
A STUDY OF THE CONDITION OF INMATES WHO LACK MENTAL CAPACITY AND THE NECESSITY FOR REMEDIES TO UPHOLD THEIR CONSTITUTIONAL RIGHTS

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ABSTRACT

There is a dearth of study in India that focuses on problems with the criminal justice system affecting a distinct group of victims and accused who are mentally ill. They require prompt mental health assistance, since any delay would be an infringement of their fundamental right, according to the Mental Health Care Act of 2017. People who are mentally ill and serving time in prison still make up a significant portion of the total prison population in India, despite the fact that they are the most vulnerable victims of human rights violations. An accused who is mentally ill has a constitutional right to seek defence against prosecution under Section 84 of the Indian Penal Code, however this privilege is not frequently used or used to the fullest extent possible due to a lack of awareness and acceptability as well as obsolete testing procedures. They are kept under trial in judicial custody by compromising on the legal process. Therefore, it is crucial to find these victims, deal with them, and give them the proper care and protection to which they are entitled under the constitution. In order to better administer justice by protecting the basic human rights of those who are mentally ill, this article seeks to explore and highlight this issue, raise awareness of such violations, provide means for deliberate medicolegal assistance, and finally, identify potential solutions, recommendations, and suggestions.

Keywords: Criminal Justice System, Human Rights, Mentally Ill Prisoners, Prosecution, Unsoundness of Mind, Victim.

Introduction

A law-breaking conduct undertaken by a person with malicious intent is always criminal in court, however prosecuting someone who committed the offense without knowing they were doing it goes against basic human and fundamental rights outlined in the Indian Constitution. Mentally ill individuals perpetrate crimes without any knowledge of or regard for their mental state, yet they are nevertheless found guilty and given sentences. Prisoners' rates of mental health issues have increased rapidly, necessitating quick attention from the criminal justice system (CJS) and other stakeholders.¹ A prisoner with a mental illness is defined as "a person who is suffering from a mental disease who is being tried for a crime, found guilty of a crime, and imprisoned in a jail or prison" under the Mental Health Care Act of 2017.² According to Section 84 of the Indian Penal Code (IPC), "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."³ Such accused have a legal defence against criminal proceedings available to them.⁴

Legal insanity is distinct from medical insanity, and this part only applies to those whose insanity has been established in court beyond a reasonable doubt.⁵ Sections 101, 102, and 103 of the Indian Evidence Act of 1872 provide that it is the defendant's responsibility to establish the truth of his mental instability during the commission of the crime.

On the other side, there is a sizable number of inmates who developed different mental illnesses after being convicted. Due to the lack of access to various healthcare services in jails, they were first determined to be mentally healthy while committing the crime but were subsequently discovered to be mentally ill.⁶

In India, the rate of various mental diseases among convicts is alarmingly high.⁷ According to the National Crime Record of Bureau's Prison Statistics India-2019, there were 4,50,696 total inmates incarcerated as of 2017; this figure increased to 4,78,600 as of 2019, with 69%

¹ Gonzalez JMR, Connell NM. Mental health of prisoners: Identifying barriers to mental health treatment and medication continuity. *Am J Public Health* 2014; 104:2328-33.

² Mental Healthcare Act, "Mental healthcare Act 2017," Minist. Heal. Fam. Welfare, Gov. India. 2017. p. 1-52, Available at: <https://egazette.nic.in/WriteReadData/2017/175248.pdf>. Last accessed on 22 December, 2022.

³ Indian Penal Code, 1860.

⁴ Ramamurthy P, Chathoth V, Thilakan P. How does India decide insanity pleas? a review of high court judgments in the past decade. *Indian J Psychol Med* 2019; 41:150-4.

⁵ Asokan T. The insanity defense: Related issues. *Indian J Psychiatry* 2016; 58:191-8.

⁶ Rabiya S, Raghavan V. Prison mental health in India: Review. *Indian J Soc Psychiatry* 2018; 34:193-9.

⁷ Kumar V, Daria U. Psychiatric morbidity in prisoners. *Indian J Psychiatry* 2013; 55:366-70.

