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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**UNSOUND MIND IN CRIMINAL PROCEEDINGS: THE ABSENCE
OF TIME FRAMES FOR MENTAL HEALTH ASSESSMENTS
UNDER SECTION 329 OF THE CODE OF CRIMINAL
PROCEDURE AND ITS IMPLICATIONS.**

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Introduction

In the realm of criminal justice, a significant yet often overlooked demographic emerges - the undertrial prisoners grappling with mental health conditions. This intersection of legal vulnerability and mental health intricacies unravels a myriad of challenges, posing profound ethical, legal, and societal questions. As custodians of justice, it is imperative that we scrutinize this juncture with precision, empathy, and a commitment to upholding the rights and dignity of every individual, regardless of their mental health status. The foundation of this research rests on an extensive review of cases, scholarly journals, and articles that illuminate the complex landscape of undertrial prisoners with unsound minds within the Indian criminal justice system. Notable cases such as *Hussainara Khatoon v. Home Secretary*, *Sheela Barse v. State of Maharashtra*, and *Supreme Court Legal Aid Committee v. Union of India* provides pivotal insights into the legal precedent surrounding the detention and rights of mentally ill undertrial prisoners. Moreover in the recent case of *Suo Motu v. State of Kerala*, the Kerala High Court has laid down ground-breaking rules for undertrial prisoners of unsound mind. Additionally, esteemed academic works by scholars like Amita Dhanda in "Public Interest Litigation for the Mentally Ill" and "Rights of the Mentally Ill", and N.R. Madhava Menon's "Public Interest Litigation: A Major Breakthrough in the Delivery of Social Justice" offers comprehensive analyses of the legal and social dimensions of this issue. This research adopts a predominantly qualitative approach, aiming to glean nuanced insights from the experiences, perspectives, and systemic challenges faced by undertrial prisoners with unsound minds. Grounded theory of data analysis serves as the principal analytical framework, allowing for an in-depth exploration of the multifaceted narratives that define this complex issue. Qualitative data, comprising interviews, case studies, and legal documents, will be meticulously examined to unearth emergent

themes and patterns. The core predicament under examination revolves around the detention and inadequate legal representation of undertrial prisoners afflicted with mental health conditions under Section 329 of the Code of Criminal Procedure (CrPC). This manifests as a glaring violation of their fundamental rights, demanding a comprehensive appraisal of the provisions under Chapter XXV of the said code and their efficacy in safeguarding the well-being and dignity of these individuals. The main question is how Section 329 of the CrPC could ensure timely disposal of cases, if subject to certain amendments. The overarching objective of this research is to shed light on the challenges faced by undertrial prisoners with unsound minds, advocating for a more equitable, humane, and rights-oriented approach. By scrutinizing legal provisions, landmark cases, and scholarly discourse, this study aspires to contribute to a nuanced understanding of the broader human rights implications of this complex issue, ultimately advocating for a paradigm shift in the treatment of mentally ill undertrial prisoners.

1. “Unsound Mind” as Per the Law, It’s History and Development.

1.1. The treatment of mentally ill prisoners in India is governed by a set of legal provisions outlined in various statutes. The Mental Healthcare Act, 2017, is a pivotal legislation that delineates the rights of mentally ill persons, including those within the criminal justice system. It defines a mentally ill person as someone who is suffering from “a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life...”¹. The Indian Lunacy Act, 1912 (currently operational due to non-enforcement of the Mental Health Act, 1987), outlines the procedures related to the institutionalization and treatment of mentally ill individuals. This act primarily focuses on custodial arrangements, framing mental hospitals more as places of confinement than centers for treatment. The Act defines mental disorder as any mental derangement or defect, but does not include mental retardation. It provided a broad framework for identifying mental disorders without specific diagnostic criteria. Moreover, the Act, under Section 3(4) defines a criminal lunatic as a “person for whose detention in, or removal to an asylum, jail or other place of safe custody, an order has been made in accordance with the provisions of section 330 or sections 335 and 336 of the Code of Criminal

¹ Sec. 2(s), The Mental Healthcare Act, 2017. Act No. 10 of 2017.

Procedure, 1973”²

Furthermore, the Code of Criminal Procedure, 1973, and the Indian Penal Code, 1860, address the issues concerning mentally ill prisoners. Section 330 of the CrPC allows for the examination of the accused by a medical practitioner if there are doubts regarding their mental capacity to stand trial and Section 328 provides for the examination of the accused by a medical practitioner if there is a doubt regarding their mental capacity. Finally, Section 335 deals with the situation where an accused is acquitted on the grounds of insanity. It emphasizes that acquittal does not imply automatic release, and outlines the subsequent legal procedures that will be discussed further in the paper.

