrong. Section 84 applies where a person, as a result of mental disease or defect, lacks substantial capacity to know or appreciate either that the conduct was against the law or that it was against commonly accepted moral principles, or both. For example:

- (i) A person may kill a child under an insane delusion that he is saving him from sin and sending him to heaven. Here he is incapable of knowing by reason of insanity that he is doing what is morally wrong; or
- (ii) A person may under insane delusion believe an innocent man whom he kills to be a man that was going to take his life in which case, by reason of his insane delusion, he is incapable of knowing that he is doing what is contrary to the law of the land.⁵

In the case of *Ashiruddin Ahmed v. The King*,⁶ the accused had a dream in which he was commanded by someone in paradise to sacrifice his own son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle, but, finding a *chaukidar* nearby took his uncle to a tank at some distance and slowly told him the story. On these facts it was held by a Bench of the Calcutta High Court that the accused did not know that his act of killing his son was wrong as he was labouring under a belief that his dream was a reality. Acting under delusion of his dream, he made this sacrifice believing it to be right. Thus he was granted the defense of insanity under Section 84.

⁷⁴ AIR 1977 SC 608. This incapability may be due to arrested development of the mind, sudden fit of insanity or delusion or some other medically accepted ground. In the case of *Lakshmi v. State*,³ the Court observed, "A person might believe so many things. His beliefs can never protect him once it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him to a wrong conclusion, he takes the risk and law will hold him responsible for the deed which emanated from him. What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is completely extinguished. Where such light is found to be still flickering, a man cannot be heard to plead that he should be protected because he was misled by his own misguided intuition or by any fancied delusion which had been haunting him and which he mistook to be a reality. Our beliefs are primarily the off springs of the faculty of intuition. On the other hand the content of our knowledge and our realization of its nature is born out of the faculties of cognition and reason. If cognition and reason are found to be still alive and gleaming, it will not avail a man to say that at the crucial moment he had been befogged by an overhanging cloud of intuition which had been casting its deep and dark shadows over them."

However, the above judgment has been criticized in later judgments. In *Lakshmi v. State*, the court observed, “We find ourselves unable to endorse this view of section 84, I.P.C., and must therefore, express our respectful disagreement with it

We are further of opinion that once this view is accepted to be correct, it will lead to serious consequences as it will be open to an accused in every case to plead that he had dreamt a dream enjoining him to do a criminal act, and believing that his dream was a command by a higher authority, he was impelled to do the criminal act, and he was therefore, protected by section 84. We are of opinion that such a plea would be untenable, and would not fall within the four corners of section 84.”

4.7 BURDEN TO PROVE INSANITY LIES ON THE ACCUSED

The doctrine of burden of proof in the context of the plea of insanity was stated by the Supreme Court in the case of *T.N. Lakshmaiah v. State of Karnataka*,⁸ in the following propositions:

The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by section 84 of the Indian Penal Code. The accused may rebut it by placing before the court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon party to civil proceedings

i.e. on a preponderance of probabilities.

Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

In the case of *Butu @ Madhu Oram v. State*,⁹ the Court explained that accused is not to be called upon to prove the ingredients of section 84, IPC beyond reasonable doubt in order to get an acquittal. Though the burden lies on the accused to prove his insanity at the time.

of occurrence it will be sufficient if the materials on record lead to an inference that the requirements of section 84, IPC may be reasonably probable. Such an inference can be drawn from materials on record, past history of the accused, conduct of the accused

during the occurrence and thereafter. Absence of motive though not a sine qua non, is a relevant factor for consideration

4.8 ‘MCNAUGHTEN RULES’, THE ‘IRRESISTIBLE IMPULSE TEST’ AND THE ‘DURHAMRULE’

McNaughten rules¹⁰ are principles expounded in 1843 by a panel of fifteen judges in the House of Lords in response to five hypothetical questions asked by the Lord Chancellor to understand the application of law to determine the liability for crimes committed by mentally challenged people. These principles lay down a standard to test the criminal liability of persons of unsound mind. The McNaughten rules also known as the "right-wrong" test, required the acquittal of defendants who could not distinguish right from wrong.

In 1929, the District Court of Columbia developed the “irresistible impulse” test which allowed a jury to inquire as to whether the accused suffered from a "diseased mental condition"

that did not allow him or her to resist an insane impulse. It required a jury's determination that the accused was suffering from a mental disease and that there was a causal relationship between the disease and the act.

In the year 1954, the Durham rule was adopted by an American Court in the case of *Durham v. U.S.*,¹¹. Popularly known as the ‘product test’ the rule lays down that “an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect”. This rule perpetuated the dominant role of expert testimony in determining criminal responsibility instead of a jury. However, in subsequent cases the courts overturned this rule and it was rejected by the federal courts, because of its broad spectrum and range which helped people such as alcoholics and drug addicts to seek exemption from criminal liability. The Indian law on insanity contained in section 84 of the IPC is loosely based on the McNaughten’s principles.

4.9 ASCERTAINING UNSOUNDNESS

When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other

medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.

(2) According to Section 2(w) of the Mental Healthcare Act, 2017 “prisoner with mental illness” means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison. The conduct of the accused, from the time of the commission of the offence upto the time the proceedings commenced, is relevant for the purpose of ascertaining as to whether the plea of unsoundness raised was genuine, bona-fide or an after-thought. Courts usually rely on the following to ascertain the state of mind of the accused at the time of offence.

- i. Presence or lack of motive.
- ii. Deliberation and preparation
- iii. Manner in which the crime was committed.
- iv. Nature of weapon used.
- v. Attempt at concealment of the dead body, weapon of offence or other telltale signs.
- vi. Efforts to avoid detection or evade apprehension by authorities.
- vii. Conduct of the appellant immediately before the incident, at the time of the incident and shortly after the incident.
- viii. Subsequent conduct of the appellant and his conduct during the trial of the case.
- ix. Previous history if any of attacks of insanity, hospitalization or treatment of insanity.
- x. Family history of unsoundness if any as sometimes heredity plays a part.

