
LAW AND THE MENTALLY UNSOUND: INTERSECTION OF LAW AND PSYCHOLOGY IN THE COURTROOM

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ABSTRACT

Indian Law is a charged and demanding landscape for counsels, litigants, victims and witnesses alike. Since the foundations of the legal system exist to help the common man, any and all steps taken towards the better inclusion and development of members of a society serve only to strengthen the foundation of the legal system. In this case, the consideration falls to those that suffer from mental ailments, in other words, persons of unsound mind. The legal system tends to blindside them, fails to consider them and their delicate requirements while entirely requiring them to be part of a mainstream system that they are not able to integrate with. This paper aims to address those very inequalities by placing them as a litigant, witness and a victim to understand the Indian legal system, their psychology and suggests compromises towards building a more globally compliant system for people of all backgrounds to enter the mainstream Indian Law. Beginning from the current stance of the law to global standards and compliance mechanisms, all must be properly considered and understood. Critiquing these stances and compliance mechanisms is one of the best ways to offer suggestions for improving the legal system and making laws that better accommodate persons of unsound mind and better integrate them into the legal system. Finally, a glance at the newly passed laws that have taken into account global compliance standards and tried to include them in the procedure and precedent heavy legal system effectively making way for eventual integration of people with unsound minds.

INTRODUCTION

With the growing awareness about mental health/diseases and steady advancement in the field of psychology, stigmas related to people suffering with mental health issues have significantly reduced. Private and public organizations have worked together globally to make the environment more inclusive and safer for people. Reputed journals have published reports and great literature in this context in an attempt to sensitize people and create opportunities.

Despite the positive impact that this literature and various reports seem to have, what is the position of mentally unsound individuals in a field like law? This paper elaborates, with the help of landmark judgements, on the intersection of psychology and law. It discusses in detail the different scenarios that might arise when a person suffering from severe mental health diseases such as Schizophrenia and similar hallucinatory mental diseases, is put into a courtroom for trial. Three main scenarios are visited: a mentally unsound person as the victim, the perpetrator and the witness. The paper poses questions and challenges to the currently-existing legal framework and concludes by providing more remedies that can be incorporated to make the legal scenario more inclusive.

2. UNSOUND MIND AND LEGAL PROVISIONS IN INDIA

The origin of legal provisions regarding mentally unsound individuals can be observed from the British period. These provisions have evolved with changing times while new Acts were being formulated. India ratified the United Nations Convention for Rights of Persons with Disabilities (UNCRPD) in 2008¹ making the rights of mentally unsound people a significant issue. Following the ratification, numerous existing Acts had to be altered in conformation to the UNCRPD guidelines. The other legal provisions in India that hold up the rights of mentally unsound people are as follows:

2.1 THE CONSTITUTION OF INDIA- *Article 21*² of the Indian Constitution provides the “right to life” which is applicable on people with mental issues and equips them with rights like education, privacy, free movement, etc. *Article 14*³ of the Constitution talks about “right

¹ Choudhary Laxmi Narayan, Deep Shikha, *Indian Legal System and Mental Health*, Volume 55 (Suppl 2), NLM (2013).

² INDIA CONST. art. 21.

³ INDIA CONST. art. 14.

to equality” and supports equal treatment of all and therefore, can be used to treat mentally unsound people with the same respect and dignity as any other individual.

2.2 PERSON WITH DISABILITY ACT, 1995- The objective of the Act was to prevent discrimination, exploitation and abuse, and empower people with disabilities (mental disabilities included).

2.3 NATIONAL TRUST ACT, 1999- This Act is under revision post-ratification of UNCRPD guidelines however, its main objective is to empower mentally unsound individuals to live independently and provides them with the right to choose how they live.

2.4 INDIAN CONTRACT ACT, 1872- *Section 12*⁴ of the Act specifies that people with unsound minds can enter into agreements provided they are in a state of sound mind. It prohibits formulation of agreements during spells of insanity.

2.5 HINDU MARRIAGE ACT, 1955- *Section 12*⁵ and *Section 13*⁶ of the Act provide for marriages being annulled and ended with divorce respectively, if a spouse is declared as mentally unsound. Individuals married under *Special Marriage Act*⁷ are also governed by the same principles.