(3,30,487) of them awaiting trial. India continues to have one of the highest rates of pending cases in the world, and in 2019 more than half of all pending cases were held for less than six months. This suggests that a significant share of unresolved cases among inmates as a whole are the result of inadequate legal assistance from the outset. 7394 prisoners, or 1.5% of the overall population of 4,78,600, had a mental disorder as of the end of 2019. The year 2019 had a total of 1775 deaths registered in jails, of which 165 were not natural causes. Regardless of the circumstances surrounding their deaths, it highlights grave human rights violation in jail facilities. In jails, there were 165 unnatural deaths in 2019 compared to 149 in 2018. Out of 165 deaths, 116 cases, or 70%, were suicides; in this line, the Human Rights Commission study from 2017–2018 revealed that suicide rates in prisons are typically 1.5 times higher than those in the general population.⁸ The seriousness of the issue of mental health in prison is indicated by this. Out of 7394 mentally ill inmates, 50.7% (3748) were convicted criminals, 48.7% (3602) were awaiting trial, and 0.2% (18) were detainees.⁹

Due to their personality traits or qualities, such as poor judgment, poor impulse control, suspicion, loss of inhibitions, paranoid beliefs, an inability to trust others, delusions, and hallucinations, people in prison have a high percentage of mental disease sufferers. They are very difficult to manipulate and are quickly apprehended by the cops.¹⁰

The evaluation aims to draw attention to the important concerns facing mentally ill prisoners who are denied access to their basic rights. Although some of these problems and their likely remedies have been noted in earlier research, there is still much work to be done before best practices for mentally ill convicts can be put into reality.

THE STAND OF LAW COMMISSION

Unsoundness of mind is a component under section 328-339 of the Criminal Procedure Code of 1973, which mandates the court to investigate the case.¹¹ It also shows that a magistrate may request a medical examination of a suspect and postpone the trial of the case if he believes that individual to be of unsound mind and thus unable to present a defence during an investigation.¹²

⁸ Annual Report 2017-2018. National Human Rights Commission, 2018.

⁹ National Crime Record Bureau, "Prison Statistics India 2019," 2019, *Available at*: <https://ncrb.gov.in/sites/default/files/PSI-2019-27-082020.pdf>. Last accessed on 8th December 2022.

¹⁰ *Supra* note 7.

¹¹ Kumar D, Viswanath B, Sebastian A, Holla B, Konduru R, Chandrashekar CR, et al. Profile of male forensic psychiatric inpatients in South India. *Int J Soc Psychiatry* 2014; 60:55-62.

¹² Deswal V. Insanity as a defence to criminal charge – An analysis. 2013. p. 60-9.

The 42nd report of the Law Commission of India from 1971 states that the introduction of the diminished responsibility test under Section 84 of the IPC was thought to be desirable. But because of the complex medicolegal problems and the lack of qualified specialists who can scientifically and legally withstand its reasoning, it was not accepted; in this regard, their view was contradictory. In the determination of insanity, Indian courts continue to abide by a set of guidelines that date a century ago. With the advent of new developments, psychiatry and neuroscience have expanded dramatically in the modern era.¹³ As the applied sciences of psychology, such as legal psychology, forensic psychology, and investigative psychology, are expanding, there are a rising number of specialist professionals working in the field of behavioural science. The Law Commission's perspective in these areas needs to be modified because it is out of step with the most recent developments in psychiatry and neuroscience. Similar to this, the judicial system needs to be made aware of the terminology being used to refer to people with mental illnesses. Research has demonstrated the negative effects on a person's health when these terms are wisely used to identify someone with a mental disorder.¹⁴

The laws governing insanity in other nations may also be considered by Indian law. For instance, Section 10 of the Swiss Penal Code states that "any person suffering from a mental disease, idiocy or serious impairment of his mental faculties, who at the time of committing the act is incapable of appreciating the unlawful nature of his act or acting in accordance with the appreciation may not be punished." It is much easier to get considered for legal insanity under this criterion because definition is so broad.¹⁵

The living conditions inside the jail, which increase inmates' susceptibility and vulnerability to psychiatric disorders, are another element that contributes to the spread of mental illnesses among prisoners. Because of the unfavourable conditions in jail, inmates with mental illnesses are at risk of a serious worsening in their mental health.¹⁶

Another significant issue in prisons is inmates' behavior related to suicide and self-harm. According to a study, out of 179 autopsy performed, roughly 14 cases were inmates who

¹³ Math S, Kumar C, Moirangthem S. Insanity defense: Past, present, and future. *Indian J Psychol Med* 2015; 37:381-7.

¹⁴ Angermeyer HMMC. The stigma of mental illness: Effects of labelling on public attitudes towards people with mental disorder. *Ann Hum Genet* 1958; 22:385-90.

¹⁵ Akshay. Rock, paper and the scissors: A critical analysis of law relating to insanity across various jurisdictions across the globe. *Int J Law Leg Jurisprud Stud* 2000; 2: 296-318.

¹⁶ *Supra* note 1.

committed suicide, of which 71.42% occurred in lock-ups and 28.57% in prison.¹⁷ According to a study, among convicts, schizophrenia, depression, and adjustment disorder are the most prevalent disorders. It is also clear that substance misuse disorders related to cannabis, alcohol, and nicotine are very common among convicts.¹⁸

A Yale University study found that the effectiveness of treatment is enhanced by promptly diagnosing and treating schizophrenia after the commencement of the first psychotic episode. Psychotic symptoms that are left untreated, according to psychiatry professor Thomas McGlashan, raise the likelihood of a dismal prognosis.