In the case of *Raghu Pradhan v. State Of Orissa*, the accused pleaded unsoundness of mind as a defense to the charge of murdering his wife and minor children. He was also tried for assaulting a neighbor who tried to intervene and the constable who came to apprehend him. It was clear from the evidence of the witnesses and the discharge certificate that prior to the occurrence the appellant was becoming insane periodically and during that period he was assaulting persons at random for which he was being treated medically.

⁷⁶1952 CriLJ 1212.

⁷⁷Queen Empress v. Kader Nasyer Shah (1896) ILR 23 Cal. 60.

⁷⁸AIR 1919 Cal 182

It had also been proved that there was absence of motive for commission of such crime as he had cordial relations with his wife.

PW 2 had categorically deposed that at the time of occurrence the accused was behaving like a mad man. The evidence of the A. S. I. (PW 16) also disclosed that immediately after the occurrence when he reached the place the accused was in a violent mood. Accused was sent for medical examination as his behaviour was abnormal. The opinion of the Doctor (PW 19), the medical report and opinion of D. W. 1 proved that immediately after the occurrence there was contitution in the brain of the accused which is one of the symptoms of insanity. Thus after considering all the materials on record, the Court concluded that when the appellant committed the offence, he was not in a position to understand the nature of his act owing to insanity at the crucial point of time. The facts, evidence and circumstances, indicated above would clearly make out a case of legal insanity as provided in section 84 of the Code.

4.10 PREMENSTRUAL STRESS SYNDROME AS A DEFENSE TO CRIMINAL CHARGE

"Premenstrual stress syndrome is a condition that affects many women." Symptoms include extreme thirst and loss of appetite, bloating, headache, anxiety, depression, irritability and general lethargy. Diagnosis depends on the symptoms being detected, not the type, number and/or severity, and not all patients experience all of the signs or symptoms listed below. Symptoms appear seven to fourteen days before the onset of menstruation and increase in intensity and disappear shortly thereafter. May range in severity from mild to disabling, both physically and mentally.

Hormonal changes during this period can lead women to commit crimes. Premenstrual stress is often associated with irritability, apathy, depression, water retention, and these symptoms alone may be responsible for certain offenses, such as irritability, loss of self-control and may lead to violence and abuse. Yes, the patient can cause neglect of the child. and depression

Due to which she commits suicide. Menstrual psychosis is a term for psychosis, which includes short, sharp.^{88 8311}

¹¹ ⁸²(1843) 8 E.R. 718.

⁸³The words "reason to believe" mean a belief which a reasonable person would entertain on facts before him. The burden lies on the accused to establish that he was suffering from the unsoundness of mind. The provisions regarding the enquiry in the unsoundness of mind are mandatory and the Magistrate is bound to enquire before he proceeds with the case. Such enquiry is to be held at the threshold.¹³ The plea of medical insanity must first be determined by recording the medical evidence.¹⁴ The mandate of Section 329 of the Code is that when the plea of insanity is raised before a Court it shall try the fact of unsoundness of mind and incapacity of the accused in the first instance. Sub-section of this section makes, the preliminary trial, of this fact, a part of the trial before the Court.

⁸⁴ 214 F.2d 862.

⁸⁵ Code of Criminal Procedure (CrPc), s. 328(1).

⁸⁶ Dr. Jai Shanker v. State of HP, AIR 1972 SC 2267. 14 Gurjit Singh v. State of Punjab, CrLJ 1505 (P&H).

¹⁵ Ibid.

⁸⁷ 1993 CriLJ 1159.

⁸⁸ Dalton K., "Menstruation and acute psychiatric illnesses", 1(5115) *Br Med J.* 148–149 (1959).

⁸⁹ Brockington IF, "Menstrual psychosis: a bipolar disorder with a link to the hypothalamus", 13(1) *Current Psychiatry Reports* 193–7 (2011).

⁹⁰ 1981, 1 C.L. 49

⁹¹ Criminal Appeal No. 44/1987, High Court of Rajasthan, Date of Decision: 01.08.2018 or contrary to law, is exempted from criminal responsibility and comes within the purview of legal insanity.

⁹² *Shama Tudu v. State* (1986) (I) OLR 506.

⁹³ *Supra* note 12 at s.334.

⁹⁴ *Id.*, s. 335.

⁹⁵ The Mental Healthcare Act, 2017, s.19(2).

⁹⁶ Dalton K., "Menstruation and acute psychiatric illnesses", 1(5115) *Br Med J.* 148–149 (1959).

⁹⁷ Brockington IF, "Menstrual psychosis: a bipolar disorder with a link to the hypothalamus", 13(1) *Current Psychiatry Reports* 193–7 (2011). 1981, 1 C.L. 49

⁹⁸ Criminal Appeal No. 44/1987, High Court of Rajasthan, Date of Decision: 01.08.2018

⁹⁹ S. 105. Burden of proving that case of accused comes within exceptions. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustration (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

Chapter- 5

Protection of Persons with Mental Insanity under Constitutional and Criminal Law in India

The law relating to mental insanity is scattered in many Acts in India, viz., the Indian Lunacy Act, 1912, the Indian Penal Code, 1860 (Section 84), the Code of Criminal Procedure, 1973 (Sections 328 to 339) etc. Multiplicity of laws concerning a particular subject creates confusion as well as difficulty for the common man. Commenting on the baneful effect of proliferation of laws Lord Gardiner once sarcastically observed that if one wanted to know one's rights and liabilities as a tenant in England one had to study about fiftyfour Acts of Parliament, hundreds of statutory rules and when he had done that, he had still to wade through hundreds of decisions of courts of the law. He further observed that, it was his aim therefore, to consolidate and simplify the laws in such a fashion as to be able to hold a single volume and say "Here are the laws of England". Whether this pious desire of Lord Gardiner would ever be fulfilled still remains a doubtful proposition but one fact becomes crystal clear from this somewhat unusual story. It only shows that even a person well versed in law feels confused if he has to search a number of Acts for getting the requisite information on a particular subject.

