CHAPTER-V

JUDICIAL ATTITUDE TOWARDS MENTAL ILLNESS

 ―Historically, the judicial branch has often been the sole protector of the rights of minority groups against the will of the popular majority‖.

Diane Watson¹

 ―All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary‖.

Andrew Jackson, American President²

5.1 INTRODUCTION

If the rights of the mentally ill are to be assured and protected, several players from diverse areas of society need to play an active role. In this chapter, we examine the specific role of the judiciary in addressing some of the critical mental health care needs of the country.³ There is a dynamic relationship between the concept of mental illness, the treatment of the mentally ill and the law. As Jonas R. Rappeport⁴ has noted,⁵ for the psychiatrists the court is ―another house … with its different motives, goals and rules of conduct.‖ While the psychiatrists are concerned primarily with the diagnosis of mental disorders and the welfare of the patient, the court is often mainly concerned with determination of competency, dangerousness, diminished responsibility and the welfare of society.⁶ Various provisions relating to unsoundness of mind cannot take affect without a judicial pronouncement. For example, the right to vote cannot be denied unless the person is declared to be of unsound mind by a competent court. In a number of other contexts unsoundness of mind has to be

judicially determined, not for its own sake but in order to decide upon the validity of a contract, a marriage or an adoption.\footnote{Amita Dhanda, \textit{Mental Disorder and Legal order} 21(1\textsuperscript{st} edn., 2000).}

5.2 RIGHT TO HEALTH

The Right to Health is a fundamental right of every citizen in the country. Courts in India have repeatedly extended that there lies a positive duty on the part of the government to promote health in the society. Mental health is an integral and inseparable part of health. Hence, the ancient Roman proverb, \textit{mens sana in corpora sano}, meaning, ‘a healthy mind in a healthy body’. This philosophy was the bedrock of the Bhore Committee Report of 1946\footnote{This committee, known as the Health Survey and Development committee, was appointed in 1943 with Sir Joseph Bhore as its chairman.... It made comprehensive recommendations for remodelling of health services in India, Quoted in NHP, India, \textit{available at:} \url{https://www.nhp.gov.in/bhore-committee-1946_pg} (Visited on Dec. 23, 2017).} and the basis of formulating the National Mental Health Programme, way back in 1982.\footnote{Supra note 3.} Initially the Supreme Court of India enforced right to health among the people through various public interest litigations which came before the Indian judiciary. With the passage of time the judiciary found that right to life under Article 21 is incomplete without right to live with human dignity which includes various other rights like the right to education, the right to livelihood, the right to health and housing etc.\footnote{Shodhganga “Right to Health in The Constitution of India and the Role of Judiciary”, \textit{available at:} \url{http://shodhganga.inflibnet.ac.in:8080/ispui/bitstream/10603/40578/10/13_chapter4.pdf} (Visited on June 6, 2016).}

In \textit{Bandhua Mukti Morcha v. Union of India},\footnote{AIR 1984 SC 802, Judgement delivered by Hon’ble P.N. Bhagwati, R.S. Pathak and Amarendra Nath Sen, JJ.} which was relating to the workers of the stone quarries and crushers working in an unhealthy environment, the Supreme Court held that:

“\textcolor{black}{\textit{It is the fundamental right of every one in this country, assured under the interpretation given to Article 21...to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational...}}”
facilities, just and humane conditions of work and maternity relief.” 12

Thus right to health became a part of fundamental rights and impliedly covered under Article 21 of the Indian Constitution which deals with protection of life and personal liberty. It lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. The object of this fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. Right to life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. 13

In Vincent Panikulangara v. Union of India, 14 the Supreme Court on the right to health care observed that:

“...maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health in our opinion, therefore is of high priority, perhaps the one at the top.” 15

In a historic judgment, Consumer Education and Resource Centre v. Union of India, 16 the Supreme Court has held that:

“...the expression ‘life’ in Article 21 does not connote mere animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions on workplace and leisure. 17...the right to health and Medical care is a fundamental right under Article 21 of the constitution ... and make the life of the workman meaningful and purposeful with dignity of person. “Right to life” in Article 21 includes protection of the health and strength of the worker... 18 the State, be it Union or State Government or an industry, public or private is enjoined to take all such action which will promote health, strength and vigour of the workman during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living.” 19

12Id. at 811-812, para 10.
13Supra note 10.
14AIR 1987 SC 990, Judgement delivered by Hon’ble Rangnath Misra and M.M. Dutt, JJ.
15Id. at 995, para 16.
17Id. at 68 para22.
18Id. at 70 para 24.
19Ibid.
Following the Consumer Education and research Centre case in *Kirloskar Brothers Ltd. v. Employees’ State Insurance Corp.*\textsuperscript{20} the Supreme has held that, ‘right to health’ is a fundamental right of the workmen. The Court held that:

“Constitution enjoins not only the State and its instrumentalities but even private industries to ensure to the workmen to provide facilities and opportunities for health and vigour of the workman assured in the provision of Part IV of the Constitution which are integral part of right to equality under Art 14 and right to invigorated life under Article 21 which are fundamental rights to the workmen.”\textsuperscript{21}

There are number of case laws in which the courts have laid down the duty to provide health services on the state.\textsuperscript{22} In *State of Punjab and Others v. Mohinder Singh Chawala*,\textsuperscript{23} the Supreme Court held that:

“Right to health is integral to right to life. Government has a constitutional obligation to provide health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.”\textsuperscript{24}

Similarly, in *State of Punjab v. Ram Lubhaya Bagga*,\textsuperscript{25} Supreme Court has upheld the State’s duty to maintain health services. The Court observed that the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47. It is for the State to secure health to its citizen as its primary duty. No doubt government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, it has to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep, maintenance and cleanliness has to be beyond aspersion. To employ best of talents, tone up its administration and to give effective contribution. Also bring in awareness

\textsuperscript{20}(1996) 2 SCC 682, Judgement delivered by Hon’ble K. Ramaswamy Ahmad, S. Saghir and G.B. Pattanaik, JJ.
\textsuperscript{21}Id. at 688, para 10.
\textsuperscript{23}AIR 1997 SC 1225, Judgement delivered by Hon’ble K. Ramaswamy and Justice G.B. Pattanaik, JJ.
\textsuperscript{24}Id. at 1227, para 4.
\textsuperscript{25}(1998) 4 SCC 117, Judgement delivered by Hon’ble S.B. Majmudar, M. Jagannadha Rao and A.P. Misra, JJ.
in welfare of hospital staff for their dedicated service, give them periodical, medico-
ethical and service oriented training, not only at then try point but also during the
whole tenure of their service.

5.3 LUNATIC OR PERSON OF UNSOUND MIND

In Smt. Anima v. Probodh Mohan Roy, the Court observed that:

“By section 3, clause 5, thereof, “lunatic” means an idiot or a person of unsound mind. The definition thus says that “lunatic” “means” (it does not say “includes”) an idiot or a person of unsound mind. It is, therefore, a hard and fast definition and we cannot give any other meaning to the word “lunatic” than that which is mentioned in the definition itself.... Hence, going by the language of the Hindu Marriage Act, it is not possible to make room for different degrees of lunacy. No doubt, while Section 5, Clause (ii) of the Hindu Marriage Act 1955, makes a difference between an idiot and a lunatic, Section 3 clause (5), of the lunacy Act regards an idiot as much a lunatic as a person of unsound mind...”

In Jai Prakash Goel v. State, Delhi High Court observed that:

“A person may not be adjudged as of unsound mind yet the court may nevertheless consider it appropriate to appoint a guardian ad litem under Order xxxii Rule 15. However, the Court is not bound to make a rigorous or formal enquiry as contemplated by the Lunacy Act, and is competent to pass an order as soon as it is satisfied as to the party’s mental competence. There is a vast difference between mental unsoundness and incapacity by reason of mental infirmity, the latter being of a lesser degree. The Collins/Cobuild English Dictionary defines “infirm” as weak or ill and usually old. The Concise Oxford Dictionary states that “infirm” refers to a person who is not physically strong, especially through age. In Black’s Law Dictionary “infirm” has been defined as weak, feeble, lacking moral character or weak of health. Incapacity has been defined in the same treatise as want of legal ability of act. A person suffering from a low intellectual quotient may not be viewable as of unsound mind, but there can be no gainsaying that he would be incapable of protecting his interests in litigation. The Mental Health Act, 1987, in Section 2(1) defines ‘mentally ill person’ as one who is in need of treatment by reason of any mental disorder other than retardation, thereby drawing a distinction between these states of health....there is no manner of doubt that Respondent, Shri Brahm Prakash is incapable of protecting his interests in the litigation by reason of his infirmity

26AIR 1969 Cal. 304, Judgement delivered by Hon’ble Bijayesh Mukherji and S.K. Dutta, JJ.
27The Lunacy Act, 1912.
29AIR 2005 Delhi 83, Judgement delivered by Hon’ble Justice V. Sen.
30Id. at 84, para 2.
and infliction of an abnormally low intellectual quotient. Accordingly, the Court appointed Mrs. Meena Goel, wife of Shri Brahm Prakash, as his guardian ad litem.”

In the case of Veer Pal Singh v. Secretary, Ministry of Defence, the Supreme Court has explained the term schizophrenia. The Court observed that:

“In Merriam-Webster Dictionary Schizophrenia has been described as a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as in delusions), perception (as in hallucinations), and behavior, called also dementia praecox. Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history.”

The Court further observed that:

“F. C. Redlich and Daniel X. Freedman in their book titled The Theory and Practice of Psychiatry (1966 Ed.) observed:

“Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living...” (p.252)

Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity...”

5.4 MENTALLY ILL PERSONS IN PRISONS

Unfortunately, mental health took a backseat and was largely ignored. The first well known involvement of the judiciary with mental health issues was with the jailing of the non-criminal mentally ill, leading to mental health reform. There have been numerous Supreme Court and State High Court decisions that have exposed

31 Id. at 87, para 10.
32 AIR 2013 SC 2827, Judgement delivered by Hon’ble G. S. Singhvi, Smt. Ranjana Prakash Desai, and Sharad Arvind Bobde, JJ.
33 Id. at 2836-2837, para 13.
34 Id. at 2839, para 16.
illegal detention and institutionalisation of women, unlawful use of reception orders to detain a family member or spouse and housing of the mentally ill.\textsuperscript{36}

In Bihar, a number of under-trials had been kept in jail for long periods without trial. The Supreme Court, in \textit{Hussainara Khatoon v. State of Bihar},\textsuperscript{37} ordered the release of under-trial prisoners who have been in jails for longer periods. The Court observed that the lists of under-trial prisoners filed on behalf of the State of Bihar that the under-trial prisoners whose names are set out in the chart filed by Mrs. Hingorani have been in jail for periods longer than the maximum term for which they could have been sentenced; if convicted. This discloses a shocking state of affairs and betrays complete lack of concern for human values. It exposes the callousness of our legal and judicial system which can remain unmoved by such enormous misery and suffering resulting from totally unjustified deprivation of personal liberty. It is indeed difficult to understand how the State Government could possibly remain oblivious to the continued incarceration of these under-trial prisoners for years without even their trial having commenced. The judiciary in the State of Bihar also cannot escape its share of blame because it could not have been unaware of the fact that thousands of under-trial prisoners are languishing in jail awaiting trial which never seems to commence. How the continued detention of these under-trial prisoners mentioned in the list of Mrs. Hingorani can be justified when the Court find that they have already been in jail for a period longer than what they would have been sentenced to suffer, if convicted. They have in fact some jail term to their credit. The Court, therefore, direct that these under-trial prisoners whose names and particulars are given in the list filed by Mrs. Hingorani should be released forthwith as continuance of their detention is clearly illegal and in violation of their fundamental right under Article 21 of the Constitution. The Court further observed that:

“Speedy trial is an essential ingredient of ‘reasonable, fair and just’ procedure guaranteed by Article 21 and it is the constitutional obligation of the State to device such a procedure as would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial... The State is under a constitutional mandate to ensure speedy trial and whatever

