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MENTAL HEALTH AND CARCERAL MEDICINE: THE INSTITUTIONALISATION OF THE "INCURABLE"

~ Sampurna Samanta

INTRODUCTION

"The asylum no longer punished the madman's crime; it imprisoned his unreason." - Michel Foucault.[1]

In India, the combination of mental health and carceral health care is a form of crisis - the incarceration of those labeled "incurable", "dangerous" or "social outcasts". This is a medical and constitutional failure. In spite of the Mental Healthcare Act of 2017[2], the Rights of Persons with Disabilities Act of 2016, and the Bharatiya Nyaya Sanhita (BNS) of 2023[3] institutions are still over populated and dehumanising. This blog examines the evolution of carceral health care, its legal roots, and the urgent call to restore dignity through community based care.

THE CONCEPT:

The World Health Organisation defines mental health as "a state of well-being in which every individual realises his or her potential, can cope with the normal stresses of life, and can work productively." In India, considerable stigma, poverty, and patriarchy are barriers to care leading to confinement. Carceral medicine as what Foucault described to be an instrument of biopower blur the lines between health care and watchful control, which in turn transforms health institutions into centers of discipline. From the colonial Lunacy Acts to the Mental Health Act

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[1] Michel Foucault, "*Madness and Civilization: A History of Insanity in the Age of Reason*" (Pantheon Books 1961).
[2] Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).
Available at: https://cdn.ncw.gov.in/wp-content/uploads/2023/08/mental-Health-act-2017.pdf
[3] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
Available at: https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

of 1987 psychiatry was the isolation of the “other”. Although the 2017 Mental Health Care Act is a step toward autonomy, in practice it is still coercive which goes against Francis Coralie Mullin (1981)[4], Shatrughan Chauhan (2014)[5] and Accused X v. State of Maharashtra (2019)[6].

THE ORIGIN:

The history of carceral medicine and mental health can be traced back to Europe’s “Great Confinement” of the 17th and 18th centuries. The Hôpital Général and Bethlem Royal Hospital operationalised surveillance as care, confining the “mad,” “idle,” and “poor.” Even Pinel and Tuke’s reforms, advocating “moral treatment,” continued to sustain isolation as a form of governance. This was in turn, applied to colonial India through the Bengal Regulations (1795), Indian Lunatic Asylums Act (1858), and Indian Lunacy Act (1912), which conceptualised the “criminal lunatic.” This asylum-prison nexus still governs rather than heals, despite the Mental Healthcare Act (2017) and the Bharatiya Nyaya Sanhita (2023).

CONTEMPORARY CASES IN INDIA - A STUDY.

Psychological distress goes overlooked within India’s prisons. According to the National Crime Records Bureau (NCRB)[7]Prison Statistics India 2022 estimated the total number of prison inmates, including Bandopadhyay, to be 5.7 lakh which included 9,084 (1.6%) mentally ill inmates rising to 16,503 (2.7%) by 2023. WHO contends the mentally ill population within prisons is grossly underestimated at 20-80 per cent, with 25 mental health professionals for 1,330 prisons, and with positions for mental health professionals vacant.[8] The cases of - Dipak Joshi’s detention for 41 years without trial and Jabira Sattar who was held five years post-bail demonstrate the system problem, highlights this. Courts during Sartaj v. State of NCT (2023) and Calcutta HC (2024) had intervened but suicides form 80% of unnatural deaths. Indeed, Foucault rightly claimed that prisons remain “the asylum that forgot its purpose.”

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[4] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (India).
[5] Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1 (India).
[6] Accused X v. State of Maharashtra, (2019) SCC OnLine SC 238 (India).
[7] National Crime Records Bureau, *Prison Statistics India 2023* (2023), https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf
[8] World Health Organisation, *Mental health: a state of well-being*, https://www.who.int/features/factfiles/mental_health/en/ (last visited Oct. 20, 2025).

MENTAL HEALTH, CARCERAL MEDICINE AND THE ANTI-THESIS OF HUMAN RIGHTS

'Incurable' is not a measure of medical defeat, but rather the moral failure of human rights. As Dr. Martin Luther King Jr. once said, "Of all the forms of inequality, injustice in health is the most shocking and inhumane." When care becomes custody, patients become inmates and their rights Article 14, 19 and 21 are violated. Maneka Gandhi v. Union of India (1978)[9] ruled liberty must mean "just, fair and reasonable" yet NHRC (2024)[10] discovered 60% psychiatric inmates had been locked up for upwards of five years; many were already fit to be set free. Even with the legal progress made in Jeeja Ghosh v. Union of India (2016), institutions still treat difference as deviance. With the Bharatiya Nyaya Sanhita (2023), India still acknowledges "unsound mind"; with NIMHANS–NHRC (2023-24), revealing chaining and neglect, under 30% of people could access care.[11]