The Santhanam Committee on Corruption also provides more or less in the same fashion when it recommended in its report that instead of piecemeal

legislations on the subject of corruption and other allied offences, it would be ideal to have a comprehensive chapter on social and economic offences in the body of the Indian Penal Code itself. In India, the law relating to protection of insanity is duly protected or not is a debatable issue over time. It is relevant to note that the persons with mental insanity is a part of persons with disabilities.

¹⁰⁰ See R. Deb, "Reform of the India Lunacy Act" 17 Journal of the Indian Law Institute (1975) pp. 398-409 at p. 401. See also, The House of Commons, The Law Commission Seventh Programme of Law Reform (1999) pp. 18 and 43.

¹⁰¹ In 1962, Lal Bahadur Sastri appointed Santhanam to preside over the corruption committee.

5.1 Yes, there are some provisions regarding the protection of persons with disabilities, such as the Mental Health Act from 1987 and the Rehabilitation Council of India Act, as amended. In 1992, in addition to constitutional protection, a law from 1995 was adopted. Age Discrimination (Equality of Opportunity, Protection of Rights and Full Participation) and Act 1999. About National Social Insurance Fund for People with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. Before researching the usefulness of these rules, it is very important to study the extent and extent of protections for people with dementia provided by the Criminal Code, see "Constitutional Aspects of Human Rights, Mental Insanity in India". This section is mainly devoted to this aspect of the work.

5.2 Protection of Persons with Mental Insanity under the Constitution of India

According to the Constitution of India, India consists of a large number of lines for the safety and enjoyment of all the people. However, do the rights of people with dementia fit the scheme of the Constitution? However, this is not a matter of the courts, as Article 41 of the Constitution provides protection for those who are nepennosprenich. d capable of being guided by Article 41 to provide people within the limits of their economic capabilities and development, with the basic factors of life, namely: a) employment, or b) education c) unemployment, old age, illness and State assistance in cases of disability, as well as in other cases of unmet needs. Unemployment and unemployment are on the rise in the modern world, and everyone should have the right to a decent life in which the right to work should be a basic law. Some even suggested reducing the coverage of Article 41 of Chapter IV of Part III of the Constitution. In ? Thakur V., in the State of Bihar, it was decided that the term "State aid" provided in Article 41 refers to financial assistance to the needy. However, this article has no effect on the interpretation of the provisions of Article 16,

¹⁰² reputation as Santhanam's Committee on Corruption. In his 1976 'Code of Conduct for persons in power, authority or positions of trust in our country', he explicitly included ministers and members of Parliament and state legislatures. There should be no use of position for personal or family advantage, read his code; no actions motivated by considerations of party, religion, caste, or community; no unofficial dealings with businessmen or hospitality or gifts accepted from them or other private persons. See Granville Austin, Working a Democratic Constitution: A History of the Indian Experience. (Oxford University Press, New Delhi (1999) at p. 642.

In the Delhi High Court, the Horticulture Development Workers' Union (v Instagram, Admin) said that the objective of the directive is to ensure effective exercise of the right to work for those of you who are deserving of economic development and thus ensure that the persons employed under this program, such as the Jawaharlal Nehru Rozgar Yojana, do not have the right to fully regulate their work. However, despite their importance, these provisions of the Constitution must be questioned for the following reasons: (a) Are these conditions binding? (ii) What are the legal differences between fundamental human rights and governance principles? (I) Are these terms and conditions binding on the State? The answers to these questions lie in a religious conflict between the sanctions and the implementation of the Indian Constitution.

Despite this, the Prophet Muhammad (PBUH) has the right to change any of the basic human rights of citizens under the Constitution of India, after being treated as a citizen of India. Their mental health condition resulting from disability does not seek to deprive them of the opportunity to exercise their basic rights and personal liberty. Article 21 of the treaty establishing the constitutional right to life and liberty. This right is available to all without any discrimination. It also includes the right to a decent standard of living and the right to health care. Mentally ill people have the right to receive psychiatric care and stay in a psychiatric hospital. The right to life is much more than just a continuation of the animal's existence.

This includes the right to live and work, to work, to work, and if possible in society, as well as the right to privacy and the right to lead a normal life. Because the seriously ill mentally ill people are a special group of people with disabilities. This group has the right to live in society on an equal basis with others and is guaranteed the right to protection from exploitation, abuse and violence. Part IV of the Constitution contains the norms and rules enshrined in the policy, which clearly states that it is the responsibility of the state to improve the quality of food and the standard of living and the health of the population. In the light of the working of the constitutional framework, which we propose to discuss in the following pages, the people of India have various known constitutional rights, and are not listed as Right to Life by virtue of Article 21 and in its context . this . During break-offender and constitutional defense..

¹⁰³ AIR 1957 Pat 617.

5.3 Specific Protection for Persons with Mental Insanity under Indian Penal Code

The Indian Penal Code of 1860 covers a comprehensive set of remedies for people suffering from mental illnesses. Section 84 of the Indian Penal Code provides protection for persons suffering from mental disorders, i.e. in criminal proceedings on the ground that soap has no meaning and therefore does not require a person to commit an offence. Deprived of free will, the latter will be placed in a worse position than the one in which the child is placed, and as such, can at least exert will and control behavior, while the former cannot. In fact, he was the one to condemn his anger - the Instagram rage made him even more so.