The *Hindu Inheritance (Removal of Disabilities) Act*⁸ allowed individuals of unsound mind to inherit property that was vested in them.

2.6 INDIAN SUCCESSION ACT, 1925- *Section 59*⁹ of the Act specifies that an individual of an unsound mind can make a will in a period when they are of sound mind.

2.7 REPRESENTATION OF PEOPLE ACT, 1950- *Section 16*¹⁰ of the Act prohibits people of unsound mind to hold public offices such as of the President, Prime Minister, etc.

2.8 MENTAL HEALTH CARE ACT, 2017- *Section 3*¹¹ of the Act states that an individual will be classified as having an unsound mind only when declared by a competent court.

⁴ Indian Contract Act, 1872, § 12, No. 09, Acts of Parliament, 1872 (India).

⁵ Hindu Marriage Act, 1955, § 12, No. 25, Acts of Parliament, 1955 (India).

⁶ Hindu Marriage Act, 1955, § 13, No. 25, Acts of Parliament, 1955 (India).

⁷ Special Marriage Act, 1954.

⁸ Hindu Inheritance (Removal of Disabilities) Act, 1928.

⁹ Indian Succession Act, 1925, § 59, No. 39, Acts of Parliament, 1925 (India).

¹⁰ Representation of People Act, 1950, § 16, No. 43, Acts of Parliament, 1950 (India).

¹¹ Mental Health Care Act, 2017, § 3, No. 10, Acts of Parliament, 2017 (India).

The intention of the legislature to provide better opportunities and equal rights to people with unsound minds has paved the way for the intersection of psychology and law.

With increasing access to justice, situations will arise where mentally unsound individuals have to report to a courtroom. They can be a victim, perpetrator or a witness. The following paragraphs will discuss in detail, legal provisions (if) applicable in all three situations along with landmark judgements.

3. MENTALLY UNSOUND AS VICTIMS

A great number of studies and literature observe that mentally unsound individuals are at a higher risk of being victims. '*Victimization of People with Severe Mental Illness Outside and within the Mental Health Care System: Results on Prevalence and Risk Factors from a Multicenter Study*¹²' even talks about mentally unsound individuals being victimized inside the health care system by their care providers.

Since victimization rates are high, special provisions should be formulated in assistance of legal professionals and mentally unsound victims. The aim of these provisions or guidelines should be to sensitize legal professionals and to make them aware of various methods through which there can be an improved flow of communication. Other rules such as appointment of mental healthcare professions during a case with a mentally unsound victim, etc. should also be imposed. The objective should be to make mentally unsound victims as comfortable with their surroundings in a Courtroom as possible.

Although not many steps have been taken in this regard, the Supreme Court has passed several landmark judgements that have taken steps to make the Indian legal scenario more inclusive for mentally unsound victims.

In *Devendra @ Karan v State of Maharashtra*¹³, it was clearly established that burden of proof lies on the Prosecution if the victim claims to be mentally unsound and such a claim should be proved beyond reasonable doubt.

¹² Verena Rocco, Peter Schmid, Tilman Steinert, *Victimization of People With Severe Mental Illness Outside and Within the Mental Health Care System: Results on Prevalence and Risk Factors From a Multicenter Study*, NLM (2020)

¹³ *Devendra @ Karan v State of Maharashtra*, Criminal Appeal No. 487 of 2013.

In a 2017 Supreme Court judgement, *Chaman Lal v State of Himachal Pradesh*¹⁴ by Justices Ashok Bhushan, R. Subhash Reddy and MR Shah, a man was convicted of raping a mentally unsound girl. The IQ of the victim fell in the category of mild mental retardation and it was observed that the victim could not differentiate between the good or the bad. Since the victim did not understand the nature of the consequences, she was unable of giving an unequivocal consent.

