

## **MENS-LEGEM CONNECT- INFANCY, INSANITY AND LAW**

Laid down by the State, LAW is a standing reMINDER as to what is permissible conduct and what is not. Law 'minds' both the state and the society. Sense of justice, fairness and order has prevailed through the institution of law. The Mens-Legem connect is very old and presents intriguing issues. Socrates found that man's intelligence & insight were the measure of the good and it was this insight which tested the reason & goodness of laws.<sup>1</sup> Law takes into account the state of mind of the alleged wrongdoer in determining the guilt and the extent of liability<sup>2</sup>. Law recognizes the importance of mind and proceeds in various ways to protect and nurture it. Intellectual property is protected. Universal Declaration of Human Rights, 1948 recognizes that human beings are endowed with reason & conscience. It recognizes the right of everyone to freedom of opinion & expression. Everyone's right to education has been recognized.<sup>3</sup> Constitution of India secures to all its citizens liberty of thought, expression, belief and faith. It casts a fundamental duty on all citizens to develop scientific temper, humanism and the spirit of inquiry & reform. Right to education and information have been recognized.<sup>4</sup> Law crushes under its feet offences to mind. Injury includes harm to any person in mind.<sup>5</sup>

**The purpose of this paper is to explore firstly into how law deals with infancy and its attendant immaturity and secondly into how law handles persons with a fit of insanity.**

### **Infancy, Immaturity and Law**

'Non-age' entails deficiency in maturity and the long arms of law shall protect such persons. U. N. Convention on Rights of the Child, 1989 (UNCRC) mandates the State parties to protect children from all forms of exploitation & abuse. Education of children shall be directed to develop mental abilities to their fullest potential and to train them to become tolerant & peace loving.<sup>6</sup> Indian Constitution calls upon the state to secure that children are given opportunities & facilities to develop in a healthy manner & in conditions of freedom & dignity & that childhood and youth are protected against exploitation & against moral & material abandonment. State is enabled to make special provisions for children and is obliged to provide education to them.<sup>7</sup> India has ratified UNCRC and has established National Commission for Protection of Child Rights.<sup>8</sup>

UNCRC requires the states to establish distinct laws, procedures, authorities & institutions to deal with young persons who violate the penal law. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.<sup>9</sup> A child is presumed innocent based on the immaturity of intellect. In India a child below seven years is doli incapax, i.e., it is incapable of committing a crime. A child above seven but below twelve is capable of committing a crime & will enjoy no immunity if it has obtained sufficient maturity of understanding to judge the nature & consequences of the conduct on that occasion.<sup>10</sup> Law Commission of India has recommended that children below ten years be completely exempted from criminal liability & the rule as to children of age between 7-12 be deleted.<sup>11</sup> Juvenile Justice Act, 2000 is a special enactment to deal with delinquents below the age of eighteen. In the absence of

intention to cause death or grievous injury consent is a defence in a criminal action for offences other than death or grievous hurt. In case death ensues, if the consent is for the benefit of the deceased, consent can still exonerate the accused provided there was no intention to cause death. Such consent should be by a person above eighteen years or by guardian if required for the benefit of the child. Consent by a child who is under twelve years of age is not a valid consent<sup>12</sup>

A person who has not obtained the age of majority is incompetent to contract and any contract entered into is null & void<sup>13</sup>: for want of mental maturity no one should consent against one's own interest. However a minor is not regarded as incapable of accepting any benefit or gift where he / she has to bear no obligation. A child can sue through next friend.<sup>14</sup> A minor's property is liable for necessaries supplied to him / her or his / her minor dependents who he / she is legally bound to support.<sup>15</sup> A minor cannot be declared insolvent.<sup>16</sup>

In case of civil wrongs by minors, their property will be liable. But where mental element like malice or negligence is an essential requirement, the courts are reluctant to impose liability. 'Consent' a defence in actions for torts cannot be invoked against children as their faculties are not developed adequately to safeguard their interests while exercising their volition.<sup>17</sup>

Law ensures that the society is protected by stipulating minimum age as a qualification or condition to occupy public office or enjoy certain permits. Minimum age is prescribed for marriage,<sup>18</sup> consumption of alcohol,<sup>19</sup> driving licences<sup>20</sup>, voting at general elections<sup>21</sup> etc. Minimum age for membership is 25 years for Lok Sabha / State Legislative Assembly, 35 years for Rajya Sabha / State Legislative Council and 21 years for Panchayats / Municipalities.<sup>22</sup> Law does not lay down the minimum age to testify as witness in the court of law. A child who cannot understand questions put to it or provide rational answers to them are incompetent to testify.<sup>23</sup>

## **Persons of unsound mind and law**

Disease of mind causing defect of reason is as common as disease of body. In the Human Rights perspectives, mental disorder is seen as disability. Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>24</sup> Law makes special provisions to exempt them from unreasonable liability and to protect their interests.

