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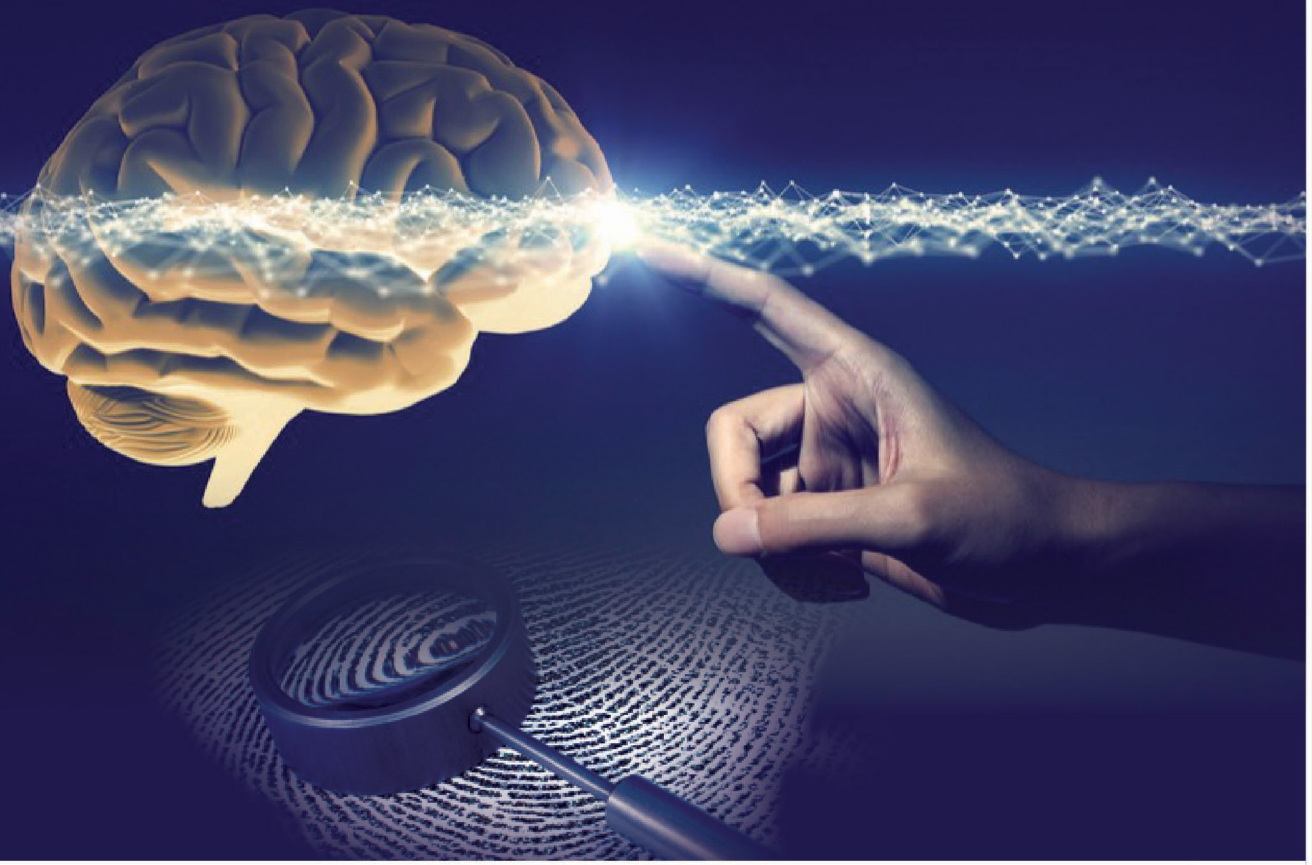
FORENSIC PSYCHIATRY