In *Ravindra Kumar Dhariwal v Union of India*¹⁵, the Supreme Court discussed provisions regarding rehabilitating mentally unsound individuals. In another verdict, the Supreme Court observed that the testimony of a mentally unsound victim will be considered credible.¹⁶

In a one-of-a-kind case in 2017, the Supreme Court observed that the term ‘age’ in *POCSO Act*¹⁷ cannot be expanded to include ‘mental age’. In *Ms. Eera v State Government of NCT Delhi*¹⁸, Justice Dipak Misra observed that judiciary cannot make laws or comment on considering mental age as a factor in age under the *POCSO Act*¹⁹ for determining whether the victim is a child or not. In this case, an adult woman who suffers from cerebral palsy and therefore, has the mental age of an eight-year-old child, was raped. Her father, a doctor, filed the case and contended that the accused be charged under the *POCSO Act*²⁰.

4. MENTALLY UNSOUND AS PERPETRATORS

Having dealt with the position of individuals with unsound minds in the Indian legal scenario, it is essential to discuss the legal provisions that govern mentally unsound individuals who are the perpetrator. Under *Section 84 of the Indian Penal Code, 1860*, (IPC) any act committed by an individual, at the time of committing the act does not have the mental capacity to recognize or understand the nature and consequences of the said act, will not be counted as an offense. Such a situation is included in ‘General Exceptions’. In the case of *Shrikant Anandrao Bhosale v State of Maharashtra*²¹, the accused pled defense under *Section 84*²² and provided his

¹⁴ *Chaman Lal v State of Himachal Pradesh*, Criminal Appeal No. 1229 of 2017.

¹⁵ *Ravindra Kumar Dhariwal v Union of India*, Civil Appeal No. 6924 of 2021.

¹⁶ *Mentally Ill Woman's Testimony Valid: Supreme Court To Rape Convict*, NDTV (Aug. 12, 2021, 8:31 PM), <https://www.ndtv.com/india-news/mentally-ill-womans-testimony-valid-supreme-court-to-rape-convict-2509089>

¹⁷ Protection of Children from Sexual Offences Act, 2012.

¹⁸ *Ms. Eera v State Government of NCT Delhi*, Criminal Appeal No.1217-1219 of 2017.

¹⁹ *Supra* note 17.

²⁰ *Ibid.*

²¹ *Shrikant Anandrao Bhosale v State of Maharashtra*, AIR 2002 SC 3399.

²² Indian Penal Code, 1860, § 84, No. 45, Acts of Parliament, 1860 (India).

previous psychiatric treatment report that observed that the accused suffers from schizophrenia. He was acquitted.

If the accused has a mentally unsound mind when they were committing the alleged offence, it is expected to not be proved beyond a reasonable doubt. In the landmark judgement of *Prakash Nayi @ Sen v State of Goa*²³, the accused committed a murder and was charged under *Section 302*²⁴ however, he was able to prove that he was mentally unsound at the time of his act as he suffered from Schizophrenia till a reasonable point and was thus acquitted.

The main legal provisions applicable for administrating justice when an individual is the perpetrator are given in *Chapter XXV* of the *Code of Criminal Procedure, 1973* (CrPC) and are as follows:

4.1 SECTION 328²⁵- This section mandates evaluation by a medical professional to confirm the mental state of the individual and guarantees the postponement of trial for a short period till the person regains a sound state of mind. In *Mohan Lal @ Ranjan Mohan Bhatnagar v The State of NCT Delhi*²⁶, proper procedure under this section was followed and the individual went through a series of evaluations by doctors. Once it was confirmed that the individual was mentally unsound, the trial was postponed for a brief period. In the case *I.V. Shivaswamy v State of Mysore*²⁷, the Court states that such evaluation will take place only if the Court is satisfied that the accused is mentally unsound. Another High Court judgement says that the accused must not prove his insanity beyond a reasonable doubt.²⁸ The burden to prove insanity lies on the accused according to *Section 101 and Section 105 of the Indian Evidence Act, 1872*.

4.2 SECTION 329²⁹- Post-evaluation and confirmation of one's mental state, if the individual is incapable of defending themselves then the Court will hear the prosecution and examine the records. The mental state of the person will be treated as an essential fact in Court as seen in *Kulwinder Singh v State of Haryana*³⁰.