1.2. The history of mental health treatment in India is a tapestry woven with cultural, religious, and legal threads. It reflects a dynamic evolution from ancient spiritual practices to modern medical interventions. Understanding this historical context is vital in comprehending the complexities of mental health treatment today. In ancient India, mental health was intricately linked with spirituality. Practices like yoga, meditation, and Ayurveda played pivotal roles in maintaining mental well-being. Ayurvedic texts, notably the Charaka Samhita and Sushruta Samhita, mentioned psychological disorders and prescribed herbal remedies and therapeutic interventions³. The colonial period brought about a shift in the approach towards mental health. The establishment of lunatic asylums, starting with the Royal Naval Hospital in Bombay (now Mumbai) in 1745, marked a significant departure. These asylums were primarily custodial, focusing on containment rather than treatment. Conditions in these institutions were often deplorable⁴. After gaining independence, India underwent a period of modernization and reform in mental healthcare. The Mental Health Act of 1987 was a watershed moment. It aimed to safeguard the rights of mentally ill individuals, outlining procedures for admission, treatment, and discharge. However, full enforcement of the act had been delayed, leading to the continued applicability of the older Indian Lunacy Act of 1912. In recent years, there has been a paradigm shift towards holistic mental healthcare in India. Integrating traditional practices with modern psychiatry has gained prominence. Initiatives like the National Mental Health Programme (NMHP) focus on community-based care, awareness, and reducing the stigma associated with mental illness⁵. While strides have been made, challenges still persist. Access to quality mental healthcare

² Sec.3(4), The Indian Lunacy Act, 1912. Act No. 4 of 1912.

³ Kakar, S. *Shamans, Mystics and Doctors: A Psychological Inquiry into India and Its Healing Traditions*. University of Chicago Press, (1982).

⁴ Agarwal, S. P. *Mental Health in India: An Overview*. British Journal of Psychiatry, 142, Pg.618-624, (1983).

⁵ Vikaspedia, *National Mental Health Programme* <https://vikaspedia.in/health/mental-health/national-mental-health-programme>

remains inequitable, with urban areas often having better facilities than rural regions. Stigma and misconceptions surrounding mental illness continue to hinder early intervention and treatment. Furthermore, the interface between mental health and the criminal justice system, especially regarding mentally ill prisoners, remains a critical concern.

2. Case Studies and Legal Precedents

2.1. There have been many landmark judgements that have discussed the rights of undertrial prisoners ever since India gained independence. But there were never specific mentions of persons of unsound mind and their right against arbitrary detention under Article 22 of the Constitution of India.

2.2. The first and most important case to be discussed is *Suo Motu v. State of Kerala*⁶ where the Kerala High Court particularly talked about how undertrial prisoners who are of unsound mind are being subjected to arbitrary detention and how the administration should go about solving this problem. The original petition was registered *suo motu* (on its own motion) after a judge brought to the Chief Justice's attention the plight of mentally ill remand prisoners, asserting that such cases amounted to a violation of their fundamental rights. The case that spurred this judicial action involved a 72-year-old remand prisoner who had spent an astounding 49 years in the Government Mental Healthcare Centre due to his unsoundness of mind. This pivotal moment prompted a closer examination of the situation, resulting in the proposal and acceptance of guidelines by the Kerala Legal Services Authority (KELSA) for the rehabilitation of mentally ill prisoners. As of August 10, 2020, there were 77 convicts and remand prisoners undergoing treatment in such centers in the state, including 22 who remained after acquittal. Among the remaining, 48 were undertrial prisoners and 7 were convicts. Out of the 22 acquitted persons, 18 were deemed fit for discharge and rehabilitation. The KELSA Guidelines are as follows:

1. **Rehabilitation of Acquitted Persons:** This guideline addresses individuals acquitted by the court but are still residing in mental health centers due to reasons such as lack of family support or reluctance from the family to take them back. **Action Plan:** For In-State Individuals: They can be rehabilitated in one of the 33 identified psycho-social rehabilitation centers in the state. For Out-of-State Individuals: KELSA will attempt to locate their relatives and persuade

⁶ *Suo Motu v. State Of Kerala* (2021) OP(CrL.) No.487/2019.

them to take responsibility. If unsuccessful, the respective State governments, aided by the State Legal Services Authority, will facilitate rehabilitation.