\textsuperscript{36}Supra note 3 at 69-70.
\textsuperscript{37}AIR 1979 SC 1369, Judgement delivered by Hon’ble P. N. Bhagwati and Justice D. A. Desai, JJ.
is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.\textsuperscript{38}

The next case which we must consider is the case of \textit{Veena Sethi v. State of Bihar & Ors.},\textsuperscript{39} in which the Supreme Court observed that:

\begin{quote}
“There are some people who are critical of the practice adopted by this Court of taking judicial action…basic human rights of the weaker sections of the community. This criticism is based on a highly elitist approach and proceeds from a blind obsession with the rites and rituals sanctified by an outmoded Anglo-Saxon jurisprudence.\textsuperscript{40} What meaning has the rule of law if the poor are allowed to languish in jails without the slightest justification as if they are the castaways of the society? The rule of law does not exist merely for those who have means to fight for their rights and very often for perpetuation of the status quo which protects and preserves their dominance and permits them to exploit large sections of the community but it exists also for the poor and the down-trodden, the ignorant and the illiterate who constitute the large bulk of humanity in this country. It is the solemn duty of this Court to protect and uphold the basic human rights of the weaker sections of the society, and it is this duty we are trying to discharge in entertaining this public interest litigation.”\textsuperscript{41}
\end{quote}

The Court further held that:

\begin{quote}
“There must be an adequate number of institutions for looking after mentally sick. The practice of sending lunatics or persons of unsound mind to jail for safe custody was not at all healthy or desirable one because jail is hardly a place was not an appropriate place for treating those who were mentally sick.”\textsuperscript{42}
\end{quote}

The Court directed that the jail superintendent to have such mentally ill under-trials examined by psychiatrists every six months and submit a report to the District Judge. If, as a result of such examination, it is found at any stage that the prisoner concerned had become sane; the District Judge should immediately order his or her

\textsuperscript{38}\textit{Id.} at 1376-1377, para 10.
\textsuperscript{39}1982 (2) SCC 583, Judgement delivered by Hon’ble D. A. Desai and P. N. Bhagwati, JJ.
\textsuperscript{40}\textit{Id.} at 584, para 1.
\textsuperscript{41}\textit{Id.} at 586, para 3.
\textsuperscript{42}\textit{Id.} at 585, para 2.
release from the jail. The State government would provide the necessary funds for meeting the expenses of the journey to his or her native place and his or her maintenance for a period of one week.43

In a case, Sheela Barse v. Union of India,44 which was related to the plight of physically and mentally retarded children under the age of 16 as also abandoned or destitute children who are lodged in various jails in the country for safe custody. The Supreme Court observed that there are a few matters which need our urgent directions. It seems that there are a number of children who are mentally or physically handicapped and there are also children who are abandoned or destitute and who have no one of take care of them. They are lodged in various jails in different states. The State Governments must take care of these mentally or physically handicapped children and remove them to a home where they can be properly looked after and so far as the mentally handicapped children are concerned, they can be given proper medical treatment and physically handicapped children may be given not only medical treatment but also vocational training to enable them to earn their livelihood. Those children who are abandoned or lost and are presently kept in jails must also be removed by the State Governments to appropriate places where they can be looked after and rehabilitated. The Court also directed the Director General, All India Radio and the Director General, Doordarshan to give publicity requesting non-governmental social service organisations to offer their services for the purpose of accepting these children with a view to taking care of them and providing for their rehabilitation in accordance with a hand-out to be sent by the Registrar of this Court.

In an another case of Sheela Barse v. Unionof India and Others,45 which was pertaining to the admitting of non-criminal mentally ill persons to prisons in West Bengal. A letter from Ms. Sheela Barse addressed to the Hon’ble Chief Justice of India with respect to the deplorable conditions in which mentally ill and insane women were locked up and kept in Presidency jail, Calcutta, was registered as a writ petition and certain orders were passed by the Court. Subsequently, Ms. Sheela Barse withdrew from the matter. In her place, the Supreme Court Legal Aid Committee was substituted. Several orders were passed by this Court from time to time. Commissioners were also appointed to investigate and report on the conditions

43Id. at 586, para 2.
44(1986) 3 SCC 632, Judgement delivered by Hon’ble P.N. Bhagwati, Chief Justice of India.
45(1995) 5 SCC 654, Judgement delivered by Hon’ble B.P. Jeevan Reddy and M.K. Mukherjee, JJ.
obtaining in places where women and children were being detained. Over the years, this Court has also been monitoring the implementation of its orders.\footnote{Id. at 655, para 1.} In this case the Supreme Court directed the High Court to monitor and ensure proper and full implementation of the orders of the Supreme Court, relating to the mentally ill women and children detained in prisons, insofar as that particular State is concerned. The following orders were made in this case:

1. The office shall prepare requisite number of sets of the record of this case. The record shall be in two parts. Part I shall contain the letter written by Ms Sheela Barse, the orders passed by this Court, again in their proper sequence.

2. The office shall separate the affidavits, counter-affidavits, rejoinders and further affidavits, if any, along with their annexures with respect to each state separately. If there are any affidavits, reports or other documents filed by the Union of India, the same may be included in each of such sets. This shall be treated as Part II of the record. Obviously, it will be separate for each State concerned herein.

3. The cost of preparing both Parts I and part II shall be borne by the Union of India.

4. The office shall communicate a copy Part I to each of the High Courts. Along with Part I, Part II relating to that particular State shall also be enclosed.

5. The High Courts are requested to register the record so received by them as a Public Interest Litigation. The Hon'ble Chief Justice of each of the High Courts is requested to designate to a Judge of the Court to deal with the matter. The High Court shall make all such necessary and appropriate orders as may be warranted, from time to time, for a proper implementation of the orders of this Court. The High Court shall also be free to pass such other and further orders as may be found necessary or appropriate to protect and improve the conditions obtaining in places where women and children, not accused of any crime are detained.

6. High Court Legal Aid Committee of each of the High Courts shall be treated as petitioner in the matter in that High Court. Copies of Part I (and Part II,
wherever applicable) shall be communicated to the respective Legal Aid Board in the High Court.

The High Court Legal Aid and Advise Board will assist the High Court in the matter of monitoring compliance with the orders and directions made by this Court. It will be entitled to apply for such further orders and directions from the High Court as may be found necessary in the matters.

7. It was made clear that the High Courts to whom the proceedings are being made over shall be fully free and competent to pass such further orders and make directions as they think appropriate in the light of the facts and circumstances obtaining in that particular State consistent with and to further the objectives underlying the orders of the Supreme Court.47

*Sheela Barse v. Union of India and Others,*48 was filed in 1989. Following this Public Interest Litigation, there was a series of affidavits and counter affidavits. The Court appointed a commission in 1992 to evaluate the situation. The commissioners Srinivasa Murthy and Amita Dhanda, in their report highlighted the problems in providing effective mental health services to the mentally ill in jails, lack of human resource, lack of supervision of care, absence of a mental health team, and absence of adequate range of treatment services. It suggested various remedial measures, including setting up managing bodies for all the mental hospitals in West Bengal, formulating schemes to improve conditions of care, establishment of state level rehabilitation centres and association with voluntary agencies. It recommended the moving out of the mentally ill in prisons to the nearest place of treatment and care. In its judgement, the Supreme Court held that such a practice (of keeping the non-criminal mentally ill in prisons) contravened Articles 21 and 32 and ordered that such persons be examined by a mental health professional or psychiatrist and on his advice sent to the nearest place of treatment and care. It directed the state government to take immediate action and issue instructions for implementation. The state government was also asked to take immediate steps for upgradation of mental hospitals, set up psychiatric services in all teaching and district hospitals and integrated mental health care with primary health care. The Calcutta High Court was requested to appoint a committee and submit a report with detailed recommendations. It is worth mentioning

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47 *Id.* at 655-666, para 2.
48 *(1995) 5 SCC 654.*
that there are now a large number of NGOs working in the area of mental health in West Bengal. One such organisation, Paripurnatha was founded to rehabilitate mentally ill women in Kolkata prisons.49

Further in an another case of Sheela Barse v. Union of India and Others,50 which was related to jailing of children and adults who are committed to jail in Calcutta as lunatics.

“In fact they are not mentally ill at all. Some are normal, some temporarily under stress or undergoing a phase of mental disturbance, and a few are mentally retarded. Once they are jailed, they are all categorised as “Non-criminal Lunatics”. This jailing deprives them of their liberty on the pretext that he is interned for treatment. When these persons are produced before the Judicial or the Executive Magistrate of West Bengal an instant assessment is made of their mental health and they are committed to jail without fixing the case, date of hearing or the duration of detention. Thereafter they are never produced before the Magistrate. During their confinement these persons lose all the contacts with the outside world, more often than not the Magistrates purporting to act under section 13 of the Lunacy Act (which Act has been repealed) arrogating to themselves a power which they do not have.”51

On a consideration of the matter, the Court issued the following directions:

“(1) It is declared that admission of non-criminal mentally ill persons to jails is illegal and unconstitutional.

(2) It is directed that admissions of mentally ill persons to jails in West Bengal on any ground whatsoever be stopped forthwith and the State of West Bengal is directed to issue instructions to this effect immediately.

(3) It is directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed by Executive Magistrate shall hereafter be performed only by Judicial Magistrates.

(4) The Judicial Magistrate will, upon a mentally ill person being produced, have him or her examined by a Mental Health Professional/Psychiatrist and if advised by such MHP/Psychiatrist send the mentally ill person to the nearest place of treatment and care.

(5) The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be

49 Supra note 3 at 70-71.
50(1993) 4 SCC 204, Judgement delivered by Hon’ble M.N Venkatachaliah, C.J. and S. Mohan, J.
51Id. at 205, para 2.
screened and sent to places of safe custody and action taken by the Judicial Magistrate thereon.

(6) The Government of West Bengal is hereby directed to:

(i) take immediate action and issue instructions in the implementation of the directions given herein above.

(ii) order enquiry into the death of 19 persons in the Dum Dum Central Jail in December 1991 and take action to rectify the factors that resulted in such a calamity. A copy of report of the enquiry and the details of the steps taken thereon to be placed before the court given a period of two months from today.

(iii) take simultaneous immediate steps for:

(a) immediate upgradation of mental hospitals.

(b) setting up of psychiatric services in all teaching and district hospitals. This will include filling up the posts of psychiatrists in these places.

(c) Integrating mental health care with the primary health care system.

(iv) Regulate the procedure from admission to discharge from the mental hospitals in West Bengal of mentally ill persons by a fresh set of instructions in accordance with the recommendations made in the report of the Commissioners.

(v) The Health Secretary of the State of West Bengal will send quarterly report to this Court on the steps taken to implement each of the directions given in this Order. This will be in the form of an affidavit.

Any difficulty encountered in the implementation of the order will be forthwith brought to the notice of this Court.

(7) The High Court of Judicature at Calcutta is requested to appoint a committee comprising a mental health professional/psychiatrist, a Social Worker and a Law Person to evaluate the state of the existing mentally ill in jails. The Committee will in a report make detailed recommendations to:

(a) discharge such of those persons found fit and ensure their return to their homes and/or their rehabilitation.

(b) move out such of those persons requiring continued treatment and care from out of the jails, to the nearest places of treatment and care.