MENTAL HEALTH, CARCERAL MEDICINE AND THE RULE OF LAW

A.V. Dicey noted that the Rule of Law meant the absence of arbitrariness — that every State act must be a matter of law, and not of discretion. However, within India's carceral and psychiatric regimes, the law still performs the denial of liberty that it professes to prevent. Article 21 promises the protection of life and liberty, but for the "unsound" people, procedure rigidly becomes punishment. The Bharatiya Nyaya Sanhita (2023) and Bharatiya Nagarik Suraksha Sanhita (2023)[12] still retain "safe custody", thereby permitting the State to unleash indefinite confinement. Kartar Singh v. State of Punjab (1994)[13] warned discretion, unchecked, disturbs legality. From Sunil Batra v. Delhi Administration (1978)[14] to Re: Inhuman Conditions in 1382 Prisons (2016), courts declared rights to prison; Shatrughan Chauhan v. Union of India (2014) and Accused X v. State of Maharashtra (2019) supported rehabilitation, but Vikas Yadav and Nitika Mehta's cases respectively exposed the perpetual "systemic criminalisation of mental

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[9] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).
[10] National Human Rights Commission, *Annual Report 2023–24* (2024), https://nhrc.nic.in/assets/uploads/annual_reports/1755187700_d5bfef90db19872e5f9a.pdf.
[11] National Human Rights Commission, *NIMHANS–NHRC Report on Mental Health* (2023), https://nhrc.nic.in/assets/uploads/annual_reports/1755187700_d5bfef90db19872e5f9a.pdf.
[12] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
Available at: https://cdnbbsr.s3waas.gov.in/s3ae1eaa32d10b6c886981755d579fb4d8/uploads/2024/03/20240318164266609 2.pdf
[13] Kartar Singh v. State of Punjab, (1994) 3 SCC 569 (India).
[14] Sunil Batra v. Delhi Administration, (1978) 4 SCC 494 (India).

illness." At less than 1% of the healthcare budget, legality without dignity makes the Rule of Law irrelevant.

RECOMMENDATIONS

India's mental health laws are a paradox: they are protective in principle, yet permissive of control. India must rethink how prison mental health is understood through a rights-based lens. This is through a recovery-oriented framework aligned to the UNCRPD[15] and the Nelson Mandela Rules.[16]

1. Oversight of custodial psychiatry should also fall to the Health Ministry, under WHO's Health in Prisons Programme (HIPP) and OPCAT[17], with pilot facilities monitored by National Preventive Mechanisms and Ombudspersons. Funding can include World Bank IDA health windows[18], UNPRPD, and bilateral grants, focusing on women, juveniles, and people with psychosocial disabilities.
2. Integrate the WHO QualityRights and mhGAP clinical standards, incorporate Integrated Telepsychiatry through OpenMRS/DHIS2, implement staff certification and training based on Canada's ACCESS Open Minds and Brazil's CAPS-F with cultural adaptations, and expansion-enabled CAPS-F and culturally responsive adaptations CAPS-F.
3. Independent Forensic Mental Health Review Boards, with guidance from the Istanbul Protocol, should examine cases of indefJune detention and divert cases through CMHTs using the Sequential Intercept Model (SIM) and Memphis-style Crisis Intervention Teams.

CONCLUSION:

The establishment of "incurable cases" demonstrates the hold medicine and law maintain over care when it becomes coercive. Dignity and liberty are the cornerstones of the Indian Constitution, yet there still exists confinement. Reform should not be "better" asylums, but the

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[15] United Nations, Convention on the Rights of Persons with Disabilities (CRPD), https://www.ohchr.org/en/hr-bodies/crpd
(last visited Oct. 20, 2025).

[16] United Nations Office on Drugs and Crime (UNODC), *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (last visited Oct. 20, 2025).

[17] United Nations, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture (last visited Oct. 20, 2025).

[18] World Bank, *International Development Association (IDA) Health Projects*, https://www.worldbank.org/en/programs/ida (last visited Oct. 20, 2025).

removal of the idea of lives beyond recovery. The Supreme Court encapsulated this principle in Railway Board v. Chandrima Das (2000)[19]: the extending of rights to the "incurable" is not a goodwill gesture but a fundamental constitutional obligation and the very essence of justice.

[19] Railway Board v. Chandrima Das, (2000) 2 SCC 465 (India).