AN INDIAN PERSPECTIVE



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CHAPTER

3

Law and Psychiatry in India

LEARNING OBJECTIVES

- Indian Medical Council Act, 1956
- Narcotic Drugs and Psychotropic Substances Act (NDPSA), 1985
- Consumer Protection Act, 1986
- Mental Health Act (MHA), 1987
- Rehabilitation Council of India Act (RCI Act), 1992
- Protection of Human Rights Act (PHR Act), 1993
- Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act (PWD), 1995
- National Trust for the Welfare of the Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act (NTA), 1999
- Cigarette and Other Tobacco Products Act (COTPA), 2003
- Right to information Act (RTI Act) 2005
- Protection of Women from Domestic Violence Act (PWDVA), 2005
- United Nations Convention for Rights of Persons with Disabilities (UNCRPD), 2006
- Protection of Children from Sexual Offences Act (POCSO Act), 2012
- Transplantation of Human Organ Act, 2014
- Rights of Persons with Disabilities Act (RPWD Act), 2016
- Mental Healthcare Act (MHCA), 2017
- Marriage and divorce related Acts
- Indian contract laws
- Laws concerning criminal responsibility

LAW AND PSYCHIATRY IN INDIA

Law in India refers to the legal system operative in the country. If we look back at the ancient times, there was a discrete tradition of law having an autonomous school with legal theory and practice. In India, there is an illustrious history of law as a part of religious prescriptions and philosophical sermon.[1] The legal system was broadly based on explicitly defined and elaborately practiced social institution of caste-system established by a divine ordinance or at least with divine approval according to Hindu religious scriptures.[2] Legitimizing the caste-system, Lord Krishna says, "I myself have created the arrangement known as *Chaturvarna* assigning them different occupations in accordance with their deeds of previous lives." (Gita IV, 13). Bhagwad Gita, the most revered holy book for an ordinary Hindu describes one's social and legal status on the basis of law of *karma* based on the deeds of the previous lives. This concept

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presupposes a series of birth, *Karma* and rebirth justifying every social and legal inequality in the country. The *Arthashastra* which dates back to 400 BC and the *Manusmriti* to 100 AD were significant treatises in the past, texts that were once considered to be influential legal documents.[3] Manu's essential philosophy comprised of tolerance and pluralism and provided differential penalty for the offenders in accordance with their caste hierarchy. Brahmins enjoyed immunity against capital punishment; *brahm-hatya* (killing of a Brahmin) being a sinful act. [Manusmriti VIII, 89] If a *shudra* offended a Brahmin, the punishment accorded was severest [Manusmriti VIII, 267] in comparison to others for the same crime.

In the Islamic regime, *Sharia* law approached India, but was made applicable mostly to the Muslim population. But later, as India became part of the British Empire, there was a disruption in this tradition, Hindu and Islamic laws were replaced by the common law. Thus, the present judicial system of India is derived largely from the British system and while having little correlation to the institutions in the Pre-British era.[3] Much of the modern Indian Laws are based on English Common Law with a considerable influence of Europe and America. Several legislations introduced by British are still operational in independent India. Thus, the roots of most of the legislations related to mentally ill can be drawn back to the British period. There is a dynamic association between the concept of mental illness, their treatment and the law.[4,5] Psychiatrists are largely concerned with dangerousness, competency determination, diminished responsibility and/or the welfare of society,[6] most of the earlier legislations for mentally ill were concerned with these aspects.

Historically, the relationship between law and psychiatry comes at the time of management of the mentally ill which often involves limiting personal liberty of the patient. Most countries in the world have laws which regulate treatment of patients with psychiatric illlness. Although there are intricate descriptions of several forms of mental disorders in Ayurveda, an Indian system of medicine,[7] Britishers invented the care of mentally ill in the asylums in India.[8] After the English began to exercise their political power in India, a chain of lunatic asylums came along the coast-line of Indian peninsula governed by the English Lunacy Acts. After the First War of Independence in 1857, numerous laws were introduced in rapid succession for establishing and regulating the asylums and providing custodial care for the mentally ill.[9] These laws are:

1. The Lunacy (Supreme Courts) Act, 1858
2. The Lunacy (District Courts) Act, 1858
3. The Indian Lunatic Asylum Act, 1858 (with amendments in 1886 and 1889)
4. The Military Lunatic Act, 1877.