2. **Rehabilitation of Remand Prisoners with Prolonged Mental Health Treatment:** Targets remand prisoners whose alleged offenses carry a maximum sentence of 10 years, and who have been in mental health centers for more than 5 years without improvement. Action Plan: They can be rehabilitated back to their homes, provided there's family support. In the absence of family support, they can be placed in PsychoSocial Rehabilitation Centres. They must undergo periodic medical evaluations (every 3 to 6 months) to determine if they are fit for trial.
3. **Rehabilitation of Remand Prisoners with Severe Charges:** Addresses remand prisoners facing charges punishable with over 10 years of imprisonment or the death penalty. Action Plan: After 10 years of admission to the mental health center, if the medical board still deems them unfit for trial, they can be rehabilitated. Similar to the previous category, periodic medical evaluations are crucial.

The judgment acknowledges the need to align the existing provisions in the Code of Criminal Procedure (CrPC) with the Mental Healthcare Act, 2017. It highlights the significance of the Mental Health Review Board, emphasizing that a prisoner with mental illness must have prior permission from the Board before being transferred to a mental health establishment. Moreover, it underscores the need for the High Court to intervene in cases of prolonged undertrial detention. It culminates in several interim directions, including the immediate establishment of mental health facilities in at least one prison, the constitution of Mental Health Review Boards, strict compliance with duties by Medical Officers, the assurance of dignified treatment for mentally ill prisoners, the provision of prisoner details to the Kerala State Legal Services Authority, and steps to trace and rehabilitate deserving cases.

- 2.3. The reasoning of the judges in the above mentioned case was from a jurisprudence that first arose in the case of *Hussainara Khatoon v. Home Secretary*⁷. This landmark case was pivotal in establishing the right to a speedy trial as an essential component of the right to life and personal liberty enshrined in Article 21 of the Indian Constitution. It highlighted the plight of undertrial prisoners who had been incarcerated for extended periods without a fair and expeditious trial. The reasoning given by the court in reaching its decision in this instance was that it is an egregious injustice and a disgrace to the legal system. People in poverty with no names who have been imprisoned are deprived of basic

⁷ *Hussainara Khatoon (IV) v. Home Secy., State of Bihar*, (1980) 1 SCC 98.

amenities and fundamental rights. Denial of trials is the same as denial of justice, as has already been established in earlier cases.

- 2.4. In 1992, the case of *A.R. Antulay v. R.S. Nayak*⁸ emphasized that this constitutional guarantee of speedy trial is adequately reflected in the procedural provisions of the Code of Criminal Procedure, cautioning against setting strict time limits for all cases. This case emphasized the importance of adhering to procedural timelines but also recognized that setting rigid time limits for all cases might not be practical.
- 2.5. Further in the case of *Common Cause v. Union of India*⁹, the Supreme Court tackled the critical issue of prolonged delays in the criminal justice system, especially concerning undertrial prisoners. The petitioners contended that such delays violated the fundamental right to a speedy trial enshrined in Article 21 of the Constitution. The Court, echoing the precedent set by *Hussainara Khatoon*¹⁰, underscored that excessive delays in the trial process could infringe upon this fundamental right, which it deemed an integral facet of the right to life and personal liberty. Importantly, it established that in cases of egregious delay leading to extended periods of custody, the accused may possess the right to be either acquitted or discharged. Furthermore, the Court laid down procedural guidelines for handling such delayed cases, emphasizing the need to assess the reasons behind the delay and determine appropriate actions, which could include release on bail or discharge. This case significantly reinforced the principle that justice delayed amounts to justice denied, advocating for a more efficient and expedient criminal justice system. It struck a vital balance between safeguarding the accused's right to a swift trial and ensuring thorough and fair proceedings. Moreover, the case demonstrated the judiciary's proactive approach in addressing systemic issues within the legal framework, signaling a move towards judicial activism aimed at reforming the legal process for the better.
- 2.6. After taking into consideration the aforementioned rulings, a five-judge bench later decided in *Ramachandra Rao P. v. State of Karnataka*¹¹ that a bench of seven judges should consider whether the general guidelines provided in *Common Cause* and *Raj Deo Sharma* are permissible under the law and could be upheld, or whether the dictum established in *A.R. Antulay* still holds true. As a result of this, the Seven Judges Bench answered the reference in *P. Ramachandra Rao v. State of*

⁸ A.R. Antulay v. R.S. Naik, (1986) Supp SCC 510.

⁹ Common Cause v. Union of India, (1996) 4 SCC 33.

¹⁰ *Supra* Note 7.

