



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Psychological disorders and laws in India

Manaswini Rout<sup>a</sup>

<sup>a</sup>National Law University, Odisha, India

*Received* 25 September 2021; *Accepted* 16 October 2021; *Published* 20 October 2021

---

*As we progress into a world that is more modern and scientific, the more we get to know about the various ailments that we suffer from. Modern science has made it possible for us to study our brain and the various disorders that may occur in it. We are at a time when nearly 13 percent of the world's population suffers from such disorders. We need better laws to help those who are victims of such disorders. The article tries to highlight various disorders that make the person violent which can cause harm to others as well as themselves, to show how much there is a need for better mental healthcare. This article tries to discuss the various acts and laws that are present in India to help people suffering from disorders. It also discusses 'testamentary capacity and the 'defense of insanity that is used to protect such patients.*

**Keywords:** *psychological disorders, violence, mental health care.*

---

### INTRODUCTION

According to the 2001 "World Health Report", every fourth person of the world population has suffered from some kind of mental or psychological disorder at some point of their life, with about 450 million active cases at a time<sup>1</sup>. Another statistic report from 2017 stated that nearly

---

<sup>1</sup> 'The World Health Report 2001: Mental Disorders Affect One in Four People' (World Health Organization) <<https://www.who.int/news/item/28-09-2001-the-world-health-report-2001-mental-disorders-affect-one-in-four-people>> accessed 20 September 2021

13% of the world's population suffered from a mental health or drug abuse disorder<sup>2</sup>. In India alone, nearly 14% of the population suffered from some form of psychological disorder in 2017<sup>3</sup>. In a country where speaking about being mentally ill is still taboo, one can guess how neglected the mental health care system has been. The ones suffering from such disorders are still a part of the population and it is important that the laws that govern them are equally developed. People suffering from mental health issues who receive proper treatment do succeed in leading their lives normally to some extent, like other people. However, there are some disorders that make patients increasingly violent. This sometimes escalates into them committing a crime. Hence, laws that safeguard both patients and the general public should be taken seriously.

## PSYCHOLOGICAL DISORDERS THAT MAY MAKE THE PATIENT VIOLENT

There are a number of psychological disorders, and they include neurodevelopmental disorders, anxiety disorders, personality disorders, stress-related disorders, and so on. However, there are many such severe mental disorders that if left untreated will cause the patients to harm themselves as well as the people around them.

**Borderline Personality Disorder:** - It is a disorder in which people have trouble regulating their emotions, i.e., when they go through an emotionally provoking incident, they have a harder time returning to the normal baseline of emotions like others, and they behave in a way that is erratic in the eyes of others<sup>4</sup>. They feel empty and become suicidal, which can lead to self-harm<sup>5</sup>. They often have outbursts of rage or depression and find it difficult to control their

---

<sup>2</sup> Elflein J, 'Share of Global Population with Mental Health Disorders 2017' (*Statista*, 2021) <<https://www.statista.com/statistics/979852/prevalence-of-mental-health-disorders-globally/>> accessed 17 September 2021

<sup>3</sup> 'Topic: Mental Health in India' (*Statista*) <<https://www.statista.com/topics/6944/mental-health-in-india/>> accessed 17 September 2021

<sup>4</sup> 'Borderline Personality Disorder' (*NAMI*) <<https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions/Borderline-Personality-Disorder>> accessed 17 September 2021

<sup>5</sup> 'NIMH Borderline Personality Disorder' (*National Institute of Mental Health*) <<https://www.nimh.nih.gov/health/topics/borderline-personality-disorder>> accessed 17 September 2021

anger, sometimes becoming violent towards the people around them<sup>6</sup>. The severity of this disorder differs from person to person<sup>7</sup>.