²³ Prakash Nayi @ Sen v State of Goa, Criminal Appeal No. 2010 of 2010.

²⁴ Code of Criminal Procedure, 1973, § 302, No. 02, Acts of Parliament, 1973 (India).

²⁵ Code of Criminal Procedure, 1973, § 328, No. 02, Acts of Parliament, 1973 (India).

²⁶ Mohan Lal @ Ranjan Mohan Bhatnagar v The State of NCT Delhi, Criminal Appeal No. 350 of 1997.

²⁷ I.V. Shivaswamy v State of Mysore, AIR 1971 SC 1638.

²⁸ Basit Amin Makhdoomi, *Accused Claiming Defence Of 'Unsound Mind' U/S 84 IPC Not Expected To Prove His Insanity Beyond Reasonable Doubt: Himachal Pradesh High Court*, LIVELAW (Aug. 12, 2023, 09:00 AM), <https://www.livelaw.in/high-court/jammu-kashmir/himchal-pradesh-high-court-ruling-burden-of-proof-insanity-plea-section-84-ipc-235032>

²⁹ Code of Criminal Procedure, 1973, § 329, No. 02, Acts of Parliament, 1973 (India).

³⁰ Kulwinder Singh v State of Haryana, AIR 2011 SC 1777.

4.3 SECTION 330³¹- Considering the procedure listed in *Section 328³²* and *Section 329³³*, the Court should release a mentally unsound individual or keep them under detention in a location where they can easily access treatment. This was noted in *Kanhaiya v State of UP³⁴*. In the judgement of *State of Maharashtra v Sindhi³⁵*, it was observed that if the accused was fully aware of the nature and the consequences of his act, he could not be declared as ‘incapable of defending himself’.

4.4 SECTION 331³⁶- If the inquiry or trial was postponed, the Court must summon the individual once they regain mental soundness.

4.5 SECTION 332³⁷- When the accused appears in Court and it can be noted that they are capable of presenting their defense, the investigation and trial will continue. If the person is unable to present their defense, then *Section 330³⁸* would be applicable.

4.6 SECTION 333³⁹- This section specifies that if a mentally unsound individual was of sound mind while they were committing the acts, the Court can proceed with the case.

4.7 SECTION 334⁴⁰- It is essential for the Court to state whether the accused committed the alleged offense or not if the Court accepts the plea of insanity. The accused must be unable to identify the nature of the act. Such procedure was followed in the case of *Abdul Latif v State of Assam⁴¹*.

4.8 SECTION 335⁴²- When an individual is acquitted on the grounds of insanity, they should either be detained in a safe space or with family members or friends provided they make such application to Court. If a family member or friend is undertaking the mentally unsound individual, they are responsible for the proper care of that individual while presenting that person for inspection whenever required by the State. In the case of *Niman Sha v State of*

³¹ Code of Criminal Procedure, 1973, § 330, No. 02, Acts of Parliament, 1973 (India).

³² Supra note 25.

³³ Supra note 29.

³⁴ *Kanhaiya v State of UP*, Criminal Misc. 3417 of 2018.

³⁵ *State of Maharashtra v Sindhi*, 1975 AIR 1665.

³⁶ Code of Criminal Procedure, 1973, § 331, No. 02, Acts of Parliament, 1973 (India).

³⁷ Code of Criminal Procedure, 1973, § 332, No. 02, Acts of Parliament, 1973 (India).

³⁸ Supra note 31.

³⁹ Code of Criminal Procedure, 1973, § 333, No. 02, Acts of Parliament, 1973 (India).

⁴⁰ Code of Criminal Procedure, 1973, § 334, No. 02, Acts of Parliament, 1973 (India).

⁴¹ *Abdul Latif v State of Assam*, 1981CRILJ 1205.

⁴² Code of Criminal Procedure, 1973, § 335, No. 02, Acts of Parliament, 1973 (India).

*M.P.*⁴³, the Court ordered the accused to be imprisoned at a mental hospital considering the grievous nature of the offense committed by him.