The report will be submitted within two months of its appointment by the Committee to the High Court with a copy to this Court. The High Court is requested to monitor, in such manner as it deems fit,
the implementation of the recommendations of the Committee. This Court will be kept informed of the steps taken in this regard.\textsuperscript{52}

Though the report of the Commission relates to only the State of West Bengal the Court ordered that these recommendations are properly implemented in other States as well.\textsuperscript{53}

In the case of \textit{R.D. Upadhyay v. State of Andhra Pradesh and Others},\textsuperscript{54} the Supreme Court had traced the history of confinement of Ajoy Ghosh who was arrested in 1962. The Court observed that no efforts to take any action in the case of the unfortunate lunatic undertrial prisoner Ajoy Ghosh languishing in jail since 1962 were made. Even medical treatment was provided to him only after the High Court intervened. The Superintendent Presidency Jail, Calcutta even later on took no action to send medical reports of the physical and mental state of Ajoy Ghosh from 1964 to 1983 and thereafter till 1995. There may be many like Ajoy Ghosh languishing in West Bengal or other jails of the country. There has been a complete violation of the statutory provisions contained in the Prisons Act, 1990; the Code of Criminal Procedure, 1973\textit{(CrPC)}; and the Indian Lunacy Act, 1912 in dealing with the case of Ajoy Ghosh. The Apex Court suggested to the State of West Bengal to file a submission/suggestion note for assistance of the Court to issue such guide-lines and directions as may be necessary for ensuring that the detenues like Ajoy Ghosh do not suffer in the manner in which Ajoy Ghosh has suffered. For the time being, Ajoy Ghosh, under the directions of the Court, has been accommodated in the Home maintained by Missionaries of Charity.

In the case of \textit{Charanjit Singh and National Human Rights Commission v. State},\textsuperscript{55} the issue related to the continued detention of an under-trial prisoner who was mentally unstable and his physical and mental condition did not even allow him to defend himself in the trial which was pending against him. In the process almost 20 years have elapsed. His plight caught attention of the National Human Rights Commission (NHRC). The Delhi High Court held that we are not terminating the proceedings simply because trial is pending for last 20 years. The exceptional

\textsuperscript{52}\textit{Id.} at 211–213, para 12.
\textsuperscript{53}\textit{Id.} at 213, para 13.
\textsuperscript{54}2000 CrIj 2277, Judgement delivered by Hon’ble Anand, S. R. Babu and R. Lahoti, JJ.
\textsuperscript{55}MANU/DE/0308/2005, Judgement delivered by Hon’ble D Jain and A.K. Sikri, JJ.
situation which has arisen in this case is that neither trial has begun for all these years nor there is any possibility, even distinct possibility, in future.\textsuperscript{56}

5.5 TREATMENT OF MENTALLY ILL

There is sufficient case law on the issue of health in State run institutions such as remand homes for children and care homes.\textsuperscript{57}

In the case of Chandan Kumar Banik \textit{v. State of West Bengal},\textsuperscript{58} the Supreme Court observed that the inhuman conditions of the mentally ill in the Mental Hospital at Mankundu in the District of Hooghli. The Court ordered the directions for discontinuing the practice of tying up the patients with iron chains and ordered drug treatment for them. The Court held that:

“This case was an application, which had its origin as a Public Interest Litigation in a letter addressed to the Supreme Court on the basis of a press publication with a photograph showing mentally ill patients chained in a State Hospital in West Bengal.\textsuperscript{59} Thereafter a notice was issued to the State Government of West Bengal and an affidavit was filed in reply to this notice. The Court appointed a Committee to inspect this mental hospital located at Amankundu in the District of Hooghli and to write a report about the conditions prevailing there.”\textsuperscript{60}

The Committee inspected the Hospital. In its report the Committee took into account the various aspects like the administration, the condition of the hospital, the amenities to the patients and the scope of treatment available therein. Reference was also made to the diet and the staffing pattern of the hospital. On each of these aspects several defects were pointed out. The Apex Court further observed that to administer such an institution there was a need to appoint a person who had an understanding of and consideration for mentally ill people. From the materials available, the Court also observed that there was no drug treatment for patients who were unruly or not physically controllable otherwise. As a rule such patients were usually tied up with iron chains to some fixed pillar or door frame, until in due course normalcy was

\textsuperscript{56}Case No: 3628/30/2001-2002.
\textsuperscript{58}(1995) Supp (4) SCC 505, Judgement delivered by Hon’ble Ranganath Misra, P.B. Sawant and K. Ramaswamy, JJ.
\textsuperscript{59}Id. at 505, para 1.
\textsuperscript{60}Id. at 505, para 2.
restored. The State lawyer therefore agreed that there would be no recurrence of the chaining system and immediate steps would be taken to provide drug therapy.

Despite the directives of the court, the tragedy of Erwady occurred. On 6 August 2001, in Erwady in the Ramanathapuram district of Tamil Nadu, 25 mentally ill patients kept chained in a thatched shed in a dargah were charred to death in a fire. Following this shocking incident, the Supreme Court took *suo moto* notice of the incident in the form of a Public Interest Litigation. Notices were issued to the Union of India and to the State of Tamil Nadu. Subsequently, the court directed the Union of India to “conduct a survey on an all-India basis with a view to identify registered and unregistered ‘asylums’ as also about the state of facilities available in such ‘asylums’ for treating mentally challenged. Meanwhile, more Public Interest Litigations followed Erwadi. The Delhi-based NGO ‘Saarthak’ filed a Public Interest Litigation in October 2001, calling for a ban on the practice of physical restraint and administering ‘unmodified’ or ‘direct’ Electro Convulsive Therapy, i.e. ECT without anaesthesia. ACMI, an advocacy organisation for families caring for family members with mental illness, filed another Public Interest Litigation before the court emphasising the importance of family members and their under representation in decisions regarding the care of the mentally ill. This Public Interest Litigation highlighted the need for a short-term emergency plan for mental healthcare in view of the gross mental health manpower deficits, need for a psychiatrist to man district level services, short-term training in psychiatry for general practitioners, integrating the family and community model into institutional care, due representation to families in processes of revising mental health legislation, due weightage to families in decisions regarding treatment, safeguarding the rights of the mentally ill, addressing issues of guardianship, inclusion of mental illness under the Persons with Disabilities Act and The Rehabilitation Council of India, Act (RCI) and formulation of guidelines for research involving the mentally ill.62

In *Re: Death of 25 Chained in Asylum Fire in T.N. v. Union of India and Ors.*, the Supreme Court Bench issued directions pursuant to the suggestions of the

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61 *Supra* note 3 at 71.
62 *Id.* at 71-72.
63 AIR 2002 SC 979, Judgement delivered by Hon’ble M.B. Shah, B.N. Agrawal and Arijit Prasayat, JJ.
Amicus Curiae⁶⁴ appointed by the Court, to investigate the plight of mentally ill persons in various mental asylums, after the unfortunate event in which 25 inmates died in a fire as they were chained to their beds and could not escape.

The directions issued by the Apex Court for strict implementation of the provisions such as Sections 3, 4, 6 and 8 of Mental Health Act, 1987 were:

“(i) Every State and Union Territory must undertake a district-wise survey of all registered/unregistered bodies, by whatever name called, purporting to offer psychiatric mental health care. All such bodies should be granted or refused license depending upon whether minimum prescribed standards are fulfilled or not. In case license is rejected, it shall be the responsibility of the SHO of the concerned police station to ensure that the body stops functioning and patients are shifted to Government Mental Hospitals. The process of survey and licensing must be completed within 2 months and the Chief Secretary of each State must file a comprehensive compliance report within 3 months from date of this order. The compliance report must further state that no mentally challenged person is chained in any part of the State.

(ii) The Chief Secretary or Additional Chief Secretary designated by him shall be the nodal agency to coordinate all activities involved in implementation of the Mental Health Act, 1987. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. He shall ensure that there are no jurisdiction problems or impediments to the effective implementation of the three Acts between different ministries or departments. At the Central level, the Cabinet Secretary, Government of India or any Secretary designated by him shall be the nodal agency for the same purpose.

(iii) The Cabinet Secretary, Union of India shall file an affidavit in this Court within one month from date of this order indicating:

a) The contribution that has been made and that proposed to be made under Section 21 of the 1999 Act which would constitute corpus of the National Trust.

b) Policy of the Central Government towards setting up at least one Central Government run mental hospital in each State and Union Territory and definite time schedule for achieving the said objective.

⁶⁴Literally, friend of the court. A person with strong interest in or views on the subject matter of an action, but not a party to the action, may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views. Quoted in, The Free dictionary, “Amicus Curiae”, available at: http://legal-dictionary.thefreedictionary.com/amicus+curiae (Visited on March 7, 2017).
c) National Policy, if any, framed under Section 8(2)(b) of the 1995 Act.

(iv) In respect of States/Union Territories that do not have even one full-fledged State Government run mental hospital, the Chief Secretary of the State/Union Territory must file an Affidavit within one month from date of this order indicating steps being taken to establish such full-fledged State Government run mental hospital in the State/Union Territory and a definite time schedule for establishment of the same.

(v) Both the Central and State Governments shall undertake a comprehensive awareness campaign with a special rural focus to educate people as to provisions of law relating to mental health, rights of mentally challenged persons, the fact that chaining of mentally challenged persons is illegal and that mental patients should be sent to doctors and not to religious places such as Temples or Dargahs.

(vi) Every State shall file an affidavit stating clearly:

a) Whether the State Mental Health Authority under Section 3 of the 1987 Act exists in the State and if so, when it was set up.

b) If it does not so exist, the reasons therefore and when such an Authority is expected to be established and operationalised.

c) The dates of meetings of those Authorities, which already exist, from the date of inception till date and a short summary of the decisions taken.

d) A statement that the State shall ensure that meeting of the Authority take place in future at least once in every four months or at more frequent intervals depending on exigency and that all the statutory functions and duties of such Authority are duly discharged.

e) The number of prosecutions, penalties or other punitive/coercive measures taken, if any, by each State under the 1987 Act.”

In *Saarthak Registered Society and another v. Union of India,* the Supreme Court passed the following directions:

1. Every State and Union Territory shall undertake an assessment survey and file the report on the following aspects:

a. Estimated availability of mental health resources including psychiatrists, psychologists, psychiatric social workers and nurses in both public and private sector.

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65AIR 2002 SC 979, at 980-981, para 8.
66AIR 2002 SC 3693, Judgement delivered by Hon’ble M. B. Shah, Bisheshwar Prasad Singh and H.K. Sema, JJ.
b. Type of Mental Health Delivery System available in the State including available bed strength, outpatient and rehabilitation services.

c. An estimate of the Mental Health Services that would be required considering the population of the State and the incidence of mental illness.

2. The Chief Secretary of each State and Administrator or Commissioner of every UT to file affidavit stating clearly:

a. Whether any minimum standards have been prescribed for licensing of Mental Health Institutions in the State or UT and in case such minimum standards have been prescribed, full details thereof;  

b. Whether each of the existing registered Mental Health Institutions in the State/UT whether private or run by the State meet the basic minimum standards as on date of passing this order and if not, what steps have been taken to ensure compliance of licensing conditions;  

c. Number of unregistered bodies providing psychiatric/mental health care exist in the State and whether any of them comply with minimum standards;  

d. Whether any mentally challenged person is found to be chained in any part of the State or UT;  

3. The report on the Need Assessment Survey and affidavit was to be submitted to the Health Secretary, Union of India within a stipulated time. The Health Secretary was to compile them and present it to the Court.

4. Further Union of India was directed to:

a. Frame a policy and initiate steps for establishment of at least one Central Government run Mental Health Hospital in each State.  

b. Examine the feasibility of formulating uniform rules regarding standard of services for both public and private sector Mental Health Services.  

c. Constitute a committee to give recommendations on the issue of care of mentally challenged persons who have no immediate relatives or who have been abandoned by relatives.

67Id. at 3693, para 2.  
68Id. at 3693-3694, para 2.
d. Frame norms for non-government organizations working in the field of mental health and to ensure that the services rendered by them are supervised by qualified/trained persons.

5. All State Governments were also directed to frame policy and initiate steps for establishment of at least one State Government run Mental Health Hospital in each State.

6. Two members of the Legal Aid Board of each State were appointed to make monthly visit to such institutions to help the patients and their relatives in applying for discharge if they have been fully discharged.

7. Two members of the Legal Aid and Judicial Officer would explain their rights to patients and their guardians at the time of admission to the institutions.