**Bipolar Disorder:** This disorder was formerly called 'Manic Depression'<sup>8</sup>. It is characterised by severe mood fluctuations, including unusual shifts in emotions<sup>9</sup>. This condition usually persists throughout an individual's life<sup>10</sup>. These mood swings usually range from the extremes to the extremes, i.e., the patient may sometimes have "manic outbursts" during which they become restless and agitated and get irritated quite easily, or at some other time, they go through "depressive outbursts" during which they feel hopeless and have an indifferent attitude towards life<sup>11</sup>. Bipolar disorder can actually be categorised into three different types, namely- 'Bipolar I Disorder', "Bipolar II Disorder" and "Cyclothymic Disorder", depending upon the severity of the symptoms, with "Bipolar I" being the most severe<sup>12</sup>. Due to these sudden fluctuations in mood, patients suffering from bipolar disorder are prone to agitation, which can lead to impulsive violence<sup>13</sup>. Incidentally, most of these patients may also have other mental disorders like ADHD (Attention-Deficit Hyperactivity Disorder) and can also develop substance abuse problems<sup>14</sup>.

**Post-Traumatic Stress Disorder:** - This is a disorder that usually develops after an individual suffers from some kind of terrifying or traumatising event. Generally, anyone who faces such an event suffers from the trauma for some days and then naturally copes with the event<sup>15</sup>. However, some people are unable to do so and the symptoms, including nightmares and flashbacks of the traumatic events, last for months, or in some cases, years<sup>16</sup>. Although not

---

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> 'Bipolar Disorder' (*Mayo Clinic*, 16 February 2021) <<https://www.mayoclinic.org/diseases-conditions/bipolar-disorder/symptoms-causes/syc-20355955>> accessed 17 September 2021

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> NIMH (n 5)

<sup>13</sup> *Ibid*

<sup>14</sup> Bipolar Disorder (n 8)

<sup>15</sup> 'NIMH " Post-Traumatic Stress Disorder"' (*National Institute of Mental Health*)

<<https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd>> accessed 17 September 2021

<sup>16</sup> *Ibid*

always the case, some individuals suffering from PTSD act violently. Since some of them are in constant panic mode, they cannot sleep easily and get irritated easily, which leads to them acting violently<sup>17</sup>. In some other cases, patients try to push down their anger, which leads to their own mental breakdown<sup>18</sup>.

**Dissociative Identity Disorder:** - Earlier Dissociative Identity Disorder was known as 'Multiple Personality Disorder' and is still commonly called as 'Split Personality Disorder'. In this disorder, an individual develops two or more identities or personalities<sup>19</sup>. These other identities of the person are also called 'alters' of the main personality<sup>20</sup>. Dissociative disorders often arise as a reaction to trauma, and they are a result of the patient's brain's defence mechanism that tries to keep the bad or traumatic memories away from them<sup>21</sup>. This disorder is characterised by the loss of continuity between ideas and memories<sup>22</sup>. These lapses in memories occur when their altered personalities take over the host or original personality. At times the host personality is not even aware of the presence of other personalities<sup>23</sup>. The symptoms are usually noticed by the others. Due to the deep trauma associated with the patients of this condition, a lot of them also exhibit suicidal tendencies and try to harm themselves<sup>24</sup>.

**Anti-social Personality Disorder:** - In this disorder, a person affected continuously disregards right and wrong and is insensitive towards the feelings or rights of other people, i.e., they can easily manipulate people or abuse the rights of other people and feel no guilt or regret<sup>25</sup>. They

---

<sup>17</sup> Tull M, "Why People with PTSD Tend to Experience Irritability and Anger" (*Verywell Mind*) <<https://www.verywellmind.com/the-relationship-between-anger-and-ptsd-2797543>> accessed 18 September 2021

<sup>18</sup> *Ibid*

<sup>19</sup> 'Split Personality Disorder: Signs, Symptoms, Causes, and More' (*Medical News Today*) <<https://www.medicalnewstoday.com/articles/split-personality#what-it-is>> accessed 18 September 2021

<sup>20</sup> *Ibid*

<sup>21</sup> 'Dissociative Disorders' (*Mayo Clinic*, November 17, 2017) <<https://www.mayoclinic.org/diseases-conditions/dissociative-disorders/symptoms-causes/syc-20355215>> accessed 18 September 2021

<sup>22</sup> *Ibid*

<sup>23</sup> Split Personality Disorder (n 19)

<sup>24</sup> 'DID Fact Sheet' (*NAMI Michigan*) <<https://namimi.org/mental-illness/dissociative-disorder/didfactsheet>> accessed 18 September 2021

<sup>25</sup> 'Antisocial Personality Disorder' (*Mayo Clinic*, 10 December 2019) <<https://www.mayoclinic.org/diseases-conditions/antisocial-personality-disorder/symptoms-causes/syc-20353928>> accessed 18 September 2021

have miscreant tendencies, and their behaviour can sometimes be regarded as criminal behaviour<sup>26</sup>. They may lie or deceive others for their own advantage<sup>27</sup>. There is no known cause for this disorder. It is suspected that such a personality disorder may arise due to abuse during childhood, or it may just be genetic<sup>28</sup>. Treating this disorder is extremely difficult and there are no known medications to cure this disorder<sup>29</sup>.