These Acts reflect the legalistic casing for the custodial management of the person with mentally illness without protecting the interest of the inmates.[10] In first decade of the 20th century, awareness in public about the terrible conditions of the asylums heightened the enactment of Indian Lunacy Act 1912 (Act 4), which has guided the destiny of Psychiatry in India.[11] This act clearly defined the procedure of admission and certification. The provision for voluntary admission was added with emphasis on preventing the society from dangerousness of mentally ill. In 1920, Lunatic asylums were re-named as mental hospitals with central supervision. The same year, the control of administration of these hospitals was given from

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passed prison authorities to the medical personnel. The Act also provided provisions of judicial inquisitions for mentally ill persons.[12]

During the early part of the 20th century, several significant developments in mental health branch took place which brought a paradigm shift in care of mentally ill. Psychiatry began to move out of the traditional mental hospital confines to the general hospitals with improved treatment modalities in the form of electroconvulsive therapy and anti-psychotic medication making it conceivable to effectively treat the persons with mentally illness.[13] After World War II took place, UN General Assembly in 1948 adopted the Universal Declaration of Human Rights (UDHRs). Article 1 of the UDHRs provides that "all people are free and equal in rights and dignity, establishing that people with mental disabilities are protected by human rights law by virtue of their basic humanity".[14] Indian Psychiatric Society, founded in 1947, submitted a draft in 1949 called Mental Health Bill which was to substitute the outdated ILA-1912 as it had outlived its utility in the light of ongoing developments in the mental health care. After several efforts, Mental Health Act (MHA-1987) came into existence 1987.[15]

Legislations drafted in 1980s onwards emphasize on the rights of person mentally ill. People with mental illness have historically been victimized by family members, care-givers, professionals, law enforcing agencies, friends and institutions mostly because of their susceptibility to abuse and violation of their basic human rights. Subsequent Acts set an imperative for a mechanism that protects and ensure appropriate, suitable, timely, and humane services to health care. These mechanisms include legislative provisions and policies to ensure protection of the rights of the vulnerable group.[16] National Mental Health Programme (NMHP, along with its functional arm, the District Mental Health Programme, DMHP) was launched in 1982 to bring the mental healthcare services at patients'door-step.[17,18] Following are the mental health related Acts introduced in 1980s and later:

Legal statutes concerning mental health establishments and deaddiction:

- Narcotic Drugs and Psychotropic Substances Act (NDPSA), 1985.
- Mental Health Act (MHA), 1987
- Mental Healthcare Act (MHCA) 2017

Legal statutes concerning substance of abuse:

- Narcotic Drugs and Psychotropic Substances Act (NDPSA), 1985
- Cigarette and Other Tobacco Products Act (COTPA), 2003

Legal statutes concerning medical jurisprudence:

- Indian Medical Council Act, 1956
- Consumer Protection Act, 1986

Legal statutes concerning protection and promotion of rights of persons with disability:

- Protection of Human Rights Act (PHR Act), 1993
- Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act (PWD), 1995
- National Trust for the Welfare of the Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act (NTA), 1999
- Right to Information Act (RTI Act), 2005

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- United Nations Convention for Rights of Persons with Disabilities (UNCRPD), 2006
- Rights of Persons with Disabilities Act (RPWD Act), 2016

Legal statutes concerning interface of civil law and mental health:

- Marriage and divorce related Acts
- Indian contract laws
- Protection of Women from Domestic Violence Act (PWDVA), 2005
- Transplantation of Human Organ Act

Legal statutes concerning interface of criminal law and mental health:

- Protection of Children from Sexual Offences Act (POCSO Act), 2012
- Laws concerning criminal responsibility

Legal statutes concerning mental health professional training:

- Rehabilitation Council of India Act (RCI Act), 1992

LEGAL STATUTES CONCERNING MENTAL HEALTH ESTABLISHMENTS AND DEADDICTION

1. *The Narcotic Drugs and Psychotropic Substances Act (NDPSA), 1985:* This Act consolidates and amends the various provisions for controling and regulating operation related to narcotic drugs and psychotropic substances under the Opium Act, 1878 and the Dangerous Drugs Act, 1930. The Act was amended in 1989, 2001 while the latest amendment in 2014. The last amendment was aimed at ensuring essential opioid medicines for medical use, which was tragically difficult in the previous Acts. Spread in eight chapters, the Act enlists punishments for production, possession, transportation, trading, purchase and use of any of the listed substances. It also provides immunity form punishment to persons using small quantity for personal consumption by giving them option for availing for deaddiction services at nearest designated mental health facility.[19]
2. *Mental Health Act 1987:* This Act came after 40 years of independence of the country repealing the Indian Lunacy Act of 1912. In the definition of mental illness the act excludes mental retardation and stresses upon treatment rather than just custodial care. However, the Act continues with the practice of admission under reception order and the tradition of custodial care. It empowers the central and state governments for the establishing of Mental Health Authority for the regulation and supervision of the psychiatric hospitals/nursing homes and for advising Central/State Governments on matters related to mental health. There is a provision of admission under certain special circumstances in a psychiatric hospital/nursing home which is included (Section 19) in addition to admission on the reception orders and voluntary admission. Emphasis is also made on the protection of human rights of the mentally ill in this Act[18] without addressing the fundamental rights of the patients.[20]

   The Act mainly concentrates on the various legal procedures related to licensing, regulation of admissions and matters related to guardianship of the mentally ill.

   Considering its relevance in current context, the MHA, 1987 suffers from glaring omissions which included:

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- It does not address the fundamental right "right to life and liberty"enshrined in constitution under article 21. It provides that no one should be deprived of these basic rights except according to procedures established by law. Thus, arbitrarily keeping persons with mental illness in closed ward in mental hospitals without any review mechanism under perview of Mental Health Act is unconstitutional.
- The Act excluded mental retardation with the good will of preventing undue institutionalization of such persons, but persons with mental retardation with significant behavioral problems requiring admission were kept out of the therapeutic benefits offered under this Act.
- The Act only covered psychiatric hospitals/nursing homes and excluded other places like persons with mental illness are kept on name of deaddiction, rehabilitation or religious healing, leaving them to follow unstandardized practices.
- The Act just focused on hospital-based custodial care, ignoring community care.
- The Act failed to give prominence to choices of persons with mental illness as individual or regarding range of treatment.
- The Supreme Court of India has stated that all doctors, whether in a government hospital or otherwise have a professional responsibility for rendering medical services when required during emergency situations with due expertise for protecting life, but this Act fails to provide provision for emergency care for helping families of mentally ill.
- The Act has many good principles, but even after decades of enactment, many states did not make rules for implementation and some states did not constitute state mental health authorities.

  Human rights activists have questioned about the MHA (1987) regarding its constitutional validity and the Act was repealed by Mental Healthcare Act, 2017.[21]

3. *Mental Healthcare Act (MHCA), 2017:* In compliance with the international instruments United Nations Convention on Rights of Persons with Disabilities (UNCRPD), the Indian parliament enacted Mental Health Care Act, 2017 which came on 7th April 2017 to deliver mental healthcare and services for the mentally ill. The Act provides to guard, promote and fulfill the rights of persons with mental illness during delivery of mental health care and services and for all matters connected therewith or incidental thereto.

- Act defines mental illness and mandates practitioners to make diagnosis only in harmony with nationally and internationally acknowledged medical standards (including latest edition of International Classification of Disease (ICD) of the World Health Organization, WHO).
- It talks about fundamental rights of persons with mental illness and makes it duty of government and healthcare providing agencies to ensure they are delivered and adequate safeguard mechanism are in place to prevent its abuse.
- It brings under its ambit all mental health establishments, whether government or non-government, being used for therapeutic or rehabilitative purpose of all modalities of healing (medicianal like allopathic, ayurvedic, unani, homeopathy, siddha or religious). All such organizations keeping mentally ill persons will have to follow the standard prescribed regulations for licensing.