¹¹ P. Ramachandra Rao v. State of Karnataka, (2012) 9 SCC 430.

*Karnataka*¹², concluding that the dicta in *A.R. Antulay* is accurate and remains in the field. The Bench determined that drawing or prescribing an outer limit for the completion of any criminal proceedings is neither prudent nor practicable, nor is it permissible by the courts. As a result, the time limits or bars of limitation specified in the various directives made in *Common Cause, Raj Deo Sharma-I*¹³, and *Raj Deo Sharma-II*¹⁴ could not have been so prescribed or drawn, and they are not good law. Additionally, the Bench stated that criminal courts are not required to end trials or criminal processes just because time has passed. All of these cases highlight the matter addressed in *Suo Motu* and provide a standpoint for the Indian Administrative System to be followed.

2.7. Apart from these cases, there are other landmark judgments pronounced by the Supreme Court of India that do not discuss unsound persons undertrial but broadly talk about the rights of undertrial prisoners in common. The landmark case of *Hussainara Khatoon*¹⁵, the Court observed that many prisoners, especially those that belong to economically weaker sections of the society, are languishing in jails without trial. This is seen to violate their rights under Article 21 of the Constitution. Further, in the case of *Parmanand Katara v. Union of India*¹⁶, right to life under Article 21 also includes the right to receive immediate medical aid and it must be provided to all persons who are in need of such treatment. This would make even unsound persons who are under trial eligible for such treatment. In another landmark judgment of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Anr.*¹⁷, The Court observed the inefficiency and delay in the criminal justice system which in turn is affecting the rights of undertrial prisoners. The Court also places the responsibility of disposing such cases on the Administration.

2.8. With respect to female prisoners under trial, the landmark judgment of *Sheela Barse v. State of Maharashtra*¹⁸ deals with prisoners with mental illness who are subject to inhumane conditions such as overcrowding and inadequate healthcare and lack of facilities. The Court held that their Article 21 rights are being violated and that basic human rights must be assured to such female prisoners to uphold their life and liberty rights.

¹² P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578.

¹³ Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507.

¹⁴ Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604.

¹⁵ *Supra* Note 7.

¹⁶ Paramanand Katara v. Union of India, (1989) SCR (3) 997.

¹⁷ Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Anr., (1994) SCC (6) 731.

¹⁸ Sheela Barse v. State of Maharashtra, (1983) SCR (2) 337.

3. Lacunae in Current Legal Framework

3.1. Section 329 of the Code of Criminal Procedure (CrPC) is a critical provision concerning the detention of individuals found to be of unsound mind during legal proceedings. While this section plays a crucial role in safeguarding the rights of mentally ill individuals, it also exhibits a significant lacuna regarding the absence of specific time frames. This essay will delve into this issue, emphasizing the importance of incorporating defined time limits within Section 329 of the CrPC.

3.2. Section 329 of the CrPC primarily deals with the procedure to be followed when a person is found incapable of defending themselves due to unsoundness of mind. While it lays out the process for postponing the trial or inquiry, it crucially lacks any stipulation regarding the maximum duration for which such postponement can occur. This omission is glaring, as it leaves room for indefinite detention of individuals who are, in essence, not fit to stand trial.

3.3. Implications of the Absence of Time Frames

1. **Violation of Rights and Dignity:** The absence of time frames directly infringes upon the fundamental rights and dignity of the accused. The right to a speedy trial is a cornerstone of justice, and the indefinite postponement of proceedings for mentally ill individuals goes against this principle and violates their rights to live with dignity as well¹⁹.

2. **Potential for Abuse and Arbitrary Detention:** Without clear time limits, there is a risk of the provision being misused. Authorities could potentially exploit this ambiguity to indefinitely detain individuals, potentially leading to human rights abuses²⁰.

3. **Lack of Clarity for Legal Professionals:** Legal professionals, including judges, may face a challenging situation in the absence of specific time frames. This ambiguity can hinder the efficient administration of justice, leading to delays and potential miscarriages of justice.

3.4. When we compare this with international standards, such as the United Nations' Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules), it becomes evident that these rules advocate for prompt assessment and treatment of mentally ill individuals within the criminal justice system. This includes specific time frames for such assessments.