If all other things are equal, early detection initiatives will help people enter therapy when their symptoms are less severe.¹⁹ According to McGlashan, patients who started their treatment early tended to be younger, symptom-free, and more responsive to it.²⁰

THE INTERNATIONAL COMMITTEE OF RED CROSS

Every country in the world has a significant prevalence of mental illnesses, particularly among those who are incarcerated. The following list of factors explains why mental illness is disproportionately prevalent in prisons:

1. The prevalent misunderstanding that everyone who has a mental illness is dangerous to others;
2. The general intolerance of societies for challenging or unsettling behaviour;
3. The absence of or difficult access to mental health treatments, as well as the inability to support treatment, care, and rehabilitation.

Numerous mental disorders may already exist before to incarceration, and the ongoing stress of incarceration may make them worse. However, due to the aforementioned environmental factors, mental problems can also manifest when a person is really incarcerated. These circumstances are sometimes referred to as maintaining or perpetuating factors for mental diseases.²¹

¹⁷ Syed Rabiya VR. An e-counseling platform helping those dealing with anxiety, depression and other concerns. *Indian J Soc Psychiatry* 2018; 34:193-6. doi: 10.4103/ijsp.ijsp_9_18.

¹⁸ Bardale RV, Dixit PG. Suicide behind bars: A 10-year retrospective study. *Indian J Psychiatry* 2015; 57:81-4.

¹⁹ McGlashan TH. Duration of untreated psychosis in first-episode schizophrenia: Marker or determinant of course?. *Biol Psychiatry* 1999; 46:899-907.

²⁰ Salokangas RKR, McGlashan T. Early detection and intervention of psychosis. A review. *Nord J Psychiatry* 2008; 62:92-105.

²¹ *Supra* note 1.

PREVAILING FACTORS

A person's stable mental health cannot be maintained in prison. Inmates' mental health may be negatively impacted by a number of factors in prisons, such as overcrowding, various types of inmate violence, forced seclusion or, conversely, a lack of privacy, a lack of meaningful activity, isolation from social networks, uncertainty about one's future prospects, employment, relationships, etc., and insufficient medical care, particularly mental health care.²² The terrible result of the interaction between these elements is that there is an elevated suicide risk in jails, which is frequently correlated with depression.²³

THE ADVANTAGES OF HANDLING MENTAL HEALTH ISSUE IN PRISON

The society as a whole will benefit greatly and fruitfully from addressing mental health issues in prison.

Prisoners

If this problem is addressed and controlled, prisoners will benefit greatly. To a certain extent, the stigma that has persisted in society will be reduced. After being released from jails or prisons, convicts can continue to contribute to society and lead fulfilling lives. They can participate in the growth of the country as a whole and will behave responsibly in society.

Prison Staff

The majority of the work that prison staff must do is deal with inmates who have mental illnesses. If they are not treated, their chronic sickness will only become worse.²⁴ The jail personnel who care for mentally ill inmates may experience comparable symptoms or it may have an impact on their mental health. This is known as the shared psychosis phenomenon.²⁵ If a person with a mental condition is treated, the prison personnel will benefit. As a result, both the inmates and the prison staff will be in good health.²⁶

²² Malik JS, Singh P, Beniwal M, Kumar T. Prevalence of depression, anxiety and stress among jail inmates. *Int J Community Med Public Heal* 2019; 6:1306.

²³ Sharma N, Prakash O, Sengar KS, Singh AR. A study of mental health problems in criminals in terms of depression, anxiety and stress. *Glob J Hum Soc Sci Res* 2015; 15:17-22.

²⁴ *Supra* note 7.

²⁵ World Health Organization. *Mental Health And Work: Impact, Issues and Good Practices*. 2000. doi: 10.1080/15374417209532465.

²⁶ Penal Reform International (PRI). *A Short Guide For Prison Staff*. 2018. p. 34. Available at: www.penalreform.org/keep-informed. Last accessed on 28th December, 2022.