8. Form a Board of Visitors as required under the Mental Health Act to every State or private institution at least once a month.\(^{69}\)

9. Envisage a scheme for rehabilitation process for people who are not having any backing or support in the community.\(^{70}\)

In response to the Court’s directive to assess the situation of mental health services in the country, the Ministry carried out a survey of the government run psychiatric hospitals, as well as other mental health services, or the lack of such services, which helped to provide inputs to formulating a re-strategised national mental health programme in the 10th Five Year Plan. Further expansion of the DMHP occurred in the 11th plan.\(^{71}\)

In July, 2016 the Supreme Court issued notice to six state governments of UP, Kerala, Rajasthan, West Bengal, Meghalaya and Jammu & Kashmir on the issue of release of over 300 persons from mental hospitals. The direction came after a petitioner claimed that over 70 inmates in Bareilly’s mental hospital, 29 in Varanasi, 41 in Shillong had recovered but were forced to live with mentally ill persons.\(^{72}\)A

\(^{69}\)Id. at 3694-3695, para 2.
\(^{70}\)Id. at 3695, para 2.
\(^{71}\)Supra note 3 at 72-73.
\(^{72}\)Priyangi Agarwal. “Times Impact - SC notice to six states on cured mental patients” The Times of India, Jul 19, 2016. available at:
bench headed by Chief Justice TS Thakur issued the notice on the PIL filed by advocate Gaurav Kumar Bansal. The petition added that there were 29 such inmates at the Institute for Mental Care, Purulia (West Bengal), 78 in Lumbini Park Mental Hospital, Kolkata, 86 in Govt Mental Health Centre, Kozhikode, and six in Srinagar.73

5.6 MONITORING OF HOSPITALS AT RANCHI, GWALIOR AND AGRA

The management of the mental hospitals at Ranchi, Gwalior and Agra had come under the scrutiny of the Supreme Court through writ petitions,74 the Apex Court, had, after considering the report submitted by the Union Health Secretary, ordered a number of measures for improving the overall functioning of these institutions by raising the standard of infrastructural facilities, professional services, administration and management, care and treatment of the patients and welfare of the staff.75

The state of affairs at the Ranchi Manasik Arogyashala was highlighted in the case of Rakesh Chandra Narayan v. State of Bihar,76 which arose out of a letter addressed to the Chief Justice of India by two citizens of Patna regarding conditions of mental hospital at Kankenear Ranchi in Bihar77... The Hospital was in the sole management of the Health Department of the State of Bihar.78 The Chief Judicial Magistrate found that:

“There was acute shortage of water in the Hospital. There was only one tubewell within the campus located in the male block. There were five ordinary wells but there was no motor pumps installed in any one of them.79 ...none of the toilets within the hospital complex was in order. The sanitary fittings were not operating having got choked. The patients were, therefore, forced to ease themselves in the adjacent open field...80 He also found that though there were electric connections with bulbs and tubes yet light was not available and, therefore, total darkness prevailed in the campus between dusk

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73Ibid.
75NHRC, Supra note 3 at 74-75.
761989 Supp(1) SCC 644, Judgement delivered by Hon’ble Rangnath Misra and M.N. Venkatachalliah, JJ.
77Id. at 645, para 1.
78Id. at 645, para 2.
79Id. at 645, para 3.
80Id. at 645-646, para 4.
and dawn\textsuperscript{81}. None of the wards had doors and windows in working condition.\textsuperscript{82}

The Court held that:

“\textquoteIt is clear that inspite of several orders made by the Court and assurances held out by the State Government of Bihar. The defects were not being remedied. The awareness of the Governmental authorities of the sordid situation prevailing in the hospital, as admitted in the scheme furnished to the Court, the non-compliance in an effective way with the directions made from time to time by the Court and the general lethargy shown in rising from slumber leaves a clear impression that the institution cannot be run as a mental hospital of that magnitude unless there be change in the administrative set-up, the control is altered and a new service to patient-oriented thrust given to the institution. In a welfare State—and...that the State of Bihar considers itself to be one such—it is the obligation of the State to provide medical attention to every citizen. Running of the mental hospital, therefore, is in the discharge of the State’s obligation to the citizens and the fact that lakhs of rupees have been spent from the public exchequer (perhaps without or inadequate return) is not of any consequence. The State has to realise its obligation and the Government of the day has got to perform its duties by running the hospital in a perfect standard and serving the patients in an appropriate way."\textsuperscript{83}

The Supreme Court on Oct. 20, 1986 issued the following directions:

1. In respect of each patient in the Ranchi Mansik Arogayashala the daily allocation for diet will be increased from the existing inadequate articles of that value shall be supplied to each patient.

2. Arrangements should be made forthwith to supply adequate quantity of pure drinking water to the hospital, if necessary, by engaging water tankers to transport potable water from outside.

3. Immediate arrangements should be made for the restoration of proper sanitary conditions in the laboratories and bathrooms of the hospital.

4. All patients in the hospital who are not at present having mattresses and blankets should be immediately supplied the same within 15 days from today. Such of the patients who have not been given cots should

\textsuperscript{81}Id. at 646, para 4.
\textsuperscript{82}Id. at 646, para 6.
\textsuperscript{83}Id. at 653, para 29.
also be provided cots within six weeks from today so that no patient shall be thereafter without a cot.

5. The ceiling limit at present in vogue in respect of cost of medicines allowable for each patient will stand removed, with immediate effect and the patients will be supplied medicines according to the prescription made by the doctors irrespective of the costs.

6. The State Government shall forthwith take steps to appoint a qualified Psychiatrist and a Medical Superintendent for the hospital and they should be posted and take charge in the Institution within six weeks from today.

The Court further directed that the Chief Judicial Magistrate, Ranchi to whom a copy of this order will be forwarded by the Registry shall visit the hospital once in 3 weeks and submit quarterly reports to this Court as to whether the aforesaid directions given by us are being complied with.84

Further in Rakesh Chandra Narayan v. State of Bihar,85 the Hon’ble Supreme Court has given directions regarding the management of the asylum. The proceedings were related to the working of the Ranchi Manasik Arogyashala respecting the administration of which several earlier orders and directions have been issued by the Court. On the basis of the reports as to its functioning, the position has since been reviewed by the Court. Sri M.S. Dayal, Health Secretary has since submitted his report (Dayal Report) on July 11, 1994. In the Report, referring to the nature and extent of the requisite changes in the administrative setup of the Ranchi Manasik Arogyashala, the Health Secretary stated that Ranchi Manasik Arogyashala should be an autonomous institution, managed by the Managing Committee, chaired by the Divisional Commissioner at Ranchi and have a Director as its Chief Executive Officer. The Court approved the report.

On the basis of report the Court issued the following directions:

“...direct the implementation of the recommendations of the report in the matter of the administration, control and management of the

84 Id. at 650-651, para 21.
85 AIR 1995 SC 208, Judgement delivered by Hon’ble M. N. Venkatchalahia, Cheif Justice and S. Mohan, J.
The improvements suggested in the report concerning the drainage and bathing platforms and additional pathways to the toilets and bathing places and renovation of sewer lines shall be accorded utmost priority along with the construction of the overhead tank as these appear to be amenities of immediate and urgent necessity. The report further suggests that the financial allocation for food for the indoor patients be increased from Rs. 20 to Rs. 30 per day. This recommendation is salutary and shall be implemented. The recommendation in the Dayal Report for an appropriate upward revision of the rates for the patients sent to Ranchi Manasik Arogyashala by the various States, having regard to the high cost of living, is fully justified. Recommendations and suggestions relating to administrative and functional powers including the power to create and abolish posts in Ranchi Manasik Arogyashala and the creation of posts mentioned in the report are accepted and shall become operative. The new Management Committee shall implement the suggestions for making water available throughout towards sanitation and hygiene. Every effort shall be made by the Management Committee and the Director to get the basic medicines available to the patients. All steps shall be taken to release patients including the undertrials who do not require any further treatment.

In the case of Aman Hingorani v. Union of India, the proceedings were related to the working of the Agra Manasik Arogyashala. The Hon’ble Supreme Court has given directions regarding the management of the Agra Manasik Arogyashala. The Court issued the following directions:

“In respect of Agra Manasik Arogyashala...direct that a similar autonomous body of Management shall be constituted by the State Government... Agra Mental Asylum shall be an autonomous institution and its management shall be vested in a Management Committee....the Union Health Secretary to be the advisor and visitor of the Agra Manasik Arogyashala under the new dispensation for a period of one year and submit his report as to its functioning and the requisite changes that may be necessary from time to time. Admissions of patients to the hospital shall be done strictly in accordance with the provisions of the Mental Health Act,
1987, and the rules made thereunder.\textsuperscript{97} The indoor patients may be sent for expert medical consultation to Agra Medical College and Hospital with an escort. The Director may invite any specialists on payment of reasonable fees, as decided by the Committee from time to time, for examination and treatment of any indoor patient.\textsuperscript{98} ...Outdoor treatment shall be free provided that the Committee may prescribe a nominal fee for the registration of a patient and reasonable fees for investigation.\textsuperscript{99}

Similarly, in *Supreme Court Legal Aid Committee v. State of M.P.*,\textsuperscript{100} the proceedings related to the working of the Gwalior Manasik Arogyashala. The Apex Court has given directions regarding the management of the Gwalior Manasik Arogyashala. The Court directed that the rules laid down on the lines of ‘Dayal Report’ in respect of Ranchi Manasik Arogyashala shall govern the functioning of the Gwalior Manasik Arogyashala. The Court issued the following directions:

“In respect of Gwalior Manasik Arogyashala...a similar autonomous body of Management shall be constituted by the State Government...Gwalior Mental Asylum shall be an autonomous institution and its management shall be vested in a Management Committee.\textsuperscript{101} ...The management Committee shall have full administrative and financial powers in respect of all the affairs of Gwalior Manasik Arogyashala...The nominated members of committee shall have a term of three years and shall be eligible for renomination and shall continue until successors are nominated...Management shall meet at least once in three months and more if necessary.\textsuperscript{102} ...A copy of proceedings of every meeting shall be endorsed to the Health Secretary and Director of Health of the State of Madhya Pradesh.\textsuperscript{103} ...The indoor patients may be sent for expert medical consultation to Gwalior Medical College and Hospital with an escort. The Director may invite any specialists on payment of reasonable fees, as decided by the Committee from time to time, for examination and treatment of any indoor patient.\textsuperscript{104} ...Outdoor treatment shall be free provided that the Committee may prescribe a nominal fee for the registration of a patient and reasonable fees for investigation...For indoor treatment, a consolidated charge on the basis of per person per day will be

\textsuperscript{97}Id. at 218, para 6.
\textsuperscript{98}Id. at 219, para 8.
\textsuperscript{99}Id. at 219, para 9.
\textsuperscript{100}AIR 1995 SC 204, Judgement delivered by Hon’ble M. N. Venkatchalahiah, Cheif Justice of India and S. Mohan, J..
\textsuperscript{101}Id. at 204, para 1.
\textsuperscript{102}Id. at 205, para 4.
\textsuperscript{103}Id. at 206, para 4.
\textsuperscript{104}Id. at 207, para 8.
levied from the government of the State to which the patient belongs.”