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- The Act aims for decriminalizing the attempt to commit suicide by seeking to warrant that the persons who have attempted suicide are offered opportunities for rehabilitation from the law in contrast of being tried or punished for the same.
- It empowers mentally ill persons with a variety of rights, permitting them to make decisions in relation to their health, given that they have the capacity to make decision about treatment and care.
- It brings in mechanism of review boards for safeguard of any violation of rights of persons with mental illness,
- Insurers now inevitably have to make provisions for medical insurance for treatment of mentally ill on the basis similar to what is available for treatment of physical ailments.[22,23]

Legal statutes concerning substance of abuse

4. *Narcotic Drugs and Psychotropic Substances Act (NDPSA), 1985. (already discussed)*
5. *The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) COTP Act, 2003:* This Act repealed The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 in compliance with the Resolution which was passed by the 39th World Health Assembly, advising the member states to implement the various measures for providing non-smokers a protection from involuntary exposure to tobacco smoke.[24]

- It prohibits advertisement of cigarette and other tobacco products and provides for the regulation of trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products in India.[25]
- It prohibits smoking of tobacco in public places, except in special smoking zones assigned for the purpose.
- It prohibits advertisement of tobacco products including cigarettes. No person shall participate in advertisement of tobacco product, or allow a medium of publication to be used for advertisement of tobacco products.
- No person shall sell video-film of such advertisement, distribute leaflets, documents, or give space for erection of advertisement of tobacco products. However, restricted advertisement is allowed on packages of tobacco products, entrances of places where tobacco products are sold. Surrogate advertisement is prohibited as well under the Act.

Legal statutes concerning medical jurisprudence

6. *The Indian Medical Council (IMC) Act, 1956:* The Act provides for the constitution of the Medical Council of India (MCI). The MCI regulates standards of medical education, permission to start new medical colleges, medical courses or increase the number of seats, registration of doctors, standards of professional conduct of medical practitioners. The Medical Council of India was established in 1934 under the Indian Medical Council Act, 1933. In 1956, the old Act was repealed and a new one was enacted. This was further modified in 1964, 1993 and 2001. The government superseded the MCI by issuing an ordinance in May 2010. The Central Government constituted the board of governors (BoG), comprising of not more than 7 members with one of them as chairperson till the new council was to be elected (time frame given was of 2 years). The government was liable to get the ordinance converted into a bill within 6 weeks from the date of the commencement of Parliament.

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Since then, the health ministry sought extension of the tenure of BoGs many times. It is planned to replace it with national medical council.[10]

7. *The Consumer Protection Act (CPA), 1986:* The Consumer Protection Act was passed on 24th December, 1986 for the better protection of the interest of consumers and to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer's dispute and for matters connected therewith.[25] Till 1995, even courts were not clear whether doctors are covered under consumer protection Act or not. In a landmark case in 1995, the Supreme Court decision in Indian Medical Association vs VP Shantha, medical profession has been brought under the Section 2(1) (o) of Consumer Protection Act, 1986 and also, it has included the following categories of doctors/hospitals under this Section:

- All medical/dental practitioners doing independent medical/dental practice unless rendering only free service.
- Private hospitals charging all patients.
- All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.
- Medical/dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee.

The medical profession has also been included within the ambit of a 'service' as defined in the Consumer Protection Act; 1986. This defined the relationship between patients and medical professionals as contractual and not a master-servant relationship as argued by the medical professionals. Patients who had sustained injuries in the course of treatment can now sue doctors in consumer protection courts for compensation.

As per the Consumer Protection Rules, 1987, the maximum time limit for a claim to be filed under CPA is 2 years from the date of occurrence of the cause of action. There are no court fees to be paid to file a complaint in a Consumer Forum/Commission. Further, a complainant/opposite party can present his case on his own without the help of a lawyer.

The courts have responsibility to punish the doctors who are guilty and at the same time to protect the honest doctors from undue harassment at the hands of patients and their relatives.