Community

Recidivism and poor treatment of mentally ill individuals are strongly correlated. According to research, those who are being treated for mental illnesses are less likely to commit crimes in the future.²⁷ It is important to evaluate the benefits for the growth of the community of treating mentally ill convicts, a topic that has been neglected for many years.²⁸

Government

The elected administration has provided for the convicts' basic requirements. According to jail data, there is a shortage of special accommodations for inmates with mental illnesses because prisons are overcrowded. According to the financial commission report, 6818.1 crore rupees have been set aside for the prison budget.²⁹ The burden on the government will be lighter if facilities for this particular population's care and support are included.³⁰

Both the Prison Act of 1894³¹ and the Prison Statistics India³² did not include mental illness in any way, leaving this problem unaddressed. The National Crime Record Bureau's prison statistics do not have any information about these people. Any type of mental disease sufferer is not handled in the way that is expected of them. The Mental Health Care Act of 2017 has, nevertheless, provided some clarification regarding prisoners' mental illnesses. Sections 103 to 105 of this act contain measures for inmates who suffer from mental diseases.³³

CONCLUSION

The effort to improve jail and prisoner conditions around the world was initiated late in 1991. The issue has consistently come up, leading to the creation of legislation and guidelines for the successful rehabilitation of mentally ill convicts. The United Nations General Assembly recently, in 2016, has enacted a resolution for the treatment of prisoners; rule number 109-110

²⁷ Zgoba KM, Reeves R, Tamburello A, Debilio L. Criminal recidivism in inmates with mental illness and substance use disorders. *J Am Acad Psychiatry Law* 2020; 48:209-15.

²⁸ McNiel DE, Sadeh N, Delucchi KL, Binder RL. Prospective study of violence risk reduction by a mental health court. *Psychiatr Serv* 2015; 66:598-603.

²⁹ *Supra* note 9.

³⁰ Commonwealth Human Rights and CHRI, *Monitoring Prisons-A Visitor's Guide*, 2017.

³¹ "The Prisons Act, 1894," p. 1-18, 1894, *Available at*: <https://legislative.gov.in/sites/default/files/A1894-9.pdf>. Last accessed on 28th December, 2022.

³² *Ibid* at 29.

³³ Mental Health Care Act, 2017.

in that resolution says about and directs toward attention on the mental health of inmates.³⁴ Prisoners' mental well-being needs to be prioritized. India released the Prison Manual and incorporated these recommendations in the same year.³⁵

A study on prison monitoring from 2016 revealed that there were no mechanisms for jail visits by a higher authority to monitor the state of prisons in India.³⁶ This topic got support in 2017 for the creation of various "boards of visitors" to defend the rights of the prisoners. Both official and unofficial members make up this board.³⁷ An eligibility requirement exists to join the board of visitors. The member of the board will be the individual who meets the necessary requirements. However, after considering the duties of the board, it should be noted that this prerequisite does not call for any forensic clinical psychologists.³⁸ The inclusion of a forensic clinical psychologist on the board may aid in the early detection of mental illness's identification signs and symptoms.³⁹

The Mental Health Care Act of 2017 provides amenities for convicts who are mentally ill. According to Section 103, mentally ill inmates must undergo regular assessments, receive the necessary treatment, and are not allowed to remain in a jail. The mentally ill prisoners are held in reserve and are not allowed to use these amenities despite these official directives.⁴⁰ The National Policy on Prison Reforms and Correctional Administration, which was produced by the Bureau of Police Research and Development, also emphasized that mentally ill inmates shouldn't be confined in prisons.⁴¹

The Delhi prison administration has started a Psychological First Aid (PFA-P) program for Indian prisoners with the assistance of medical professionals from the All India Institute of Medical Sciences (AIIMS).⁴² Some prisoners have agreed to the rules, but no notable

³⁴ United Nations High Commissioner for Refugees, "Resolution adopted by the General Assembly," 2016 Available at: <https://www.unhcr.org/excom/bgares/5729c3aa9/resolution-adopted-general-assembly-17december-2015.html>. Last accessed on 22nd December, 2022.

³⁵ *Supra* at 29.

³⁶ *Supra* note 9.

³⁷ *Supra* note 28.

³⁸ BPR&D, "Model Prison Manual for the Superintendence and Management of Prisons in India," 2003. Available at: <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>. Last accessed on 22nd January, 2022.

³⁹ Tripathi M. "Clue4 Evidence News 'Forensic and Legal Psychology - International & Indian Scenario,'" 2020. Available at: <https://clue4evidence.org/newsletter/>. Last accessed on 21st November, 2022.

⁴⁰ *Supra* note 2.

⁴¹ BPR&D, "National Policy on Prison Reforms & Correctional Administration," 2007, Available at: https://bprd.nic.in/content/196_1_NPPRCA.aspx. Last accessed on 21st November 2022.

⁴² World Health Organization, "Psychological first aid: Guide for field workers," 2021, Available at: https://www.aiims.edu/aiims/departments_17_5_16/psychiatry/COVID%2019%20Pandemic%20and%20

improvements have been seen. In this complete scenario, inmates with mental illnesses are not given the proper care, which may have an impact on the other jail populations. The government has committed a sizable sum of money and infrastructure to improving conditions for prisoners, but due to ineffective implementation, there have been no noticeable results. The financial burden can be lessened, and a workable plan can be implemented, by treating and correcting mentally ill inmates separately since they require additional care and protection that cannot be provided within a prison or a jail.