Moreover, the act itself is abnormal, done recklessly and unintentionally, with no right to do so with punishment. But at the same time, public opinion needs to be protected from the onslaught of lunatics. Therefore, the provisions of Article 330 of the Code of Civil Procedure of 1973 predate the detention of such persons in a psychiatric institution. In accordance with the provisions of the Criminal Code of the Russian Federation, this detailed discussion on the protection of persons with mental disorders should be completed.

5.4 A of the Indian Penal Code and Protection of Persons with Mental Disabilities

Chapter 84 of the Indian Penal Code of 1860 and deals with the conduct of persons with mental disorders. 84 says: "No offense is committed by a person who, at the time of committing the act, is not capable of knowing of the nature of his action or that he is doing something wrong or in contravention of law." " I have a mental illness." In other words, they refer to a mental illness that is caused by many different sources and is assigned to varying degrees. Numbness, insanity, to describe psychotic states, mental health and known as mental illness. and other forms of mental illness known to medical science. falls within the scope. However, insanity and possessiveness must be distinguished from any medical term. In an act of insanity, it means that it is a disease of the mind that destroys cognitive ability, that is, a person's The ability to be able to understand the nature and consequences of thinking and its actions.¹²

¹⁰⁷ Sanna Eranna v. State of Karnataka (1983) 1 Kant LJ 115:1983 Cri LJ 619. Jerome Hall, General Principles of Criminal Law (1960) p. 449.

Stay out of the realm of insanity, which can be caused by emotional or voluntary factors. In other words, not every degrading act of a person exempts him from criminal responsibility, it is just a particular or appropriate type of insanity that must be accepted, as you see the law which exempts a person from criminal responsibility. Can do.

5.4 Specific Procedure for Persons with Mental Insanity under Code of Criminal Procedure

Sections 328-339 (see Chapter 25 of the Code of Criminal Procedure, 1973 (Cr. p. c). The accused provide conditions for mentally disturbing persons, whereas section 84 of the Indian Criminal Code, 1860, deals with the defendant who was at the time of the commission of the offence. Yes, it's CR. P. s. It contains a number of specific provisions relating to procedures in cases where it is promoted—it is a mental illness. This is because the legislator is aware of the fact that it is a person who is of unsound mind, cannot be convicted or imprisoned on the ground of mental incapacity, the law requires other aspects of the activity. Should be kept in mind. The main thing is that this person has shown some dangerous quality, such as a tendency to violence or attacks of other people, and in light of this situation, the law does not allow the court to determine his identity and independence. Thus, the procedure to be followed is that even if the defendant cannot be imprisoned for more than one year and is in a psychiatric hospital, and in accordance with the provisions of Article 335 of the Criminal Code, there may be followed

5.5 An Appraisal

The above procedure appears to exempt from the requirements of Section 84 of the Indian Penal Code which has affected the defence. The defendant's consciousness may be partially disturbed or subject to uncontrolled impulsivity. Not enough, according to the law, for relief. The evidence must be clear that the accused was in a state of insanity at the time of the offence, so that he would not be able to know what he was doing at the time, as he could not know what he was doing was wrong or contrary to law.

¹⁰⁸ Sections 328-329 of the Criminal Procedure Code, 1973. See K. M. Sharma, "Defence of Insanity in Indian Criminal Law, 7 Journal of the Indian Law Institute (1965) pp. 325-38

¹⁰⁹ Chandgi v. Emperor AIR 1932 Lah 260: 33 Cr LJ 634(2).

¹¹⁰ Govindaswamy, In re, AIR 1965 Mad 283: (1965) 2 Ker LJ 44.

In the following pages an attempt will be made to examine in detail the legislative scheme of the Cr. P. C. relating to accused persons of unsound mind in respect to inquiry or trial and other relevant issues comparing the scope and ambit of the similar provisions contained in the Code of Civil Procedure, 1908 as well as the Limitation Act, 1963.

Similar provisions are contained in the Code of Civil Procedure of 1908. Rule 15 of 32 of the Code of Civil Procedure (CPC) provides that the provisions of Order 32 (lines 1 and 14) also apply to a person who is of unsound mind. . The provisions of the CPC should not be construed as influencing the existing rules of local law with respect to legal proceedings initiated by or against them or other people with mental disorders as insane in any way. The Supreme Court in *Kasturi Bye Vs Party, Angoori* observed: "On the basis of a reading of a certain provision, it becomes clear that the court has jurisdiction to appoint a guardian (trustee), if the person is found be unfounded. It is also found that even if you are a person who has not been traced, but is recognized by the court as an interviewer, who is not capable of defending your interest for harassing or shooting or mental reasons Weakness, in the right order, can send you to court.."

In fact, in *Sharda v Instagram* case, the Supreme Court ruled that the most important task is to find out whether a person is mentally ill or not so that he can be properly protected. The definition of such a problem, even if it relates to the definition of the issue, cannot be said to be completely powerless by the publisher and the Court in this regard. Furthermore, it is one thing to say that such a person would be subjected to a trial that violates the right to privacy, and in some cases amounts to battery, but it is quite another to say that many people were asked to submit may be referred to a psychiatrist or psychologist so that the court can come to an unbiased conclusion and decide. When asked whether a third marriage is a cure that can only be found if it is examined by a qualified psychiatrist, does not automatically require blood tests or other pathological tests, he answered: purpose.

¹¹¹ *Pancha v. Emperor*, AIR 1932 All 233 at 235.

¹¹² (2003) 3 SCC 225.

¹¹³ AIR 2003 SC 3450.

Insanity

**Insanity is a legal concept,
not a medical term.**

or,

**What psychiatry calls "mental illness"
may not be legal insanity.**

**Insanity excuses criminal liability
only when it seriously damages the person's reason
and/or will to act or to understand.**

**Few defendants plead the insanity defense,
and those that do hardly ever succeed.**

The Insanity Defense

- The insanity defense has roots in Anglo-American law because common-law crimes included *mens rea*, the mental element of the crime.
- The Key Case: Daniel M'Naghten was acquitted of murder on the basis of an insanity plea.
 - *M'Naghten's Case*, 8 Eng. Rep. 718 (1843).
- The theory is that one who is insane is incapable of forming *mens rea*.