4.9 SECTION 336⁴⁴- This section empowers the officer in charge of the jail with all or specified powers of the Inspector-General of Prisons if a person is imprisoned under *Section 330*⁴⁵ or *Section 335*⁴⁶.

4.10 SECTION 337⁴⁷- If the mentally unsound individual is found to be capable of defending themselves, the Court can resume trial as seen in *Emperor v Motilal Hiralal*⁴⁸.

4.11 SECTION 338⁴⁹- If a person is detained on the grounds of insanity under *Section 330*⁵⁰, they can be released if an authorized person issues a certificate in this regard.

4.12 SECTION 339⁵¹- If a family member or a friend of the mentally unsound individual wants to keep the individual in their care post-release, they must apply to the State Government and demonstrate their ability to care for the individual. They will also be responsible to produce the individual before the court or for inspection whenever necessary.

5. CRITIQUES FOR THE PROCEDURE PRESCRIBED BY THE CRPC IN THE CASE OF MENTALLY UNSOUND INDIVIDUALS

*Section 330*⁵² provides that a mentally unsound individual can be kept in detention and the trial can begin once they regain mental soundness as per *Section 331*⁵³. However, these sections fail to provide a definite period of time for which individuals can be kept in detention. In addition, these sections also leave unspecified the time after which a trial can be held to reevaluate the situation of the individual. This might lead to incarceration for a longer period than necessary and therefore, is in direct violation of the rights of people. Such arbitrary use of power and incarceration of individuals can be seen in *Veena Sethi v State of Bihar*⁵⁴ where individuals were put in detention for being incapable of defending themselves. The Supreme Court ordered

⁴³ Niman Sha v State of M.P., 1997 (1) MPLJ536.

⁴⁴ Code of Criminal Procedure, 1973, § 336, No. 02, Acts of Parliament, 1973 (India).

⁴⁵ Supra note 31.

⁴⁶ Supra note 42.

⁴⁷ Code of Criminal Procedure, 1973, § 337, No. 02, Acts of Parliament, 1973 (India).

⁴⁸ Emperor v Motilal Hiralal, (1921) 23 BOMLR 884.

⁴⁹ Code of Criminal Procedure, 1973, § 338, No. 02, Acts of Parliament, 1973 (India).

⁵⁰ Supra note 31.

⁵¹ Code of Criminal Procedure, 1973, § 339, No. 02, Acts of Parliament, 1973 (India).

⁵² Supra note 31.

⁵³ Supra note 36.

⁵⁴ Veena Sethi v State of Bihar, AIR 1983 SC 339.

their release as they were in jail for a period longer than what is allowed. Such an elongated incarceration was also observed in *District Agra v The State of UP*⁵⁵ where the accused was released decades later despite regaining their mental sanity.

Landmark judgements such as *Hussainara Khatoon v Home Secretary*⁵⁶ upholding the right to a speedy trial guaranteed by *Article 21*⁵⁷ must be considered and a time limit must be set within which a trial should begin. Adopting such procedure will uphold the rights of the detainees while also possibly avoiding situations like stale or tampered evidence. It also promotes right to a fair trial.

Postponement of trial in accordance with *Section 328*⁵⁸ would only work in cases where the mentally unsound individual is suffering from a treatable condition. If the individual is suffering from an incurable disease, they should be released from detention and their charges dropped. Only when there is no family member or friend available to take care of the mentally unsound, should the State resort to detention and provide them with a safe space and continuous treatment. If possible, the individual should be detained in a psychiatric unit so they can receive the continuous care.

6. MENTALLY ILL AS WITNESSES

Although there is a variety of legal provisions governing individuals with an unsound mind when they are the perpetrator, there is only one provision regarding individuals with unsound mind when they act as a witness. *Section 118 of the Indian Evidence Act, 1872* provides guidelines on who qualifies as a witness.

Looking at the section as a whole, it has been explicitly mentioned that a mentally unsound individual can qualify as a witness provided, they understand the questions that are being posed to them and are able to provide rational answers to those questions. This is a globally accepted stance regarding mentally unsound individuals as witnesses. “*If a person of unsound mind has sufficient mental capacity to remember and communicate what he has perceived and to understand the obligation to tell the truth under the sanction that the local practice imposes, he is competent to testify.*”⁵⁹

⁵⁵ *District Agra v The State of UP*, AIR 1983 SC 339.