5.7 SUPREME COURT INTERVENTION IN GOVERNMENT INSTITUTIONS

In the case of Dr. Upendra Baxi v. State of Uttar Pradesh, the Supreme Court was called upon to enforce the rights of the occupants of State Protective Homes for women. The Court has given various directions in order to ensure that the inmates of the protective home at Agra do not continue to live in inhuman and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution is made real and meaningful for them. The Court ordered a medical panel to examine the inmates and submit the report. On the basis of the report the Court observed that it is an uneasy feeling that the 19 mentally ill inmates came to be discharged from the Home merely in order to avoid an inquiry by this Court. The Court asked the Superintendent of the Home whether she made any entry in regard to the health of these 19 mentally ill inmates in the Inmates Register on the day of discharge. These inmates should not have been supplied with railway ticket as contemplated under sub-rule (4) of Rule 37, even though that rule may not be strictly applicable. If not under the rule, at least on humane grounds, she should have enquired from these 19 inmates as to where they intended to go and whether they had any money for the railway ticket and their own subsistence and how they proposed to look after themselves. The Court further observed that it is not desirable that the mentally retarded inmates should live with normal inmates as it is likely to have adverse effect on both the categories... Whatever may be the costs, charges and expenses required to be incurred for the purpose of accommodating any one or more of these mentally retarded persons in some institute for mentally handicapped must be borne by the Government. The Court had directed the State Government by order...to put forward a scheme for vocational training and rehabilitation of inmates of Protective Homes. This direction does not yet seem to have been carried out by the State Government. The Court directed the state to state as to what steps are being taken by the State Government for the purpose of formulating and implementing a

105 Id. at 207, para 9.
106 (1983) 2 SCC 308, Judgement delivered by Hon’ble O. C. Reddy and Justice P.N. Bhagwati, JJ.
107 Id. at 308, para 1.
108 Id. at 310-311, paras 7 and 8.
109 Id. at 311, para 11.
110 Id. at 315, para 25.
scheme for vocational training and rehabilitation of inmates of various Protective Homes in the State of Uttar Pradesh.  

The case of *S.R. Kapoor v. Union of India*, arise out of Writ Petitions under Article 32 of the Constitution have been registered by way of Public Interest Litigation and they relate to the mismanagement of the Hospital for Mental Diseases located at Shahdara, an institution maintained and run by the Delhi Administration....the Court appointed a Committee of Experts consisting of four eminent psychiatrists to visit the Hospital and ascertain the prevailing ecological atmosphere, make an assessment of the treatment given to the patients and also look into certain specific allegations which had been made to the Court...The Committee took some time to look into all aspects and ultimately made a report running into three volumes covering various aspects. The Court also directed that:

“Mental Hospital located at Shahdara should be taken over by the Union of India from the Delhi Administration and modelled on the lines of similar psychiatric specially obtaining at institution run by NIMHANS at Bangalore... A wider range of modern amenities and treatment facilities geared up with modern equipment and super specialist talent can be made available...It could also be examined whether the hospital could be attached to a teaching institution which has postgraduate specialisation in psychiatry, Neurology and Neuro-psychiatry.”

5.8 JUDICIAL VIEW ON THE RIGHTS OF MENTALLY ILL PERSONS

5.8.1 Legislations relating to Mental Health

In India there are various legislations which provided for the rights of mentally ill persons and time to time judiciary as a protector of human rights of citizens got a chance to protect their rights provided under various legislations. The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. As citizens of India, the mentally ill are entitled to all those human and fundamental rights which are guaranteed to each and every citizen by the constitution of India, to the extent

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111 Id. at 316, para 28.
112 AIR 1990 SC 752, Judgement delivered by Hon’ble N. M. Venkatachaliah and R. Misra, JJ.
113 Id. at 752, para 1.
114 Id. at 753, para 4.
their disability do not prevent them from enjoying those rights or their enjoyment is expressly or impliedly barred by the Constitution by any other Statutory law.\footnote{Shiv Gautam, Sanjay Jain, Lalit Batra, Rajesh Sharma and Deepi Munshi, “Human Rights and Privileges of Mentally Ill Persons”, available at: http://www.indianjpsychiatry.org/cpg/cpg2009/article6.pdf (Visited on May 13, 2016).} In India, The Mental Health Care Act, 2017 and The Rights of Persons with Disabilities Act, 2016 are the two major legislations currently in force regulating health and disability rights of Persons Mental Illness.\footnote{FACEMI, “Law and Mental Illness”, available at: https://facemindia.org.in/law-and-mental-illness/ (Visited on May 9, 2016).} In addition to the specific mental health legislation, there are other areas where legislations are improving the mental health of persons with mental illness and protecting their rights in several ways. Most of the earlier legislations in respect of persons with mental illness were concerned with the determination of competency, dangerousness, diminished responsibility and the welfare of society. However, legislations drafted after eighties tend to give some stress on the rights of persons with mental illness also.\footnote{Choudhary Laxmi Narayan and Deep Shikha, Supra note 6.}

\subsection*{5.8.1.1 The Indian Lunacy Act, 1912}

During the first decade of the 20\textsuperscript{th} century, public awareness about the pitiable conditions of mental hospitals accentuated as a part of the growing political awareness and nationalistic views spearheaded by the Indian intelligentsia. As a result, the Indian Lunacy Act, 1912 was enacted. The 1912 Act guided the destiny of Psychiatry in India. Lunatic asylums (named mental hospitals in 1922) were now regulated and supervised by a central authority. Procedure of admission and certification in this respect was clearly defined. The provision of voluntary admission was introduced. Still, the main stress was on preventing the society from dangerousness of mentally ills and taking care that no sane person is admitted in these asylums. Psychiatrists were appointed as full time officers in these hospitals. Provisions of judicial inquisitions for mentally ill persons were also given in the Act.\footnote{Ibid.}

In Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal,\footnote{AIR 1991 SC 1538, Judgement delivered by Hon’ble Kuldip Singh and K. Ramaswamy, JJ.} the appellant had taken on lease, about 55 years ago, an extent of 2 acres, 6 gunthas of agricultural lands situated in Akote village from Vishwas Rao. The Bombay Tenancy Act applies to the lease. The appellant became a deemed purchaser from tiller’s day. Since the landlord was insane, the right to purchase was statutorily
deferred under section 32-F till date of its cessation or one year after death. While the landlord was continuing under disability, his son Vasant Rao sold the land to the respondent under registered sale deed.121 After one year of the death of landlord the mamlatdar fix the price which was paid by the appellant.122 Regarding the management of the Joint Family Property or business or other interests in a Hindu Joint Family, the Karta of the Hindu Joint Family is a prima inter pares. A junior member cannot, therefore, deal with the joint family property as Manager so long as the Karta is available except where the Karta relinquishes his right expressly or by necessary implication or in the absence of the Manager in exceptional and extra-ordinary circumstances such as distress or calamity effecting the whole family and for supporting the family or in the absence of the father whose whereabouts were not known or who was away in remote place due to compelling circumstances and that is return within the reasonable time was unlikely or not anticipated. No such circumstances were available to attract the facts of the case.123 The Apex Court held that, the vendor, son of the Karta of the Hindu Joint Family per se has no right to sell the property in question as Manager so long as the father was alive. When father was under disability due to lunacy, an order from the Court under Indian Lunacy Act was to be obtained to manage the joint family property. No proceedings were taken under the Indian Lunacy Act to have the inquisition made by competent District Court to declare him as insane and to have him appointed as Manager of the Joint Family. Since the son did not obtain any order from the competent Court under the Indian Lunacy Act to have him appointed as Manager of the Joint family to alienate the property, the sale is per se illegal.124

5.8.1.2 The Mental Health Act, 1987

The Parliament has enacted the Mental Healthcare Act, which repeals and replaces the Mental Health Act, 1987.125 The Mental Health Act was drafted by parliament in 1987 but it came into effect in all the states and union territories of India in April 1993. The Act replaced the Indian Lunacy Act of 1912, which had earlier replaced the Indian Lunatic Asylum Act of 1858.126 The objectives of the Mental

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121 Id. at 1538, para 1.
122 Id. at 1540, para 2.
123 Id. at 1543, para 13.
124 Id. at 1543, para 14.
Health Act were to establish Central and State authorities, establish psychiatric hospitals and nursing homes, provide a check on working of these hospitals, provide for the custody of mentally ill persons, protect the society from dangerous manifestations of mentally ill, regulate procedure of admission and discharge, safeguard the rights, protect citizens from being detained unnecessarily, provide for the maintenance charges of mentally ill persons, provide legal aid to poor mentally ill criminals at state expenses and change offensive terminologies of Indian Lunacy Act. So many changes had been introduced in the Mental Health Act. The positive changes in the Mental Health Act, 1987 were more humane approach to problems of mentally ill persons.

In the case of Raj Kumar v. Rameshchand, Raj Kumar was a mentally retarded person. An application through next friend was filed on his behalf for eviction of the respondents from the premises which was owned by Raj Kumar. In reply to the Eviction Petition, it was inter alia stated that the appellant was a man of unsound mind and was not capable of doing any business and as no guardian has been appointed by the District Judge, the father could not act as a guardian. Sections 52 to 55 are contained in Chapter VI of the Mental Health Act, 1987. This Chapter contains provisions relating to judicial inquisition regarding alleged mentally ill person possessing property, custody of his person and management of his property. Section 50 provides for an application being made for holding an inquisition with regard to the mental condition of a person which is alleged to be mentally ill and is possessed of property. Such an application can be filed only by the persons or authorities specified in Clauses (a) to (d) of Sub-Section (1) of Section 50. It is pursuant to the proceedings so initiated that the other provisions of the Chapter including Sections 52 to 55 would apply. Section 50 does not contemplate any application being made or a contention being raised by a tenant in a proceeding for eviction against him.

“In the instant case what was applicable was Order 32, Rule 1 read with Rule 15. An application for appointment of a guardian in

128 Ibid.
129 AIR 1999 SC 3511, Judgement delivered by Hon’ble B.N Kirpal and S. Rajendra Babu, JJ.
130 Id. at 3512, para 2.
131 Id. at 3512, para 5.
accordance with the said provisions was filed. An application to this effect was filed before the Rent Controller and the father was appointed as the guardian and next friend of the appellant. Nothing more was required to be done and the High Court ...was error in coming to the conclusion that the Eviction Petition was not maintainable and the procedure provided by Sections 52 to 55 of the Mental Health Act, 1987 had not been complied with.”

In the case of Re: Megal Markus Pereira v. Unknown, the limited issue was whether the city Civil Court constituted under the provisions of the Bombay City Civil Court Act, 1948 or the High Court in exercise of its ordinary original civil jurisdiction is the District Court for the purpose of the Mental Health Act. The Bombay High Court held that a conjoint reading of Section 2(b) with Sections 53, 76 and 96 of the Mental Health Act, 1987 makes it clear that District Court as defined under section 2(b) for the area for which the city civil court is constituted shall be the City Civil Court to the exclusion of the High Court in the exercise of its ordinary civil jurisdiction. Therefore it can be said that the definition of “District Court” Section 2(b) of the Act of 1987 insofar as the area where the City Civil Court exercises territorial jurisdiction is the City Civil Court as constituted under Section3 of the Bombay City Civil Court Act, 1948.