Chapter -6

Legislative Protection of Rights of Persons with Mental Disability in India (other than Constitutional and Criminal Law)

In the United Kingdom the need for enacting legislation for protecting the persons with mental disability has been greatly realized. In India also with the increasing consciousness of the civil rights and emergence of various peoples with disabilities displaying their skills and knowledge to improve their lives, which contributed towards a new thinking and forced the law makers to overhaul the old law and come up with a new one. Hence, besides the protection of persons with mental disability under the Constitutional law and criminal law certain other legislations have been enacted in India to protect the rights of persons with mental disability since British period like Lunacy Act, 1858, Lunacy Act, 1912, the Mental Health Act 1987; the Rehabilitation Council of India Act 1992; the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. Now question arises whether these legislations are able to achieve the abode objectives. An attempt will be made in this chapter to examine critically these legislations whether these legislations are working satisfactorily.

6.1 Protection of Rights of Persons with Mental Disability through Lunacy Act

The Lunacy Act, 1858 was introduced by British Government in India providing guidelines for setting up mental asylums and procedural checks for admission and treatment of patients with a view to segregate those who by reason of insanity were troublesome and dangerous to others. The amendment in Lunacy Act, 1858 was made subsequently and it was replaced by Lunacy Act, 1912, which brought the mental hospitals under the charge of Civil Surgeons instead of Inspector General of Prisons as in the earlier Act. The psychiatrists were appointed, for the first time, and control of such asylums was handed over to the central government. This model of mental health policies was predominantly British, it differed on three aspects i.e. race, higher rate of manual labour and early admissions for the Europeans. The name of these asylums was changed to mental hospitals. The experience of Lunacy Act, 1912 revealed that rapid advancements in

the field of medical and surgical science, breakthroughs in technology, greater understanding of the causes of mental illness and improved methods of coping with it had left the old Act redundant.

The question is: who is a lunatic? In *Stedman's Medical Dictionary*, (24th edition at p. 812), it is stated that the term 'lunatic' is an obsolete term for mentally ill person. Thus, the term 'lunacy' is defined as follows: (i) formerly, a form of insanity characterized by alternating lucid and insane periods, believed to be influenced by phase of the moon, (ii) any form of insanity, (iii) insanity as defined variously by law. In *P Ramanatha Aiyar's Law Lexicon*, described the term lunacy as imbecility of mind, weakness of mind between the limits of absolute idiocy on one hand and of perfect capacity on the other.

With reference to the term 'lunatic' it is stated as follows: "A lucid interval is not necessarily a complete restoration to mental vigour previously enjoyed nor is it merely the cessation or suppression of the symptoms of insanity.⁴¹⁵ In this sense lunatic includes "every person whose mind is so affected by disease that it is necessary for his own good to put him under restraint".

The word 'lunatic' except in the phrase 'criminal lunatic' and in relation to persons detained as lunatics outside England, shall cease to be used and in relation to any person of or alleged to be of unsound mind, and the words 'person of unsound mind', 'person', 'patient of unsound mind', or 'of unsound mind', or such other expression as the context may require are to be substituted in any enactment or document there under.

The Rehabilitation Council of India Act 1992

The Rehabilitation Council of India Act 1992 was brought in to usher in a degree of quality control in the work of rehabilitation professionals. The statute adopted the same model of professionalization as was existing for the medical and the legal profession.

¹¹⁴ See Malavika Prasad, "Towards a Re-force Paradigm in Mental Health Law" 5 NUJS Law Review (2012 Jan-Mar) pp. 7-19; S. Nikhil Sankar, Liability of an Insane Person in Tort vis- a- vis Crime" 3 Kerala Law Times (2009 Aug) pp. 21-24; Subhash Chandra Singh, "Legal and Ethical Rights of Persons with Mental Disability: An overview" 32 Indian Socio-Legal Journal (2006)

¹¹⁵ Minal Doshi : "The Mental Health Act in India – A Review", available at <http://www.ndc-nihfw.org/html/legislations/mentalhealthcareact.html>. visited on 11.9.14.

¹¹⁶ Anurag K. Agarwal, "Implementing or Amending the Mental Health Act, 1987", All India Reporter (2006) at pp. 135-143.

¹¹⁷ *Ingram v. Wyatt*, (1828) 1 Hag ER at p. 401.

This means that only those rehabilitation professionals who possess degrees from universities and institutions recognized by the Council would be entitled to registration with the council. Persons not registered with the Council were expressly barred from functioning as rehabilitation professionals. The statute, in fact, provided penal sanctions against all those who infringed this requirement of the law. The Act provides certain definitions, the constitution and incorporation of Rehabilitation Council of India, functions of the Council

6.2 The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

The National Trust for welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 extends to the whole of India except the State of Jammu and Kashmir. This Act of Parliament got the assent of the President on the 30th December, 1999. The Act provides certain definition, constitution of a body at the national level for the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and for matters concerned therewith or incidental thereto.