¹⁹Giti Pratap, *Allow mentally ill prisoners to live with dignity: Kerala High Court directs State Govt to set up mental health unit in at least one prison*, 24 Aug, 2021. <https://www.barandbench.com/news/litigation/kerala-high-court-mental-health-unit-prison>

²⁰Govt. of Kerala- Social Justice Department, *Rehabilitation of cured mentally ill prisoners*. https://sjd.kerala.gov.in/scheme-info.php?scheme_id=IDE2N3NWOHVxUiN2eQ==

3.5. Potential Remedies Incorporating

1. Time Limits: The most straightforward remedy is to amend Section 329 to include specific time frames for the postponement of proceedings for mentally ill individuals. This could involve setting a maximum duration for such postponement, ensuring that the right to a speedy trial is not unduly compromised.
2. Establishment of Mental Health Review Boards: Introducing a mechanism, similar to those established under the Mental Healthcare Act of 2017, could be beneficial. These boards could periodically review the cases of mentally ill individuals to ensure that their rights are being protected and that the proceedings are not unduly delayed.

3.6. One of the critical concerns arising from the absence of specific time frames in Section 329 of the CrPC is the ambiguity surrounding the intervals at which the mental state of the accused should be reevaluated. Without clear directives, there's a risk that such assessments might be delayed or overlooked, potentially leading to extended periods of detention.

3.7. In cases where an accused is detained due to their unsound mental condition, periodic assessments are crucial. These assessments serve a dual purpose: they ensure that the accused receives appropriate treatment and therapy, and they also serve as a basis for determining if the individual has sufficiently recovered to participate in their own defense²¹.

3.8. Prolonged detention without regular reevaluation can have severe implications for the mental health of the accused. Mental health conditions can be dynamic, and without timely intervention, a person's condition may deteriorate, potentially rendering them unfit for trial even if they were initially deemed capable²².

3.9. The lack of defined time frames in Section 329 raises concerns in light of international human rights standards. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), ratified by India in 2007, emphasizes the need for persons with disabilities, including mental disabilities, to enjoy legal capacity on an equal basis with others²³. This includes the right to a fair trial and the right to be treated with dignity and respect. The UNCRPD further emphasizes the importance of periodic review of measures taken in relation to persons with disabilities, which directly

²¹ NIMHANS. "Guidelines for the Evaluation and Management of Mentally Ill Prisoners in the Criminal Justice System." National Institute of Mental Health and Neurosciences, 2019.

²² Rao, P.N. *Mental Disorders and Criminal Responsibility in India*. Indian Journal of Psychiatry, vol. 44, no. 3, pp. 220-229, 2002.

²³ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Art.12, May 3, 2008, U.S.T. No.: TIAS 10-1709 U.N.T.S. No.: I-44910.

relates to the need for clear time frames in cases of mentally ill accused individuals.

3.10. To address this lacuna, it is imperative that the legislature introduces specific time frames within Section 329. These time frames should outline the intervals at which the mental state of the accused should be reassessed. This could range from monthly assessments in severe cases to bi-annual assessments in less critical situations. Additionally, the inclusion of such provisions would not only align with international human rights standards but also provide a clear legal framework that protects the rights and well-being of mentally ill accused individuals.

4. International Perspectives on the Treatment of Mentally Ill Undertrial Prisoners

4.1. The treatment of mentally ill undertrial prisoners is a complex issue that necessitates a nuanced approach. To understand this challenge comprehensively, it is imperative to examine international perspectives and best practices. Several countries have implemented innovative strategies to address the mental health needs of incarcerated individuals, offering valuable insights for India.

4.2. The first model that is discussed is the Norwegian Model of Rehabilitation. One of the most notable international examples is the Norwegian approach to incarceration. Norway's Halden Prison stands as a paradigm of progressive penal reform. It prioritizes rehabilitation over punishment, providing an environment designed to foster personal growth and mental well-being. In this facility, cells resemble dormitory rooms, with access to communal spaces, natural light, and recreational activities²⁴. Such an environment has a positive impact on the mental health of inmates, particularly those with pre-existing conditions. By adopting similar rehabilitative measures, India can shift its focus towards the holistic well-being of mentally ill undertrial prisoners, potentially reducing recidivism rates and enhancing societal reintegration.

4.3. The United Kingdom's Mental Health Act 1983 exemplifies a legislative framework that recognizes the distinct needs of mentally ill individuals in the criminal justice system. This Act ensures that individuals suffering from mental disorders are diverted to appropriate healthcare settings, rather than being subjected to punitive measures within the prison system²⁵. It establishes clear criteria and

²⁴ Jessica Benko, *The Radical Humaneness of Norway's Halden Prison*, March 26, 2015

<https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>

²⁵National Health Service UK, *Mental Health Act*. <https://www.nhs.uk/mental-health/social-care-and-your-rights/mental-health-and-the-law/mental-health-act-easy-read/>

procedures for the assessment, treatment, and management of mentally disordered offenders. One of the major benefits of this Act is that a person in need of medical care would be given such care even if he is unwilling to take it or is not able to afford it²⁶. By implementing similar legislation, India could establish a legal framework that safeguards the rights and well-being of mentally ill undertrial prisoners.