5.8.2 CIVIL LAW

5.8.2.1 The Indian Contract Act, 1872

Sections 6, 11 and 12 of the Indian Contract Act, 1872, deal with the responsibility of the insane with regards to contracts. Section 6(4) of the Act states that a proposal is revoked by death or insanity of the proposer, if the fact comes to the knowledge of the acceptor before acceptance. Section 11 of the Act states that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. Section 12 of the Act states 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

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132 Id. at 3512, para 6.
133 AIR 2006 Bom 273, Judgement delivered by Hon’ble F.I. Rebil Loy and Anoop Motha, JJ.
134 Id. at 274, para 3.
135 Id. at 278, para 13.
136 The Indian Contact Act, 1872, s. 6(4).
137 Id. s. 11.
judgment as to its effects upon his interest.\footnote{138} A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.\footnote{139} In the case of Tarkeshwar Upadhyya v. Mahesh Kahar,\footnote{140} Patna High Court observed that:

“The principal relief claimed in the suit was a declaration that the several deeds of gift… were illegal, fraudulent and not binding on the plaintiff and that they were never acted upon. Admittedly, all the deeds of gift, which are the subject matter of the suit have been executed… by Raktu Upadhyya. The plaintiff brought this suit for declaration on the footing that he was the nearest heir of the deceased Raktu Upadhyya and that Raktu Upadhyya had lost all powers of understanding and he was insane and of unsound mind at the time he is alleged to have executed these various deeds. The case of the plaintiff was that in spite of the execution of the aforesaid deeds of gift Raktu Upadhyya continued to be in possession of the lands which are the subject matter of the gift and after his death the plaintiff was in possession of the lands covered by the various deeds of gift.”\footnote{141}

The Court further held that:

“…the grounds on which the plaintiff sought to cancel the deeds of gift rendered the deeds void and not merely voidable… Such a person is not at all competent to transfer any property, belonging to him. A person of unsound mind, is in view of the provisions of Section 11\footnote{142} of the Indian Contract Act not competent to contract and, therefore, in view of Section 7\footnote{143} of the Transfer of Property Act, not competent to transfer any property by a deed of gift etc. a transfer by him would, therefore, be void ab-initio.”\footnote{144}

5.8.2.2 The Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955\footnote{145} lays down the conditions in respect of mental disorders which must be fulfilled before the marriage is solemnized. In view of Sections 5 and 12 of the Hindu Marriage Act, 1955, the marriage of a person, if he or

\footnote{138} Id. s. 12.
\footnote{139} Ibid.
\footnote{140} AIR 1981 Pat 348, Judgement delivered by Hon’ble Shivanugrah Narain, J.
\footnote{141} Id. at 349, para 2.
\footnote{142} Section 11 of the Indian Contract Act, 1872, states that every person is competent to contract who is of the age of majority according to the law to which he is subject, who is of sound mind and is not disqualified from contracting by any law to which he is subject.
\footnote{143} Section 7 of the Transfer of Property Act, 1882, states that every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.
\footnote{144} AIR 1981 Pat 348 at 350-351, para 6A.
\footnote{145} The Hindu Marriage Act, 1955, s. 5(ii).
she although capable of giving a valid consent to his or her marriage suffers from mental disorder of such a kind or such an extent as to be unfit for marriage and the procreation of children, is voidable.\textsuperscript{146} According to the Section 13 of the Act, divorce can be obtained on the ground that 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.\textsuperscript{147}

In \textit{R. Lakshmi Narayan v. Santhi},\textsuperscript{148} the Apex Court laid down the conditions for Hindu marriage:

“A marriage may be solemnized between any two Hindus, if the following conditions under Section 5 are fulfilled, namely:-

\textit{XXX XXXX}

\textit{at the time of the marriage, neither party}

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children;

Section 12 of the Hindu Marriage Act states that \textit{(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the grounds namely \textit{XXX XXXX} (b)that the marriage is in contravention of the conditions specified in clause (ii)of section 5.} ”\textsuperscript{149}

The Court further observed that:

“Section 5 provides that a marriage may be solemnized between any two Hindus if the conditions specified in the section are fulfilled. Amongst the other conditions stated therein in sub-section (ii) it is laid down that at the time of marriage neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind or though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. The clause lays down as one of the conditions for a Hindu marriage that neither party must be suffering from unsoundness of mind, mental disorder, insanity or epilepsy and section 12(1)(b) refers that any marriage shall be voidable and may be annulled if the marriage is in contravention of

\textsuperscript{146}A. N. Saha, \textit{Marriage and Divorce} 60 (6\textsuperscript{th} edn. 2002).

\textsuperscript{147}The Hindu Marriage Act, 1955, s. 13(1) (iii).

\textsuperscript{148}AIR 2001 SC 2110, Judgement delivered by Hon’ble D.P. Mohapatra and U.C. Banerjee, JJ.

\textsuperscript{149}\textit{Id.} at 2111, para 8.
the condition specified in clause (ii) of Section 5...It is manifest that the conditions prescribed in that section, if established, disentitles the party to a valid marriage. The marriage is not per se void but voidable under the clause.”

In the case of Madhu Ranjan v. Smt. Shruti Sharma, matrimonial relief of divorce is claimed by the appellant on the ground that the respondent has been incurably of unsound mind and has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the appellant could not reasonably be expected to live with the respondent. The Court held that:

“From the... facts and circumstances, it is evident that the appellant has not been able to establish and prove his case of the respondent being of unsound mind or that she has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that he cannot reasonably be expected to live with her. As against this, the evidence produced by the respondent is cogent and convincing to dislodge the case of the appellant and the Board of Doctors of the PGI, Chandigarh has conclusively held that there was no abnormality in the respondent.”

In the case of Sharda v. Dharampal, the core question involved in the appeal was whether a party to a divorce proceeding can be compelled to a medical examination. The parties herein were married... according to the Hindu rites. ...the respondent filed an application for divorce against the appellant under Section 12(1)(b) and 13(1)(iii) of the Hindu Marriage Act, 1955. He filed an application seeking directions for medical examination of the appellant ...The appellant objected thereto inter alia on the ground that the Court had no jurisdiction to pass such directions. By an order...the said application was allowed directing the appellant to submit herself to the medical examination. Aggrieved by the said order, she filed a Revision Petition before the High Court which was dismissed by the impugned judgment. The Supreme Court observed that:

“In all such cases...where divorce is sought,... on the ground of impotency, schizophrenia...etc, normally without there being medical examination, it would be difficult to arrive at a

150 Id. at 2112, para 9.
151 The Punjab Haryana High Court, Decided on 16 January, 2015, available at: https://indiankanoon.org/doc/182919070/ (Visited on September 25, 2016), Judgement delivered by Hon’ble S.S. Saron and Navita Singh, JJ.
152 FAO No. M-91 of 2004 (O&M).
153 AIR 2003 SC 3450, Judgement delivered by Hon’ble V.N. Khare, Chief Justice of India, S.B. Sinha and A.R. Lakshmanan, JJ.
154 Id. at 3453, para 1.
155 Id. at 3453, para 2.
conclusion as to whether the allegation made by his spouse against the other spouse seeking divorce on such a ground, is correct or not. In order to substantiate such allegation, the petitioner would always insist on medical examination. If respondent avoids such medical examination on the ground that it violates his/her right to privacy or for a matter right to personal liberty as enshrined under Article 21 of the Constitution of India, then it may in most of such cases become impossible to arrive at a conclusion. It may render the very grounds on which divorce is permissible nugatory. Therefore, when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase “personal liberty” this right has been read into Article 21, it cannot be treated as absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash.”

The Court held that the High Court cannot be said to have committed a jurisdictional error in passing the impugned judgment. The appeal is, therefore, dismissed.157

In the case of Vinita Saxena v. Pankaj Pandit,158 the marriage had lasted for five months and was never consummated on account of the fact that the respondent was incapable of performing his matrimonial obligations.159 The appellant filed a HMA petition for dissolution of marriage under Section 13(1) (i-a) and (ii-i) of the Hindu Marriage Act, 1955… on the grounds of mental and physical cruelty and mental disorder.160 The evidence of the doctors also establishes the case of mental insanity and the fact that the respondent was a case of Paranoid Schizophrenia.161 The Court held that to beget children from a Hindu wedlock is one of the principal aims of Hindu Marriage where ‘sanskar’ of marriage is advised for progeny and offspring.162 If procreation of children is not possible it may furnish a good ground for nullifying the marriage. In the instant case, the husband’s mental disorder was such that he was incapable of performing his matrimonial obligations. The marriage between the parties was not consummated. A workable solution is

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156 Id. at 3468, para 80.
157 Id. at 3469, para 86.
158 AIR 2006 SC 1662.
159 Id. at 1668, para 24.
160 Id. at 1664, para 4.
161 Id. at 1665, para 10.
162 Id. at 1673, para 43.
certainly not possible and the wife’s stay with her husband is injurious to her health.\textsuperscript{163} Hence, decree of divorce granted.\textsuperscript{164}

*Darshan Gupta v. Radhika Gupta*,\textsuperscript{165} is another case where divorce was sought on the ground of insanity by the husband Darshan Gupta. According to her medical reports the medical condition of wife, Radhika Gupta, was found to have shown significant progress in all cognitive areas, and that, her word finding difficulty was reduced by 60-70\%. Even though the report records, that she could not spontaneously name household articles and food materials, or recall the names of persons and objects seen in movies or read in books, yet was noticed, that she could do so with some effort. The report also records, that her working memory had improved to an extent, that the same could be described as “near normal”… She was found to be able to execute and complete, working memory tasks… Her eager and earnest desire about her future reunion with her husband was also indicated in the report. She has been assessed as fully capable of shouldering the responsibilities of a happy marital life.\textsuperscript{166} The Court held that Radhika Gupta did not suffer from any incurable unsoundness of mind. She was also not suffering from such mental disorder, that it cannot be reasonably expected of her husband to live with her.\textsuperscript{167} She… merely suffered from cognitive deficiency. She was categorized by medical experts as an individual of moderate intelligence. Material on the record of the case reveals, that she would further benefit from neuro-psychological rehabilitation measures.\textsuperscript{168} The Court dismissed the petition of divorce.\textsuperscript{169}

### 5.8.2.3 The Indian Succession Act, 1925

In *Kuppu Alias Kuppammal v. Kuppuswami Mandiriand Others*,\textsuperscript{170} the Madras High Court observed that Section 28 of the Hindu Succession Act, 1956, reads as follows:

No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any

\textsuperscript{163}Id. at 1674, para 50.
\textsuperscript{164}Id. at 1674, para 54.
\textsuperscript{165}2013(9) SCC 1.
\textsuperscript{166}Id. at 41, para 20-21.
\textsuperscript{167}Id. at 43, para 22.
\textsuperscript{168}ibid.
\textsuperscript{169}2013(9) SCC 1 at 28, para 55.
other ground whatsoever. Under the texts of the Dharmsastras as interpreted by the Courts, certain defects, deformities and diseases excluded an heir from inheritance. This was substantially remedied by the Hindu Inheritance (Removal of Disabilities) Act, 1928, which ruled that “no person, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect.” The present section discards almost all the grounds which imposed exclusion from inheritance. It rules out disqualification on any ground whatsoever excepting those expressly recognized by any provisions of the Act.171

In *Smt. Gurmail Kaur and Ors. v. Smt. Jaswant Kaur and Ors.,*172 the Punjab and Haryana High Court observed that:

“The obvious question is whether a person of unsound mind can exercise his free volition and the answer can only be an emphatic “No”. A will is an expression flowing from a voluntary state of mind by which a person bequeaths his assets to the person he desires to succeed in the event of his death. Voluntary deposition is therefore the essence of such a testament. A person of unsettled mind incapable of understanding the consequences of execution of such documents which have the effect of bartering away the rights of an individual cannot be bound such executions.”173

5.8.2.4 The Specific Relief Act, 1963

In *Clara Auroro de Brangnaca v. Sylvia Angela Alvares,*174 the Bombay High Court observed that person of unsound mind who was a schizophrenic, a lunatic of a violent nature when released on parole from the Mental Hospital executed a Power of Attorney in favour of a person to execute of partition in respect of specific properties. A suit was filed under Section 31 of Specific Relief Act for declaration that the Power of Attorney was a nullity as it was executed by a person of unsound mind and the partition deed executed in pursuance of it was void. In the absence of the order of discharge of lunatic under Section 34 of Lunacy Act, the Court held that the person was still a lunatic during the period of parole when he executed a power of Attorney and hence the Power of Attorney was a nullity.175

171 Judgment delivered by Hon’ble S. Swamikkannu, J.
172 MANU/PH/1369/2006, Judgment delivered by Hon’ble Mahesh Grover, J.
175 Id. at 374 and 380-381, para 1 and 17.
5.8.2.5 The Civil Procedure Code, 1908

Order 32 Rule 15, of C.P.C. applies to persons of unsound mind. The Code of Civil Procedure, 1908, Order XXXII laid down the procedure for the suits by or against the persons of unsound mind.

In Kasturibai and Ors. v. Anguri Chaudhary, the Hon’ble Supreme Court explained the provisions of the Civil Procedure Code, 1908 relating to the persons of unsound mind as follows:

Order 32 Rule 15, C.P.C. reads thus:

“15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind - Rules 1 to 14 (except rule 2A) shall, so far as may be apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.”