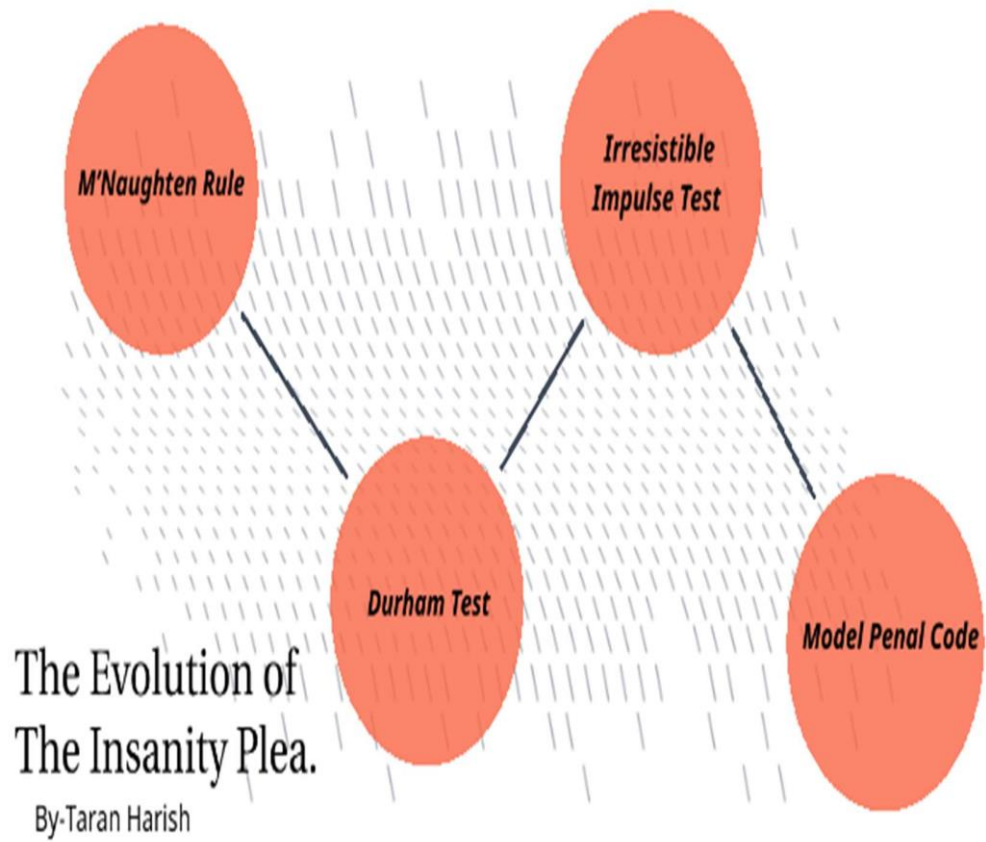
¹¹⁸ P.S. Vijaya Nataraj, "Rights of Disabled Persons: Vision and Mission" 58 *Social Action* (2008 Oct- Dec) pp. 393-398.

¹¹⁹ See S. Raju and Rama Kumari Sahu, "Hysterectomy on Mentally Retarded Girls: Is it an Atrocity?" 11 *Central India Law Quarterly* (1998 Jul. - Sep.) pp. 274-284; Aart Hendriks and Maria Vente Godt Liisberg, "Disability Rights overview" 2 *Encyclopaedia of Human Rights* (Oxford University Press, Inc, Newyork, 2009)32

The Government is in the process of setting up this trust, which does not just provide for children with disabilities but for their parents, family and guardians, for making available manpower to soon after such children and to provide of the facilities for them. The objectives of the trust are to include provisions like strengthening facilities to support people within their own families, within society and to extend support to parents and voluntary organizations, during a period of crisis, and promote measures for their care and protection after the death of their parents or guardians. Thus, the functions of the Trust include setting up of residential hostels and homes foster care, day services, counselling use.

¹²⁰ P.S. Vijaya Nataraj, "Rights of Disabled Persons: Vision and Mission" 58 *Social Action* (2008 Oct- Dec) pp. 393-398.

¹²¹ See S. Raju and Rama Kumari Sahu, "Hysterectomy on Mentally Retarded Girls: Is it an Atrocity?" 11 *Central India Law Quarterly* (1998 Jul. - Sep.) pp. 274-284; Aart Hendriks and Maria Vente Godt Liisberg, "Disability Rights overview" 2 *Encyclopaedia of Human Rights* (Oxford University Press, Inc, Newyork, 2009) . 32-43.



Chapter-7

Concluding Observations and Recommendations

More than 500 million persons -10 per cent of the World's population, an estimated 80 percent of them living in the developing World, - suffer from either mental or physical disability. They are often denied basic educational opportunities and often given menial or poorly paid jobs. Social attitudes exclude them from cultural life and normal social relationship. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In order to promote and protect the rights and dignity of persons with disabilities General Assembly on December 19, 2001 established an *Ad hoc* Committee, for the preparation of a comprehensive and integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The *Ad hoc* Committee in June, 2003 decided to establish a Working Group with the aim of preparing and presenting a draft text of a convention. The *Ad hoc* Committee adopted the draft text of, the Convention and forwarded to the General Assembly for adoption. The General Assembly on December 13, 2006 adopted by consensus the Convention on the Rights of Persons with Disabilities. The Convention shall come into force on the thirtieth day after its ratification by 20 States. The Convention has laid down a number of rights to be provided to the persons of disabilities such as right to life, equal recognition before the law, access to justice, liberty and security of persons, freedom from torture or cruel, inhuman or degrading treatment or punishment, freedom from exploitation, violence and abuse, liberty of movement and nationality, freedom of expression and opinion, and access to information, respect for privacy *etc.*

¹²² See General Assembly Resolution 56/168 of December 19, 2001. [In order to promote and protect the rights and dignity of persons with disabilities General Assembly on December 19, 2001 established an *Ad hoc* Committee, for the preparation of a comprehensive and integral International Convention on the protection and promotion of the rights and dignity of persons with disabilities.

¹²³ See Economic and Social Council Resolution 526 (XVII), dated April 26, 1954.

¹²⁴ See General Assembly Resolution 56/168 of December 19, 2001.

The Convention also stipulated that persons with disabilities shall have the right to education, health, work and employment. They shall participate in political and public life and in cultural life on equal basis with others. It is to be noted that the Convention did not create new rights for the persons with disabilities. However, it specifically mentioned them so that States Parties to the Convention may raise awareness in the society to foster respect for the rights and dignity of persons with disabilities.