⁵⁶ *Hussainara Khatoon v Home Secretary*, 1979 AIR 1369.

⁵⁷ *Supra* note 2.

⁵⁸ *Supra* note 25.

⁵⁹ Michael M. Martin, *Challenging Witness Competency*, FLASH (1990).

According to the guidelines released by the Delhi High Court, the competency of a mentally unsound individual can be tested through a simple competency examination before recording the evidence. Such an examination can be conducted by the prosecution, the defense or Suo-motu⁶⁰.

Section 65B of the Indian Evidence Act, 1872 provides for a disabled witness to give their testimony regarding a case through video conferencing. This provision was upheld in the landmark judgement of *State of Maharashtra v Dr. Praful Desai*⁶¹. The term 'disabled witness' can be extended to include individuals of unsound mind, therefore, making it possible for them to give testimonials through video conferencing and making the environment more inclusive. Guidelines released by the Delhi High Court also provide a provision under Guideline 32 regarding mentally unsound witness providing testimony via live-link television⁶².

In the landmark judgement *Patan Jamal Vali vs. State of Andhra Pradesh*⁶³ by the Supreme Court observed that testimony of a disabled witness will not be considered weak or inferior. The Court further issued guidelines to make the Indian legal system more inclusive and disabled-friendly. The division bench of Justices DY Chandrachud and MR Shah stated that such testimony must be treated on an equal footing as the testimonies of other able-bodied individuals.

In *Smruti Tukaram Badade v State of Maharashtra*⁶⁴, the Supreme Court expanded the definition of 'vulnerable witnesses' to include 'age and gender-neutral victims and witnesses suffering from mental illnesses.' The division bench of Justices DY Chandrachud and Surya Kant directed all the High Courts to notify a Vulnerable Witness Disposition Centre (VWDC). They also appointed the former Chief Justice of Jammu and Kashmir High Court, Gita Mittal as the chairperson of the committee to design and implement an all-India VWDC training program for better management and sensitization on a wider scale⁶⁵.

⁶⁰ Delhi High Court, *Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters*, https://delhicourts.nic.in/ejournals/Vulnerable_Witness_Guidelines.pdf

⁶¹ *State of Maharashtra v Dr. Praful Desai*, AIR 2003 SC 2053.

⁶² *Supra* Note 60.

⁶³ *Patan Jamal Vali vs. State of Andhra Pradesh*, Criminal Appeal No. 452 of 2021.

⁶⁴ *Smruti Tukaram Badade v State of Maharashtra*, Criminal Appeal No 1101 of 2019.

⁶⁵ SC Expands Definition of 'Vulnerable Witness' to Include Sexual Assault Victims, Mentally Ill, , THE WIRE (Jan. 12, 2022), <https://thewire.in/law/sc-expands-definition-of-vulnerable-witness-to-include-sexual-assault-victims-mentally-ill>

This was implemented in conformation with the guidelines ‘*Vulnerable Witness Guidelines*⁶⁶’ formulated by the Delhi High Court. In a 2017 judgement by the apex court, *State of Maharashtra v Bandhu*⁶⁷, the setting up of VWDC was made mandatory. It was further observed that in every High Court jurisdiction, there must be at least two Centres that should be set up and more Centres can be built based on requirement.

7. HOW TO MAKE THE ENVIRONMENT MORE INCLUSIVE?

With increasing access to justice and the spreading idea of equality, there may be instances where counsels come across victims or witnesses who are mentally unsound. Counsels might face discomfort due to misconceptions that they have when preparing such mentally unsound individuals for a trial. Legal provisions should be formulated to promote a more inclusive environment and to make the counsels fully-equipped to deal with any situation that they may come across. Few suggestions, taken after existing policies in other countries, to make the Indian legal scenario more inclusive are as follows-

7.1 Awareness must be spread and professionals should be sensitized and made comfortable in communicating with mentally unsound individuals.