In order to attract exemption from criminal liability for any act under penal law, insanity should be one which renders the person incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law at the time of doing the act. Courts presume every person of the age of discretion to be sane and the burden of rebutting the presumption & seeking the exemption would be that of the accused.<sup>25</sup> Unsoundness of mind caused by voluntary intoxication is not a defence<sup>26</sup>; alcohol dependency syndrome may constitute an abnormality of mind.

Legal insanity is distinguished from medical insanity and the courts can take advantage of advancements in medical science & psychiatry. Automatism caused by cerebral tumour leading to acts of impulsive violence has been considered as insanity for exoneration.<sup>27</sup> Every mental aberration is not insanity for absolving liability under criminal law.<sup>28</sup> Malfunctioning of mind must be due to disease and not due to external factors like anesthetics, drugs etc.<sup>29</sup> Whereas other countries<sup>30</sup> have incorporated doctrine of diminished responsibility to convert charges of murder to culpable homicide in case of mentally deranged persons, Law Commission of India sees no reason to do so. It fears introduction of complicated medico - legal issues in the trial and is complacent with judicial discretion in sentencing.<sup>31</sup>

Right to defend oneself is a human right.<sup>32</sup> If any person accused of any offence(s) is of unsound mind at the time of inquiry or trial and therefore incapable of making his / her defence, the court shall send the person to a mental asylum or make over to the care of a relation or friend. The trial will be postponed till the person recovers<sup>33</sup>

Insane persons are incompetent to contract. A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals. A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effects cannot contract whilst such delirium or drunkenness lasts. In India, an agreement by a person of unsound mind is void absolutely.<sup>34</sup> They cannot testify as witness in a court if they are prevented from understanding the questions put to them or providing rational answers to them.<sup>35</sup> Their property, if any, will be liable for their civil wrongs, but not if the wrong requires malice or negligence.<sup>36</sup>

In general public interest unsound mind has been stipulated as a qualification for all constitutional offices and other statutory public offices. Citizen of unsound mind has been disqualified to be registered as a voter.<sup>37</sup>

Mental Health Act, 1987 aims at regulating the treatment & care of mentally ill persons and making better provision with respect to their property. Mentally ill person means a person who is in need of treatment by reason of any mental disorder other than mental retardation. Compulsory licensing for private mental asylums has been introduced under the Act. Central & State Authorities are established for Mental Health Services. Admission and detention of the mentally ill for institutional care is dealt with. Mentally ill persons shall be treated with dignity & no such person shall be used for research without consent in writing of the person or his guardian.

The Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 defines disability to include mental retardation and mental illness. The Act defines mental illness as any mental disorder other than mental retardation. Mental retardation means a condition of arrested or incomplete development of mind of a person which is specially characterized by subnormality of intelligence. Coordination Committees at the central and state levels are set up with executive committees for implementing the decisions of the Coordination Committees. The Act casts several obligations on the state as to early detection of disabilities, to provide special and free education to persons with disability, employment of them, research for their welfare, and establishment of institutions for them. The Act calls for identification of posts in government and semi-government

which can be reserved for disabled and rules that there shall be atleast 3% reservation therein of which one percent shall be for locomotor disability or cerebral palsy. The Act also requires all government educational institutions and educational institutions receiving aid from government to reserve atleast 3% seats for persons with disabilities.

The National Trust For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 constitutes a central level body. Autism means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour. Cerebral palsy means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development. The Trust shall work to enable and empower the persons with such difficulties to live as independently and as fully as possible within and as close as to the community to which they belong; to strengthen support and care for them; to evolve procedure for the appointment of guardians and trustees for persons in need of such protection. The trust shall be managed by a Board. It has received a one time corpus of rupees hundred crores for providing adequate standard of livelihood and necessary support systems for the persons with such difficulties. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Fund has been constituted.

Freedom from fear and guarantee of security are the ultimate goals of **Human Rights**. Pledged to the cause of human rights state has the utmost duty of safeguarding the immature, whether immaturity is due to age or by disease.

**Where the Mind is without Fear and the head is held high ...  
Into that heaven of freedom, my Father, let my Country awake**  
- Rabindranath Tagore

*Presented in International seminar on "Mind Brain and Consciousness" by VPM's Joshi-Bedekar College held on 14<sup>th</sup> and 15<sup>th</sup> January 2010.*