Legal statutes concerning protection and promotion of rights of persons with disability

8. *Protection of Human Rights Act (PHRA), 1993:* This is an Act for providing the constitution of a National Human Rights Commission (NHRC), State Human Rights Commission in States and Human Rights Courts for enhanced protection of human rights and for matters connected therewith or incidental thereto. This was introduced in 1993, and was amended in 2006. NHRC has been influential in bringing many mental health reforms in past two decades.[26]
9. *Persons with Disabilities Act (PDA), 1995:* Persons with Disabilities Act (PDA), 1995 was enacted to eliminate discriminations and to avert abuse and exploitations of persons with disability. It provides barrier free environment and spelled out responsibilities for the government for planning strategies for a comprehensive development programs and special provision for amalgamation of disabled into the social mainstream. Under this Act,

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both mental retardation and mental illness are categorized in conditions of disability. Thus, the mentally ill are also enabled to benefits which are available to disabled as provided under the Act. This Act is reviewed in the light of the UNCRPD-2006.[27]

10. *National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999:* This Act seeks to provide for the 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 connected, to enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong and to facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability.[28]
11. *Right to Information Act (RTI Act), 2005:* In 2005, the Parliament enacted—Right to Information Act (2005).[29] The legislation confers on all citizens the right of access to the information and, correspondingly, makes the dissemination of such information an obligation on all public authorities (any government or non-government agency owned, controlled, regulated or substantially financed by government), promoting transparency and accountability. Interestingly, the Act in section 8, restricts to disclose any information provided under fiduciary relationship like that of doctor-patient relationship. But the appellate authority, central information commission (CIC) in some specific instances have instructed hospitals to provide medical records under RTI including sensitive psychiatry case records over riding code of medical ethics regulation, 2002 of confidentiality. Also, Prabhat Kumar vs Directorate of Health Services, 2014 case, CIC extended its coverage over to private hospitals stating since private hospitals are under regulations of public authority like IMC Act, CPA Act, Directorate of Health Services and Clinical Establishments (Registration & Regulation) Act 2011.[30] It stated that all hospitals whether private or government are under jurisdiction of RTI and all hospitals have duty to provide information in compliance with IMC Act, CPA and RTI Act.
12. *United Nations Convention for Rights of Persons with Disabilities (UNCRPD), 2006:* UNCRPD was adopted in December 2006; India ratified it in May, 2008. The countries that have signed and ratified it have an obligation to harmonize their laws and policies in tune with it. This convention has been a paradigm shift with regards to disabilities changing from a social welfare domain to a human right matter. This new paradigm is founded on conjecture of legal capacity, equality and dignity. Article 3 enlists the general principles of equality, non-discrimination, accessibility, respect for inherent dignity and individual autonomy. According to Article 12 of the convention, person with disability will enjoy legal capacity on an equal basis for all aspects of life. Article 4 makes it obligatory responsibility of state to provide "reasonable accommodation", i.e. make appropriate modifications in existing system so that persons with disability can enjoy the entitlements without discrimination. Article 15 calls for freedom from inhuman or degrading treatment and article 16 calls for freedom from exploitation, violence and abuse. It explicitly prohibits any kind of forced treatment or restriction on one's liberty on grounds of disability without consent of person. It lays down right to health, right to access treatment and related information, lays down standards of living for persons with disability and mandates putting up adequate safeguard mechanisms in place as oversight monitoring agencies.[31-34]

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Legal statutes concerning interface of civil law and mental health

13. *Indian contract laws:* According to Indian Contract Act, 1872, any person of sound mind can make a contract. Section 12 of the Act stipulates that a person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. It means a person with mental illness who is currently free of the psychotic symptoms can make a contract, whereas a person who is currently intoxicated or delirious cannot make a contract.[33]
14. *Marriage and divorce:* Under Hindu Marriage Act, 1955, conditions in respect of mental disorders, which must be fulfilled before the marriage is solemnized under the Act,[35] are as follows:

- Neither party is incapable of giving a valid consent as a consequence of unsoundness of mind.
- Even if capable of giving consent, must not suffer from mental disorders of such a kind or to such an extent as to be unfit for marriage and the procreation of children.
- Must not suffer from recurrent attacks of insanity.

The expression "mental disorder" means mental illness, arrested or incomplete development of mind. The expression "psychopathic disorder" means a persistent disorder or disability of the mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.