7.2 A community or group should be made that can help and provide guidance to legal professionals with any barriers they face while preparing a mentally unsound individual for trial. Professionals in therapeutic disciplines such as psychiatrists, psychologists, etc. and other individuals with disabilities should be included to provide better quality of help.⁶⁸

7.3 Clear communication between the counsel and mentally unsound individual are of paramount importance. The proper procedure of a trial should be explained in detail mandatorily.

7.4 If needed, the counsel should ask for reasonable accommodations well-in-advance from the Judge and the opposite party.

7.5 A mental healthcare professional should be appointed for every case so that they are present if needed on an emergency basis. ‘*Vulnerable patients going to court: a psychiatrist's guide to*

⁶⁶ Supra 60.

⁶⁷ State of Maharashtra v Bandhu, AIR 2017 SC 5414.

⁶⁸ Victims, Witnesses, and Defendants with Mental Illness or Intellectual and Developmental Disabilities A Guide for Prosecutors, <https://bja.ojp.gov/sites/g/files/xyckuh241/files/media/document/victims-witnesses-defendant.pdf> NCJ Number 300460 <https://www.justice.gov/ag/page/file/1546086/download> (February 2020).

*special measures*⁶⁹ supports a similar stance and encourages the appointment of such professionals for a smoother flow of legal procedure.

7.6 Government should provide facilitators to bridge the communication gap between the legal counsels and the mentally unsound individual.

7.7 Special Acts governing trial proceedings and other legal matters for mentally unsound individuals as the victim and the witness should be prepared. Documents such as;

- '*Victims, Witnesses, and Defendants with Mental Illness or Intellectual and Developmental Disabilities - A Guide for Prosecutors*⁷⁰' and,

- '*The Attorney General Guidelines for Victim and Witness Assistance*⁷¹' by the U.S. Department of Justice,

- '*Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Cognitive Disabilities)*⁷²' by the Israel justice system,

- '*Equality, Capacity And Disability In Commonwealth Laws (DP 81)*⁷³' by the Australian Law Reform Commission,

- '*Vulnerable Adult Witnesses: The perceptions and experiences of Crown Prosecutors and Victim Services Providers in the use of testimonial support provisions*⁷⁴' by the Government of Canada,

⁶⁹ Penny Cooper, Janet Grace, *Vulnerable patients going to court: a psychiatrist's guide to special measures*, NLH (2016).

⁷⁰ Supra 68.

⁷¹ United States Department of Justice, Attorney General's Advisory Committee, 'The Attorney General Guidelines for Victim and Witness Assistance,' Cyber-Digital Task Force, Report to the Attorney General of the United States (2022), <https://www.justice.gov/ag/page/file/1546086/download>

⁷² Neta Ziv, "Witnesses with Mental Disabilities: Accommodations and the Search for Truth — The Israeli Case," *Disability Studies Quarterly*, Volume 74, No.4 (2007), (2005?) available at: <https://dsq-sds.org/index.php/dsq/article/view/51/51>

⁷³ Australian Law Reform Commission, '7. Access to Justice – Witnesses,' *Equality, Capacity and Disability in Commonwealth Laws (DP 81)*, Report of the Australian Law Reform Commission (2014), <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-dp-81/7-access-to-justice/witnesses/>

⁷⁴ Department of Criminal Justice, 'Vulnerable Adult Witnesses: The perceptions and experiences of Crown Prosecutors and Victim Services Providers in the use of testimonial support provisions,' Reports of the Government of Canada, Department of Criminal Justice (2021), https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_15a/p1.html

- ‘EVIDENCE OF VULNERABLE PERSONS: SPECIAL PROVISIONS’⁷⁵,
- ‘Achieving justice for victims and witnesses with mental distress’⁷⁶ and,
- ‘Supporting victims and witnesses with mental health issues’⁷⁷ by the UK Parliament should be referred to while preparing legal provisions to encourage inclusivity.