## ACTS REGARDING MENTAL HEALTH IN INDIA

In our country, not everyone is vocal when it comes to matters of mental health. People and their families still fear the judgement of society and often try to suppress such matters without seeking proper treatment. As a result, new laws were required to assist the mentally ill individual. Not everyone in our country is financially equipped to get treated for such conditions, and it was the goal of the government to aid the patients with proper treatment so as to enable them to join the mainstream population and live among them.

The 'National Mental Health Programme', or NMHP for short, was introduced by the Government of India in the year 1982 to deal with such problems<sup>30</sup>. It was the first of its kind in India and was a huge help to develop the much-needed psychiatry sector of the nation<sup>31</sup>. The programme basically has three objectives. The first one is to ensure that mental healthcare is accessible as well as available to everyone in the country, including those who are underprivileged<sup>32</sup>. The second objective was to promote the use of mental healthcare in social improvement and general healthcare<sup>33</sup>. The third objective was to encourage public participation of people in developing the mental healthcare system and promoting self-help initiatives<sup>34</sup>. In 1996, under NHMP, the 'District Mental Health Programme' was introduced<sup>35</sup>.

---

<sup>26</sup> 'Antisocial Personality Disorder: MedlinePlus Medical Encyclopedia' (*MedlinePlus*) <<https://medlineplus.gov/ency/article/000921.htm>> accessed 18 September 2021

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

<sup>30</sup> Wig NN & Murthy SR, 'The Birth of National Mental Health Program for India' (*Indian journal of psychiatry*, 2015) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4623656/>> accessed 18 September 2021

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

This programme dealt with the training of physicians to diagnose and treat common mental disorders<sup>36</sup>. The programme also focused on the treatment and detection of such psychological ailments as well as on creating public awareness about such disorders<sup>37</sup>.

The government of India on 7<sup>th</sup> April 2017 passed the "Mental Healthcare Act 2017"<sup>38</sup>. This act came into force on 7<sup>th</sup> July 2018 after the original 'Mental Health Act of 1987' was revoked<sup>39</sup>. This act defines the term 'mental illness' under **Section 2** as follows: "a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, especially characterised by subnormality of intelligence." A major change that this act did was the decriminalisation of suicide. Earlier, under Section 309 of the Indian Penal Code, it was illegal to commit suicide or to attempt suicide. Now, however, it is stated in the act that, "Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860), any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code." The main aim of this act is to ensure proper treatment for all those suffering from mental conditions and to enable these patients to live their lives with dignity<sup>40</sup>.

## MENTAL DISORDERS AND TESTAMENTARY CAPACITY

Testament refers to an individual's will, and testamentary capacity pertains to a person's complete sense and mental sanity, following which the person can confirm and sign a will

---

<sup>35</sup> 'National Mental Health Programme (NMHP)' (*National Health Mission*) <<https://nhm.gov.in/index1.php?lang=1&level=2&sublinkid=1043&lid=359>> accessed 18 September 2021

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> 'National Mental Health Programme: National Health Portal of India' (*National Mental Health Programme | National Health Portal of India*) <[https://www.nhp.gov.in/national-mental-health-programme\\_pg](https://www.nhp.gov.in/national-mental-health-programme_pg)> accessed 18 September 2021

<sup>39</sup> *Ibid*

<sup>40</sup> A Mishra & A Galhotra, 'Mental Healthcare Act 2017: Need to Wait and Watch' (*International Journal of Applied & Basic Medical Research*, 2018) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/>> accessed 18 September 2021

after fully comprehending his assets and the consequences of doing so<sup>41</sup>. Legally speaking, it is the capability of a person to understand and sign a will<sup>42</sup>. According to the “Indian Succession Act 1925”, a will can be made by a person who is of sound mind<sup>43</sup>. If a person is normally insane but once in a while becomes of sound mind, then that person can make and sign a will when he is of sound mind<sup>44</sup>. Also, no person can make a will when they are of unsound mind, whether it be due to any disorder or due to some kind of intoxication<sup>45</sup>. Normally, when a will is being drafted, the lawyers make sure that the person making the will is of sound mind<sup>46</sup>. They can take the help of experts to determine whether or not the person has testamentary capacity<sup>47</sup>.