4.4. A significant landmark in the international jurisprudence of mental health and incarceration is the case of *X v. Finland*²⁷, adjudicated by the European Court of Human Rights. The case concerned the confinement of a person with a mental disorder in a prison cell without adequate psychiatric care. The European Court of Human Rights (ECHR) ruled that the confinement of a person with a mental disorder in a prison cell without appropriate psychiatric care violated the European Convention on Human Rights. This decision underscores the international consensus on the need for specialized mental health facilities for such individuals. Furthermore, the United Nations' Standard Minimum Rules for the Treatment of Prisoners²⁸ (the Nelson Mandela Rules) emphasize the importance of providing adequate mental healthcare to incarcerated individuals. These rules establish a global benchmark for the humane treatment of prisoners, including those with mental health conditions.

4.5. United Nations' Nelson Mandela Rules: The United Nations Standard Minimum Rules for the Treatment of Prisoners, commonly known as the Nelson Mandela Rules, serve as a global benchmark for the humane treatment of incarcerated individuals. Rule 24 specifically addresses the healthcare of prisoners, emphasizing the importance of providing mental healthcare services equivalent to those available in the community²⁹. This international standard reinforces the principle that prisoners, including those with mental health conditions, should receive the same quality of healthcare as the general population. India could use these rules as a reference point for developing comprehensive policies and guidelines for the treatment of mentally ill undertrial prisoners.

4.6. Drawing from these international examples and legal precedents, India has an opportunity to redefine its approach to mentally ill undertrial prisoners. By prioritizing mental health and adopting a rehabilitative stance, India can improve the overall well-being of incarcerated individuals and reduce

²⁶Rethink Org., Rethink Mental Illness, *The Mental Health Act*. <https://www.rethink.org/advice-and-information/rights-restrictions/mental-health-laws/mental-health-act/#:~:text=The%20Mental%20Health%20Act%20says,you%20don't%20want%20it>.

²⁷*X v. Finland*, (2012) ECHR 1371

²⁸The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Art. 29, 17 Dec. 2015.

²⁹The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 24, 17 Dec. 2015.

the long-term societal costs associated with untreated mental health conditions. This shift necessitates targeted investments in mental health infrastructure within the prison system, specialized training for prison staff, and the development of standardized assessment protocols.

5. Various Theorists of Mental Unsoundness and Their Possible Contributions

5.1. The first theory in discussion would be the Recovery Model by Warner and Richard. The recovery model in mental health emphasizes the possibility of individuals with mental illness regaining control over their lives. The absence of time frames may hinder their access to timely treatment and support, affecting their chances of recovery. The recovery model is not simply about surviving with diagnostics, but finding purpose, connection and fulfillment through it. Rather than simply responding to symptoms, the perspective offers a comprehensive outlook that aims to take patients beyond the back footedness of survival and into the agency of a meaningful life³⁰. It takes into account the patient's unique, subjective experience and incorporates that into their treatment plan. The State Health Centres in India can be advised to use this model wherein psychiatrists prescribe medications as treatment to address the biological causes of mental health conditions. It focuses primarily on drugs that interact with the chemicals and circuiting within the brain and nervous system. The Recovery Model on the other hand, places a patient and their experience at the center of their own mental health care. Therefore, this method is believed to be highly required in the criminal justice system as it would lead to timely and efficient recovery of undertrial prisoners, furthering the efficiency of the provisions of Section 329 of the CrPC.

5.2. The second theory is the Stigma Theory. This theory was extensively discussed by Goffman and Erving wherein they explore how negative attitudes, beliefs and stereotypes towards individuals with mental health disorders lead to social discrimination, and exclusion. It highlights the harmful consequences of stigma, such as to seek help, reduced opportunities for social engagement and compromised self esteem. Stigmatization can impose access to mental health services and hinder the recovery process for affected individuals. By understanding Stigma Theory, interventions can be developed to challenge stereotypes, raise awareness and foster more support and inclusive environments, ultimately reducing social burdens faced by those with mental health conditions³¹. This

³⁰ Warner, Richard. *Recovery from Schizophrenia and the Recovery Model*. (2009).