Marriages in contravention to the provision in respect of mental disorders come under voidable category. Voidable marriages (Sec. 12) are those which may be annulled by a decree of nullity on the given grounds but may continue to be legal till the time it is annulled by a competent court. According to the Section 13 of the Act, divorce or judicial separation can be obtained if the person has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. The expression "incurably" of unsound mind cannot be so widely interpreted as to cover feeble minded persons or persons of dull intellect who understand the nature and consequences of the act and are therefore able to control them and their affairs, and their reaction in the normal way [A.I.R. 1969 Guj-48 and 78 CLT (1994) 561]. When there was sufficient evidence for the court to conclude that the slight mental disorder of the wife was not of such a kind and to such an extent that the husband could not reasonably be expected to live with her, divorce could not be granted (A.I.R., 1982 CAL 138). Each case of schizophrenia has to be considered on its own merits.[16] Under Special Marriage Act, 1954, the grounds for marriage, divorce and judicial separation are practically the same as those in the Hindu Marriage Act, 1955. The Special Marriage Act, 1954 is meant for any person in India and Indian nationals abroad, irrespective of the faith that the individual may profess. A marriage solemnized in any other form can be registered under this Act.[35]

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Under the prevalent Muslim Law, marriage is a type of contract. Therefore, a Muslim who is of sound mind and has attained puberty is qualified to marry. However, if the guardian of a person of unsound mind considers such a marriage to be in his interest and in the interest of society and is willing to take up all the monetary obligations of the marriage, then such a marriage can be performed. *Talaq* (divorce) under Muslim Law has to be for a reasonable cause and must be preceded by attempts for reconciliation by two arbiters. In practice, a Muslim has the right to divorce his wife merely by pronouncing the word Talaq thrice, however, this practice is under criticism and a bill against it is pending in the parliament. According to Muslim Marriage Act, 1939, a woman married under Muslim Law is entitled to obtain a decree of divorce if her husband has been insane for a period of 2 years.

Under Christian Law, marriage is voidable, if either party was a lunatic or idiot. Christians can obtain divorce under Indian Divorce Act. 1869 (as amended in 2001) on grounds of unsoundness of mind provided: (i) it must be incurable (ii) it must be present for at least 2 years immediately preceding the petition. Divorce is not admissible on ground of mental illness under the Parsi Marriage and Divorce Act, 1936. However, divorce can be obtained if the defendant at the time of marriage was of unsound mind, provided the plaintiff was ignorant of the fact and the defendant has been of unsound mind for a period of 2 years upwards and immediately preceding the application.

15. *Testamentary capacity:* Testamentary capacity is the legal status of being capable of executing a Will, a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. Indian Succession Act, 1925 Testamentary capacity requires a person's full sense and mental sanity to have confirmed and signed the Will after understanding what his assets comprised and what he is doing by making a Will. He understands in full mental capacity to whom he is naming the assets to and how are they related to him and what repercussions it may have later.[17]
16. *Transplantation of Human Organs Act, 2014:* The primary legislation related to organ donation and transplantation in India, Transplantation of Human Organs Act, was passed in 1994[36] and is aimed at regulation of removal, storage and transplantation of human organs for therapeutic purposes and for prevention of commercial dealings in human organs. Amendments were made in 2009 and 2011, which were gazette notified in 2014. The Act mandates that organ donation can be done for therapeutic purposes only. It mandates brain death certification from a medical board and psychiatry clearance is required for mental state of living donors.
17. *Protection of Women from Domestic Violence Act (PWDVA) 2005:* The Protection of Women from Domestic Violence Act 2005 is an Act to protect women from domestic violence. It was brought into force from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally. The Act does not extend to Jammu and Kashmir, which has its own Act, enacted in 2010, the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010.[37]

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Legal statutes concerning interface of criminal law and mental health

18. *Protection of children from sexual offences Act (POCSO Act) 2012:* This Act provides for a variety of offenses under which an accused can be punished. It defines a child as a person under age of 18 years. It encompasses the biological age of the child and silent on the mental age considerations.[38]

- It recognizes range of activities as sexual offences including all forms of penetration other than peno-vaginal penetration, acts of immodesty against children, sexual harassment, using children for pornographic purposes and even online sexual abuse.
- This is a gender-neutral Act including boys also as potential victims besides girls as against to previous laws.
- It mandates all individuals including health professionals to report any such incidence that comes to their notice to legal agencies with punishment of six months for failure reporting.