The Court observed that:

“On a bare perusal of the said provision, it is evident that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provides that even if a person is not so adjudged but is found by court on inquiry to be incapable of protecting his or her interest when suing or being sued by reason of any mental infirmity, an appropriate order there under can be passed. The respondent did not contend that appellant …herein is of unsound mind. As noticed hereinbefore, the respondent herself had filed an application before the trial court for holding an inquiry to the effect that she suffers from mental infirmity.

The Court further held that the learned trial court refused to do the same and in that view of the matter the High Court,… while setting aside the said order could only issue a direction directing the learned trial Judge to hold an inquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or not. As no such inquiry was held, there cannot be any doubt whatsoever that, the learned Single Judge committed a

176 Code of Civil Procedure, 1908, o. 32.
177 AIR 2003 SC 1773, Judgement delivered by Hon’ble S.B. Sinha and A.R. Lakshmanan, JJ.
178 Id. at 1775, para 10.
179 Id. at 1775, para 11.
jurisdictional error in passing the impugned judgment. The Court upheld the decision of the High Court.\textsuperscript{180}

In \textit{Amarjit Singh v. Sukhminder Kaur and Ors},\textsuperscript{181} Amarjit Singh claiming himself to be of unsound mind had filed a suit wherein application was moved by Gurmit Singh as his next friend for seeking permission of the Court to institute the said suit as next friend of the plaintiff said application of Gurmit Singh as next friend of Amarjit Singh was dismissed by the lower court holding that Amarjit Singh was a person of sound mind. The Hon’ble Punjab and Haryana High Court held that it is strange that the lower court though had called for report of the Board of Doctors, which had been constituted to examine Amarjit Singh plaintiff not even a whisper what to talk of consideration of the same in the impugned order was made by the lower court. It is also not understandable as to how and in what circumstances the lower court gave its own finding that the plaintiff seems to be a person of unsound mind without even examining the plaintiff in the witness box.

\section*{5.8.3 CRIMINAL LAW}

\subsection*{5.8.3.1 The Indian Penal Code, 1860}

Section 84 of Indian Penal Code 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.\textsuperscript{182}

In \textit{Siddhapal Kamala Yadav v. State of Maharashtra},\textsuperscript{183} the Apex Court has observed that:

“Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There, is no definition of “unsoundness of mind” in the IPC. Courts have, however, mainly treated this expression as equivalent to insanity. But the term “insanity” itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. The Court is concerned with legal insanity,

\begin{itemize}
  \item \textsuperscript{180}\textit{Id.} at 1775, para 12.
  \item \textsuperscript{182}Indian Penal Code, 1860, s. 84.
  \item \textsuperscript{183}AIR 2009 SC 97, Judgement delivered by Hon’ble Dr. Arijit Pasayat and Dr. Mukundakam, JJ.
\end{itemize}
and not with medical insanity… The Court further observed that there are four kinds of persons who may be said to be non componens (not of sound mind), i.e., (1) an idiot; (2) one made non componens by illness (3) a lunatic or a mad man and (4) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like… A person made non componens by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder… A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason… Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.”

In this case Victim Dilip was admitted for treatment since 14.7.2002. On 18.7.2002, the appellant was admitted for treatment with the complaint that he was murmuring to himself, like a lunatic. Both, the victim and the appellant, were lodged in Ward… in a common room. On 19.7.2002 at about 4.00 a.m Police Constable on duty, shouted, that there is a noise of violence in the wardroom. Consequently, entire guard party rushed to the wardroom and it was opened. As ASI entered the room, he was grabbed by the appellant. However, all policemen managed to control the appellant and again put him on the bed, where he was asked to sleep on the night with handcuff. It was noticed at that time that, the appellant had freed himself from the handcuff. It was noticed that the co-prisoner was not on the bed, but was hanging from the cot, his leg still was locked to the bed with the fetter. Defence of insanity was raised by the appellant. The Apex Court held that the evidence of doctors who attended the accused-appellant and the opinion expressed by them clearly goes to show that the appellant's plea relating to unsoundness of mind have no substance.

In the instant case Surendra Mishra v. State of Jharkhand, the Apex Court observed that:

184 Id. at 99-100, para 7 and 9.
185 Id. at 98, para 3.
186 Id. at 101, para 14.
187 AIR 2011 SC 627, Judgement delivered by Hon’ble Harjit Singh Bedi, P. Sathasivam and Chandrakauli, JJ.
In view of the plea raised it is desirable to consider the meaning of the expression “unsoundness of mind” in the context of Section 84 of the Indian Penal Code and for its appreciation, it is expedient to reproduce the same. It reads as follows:

84. Act of a person of unsound mind:- “nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”\(^\text{188}\)

Section 84 of the Indian Penal Code is found in its Chapter IV, which deals with general exceptions.\(^\text{189}\)

From a plain reading of the provision it is evident that an act will not be an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law.\(^\text{190}\)

In an another case of State of Rajasthan v. Vidhya Devi,\(^\text{191}\) the accused respondent was suffering from insanity on the date of the incident which was happened in 1996 and even before the challan had been filed the accused had been sent to the Medical Hospital for treatment and that she had remained admitted in the hospital for treatment till 2001. The Hon’ble Supreme Court comprising of Justice Harjit Singh Bedi and Justice Gyan Sudha Misra held that the circumstances of the case show that the respondent was suffering from insanity and was, therefore, entitled to claim the benefit under Section 84 of the Indian Penal Code.

In case of Bobby Mathew v. State of Karnataka,\(^\text{192}\) the dead body of deceased discovered in the room of the accused and body was bearing as many as 31 injuries all over. The Apex Court comprising Justice Harjit Singh Bedi and Justice Aftab Alam held that question of any insanity does not arise as this was never pleaded on behalf of the accused-appellant at any stage. Under Section 84 of the Indian Penal Code, 1860, in order to get the benefit of insanity or unsoundness of mind the

\(^{188}\text{Id. at 630, para 6.}\)

\(^{189}\text{Ibid.}\)

\(^{190}\text{AIR 2011 SC 627 at 630, para 7.}\)

\(^{191}\text{2011(15) SCC 228.}\)

accused is liable to show that on the day of the incident the accused was not in sound condition.

In the case of *Bhanudas Natha Mohite v. State of Maharashtra*,\(^{193}\) appellant was convicted by the Trial Court under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. The apex court rejected the case of the defence in relation to insanity as for proving the same, the defence has not adduced any evidence whatsoever. This being the position, no ground for interference was made out.

In *Hari Singh Gond v. State of MP*,\(^{194}\) the Apex Court observed about the application of Section 84 of the Indian Penal Code that:

“The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this Section.”\(^{195}\)

In *State of Rajasthan v. Shera Ram @ Vishnu Dutta*,\(^{196}\) the Apex Court observed that:

“It is obvious from a bare reading of this provision that what may be generally an offence would not be so if the ingredients of Section 84 IPC are satisfied. It is an exception to the general rule. Thus, a person who is proved to have committed an offence, would not be deemed guilty, if he falls in any of the general exceptions stated under this Chapter.\(^{197}\) To commit a criminal offence, mens rea is generally taken to be an essential element of crime... In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime, *actus non facit reum nisi mens sit rea*. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person

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\(^{194}\)AIR 2009 SC 31, Judgement delivered by Hon’ble Dr. Arijit Prasayat and Dr. Mukundakum Sharma, JJ.

\(^{195}\)Id. at 34, para 10.

\(^{196}\)(2012) 1 SCC 602, Judgement delivered by Hon’ble Swatanter Kumar and Ranjana P. Desai, JJ.

\(^{197}\)Id. at 613, para 16.
suffering from mental disorder cannot be said to possess this basic norm of human behavior.”198

In the recent case of Mariyappan v. State of Tamil Nadu,199 the Apex Court held that though the doctor attached with the Government Hospital who treated the accused from 11.07.2001 to 08.08.2001 has stated that the appellant accused was suffering from paranoid schizophrenia, it is not in dispute that after 08.08.2001, there is no material or information on record that he was suffering from the same. The date of occurrence was 05.11.2001 i.e. nearly after three months of the treatment. All these aspects show that at the relevant time, appellant was not insane as claimed by him.

In the case of Sudhakaran v. State of Kerala,200 the Supreme Court held that for claiming benefit of the defence of insanity, accused would have to prove that his cognitive faculties were so impaired, at the time when crime was committed, as not to know nature of act.201 Herein the plea taken by appellant for murdering his wife was that he was suffering from paranoid schizophrenia at time of commission of murder.202 However, entire medical evidence produced was not sufficient to show that at time of commission of murder, appellant was medically insane and incapable of understanding nature of consequences of act performed by him.203 Whilst appellant had brutally and callously committed murder of his wife, he did not cause any hurt or discomfort to his child. Rather, he made up his mind to ensure that child be put into proper care and custody after the murder Conduct of appellant before and after incident, sufficient to negate any notion that he was mentally insane so as not to be possessed of necessary mens rea for committing murder of his wife. Thus, his defence under Section 84 not proved.204

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198 Id. at 613, para 17.  
199 AIR 2014 SC (Supp) 914.  
200 (2010) 10 SCC 582, Judgement delivered by Hon’ble Justice B. Sudershan Reddy and Justice Surinder Singh Nijjar, JJ.  
201 Id. at 588, para 28.  
202 Id. at 588, para 27.  
203 Id. at 587, para 25.  
204 Id. at 594, para 37.

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In Dahyabhai Chhaganbhai Thakker v. State of Gujarat, the Apex Court on the doctrine of burden of proof in the context of the plea of insanity stated the following propositions:

“(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of The Indian Penal Code. The accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was, insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.”

In this case the appellant and his wife slept in their bed-room and the doors leading to that room were bolted from inside. Wife of the appellant cried that she was being killed. The neighbours collected in front of the said room and called upon the accused to open the door. When the door was opened they found Kalavati dead with a number of wounds on her body. He made no attempt to escape. The accused was sent up for trial to the sessions on the charge of murder. The appellant was charged with murder of his wife. The defence was set up that the appellant was insane when the incident took place and was not capable of understanding the nature of his act. The Court held that:

“It has not been established that he was insane nor the evidence is sufficient even to throw a reasonable doubt in our mind that the act might have been committed when the accused was in a fit of insanity.”

In Shrikant Anandrao Bhosale v. State of Maharashtra, the Hon’ble Supreme Court held that:

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205 AIR 1964 SC 1563.
206 Id. at 1568, para 7.
207 AIR 1964 SC 1563.
208 (2002) 7 SCC 748, Judgement delivered by Hon’ble Y.K Sabharwal and H.K. Sema, JJ.
“Unsoundness of mind as a result whereof one is incapable of knowing consequences is a state of mind of a person which, ordinarily can be inferred from the circumstances. The state of mind of the accused at the time of commission of the offence is to be inferred from the circumstances.”

The Court observed that the accused was suffering from paranoid schizophrenia indulged in quarrel with his wife and hit her on her head resulting in her death. The unsoundness of mind before and after the incident is a relevant fact. Under the circumstances, reasonable inference could be drawn that the accused was under a delusion at the time of commission of crime. Thus, he is entitled to the benefit of general exceptions under Section 84.

In Jai Lal v. Delhi Administration, accused had a medical history of insanity. He was treated for and was cured of this illness. The court convicted the accused based on his subsequent conduct. The court held that to establish that the acts done were not offences under Section 84 it must be proved clearly that at the time of the commission of the acts the appellant, by reason of unsoundness of mind, was incapable of knowing that the acts were either morally wrong or contrary to law. There was clear evidence that on the morning of commission of crime the appellant’s mind was normal and also that he knew that his act of stabbing and killing was contrary to law. He concealed the weapon of offence. He bolted the front door of his house to prevent arrest. He then tried to run away by the back door. When an attempt was made to apprehend him he ran back to his house and bolted the door. He then tried to disperse the crowd by throwing brickbats from the roof. His conduct immediately after the occurrence displayed consciousness of his guilt.

In Ratan Lal v. State of Madhya Pradesh, the Apex Court observed that:

“It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies of on the accused.”