³¹ Goffman, Erving. *Stigma: Notes on the Management of Spoiled Identity*. (1963).

theory needs to be removed in order to ensure that such prisoners get faster support through inclusive environments and increased awareness. This would further lead to reduction in social burdens faced by those with such mental conditions.

5.3. The Theory of Psychological Reactance explains how individuals may react when their freedom and choices are limited, leading to heightened emotional and behavioral responses. The theory posits that when people perceive their freedom is threatened, they may respond with resistance or negative emotions³². The objective of detention during trial is to restrict their citizenship rights until they are acquitted. But if the same is applied to prisoners with mental ailments, they would react radically to such situations because their freedoms and choices are limited. It is similar to when you tell a child not to do something but their desire to do that is to such an extent that they would defy your orders and do the exact thing.

6. Proposed Solutions and Recommendations

6.1. Addressing the complex issue of undertrial prisoners with unsound minds necessitates a multifaceted approach that encompasses legal, medical, and societal dimensions. One pivotal recommendation is the establishment of specialized mental health courts or tribunals. These courts, as proposed by experts like Gostin and Hodge, would be staffed with professionals well-versed in mental health law and treatment. This approach ensures that cases involving individuals with mental illnesses are adjudicated with a nuanced understanding of their conditions. It also allows for tailored interventions, such as treatment plans and rehabilitation efforts, rather than relying solely on punitive measures. Specialized mental health courts have demonstrated success in various jurisdictions, effectively balancing the imperatives of justice and mental health treatment³³ (Gostin & Hodge, 2009).

6.2. Another crucial intervention is the implementation of routine mental health screenings for all individuals entering the criminal justice system. Scholars like Slobogin argue that these screenings should be conducted by trained professionals to detect mental health issues early on. This early identification enables timely and appropriate interventions, ensuring that individuals receive the necessary care and support. It also aids in crafting individualized legal strategies that take into account

³² Brehm S. S. and Brehm J. W. *Psychological Reactance: A Theory of Freedom and Control* (1981).

³³Gostin, L. O., & Hodge, J. G. *Personal Responsibility for Health*. *World Medical & Health Policy*, 1(2), 39–50. (2009).

their mental health status, promoting fair and just outcomes in legal proceedings³⁴.

6.3. Additionally, diversion programs are instrumental in diverting individuals with mental illnesses away from the traditional criminal justice system. This approach, advocated by experts like Steadman and Naples, involves redirecting them towards community-based treatment and support services. By doing so, individuals can receive the specialized care they need while simultaneously reducing the burden on overcrowded correctional facilities. Diversion programs have been shown to be effective in reducing recidivism rates³⁵ and improving overall mental health outcomes.

6.4. Furthermore, comprehensive training for legal professionals, including judges, prosecutors, defense attorneys, and law enforcement personnel, in mental health awareness and communication skills is imperative. Lamb and Weinberger emphasize that individuals within the criminal justice system must be equipped to identify and respond appropriately to mental health issues. This training should encompass recognizing signs of mental distress, understanding the implications for legal proceedings, and facilitating effective communication with individuals with mental illnesses³⁶. It empowers legal professionals to make informed decisions that consider the unique needs and circumstances of undertrial prisoners with unsound minds.

6.5. In the Indian context, this issue is addressed by Amita Dhanda in her article journals "Public Interest Litigation for the Mentally Ill" and "Rights of the Mentally Ill,". They serve as foundational pieces in the discourse surrounding the legal rights and protections of individuals with mental illnesses. Dhanda meticulously explores the intricacies of Public Interest Litigation (PIL) as a vehicle for advocating for the rights of the mentally ill. She highlights how PIL has emerged as a potent tool for socially committed individuals or groups to champion the rights of disadvantaged segments, including those afflicted with mental health conditions. This perspective resonates profoundly with the predicament of undertrial prisoners grappling with unsound minds. By leveraging PIL, there exists an avenue to challenge and rectify injustices faced by this marginalized group within the criminal justice system³⁷. Furthermore, Dhanda's work emphasizes the imperative of recognizing and safeguarding the rights of the mentally ill. She meticulously dissects legal provisions, advocating for a more nuanced and

³⁴Slobogin, C. *Proving the Unprovable: The Role of Law, Science, and Speculation in Adjudicating Culpability and Dangerousness*. *Psychology, Public Policy, and Law*, 8(1), 26–53. (2002).

³⁵Steadman, H. J., & Naples, M. *Assessing the Effectiveness of Jail Diversion Programs for Persons With Serious Mental Illness and Co-Occurring Substance Use Disorders*. *Behavioral Sciences & the Law*, 23(2), 163–170. (2005).