The Convention has provided general obligations to the State Parties for the full realization of all human rights and fundamental freedom for all persons with disabilities. For instance, States Parties shall undertake : (a) to adopt all appropriate legislature, administrative and other measures for the implementation of the rights; (b) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; (c) to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; (d) to refrain from engaging in any act or practice that is inconsistent with the Convention and to ensure that public authorities and institutions act in conformity with the Convention with regard to economic, social and cultural rights. Each party undertakes to take measures to the maximum of its available resources, and where needed, within the framework of international cooperation, with a view to achieving progressively and full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

A Committee on the Rights of Persons with Disabilities was established. The Committee, shall consist, at the time of entry into force of the Convention of twelve experts. The number of members shall be eighteen when the Convention is ratified by an additional sixty States. The members of the Committee shall be elected by States Parties. They shall be elected for a term of four years. The Committee shall consider the reports submitted by the States Parties on measures taken to give effect to its obligations under the Convention and on the progress made in that regard. States Parties to the Convention are required to submit report within two years after the entry into force of the Convention.

¹²⁶ See Article 45, Convention on the Rights of Persons with Disabilities (Opened for signature and ratification on 30 March 2007 and entered into force on 3 May 2008, India is a party to the Convention as it has signed and ratified).

The Committee may make suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. In India, Section 84 of the Indian Penal Code 1860 deals with the law relating to insanity. Besides, a large number of legislations are enacted in India for the protection of rights of persons with mental disability. In the contemporary era the major issue is whether the law relating to persons with mental disability in India is up to the mark or not? In this background the present study was undertaken.

Chapters- 2, 3, 4 and 5 of the study forms the main part of the thesis and examine certain issues along with other sub-issues like the issues relating to the concept of insanity and persons with mental disability, protection of rights of persons with mental disability at international level, substantive and procedural aspects of protection of persons with mental insanity under constitutional and criminal law and legislative protection of rights of persons with mental disability in India.

7.1 Findings and Suggestions

Section 84 of Indian Penal Code, 1860 (IPC), makes a general exception in case of accused persons of unsound mind and clearly postulates that nothing is an offence which is done by a person, who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law. Sections 328 to 339 of the Code of Criminal Procedure (Cr. P. C.) also provide the provisions of Criminal Law relating to persons of unsound mind. Section 84 of the IPC deals with a case where an act, which would have otherwise been an offence, is not an offence by reason of unsoundness of mind and incapacity of knowing the nature of the act or its consequences. The quality of the unsoundness of mind is different where a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defense (Section 328, Cr. P. C.) or where at the trial of any person before a Magistrate or a Court of Session such person is of unsound mind and consequently incapable of making his defense (Section 329, Cr. P. C).

¹²⁵ *Sanna Eranna v. State of Karnataka* (1983) 1 Kant LJ 115.

¹²⁶ *Supdt. and Remembrancer of Legal Affairs v. Durga Charan Barman*, 65 CWN 290.

Here the court has to assess the quality of mind with reference to his capacity to defend himself. That involves a much narrower issue than what is involved in Section 84, Indian Penal Code. The remaining Sections of the Cr. P. C. are procedural provisions dealing with auxiliary aspects. With respect to the law of insanity under criminal law the following suggestions are worth considering:

1. The abovementioned criminal procedure reveals that the provision for exemption from liability under the Section 84 of the IPC places a heavy burden on the defense. The mind of the accused person may be partially deranged or he may be subject to some uncontrollable impulse. This shall not be sufficient under law for exemption. The evidence ought to be categorical that at the time of the commission of the offence the accused was of unsound mind to such an extent that he was incapable of knowing what he was doing at the time or that he was incapable of knowing that what he was doing was wrong or contrary to law. Hence, the burden of proof be shifted to the prosecution.
2. The Section 84 of the IPC used the phrases “unsoundness of mind” which is very difficult to define or impossible to have universal criteria for determining the mental unsoundness. In the contemporary era a variety of concepts are being used for the persons with unsoundness of mind like persons with mental disability, mental retardation, mental impairment, mental illness etc. The Section 84 shall be amended and phrase “unsoundness of mind” be substituted by the phrase “mental impairment”. The proposed amendment will widen the scope and ambit of the defense. Overtime the judiciary has developed a distinction between medical insanity and legal insanity. The proposed amendment will solve the abovementioned problems and will also be in conformity with the un- enumerated rights of every person under Article 21 of the Constitution of India.
1. A review Committee shall be setup for examining the rights of individuals developed by the judiciary through the Constitutional interpretation and develop a separate Article 21B under the Constitution of India for the protection of persons with disabilities including mental disabilities. The Article 21 B shall be drafted in the following “The State shall, within the limits of its economic capacity and development, make effective provision for securing public assistance in cases disablement.”

As India has signed and ratified the UN Convention on the Rights of Persons with Disabilities, it is the official duty of the Government of India to implement the

Convention in India. The proposed amendment to the Constitution of India will strengthen the will of the legislatures in implementing the UN Convention.

It also emerges from the study that whenever an accused is found as an insane at the time of the commission of the offence he would get benefit under Section 84 of the IPC. But, in contrary case the procedure that would have to be followed, therefore, is that even if the accused cannot be detained any longer in prison that he will have to be admitted to the Mental Hospital and the provisions of Section 335 of the Cr. P. C. will have to be followed. As a natural consequence, the Mental Health Act, 1987 would be applied. The working experience of the Act shows that a number of lacunae is present in the Act. To have a lacunae free Mental Health Act following suggestions are worth considering:

1. Section 2(l) of the Mental Health Act, 1987 defines the term “mentally ill person”. According to this definition it means a person who is in need of treatment by reason of any mental disorder other than mental retardation. Now question arises why have mentally retarded persons been excluded from the definition of a mentally ill person? If this discrimination is valid, have any provisions been exclusively made for those suffering from mental retardation? Therefore, the Section 2(l) shall be amended and mental retardation should be included in the definition.
2. Section 2(q) of the Mental Health Act, 1987 defines the term “psychiatric hospital” or “psychiatric nursing homes”. According to this definition “psychiatric hospital” or “psychiatric nursing homes” which means a hospital or, as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services. What is the need for exclusive institutionalization of services for the mentally ill in the form of “psychiatric hospitals” or “psychiatric nursing homes”? This leads to exclusion. When a person suffering from a disease can go and get treatment in a hospital of his choice, why do mentally ill persons be forced to go to a psychiatric hospital etc.? This exclusion in the definition be removed by suitable amendment.
3. Section 2 (r) of the Mental Health Act, 1987 defines “psychiatrist” which means a

medical practitioner possessing a postgraduate degree or diploma in psychiatry, recognized by the Medical Council of India, constituted under the Indian Medical Council Act, 1956, and includes, in relation to any State, any Medical Officer who, having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act. This definition leaves a lot of scope for manipulation. These are experts, so there should not be any provision for declaration by the State Government that a person be regarded as a psychiatrist. The MH Act empowers State Government to designate any medical officer as psychiatrist, based on his/her knowledge and experience in psychiatry.

The clause has the possibility of misuse, since the precise nature of knowledge and the duration of experience in the speciality have not been specified in the definition. There is a possibility that in the absence of suitable norms, the State Governments may declare medical officers with inadequate knowledge, and insufficient experience as psychiatrists as well as those who will appoint them on behalf of state Government may not be specialized. This definition suffers from excessive, unguided and uncontrolled delegation of power, and violates the principles of administrative law as laid down by the Supreme Court in *Ajmer-Merwara Extension v. Part C States (Laws) Act, 1950*.⁴⁹⁵ In the light of the principle of the Supreme Court the definition should be modified.

4. Section 3 provides for the Central authority for mental health services and Section 4 provides for State authority for mental health services. But, these Sections used the word “shall” while talking about establishment of a Central/ State mental health authority. Have these provisions been strictly implemented so far? In order to ensure that the authorities are in place, time limits must be prescribed within Sections 3 and 4 of the MH Act, which lay down the period within which the central and state governments shall established the Central and State mental authorities respectively. There are certain States where such authorities do not exist at all. A high level committee shall be established for looking the matter relating to implementation of the MH Act.
5. Section 10 of the Mental Health Act, 1987 only provides that Psychiatric Institutions have to operate in accordance with the rules prescribed for them. At the same time, it seems strange when Section 8(b) of the MH.

Act requires minimum treatment facilities to be available in private psychiatric

institutions only, while the statute makes no such express declaration with regard to public psychiatric hospitals. It does not provide for the rules with regard to living and treatment conditions of psychiatric hospitals and nursing homes and which shall be the same for both public and private institutions. This is a necessary requirement. Hence, the provision shall be suitably amended keeping the view of the Supreme Court guidelines.

6. Section 19 of the MH Act provides for admission of mentally ill persons under certain special circumstances. There is a general feeling that the involuntary admission clause is too restrictive. Several patients who have been admitted by their relatives, or “involuntary admissions” may not require to be in the nursing home’s care for 90 days, which is the prescribed minimum duration of stay for involuntary patients. Section 19(2) which says that a patient can be admitted and treated by a psychiatrist only if a request is made, supported by two medical certificates from two medical practitioners who are not psychiatrists. This provision is absurd and objectionable. What is the point of certification and that too from medical practitioners who have no specialization in the field? Therefore, the MH Act shall be amended and this problem be solved.
7. Section 81 of the MH Act provides for protection of human rights of mentally ill persons. This Section does not mention the human rights which all patients are entitled to in general. Despite the presence of this provision, there is no actual implementation. Enumeration of minimum human rights may be useful. Unfortunately, the Section does no more than make a figurative acknowledgement to the human rights of persons with mental illness. While pointing out the difference between use of mentally ill patients for therapeutic and experimental research, which is missing from Section 81. It can be said that a total ban on therapeutic research could be contended to be a discrimination against the mentally ill as a class, by denying them the fruit of new knowledge.

At the same time, an unregulated sanctioning procedure would reduce persons with mental illness to guinea pigs in the research process. A balanced approach is to be taken keeping in mind the benefit to society and eradication of all harmful action to the mentally ill person. By permitting such research merely on the written consent of the guardian, the MH Act fails to introduce any balancing considerations. again Under Section 81(2)(ii), how can consent be given by guardians of a mentally ill person for use of the patient for research purposes when such person is incapable of giving consent? All these dichotomize shall be removed by suitable amendment to the MH

Act.

8. Apart from above points, there is a need of big investment in development of the infrastructure and provision of basic facilities in mental hospital which is still largely ignored. Therefore, a regular budget be granted from the consolidated fund of India under Article 275 of the Constitution of India.

Besides the above legal framework there are three more legislations relevant for the protection of rights of persons with mental disabilities and these are the Rehabilitation Council of India Act 1992 (RCI Act); the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)

Act 1995 (PWD Act), the National Trust for Welfare of Person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (NT Act). The PWD Act defined the term “disability” and includes mental retardation and mental illness within the definition. This definition is comparatively wide enough. However, for effective implementation of these all legislations an attempt shall be made to repeal all the three legislations by enacting a single umbrella legislation. This will help the general public to easily understand the latest legal position.

It is expected that if the above stated suggestions are being implemented by the Government the persons with mental disability will be benefited. The issue relating to persons with mental disability is highly controversial in the contemporary era. It is expected that the present study will be useful for judges, lawyers, academicians, statesman as well as researchers and members of the civil society.

¹²⁷ AIR 1951 SC 332.

¹²⁸ *In Re Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu v. Union of India* , AIR 2002 SC 979; (2002) 3 SCC 31; *Chandan Kumar Banik v. State of West Bengal*, (1995) 4 SCC Supp. 505.

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