The Court further observed that:

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209 Id. at 753, para 14.
211 AIR 1969 SC 15.
212 AIR 1971 SC 778, Judgement delivered by Hon’ ble S.M. Sikri, V. Bhargava and T.D. Dua JJ.
213 Id. at 778, para 1.
“The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.”  

In the present case the appellant set a fire to the grass lying near a khalyan. The Assistant Surgeon, the Civil Surgeon, and the Psychiatrist of the mental hospital to which he was referred reported that he was depressed and silent. According to the Psychiatrist he was a lunatic in terms of the Indian Lunacy Act, 1912. The Court acquitted the appellant of the offence because at the time of the incident he was a person of unsound mind.

In *Bapu @ Gajraj Singh v. State of Rajasthan*, the Court observed that:

In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:

“Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment, whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case: Would the prisoner have committed the act if there had been a policeman at his elbow? It is to be remembered that these tests are good for cases in which previous insanity is more or less established.” These tests are not always reliable where there is, what Mayne calls, “inferential insanity”.

In *State of Madhya Pradesh v. Ahmadullah*, the accused suffered from epilepsy. The Court held that it is not sufficient only to prove that the accused suffered from an “epileptic type of insanity” before or after the commission of the crime. There was nothing on the record of the instant case to show that at the moment when the crime was committed the accused was capable of knowing that what he was doing was wrong or contrary to law and as such he was not entitled to an acquittal.

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214Id. at 779, para 2.
2162007(8) SCC 66.
217Id. at 72, para 7.
218AIR 1961 SC 998.
In another case of *T.N. Lakshmaiah v. State of Karnataka*,219 the Court held that:

“where the exception under Section 84 of the Indian Penal Code is claimed, the court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence up to the time the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bona fide or an afterthought.”220

In *Sheralli Wali Mohammed v. State of Maharashtra*,221 the Apex Court observed that:

“The law presumes that every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved why the accused committed an offence or, the fact that he made no attempt to run away from the scene, would not indicate that he was insane or, that he did not have the necessary mens rea for the commission of the offence.”222

In the case of *Surendera Mishra v. State of Jharkhand*,223 the Apex Court observed that:

“The burden of proof is in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities.”224

In the case of *Siddhapal Kamala Yadav v. State of Maharashtra*,225 the Court has observed that:

“…where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before

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219AIR 2001 SC 3828, Judgement delivered by Hon’ble M.B. Shah and R.P. Sethi, JJ.
220Id. at 3831, para 11.
222Id. at 2446, para 13.
223AIR 2011 SC 627, Judgement delivered by Hon’ble Harjit Singh Bedi, P. Sathasivam and Chandramauli Kumar Prasad, JJ.
224Id. at 631, para 10.
225AIR 2009 SC 97, Judgement delivered by Hon’ble Dr. Arijit Pasayat and Dr. Mukundakam Sharma, JJ.
the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused."

In *State of Rajasthan v. Shera Ram @ Vishnu Dutta*, respondent Shera Ram @ Vishnu Dutta was charged for committing murder and was sentenced to undergo imprisonment for life by the Additional Sessions Judge. However, upon appeal, he came to be acquitted of all the offences by a Division Bench of the High Court of Rajasthan on the ground that at the time of incident, he was a person of unsound mind within the meaning of Section 84 IPC and was directed to be detained in safe custody in an appropriate hospital or a place of custody of noncriminal lunatics. The respondent not only in his statement under Section 313 Cr.P.C. took up the defence of mental disorder seeking benefit of Section 84 IPC but even led evidence, both documentary as well as oral, in support of his claim. According to the statement of the doctor and the prescription, the respondent was suffering from Epilepsy. The Hon’ble Supreme Court declined to interfere with the finding recorded by the High Court.

In *Jagdish v. State of M.P.*, the appellant was found in his house with a blood stained knife besides the dead bodies of his wife and minor children. The appellant was convicted under Section 302 of the IPC for having murdered his wife, four minor daughters and a minor son. Circumstantial evidence and medical evidence supported the prosecution case in its entirety. In Appeal before the Apex Court it was contended that that appellant was suffering from mental disturbance and incapable of understanding the nature of his actions and entitled to benefit of Section 84 IPC. It is significant that before the trial court as well as in appeal in the High Court, no plea with regard to the appellant's mental condition was taken. The Court observed that the implication of the provision of Section 84 Indian Penal Code is that the offender must be of this mental condition at the time when the act was committed and the fact that he was of unsound mind earlier or later are relevant only to the extent that they, along with other evidence, may be circumstances in determining the mental condition of an accused on the day of incident. The Court dismissed the appeal.

5.8.3.2 The Code of Criminal Procedure, 1973

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226 Id. at 99-100, para 8.
228 Criminal Appeal No. 338 of 2007.
The Code of Criminal Procedure, 1973, Chapter XXV laid down the procedure for the trial of unsound person. Section 328 is empowers the Magistrate to inquire into the fact of unsoundness of mind of a person and cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness. Section 329 empowers the Magistrate to record a finding and postpone further proceedings in the case on the basis of medical and other evidence as may be produced before him.

In *State of Gujarat v. Ghogha Virji Baraiya,* the Court held that Sections 328 and 329 of Criminal Procedure Code operated at a later stage where even at the time of commission of the offence the accused may not have unsoundness of mind as a defence, at the time of conducting inquiry or the trial he is of such a mental condition that he is incapable of making his defence. Section 328 applies at the stage of Magistrate holding an inquiry whereas Section 329 would apply at a stage of conducting of the trial by the Magistrate or Court of Sessions. In any of such course if it is found that if the person is of unsound mind, and therefore incapable of his defence, the inquiry of the trial would be postponed, the philosophy being that a person of unsoundness of mind, who is not capable of putting his defence, cannot be prosecuted. The Court further held that the provisions of Section 329(1) are mandatory in nature and casts a duty on the Magistrate or the Court to call for formal inquiry report when it appears that the accused on account of his unsoundness of mind is incapable of putting his defence.

In *Bachan Singh Etc. Etc v. State of Punjab,* mitigating circumstances relating to mental disorder have been laid down by the Supreme Court. In this case constitutionality of Section 354(3) was challenged. Accordingly, Sub-section (3) of Section 354 of the current Code provides that when the conviction is for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the

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230 Id. s. 328(1).
231 Id. s. 329(1).
233 AIR 1982 SC 1325, Judgement delivered by Hon’ble P.N. Bhagwat, J.
sentence awarded, and, in the case of sentence of death, the special reasons for such sentence. Hon’ble Supreme Court held that death sentence should be awarded in rarest of rare cases. The Court further sets out certain mitigating circumstances which were suggested by Dr. Chitaley, the learned counsel. Mitigating circumstances relating to mental disorder are as follows:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

5.8.4 The Indian Evidence Act, 1982

In Mariyappan v. State of Tamil Nadu,\textsuperscript{234} the Apex Court referred Section 105 of the Indian Evidence Act, 1872 which lays that when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

In Siddhapal Kamala Yadav v. State of Maharashtra,\textsuperscript{235} Justice Dr. Arijit Pasayat has observed that:

“The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1982… and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding.”\textsuperscript{236}

In Ramesh Chandra Aggrawal v. Regency Hospital Ltd. & Ors,\textsuperscript{237} the Hon’ble Supreme Court while observing the importance of expert opinion in case where plea of insanity has been taken held that:

\textsuperscript{234}AIR 2014 SC (Supp) 914.
\textsuperscript{235}AIR 2009 SC 97, Judgement delivered by Hon’ble Dr. Arijit Pasayat and Dr. Mukundakam Sharma, JJ.
\textsuperscript{236}Id. at 99, para 7.
\textsuperscript{237}AIR 2010 SC 806, Judgement delivered by Hon’ble G.S. Singhvi and H.L Dattu, JJ.
“The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court’s knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are: (i) that the expert must be within a recognized field of expertise (ii) that the evidence must be based on reliable principles, and (iii) that the expert must be qualified in that discipline.”

The importance of expert opinion has been explained in State of H.P v. Jai Lal, the Court held that:

“Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identify of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.”

In the recent case of Veer Pal Singh v. Secretary, Ministry of Defence, the Court explained that:

“Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. The opinion of the experts deserves respect and not worship.”

5.8.5 Other Legislations
5.8.5.1 The Medical Termination of Pregnancy Act, 1971

In Suchita Srivastava & Ors. v. Chandigarh Administration, Court observed that the woman had become pregnant as a result of an alleged rape that took place

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238 Id. at 808-809, para 11.
240 Id. at 285-286, para 17.
241 AIR 2013 SC 2827, Judgement delivered by Hon’ble K.T. Thomas and D.P. Mohapatra, JJ.
242 Id. at 2836, para 11.
243 (2009) 9 SCC 1, Judgement delivered by Hon’ble K.G. Balakrishnan, Chief Justice of India and P. Sathasivam, J.
while she was an inmate at a government run welfare institution located in Chandigarh. She has been described as a person suffering from ‘mild mental retardation’. Persons with borderline, mild or moderate mental retardation are capable of living in normal social conditions even though they may need some supervision and assistance from time to time. The victim has expressed her willingness to carry the pregnancy till its full term and bear a child. The Expert body has found that she has a limited understanding of the idea of pregnancy and may not be fully prepared for assuming the responsibilities of a mother. As per the findings, the victim is physically capable of continuing with the pregnancy and the possible risks to her physical health are similar to those of any other expecting mother. There is also no indication that the prospective child may be born with any congenital defects.244 The Court held that the direction given by the High Court to terminate the victim’s pregnancy was not in pursuance of her best interests. Performing an abortion at such a late stage could have endangered the victim’s physical health.245

5.8.5.2 The Protection of Children from Sexual Offences Act, 2012 (POCSO)

In a recent case of Ms. Eera Through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi)246, the main issue pertained to interpretation of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO), and the primary argument of the learned counsel for the appellant is that the definition in Section 2(d) that defines “child” to mean any person below the age of 18 years, should engulf and embrace, in its connotative expanse, the “mental age” of a person or the age determined by the prevalent science pertaining to psychiatry so that a mentally retarded person or an extremely intellectually challenged person who even has crossed the biological age of 18 years can be included within the holistic conception of the term “child”. The appellant was represented by her mother on the foundation that she is suffering from Cerebral Palasy (R. Hemiparesis) and, therefore, though she is biologically 38 years of age, yet her mental age is approximately 6 to 8 years. In this backdrop, it is contended that the trial has to be held by the Special Court established under the POCSO Act. The mother of the appellant had lodged FIR against the respondent alleging that he had committed rape on her mentally retarded daughter. The appellant felt aggrieved as the two main prayers, namely, (i) transfer of

244 Id. at 19, para 42.
246 Criminal Appeal Nos.12171219 of 2017(Arising Out Of S.L.P. (Crl.) Nos. 26402642 of 2016).
the case to the Special Court established under the POCSO Act as the functional age of the prosecutrix is 6 to 8 years and (ii) the transfer of the case from P.S. Defence Colony to the Crime Branch for proper supervisinal investigation were not allowed. As the impugned order would show, the High Court directed that the case should be assigned to a trial court presided over by a lady Judge in Saket Court. The Supreme Court while upholding the decision of the High Court held that:

“it is clear that viewed with the lens of the legislator, we would be doing violence both to the intent and the language of Parliament if we were to read the word “mental” into Section 2(1)(d) of the 2012 Act. Given the fact that it is a beneficial/penal legislation, we as Judges can extend it only as far as Parliament intended and no further.”

In brief, from the above discussion of cases it is evident that the judiciary has clearly read right to health within the ambit of right elaborated to life as under Article 21 of the Constitution. There have been several Supreme Court interventions largely in response to PILs focusing on the problems of the mentally ill in prisons and focusing on the care in psychiatric hospitals.247 There is a great need presently for legal literacy about mental health issues to be more widespread even among the judiciary. Responsive central and state administrations, a committed judiciary, human rights advocates and watchdogs and an informed public which demands mental health care need to work together to further enhance mental health reform.248

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247 Supra note 3 at 82.
248 Ibid.