³⁶Lamb, H. R., & Weinberger, L. E. *The Shift of Psychiatric Inpatient Care From Hospitals to Jails and Prisons*. *JAMA*, 298(18), 2141–2143. (2008).

³⁷Amita Dhanda, *Public Interest Litigation for the Mentally Ill*, *Journal of the Indian Law Institute*, Vol. 32, No. 3 (July-Sept 1990), pg. 378-385.

compassionate approach that upholds their dignity and agency. This advocacy directly aligns with the need to ensure that undertrial prisoners with unsound minds are not only treated fairly within the legal framework but also provided with the necessary support and accommodations to understand and engage in their defense effectively³⁸. Incorporating Dhanda's scholarship into the discourse on undertrial prisoners with unsound minds illuminates critical intersections. Her insights on PIL underscore the potential for strategic litigation to rectify systemic deficiencies in the treatment of mentally ill individuals within the criminal justice system. Additionally, her emphasis on the rights of the mentally ill underscores the importance of a rights-based approach in ensuring that these individuals are treated justly and equitably.

6.6. Therefore, the challenges faced by undertrial prisoners with unsound minds demand a comprehensive and sensitive response. The recommendations put forth by scholars and experts provide a holistic framework that encompasses legal reforms, medical interventions, and societal awareness. By implementing specialized mental health courts, conducting routine mental health screenings, establishing diversion programs, and providing extensive training for legal professionals, society can work towards a more equitable and compassionate justice system for individuals with mental illnesses.

Conclusion

This research has delved into the intricate realm of undertrial prisoners afflicted with unsound minds, scrutinizing the legal provisions and their practical implications within the ambit of the Criminal Procedure Code (CrPC) in India. The examination of CrPC provisions, particularly Section 329, has spotlighted certain lacunae, chiefly the absence of defined time frames, which poses a considerable challenge in the fair and expedient adjudication of cases involving mentally incapacitated individuals. Drawing on jurisprudential and psychological theories, we recognize that the very essence of justice hinges on the premise of an individual's capacity to comprehend proceedings and effectively participate in their own defense. Theories like the '*Mens Rea*' principle underscore the importance of understanding and intention in criminal proceedings, elements that may be compromised in cases involving unsound minds. Additionally, psychological theories of cognitive impairment further

³⁸ Amita Dhanda, *Rights of the Mentally Ill- A Forgotten Domain*, India International Centre Quarterly, Vol. 13, No. 3/4, *The Right to be Human* (Dec 1988), pg. 147-160.

highlight the need for specialized procedures.

Amita Dhanda's pivotal work in "Public Interest Litigation for the Mentally Ill" and "Rights of the Mentally Ill" has furnished critical insights into the avenues available for advocacy and redress for mentally ill individuals within the legal framework. PIL emerges as a potent instrument for addressing systemic deficiencies, offering a means to challenge the injustices faced by this vulnerable group, a perspective intrinsically relevant to our discussion on undertrial prisoners with unsound minds. Furthermore, Dhanda's advocacy for recognizing and safeguarding the rights of the mentally ill dovetails seamlessly with the imperative to ensure equitable treatment for undertrial prisoners grappling with mental health challenges.

In this context, the CrPC, as it stands, presents certain shortcomings. The absence of concrete temporal directives within Section 329 stands out as a substantial impediment. This deficiency hampers the expeditious resolution of cases involving mentally incapacitated individuals, leaving them in legal limbo. It is imperative that amendments or supplementary guidelines be introduced to rectify this gap, establishing clear time frames for the assessment, trial, and potential release or detainment of undertrial prisoners with unsound minds.

In light of these considerations, this research underscores the pressing need for a multi-dimensional approach, one that combines legal, psychological, and humanitarian perspectives. Proposals for amendments to the CrPC must be accompanied by measures to enhance mental health awareness and expertise within the legal fraternity. Moreover, collaborative efforts between legal and mental health professionals are essential to ensure a holistic and just treatment of undertrial prisoners afflicted with unsound minds.

In conclusion, the issues surrounding undertrial prisoners with unsound minds demand a concerted and compassionate response. By addressing the deficiencies within the CrPC, incorporating Dhanda's insights on PIL, and recognizing the fundamental rights of mentally ill individuals, we pave the way for a more equitable and humane legal framework. Through such collective endeavors, we aspire to create a system that upholds the principles of justice, fairness, and dignity for all, irrespective of their mental health status.