8. BHARATIYA NAGARIK SURAKSHA SANHITA AND BHARATIYA NYAYA SANHITA: THE NEW CRPC AND IPC RESPECTIVELY

The term ‘mentally unsound’ has been replaced with ‘mental illness’ in *Bharatiya Nagarik Suraksha Sanhita*⁷⁸ and is said to have the same definition of mental illness as provided in *Mental Health Care Act, 2017*. There are no major changes in BNSS regarding the procedure that must be followed.

In *Bharatiya Nyaya Sanhita*⁷⁹, the term ‘unsound mind’ has been replaced with ‘mental illness’ and has the same definition as given in *Mental Health Care Act, 2017*. Additionally, it also includes and provides a defense to individuals who abuse drugs and alcohol. The major difference is that individuals who voluntarily over-indulge themselves with alcohol and substances may be able to take ‘mental illness’ as a defense for an act committed in an intoxicated state. This is in direct contravention to provisions in the IPC that only provided a defense for involuntary intoxication.

9. CONCLUSION

‘While on the one hand a human rights discourse drives the law, its application in concrete cases brings to the surface tensions emanating from the intersection of different conceptual categories that may not always be in the best interest of the individual petitioner or of the

⁷⁵ Commons Sitting, ‘EVIDENCE OF VULNERABLE PERSONS: SPECIAL PROVISIONS,’ Parliament of the United Kingdom (1997), <https://api.parliament.uk/historic-hansard/commons/1997/jan/20/evidence-of-vulnerable-persons-special>

⁷⁶ ‘Achieving justice for victims and witnesses with mental distress A mental health toolkit for prosecutors and advocates,’ Mind UK, https://www.mind.org.uk/media-a/4325/prosecutors__toolkit.pdf

⁷⁷ Crown Prosecution Service, ‘Supporting victims and witnesses with mental health issues,’ Crown Prosecution Service (2009), https://www.cps.gov.uk/sites/default/files/documents/publications/supporting_victims_and_witnesses_with_mental_health_issues.pdf

⁷⁸ THE BHARATIYA NAGARIK SURAKSHA SANHITA, Bill No. 122 of 2023., Acts of Parliament, 2023.

⁷⁹ THE BHARATIYA NYAYA SANHITA, Bill No. 121 of 2023., Acts of Parliament, 2023.

*disabled in general.*⁸⁰

This paper discussed in detail, with the help of landmark judgements and statutes, the position of mentally unsound individuals in the Indian legal system and elaborated on the intersection of law and psychology in a courtroom. Three scenarios were visited: mentally unsound individual as a victim, perpetrator and witness.

It is followed by a critique of the existing provisions in the legal scenario while providing alternatives and other remedies regarding making the environment more inclusive for mentally unsound individuals. India has taken considerable steps to make the legal scenario more inclusive.

Post-amendment in the Rights to Persons with Disability Act in 2016 and following up on the *Justice Sunanda Bhandare Foundation v Union of India*⁸¹ judgement, the Supreme Court mandated setting up special courts in every district for trying disabled individuals for offences. In *State of Maharashtra v Bandhu*⁸², the Court further mandated the employment of a Special Public Prosecutor in every district to uphold the rights of a speedy trial of mentally unsound individuals. The Supreme Court observed in *Karamjeet Singh v Union of India*⁸³ that a third party can file a case and lodge a complaint on behalf of a person who is unable to do so because of his disabilities.

Despite many positive changes to the vast and procedurally dense Indian legal framework, there remains much ground to be covered to integrate those with unsound minds into the mainstream framework. Multiple acts and legislative intent have begun the transition to mainstream integration but without follow-through and a complete understanding of the many requirements people with unsound minds pose, it remains a challenge to equalize the 'legal playing field' for all.

⁸⁰ Renuka Addlakha, Saptarishi Mandal, 'Disability in India: Paradigm Shift or Evolving Discourse?,' Economic and Political Weekly, Vol. 44 No. 41/42 (2009), <https://www.jstor.org/stable/25663681?seq=7>

⁸¹ Justice Sunanda Bhandare Foundation v Union of India, Writ Petition (Civil) No. 116 of 1998.

⁸² Supra Note 67.

⁸³ Karamjeet Singh v Union of India, AIR 1993 SC 284.