  The Act has been criticized for three provisions, first mandatory reporting of all cases by health professionals may attach stigma for health care seeking and many of the families may resort to seeking illegal medically harmful quackery practices of medical termination of unwanted conception. Secondly, it criminalizes a consensual sexual intercourse which is between two people under the age of 18. Thirdly, it talks of physical age and is silent on sexual assault of a female with mental age less than 18 years. In a recent case filed in SC, where a woman of biological age 38 years but mental age 6 years was raped. The victim's advocate argues that "failure to consider the mental age will be an attack on the very purpose of act." SC has reserved the case for judgment and is determined to interpret whether the 2012 act encompasses the mental age or whether only biological age is inclusive in the definition.[27]

19. *Laws concerning criminal liability:* The Indian Penal Code (IPC, 1860) says 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 he is doing what is either wrong or contrary to law," (Sec 84).[22] Law presumes every person of age of discretion to be sane and defense on ground of insanity needs to be proved. If defense is proven on ground of insanity, such persons are acquitted to be detained in safe custody either to a Psychiatric Hospital or to be released to a relative on surety bond under Sec. 335 (i) of the CrPC, 1973. It is seen that there have been occasions of lesser sentence due to mental illness.

Legal statutes concerning mental health professional training

20. *Rehabilitation Council of India Act (RCIA), 1992:* In 1992, the RCI Act was enacted and the Rehabilitation Council of India became a Statutory Body in 1993. The Act was amended in 2000 to make it more broad-based. The mandate given to RCI is to regulate and monitor services given to persons with disability, to standardize syllabi and to maintain a Central Rehabilitation Register of all qualified professionals and personnel working in the field of Rehabilitation and Special Education. The Act also prescribes punitive action against unqualified persons delivering services to persons with disability.[39]

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MENTAL HEALTHCARE REFORMS IN INDIA

Although the National Mental Health Program is in place since 1982 and was restrategized in 1996. Mental Health Policy of India was introduced in October 2014, policy and programming in mental health so far have been more reactive than proactive. Tragedies like Erwadi and various public interest litigations (PILs) that have been filed before the honorable Supreme Court have been major driving forces of change. Some of the PILs have not only focused on institutional treatments but also focused on economic, social, and cultural rights of persons with mental illness. A series of reports from the National Human Rights Commission[33] highlights the gross deficiencies that existed in institutional care of persons with mental illness. These reports also demonstrated the positive changes that could be brought about with persistent monitoring, collaboration, and proactive intervention.[40] The positive changes noticed are:

1. Improvement in structural facilities and living conditions
2. Improved budgets
3. Voluntary admissions became more frequent than court admissions
4. Greater community participation, and the need for rehabilitation of persons with mental illness received greater focus.

However, these reports have also highlighted the negative aspects in terms of inadequate human resources and poor psychosocial interventions, among others. Meantime, the need to deliver the least restrictive care for persons with mental illness and by extension to develop adequate community care facilities for persons with mental illness has been the driving philosophy of the National Mental Health Policy. However, a recent report compiling state and union territory reports of the status of mental health care reveals extremely low coverage of primary mental health care in the country. The recently published Mental Health Survey Report[22] carried out in 12 states of the country estimates the prevalence of mental disorders at 10.6%, and the mental health care gap that has been calculated in these states as varying between 70.4% and 86.3%. In reality, given the huge inequity of mental health care resources across different states, and local ecologies that may aggravate mental distress, the mental healthcare treatment gap may be much higher. Mental health care, like other health care, requires human resources, facilities, and protected budgets. However, one stark truth is that there needs to be a concerted drive to improve human resources in mental health care, and that will be the biggest challenge in the decades ahead. While there is a need to train all health providers in issues related to mental health, it is also important to develop specialists in different aspects of mental health care. In addition, strengthening undergraduate psychiatry training as well as postgraduate training in psychiatry is of primary importance.

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