### THE DEFENSE OF INSANITY

Under Section 84 of the Indian Penal Code, if an act that is normally considered to be unlawful is committed by a person of unsound mind, then it shall not be considered as an offence<sup>48</sup>. It should be proved that the said person is not capable of understanding the nature of the wrongful act and the fact that the act is not lawful<sup>49</sup>. The defence of insanity is most commonly used in criminal cases to establish the fact that during the occurrence of the crime, the accused was not of sound mind and hence cannot be held liable for the particular crime. But just proving that a person is suffering from any sort of mental disorder is not enough. It is important that the person is legally insane.

---

<sup>41</sup> Jiloha RC, ‘Mental Capacity/ Testamentary Capacity’  
<<https://www.indianjpsychiatry.org/cpg/cpg2009/article9.pdf>> accessed 18 September 2021

<sup>42</sup> *Ibid*

<sup>43</sup> Narayan CL & Shikha D, ‘Indian Legal System and Mental Health’ (*Indian journal of psychiatry*, January 2013)  
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705679/>> accessed 18 September 2021

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*

<sup>46</sup> Jiloha (n 41)

<sup>47</sup> *Ibid*

<sup>48</sup> Indian Penal Code 1860, s 84

<sup>49</sup> *Ibid*

Although there is no fixed definition of being of "unsound mind", there is a difference between what a medically insane individual and a legally insane individual do<sup>50</sup>. Not every person who is medically insane will be considered legally insane<sup>51</sup>. Under medical insanity, any person who is suffering from a mental or psychological disorder will be considered as mentally affected<sup>52</sup>. However, under legal insanity, the reasoning ability of the person is taken into account<sup>53</sup>. A person can be called legally insane only if he/she is or was whilst the crime was committed, incapable of understanding that the act was wrongful, and couldn't comprehend the nature of the act<sup>54</sup>.

For example, someone with an eating disorder will be considered as suffering from a psychological disorder, but they will not be considered as legally insane. Yet another example could be that of psychopaths (anti-social personality disorder). Psychopaths cannot plead the defence of insanity because they are not considered as legally insane<sup>55</sup>. The reason is that their ailment doesn't affect their reasoning abilities. They may tend to commit crimes, but it doesn't prove that they were incapable of comprehending the nature of their act. In cases of 'Dissociative Identity Disorder, it has to be determined whether the crime was committed by the host personality or if it was done by an altered personality. If the crime was committed by an 'alter', the person could not be punished, because they were not of sound mind. However, if the host personality is the one that committed the crime, then they are punished according to the law.

## CONCLUSION

With the advancement of medical science, we are now clearer about what constitutes as a mental disorder. A significant amount of the population is under the grasp of various

---

<sup>50</sup> SB Math and others, 'Insanity Defense: Past, Present, and Future' (*Indian journal of psychological medicine*, 2015) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676201/>> accessed 18 September 2021

<sup>51</sup> *Ibid*

<sup>52</sup> *Ibid*

<sup>53</sup> *Ibid*

<sup>54</sup> *Ibid*

<sup>55</sup> D Mahapatra, 'Psychopaths Can't Plead Lunacy: SC: India News - Times of India' (*Times of India*, June 7 2007) <<https://timesofindia.indiatimes.com/india/psychopaths-cant-plead-lunacy-sc/articleshow/2104994.cms>> accessed 18 September 2021

psychological disorders. It is important that people affected by such disorders are provided proper help to ensure their right to live with dignity. Many disorders can lead to violent temperaments and self-harm. It is important to develop proper mental healthcare in our country as well as enforce laws to protect the patients affected as well as the people near them. The acts and the legislations that we currently can surely develop more resulting in improvement of their implementation.