

CHAPTER 17

Lunatics

Part A GENERAL

1. Classification—Lunatics may be classed as follows:

- (a) Criminal lunatics.
- (b) Lunatics for whose detention in an asylum a reception order has been passed.
- (c) Lunatics so found by inquisition.

2. Criminal lunatics—Criminal lunatics are lunatics for whose confinement an order has been passed under Section 466 or 471 of the Code of Criminal Procedure, or under Section 30 of the Prisoners Act, 1900. These are dealt with in Parts B and C of this Chapter.

3. Reception orders—Reception orders are dealt with in Chapter II of the Indian Lunacy Act, 1912, which lays down the procedure to be observed before a person, other than a criminal lunatic or a lunatic so found by inquisition, can be detained in an asylum. Such reception orders are usually made by Magistrates.

4. Lunatic so found by inquisition—Lunatics so found by inquisition are dealt with by the Civil Courts (*See Part III, Indian Lunacy Act, 1912*).

5. Term “Mental Patient” and “Mental Hospital” explained—Although persons suffering from unsoundness of mind are described as lunatics in the Acts mentioned above, it is now considered more humane to refer to them as “mental patients”. Similarly, institutions for the care and treatment of such persons, which were formerly called Lunatic Asylums, are now called Mental Hospitals. The latter term should ordinarily be used in correspondence.

6. Admission into Punjab Mental Hospital—The only institution of this kind in the Punjab is the Punjab Mental Hospital at Amritsar to which all mental patients, whose confinement is considered necessary, are now sent. Accommodation is limited, and the earliest possible notice should be given, whenever it is proposed to send a patient to the Hospital. Magistrates are particularly requested, before passing any order for detention therein, to study the rules regarding admission, of which the most important are given in this Chapter.

7. Further directions about admission—If possible, arrangements should be made for the patient to reach the hospital before 5 p.m. and admission on Sundays and gazetted holidays should be avoided. Patients should invariably be brought to the hospital in a conveyance, and the escort should be instructed to see that the patient is properly clothed.

Part B
CRIMINAL LUNATICS—ENQUIRY

1. Magistrate bound to make enquiry about unsoundness of mind of the accused—Whenever a Magistrate, either in the course of an enquiry or during a trial, has reason to believe that an accused person is incapable of making his defence by reason of unsoundness of mind, he is bound to hold an enquiry into such unsoundness of mind (Section 464 of the Code of Criminal Procedure).

2. Examination by Medical Officer and his evidence—For the purpose of such enquiry, he is further bound to have the person examined by the Civil Surgeon or such other Medical Officer as the State Government may direct.

The Medical Officer must then be examined *as a witness*, and his examination must be reduced to writing. It will be found most convenient to have the form mentioned in Part C paragraph 2, filled in at this stage.

3. Stay of proceedings if unsoundness of mind proved—If unsoundness of mind is established to the satisfaction of the Magistrate, a finding to that effect should be recorded, and further proceedings should be stayed.

4. Trial of the fact of insanity in Sessions trials—The procedure in a Court of Sessions is slightly different. There, the fact of unsoundness and incapacity are to be tried in the first instance by the jury, or by the Court as the case may be, and there is no specific provision for an examination by a Medical Officer. The trial of the fact of insanity however, forms part of the trial before the Court; and the Court would ordinarily take the necessary evidence before proceeding to a finding.

5. Accused may be released on security—Either during the examination of the accused by a Medical Officer, or during the enquiry into the fact of insanity, or after the accused has been found to be of unsound mind, and incapable of making his defence, the Magistrate or Court may release the accused on sufficient security being given that he will be—

- (1) properly taken care of;
- (2) prevented from doing injury to himself or any other person; and
- (3) produced before the Court or such other officer as the Court appoints, when required.

Such an order may be passed whether the case is bailable or not (Section 466 of the Code).

6. In releasing accused due regard should be paid to public safety—An order for release, however, should not be passed without due regard to the public interest. If the crime of which such a person is accused be an offence against the person, or if there is reason to believe that he has at any time been aggressive, a detailed medical history sheet should in all cases be obtained, and this should be consulted before orders are passed regarding bail. In the event of the lunatic having at any time exhibited a tendency to violence, it is the duty of the Magistrate or Sessions Judge to satisfy himself that a sufficient length of time has elapsed since such manifestations to render a recurrence improbable, and that the sureties are in a position to control the actions of the lunatic should they recur.

7. Action to be taken when accused cannot be released on bail—If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court must order the accused to be detained in safe custody in such place and manner as he or it may think fit [Section 466(2)]. The action taken must then be reported to the State Government.

8. Accused may be sent to Mental Hospital in such cases—This provision enable a Court to send an accused person direct to a Mental Hospital instead of awaiting the order of the State Government, as was formerly necessary. But if an order is made for the detention of the accused in a Mental Hospital, this order must be in accordance with any rules which the State Government may have made under the Indian Lunacy Act, 1912.

9. Proceedings under Sections 464, 466 can be taken only when a *prima facie* case is made out by prosecution evidence—It should be borne in mind, however, that before action is taken under Section 466 of the Code, the case for the prosecution should be gone into in order to discover whether any *prima facie* case is made out against the accused. In warrant cases instituted on police report, the Magistrate shall take into consideration the documents referred to in sub-sections (1) to (3) of Section 251-A and give the prosecution and the counsel for the accused an opportunity of being heard. In other cases a reference to Sections 207-A and 208 (inquiry preliminary to commitment) and Section 252 (Warrant cases instituted otherwise than on a police report) of the Code will show that the Magistrate has to record the evidence for the prosecution. When this has been done the Magistrate has to form an opinion as to whether any case is established which should go to trial or not. If no case is established the accused must be set at liberty. [Sections 207-A (6), 209, 251-A (2) and 253 of the Code]. If a *prima facie* case is made out a charge has to be framed [Sections 207-A (7), 210, 251-A (3) and 254 of the Code], either previous to the case being committed to the Court of Sessions or High Court or in view to the accused being called upon to enter upon his defence. It is at this stage that Sections 464 to 466 come into play.

10. Resumption of proceedings under Section 467—When an enquiry has been postponed under Sections 464 or 465, the Magistrate or Court may at any time call for the accused of its motion and resume proceeding under Section 467. Such action will ordinarily be taken after a reasonable period in all cases when the accused has been realised on security.

11. Patients certified by Mental Hospital to be fit to make their defence—If, however, the accused has been detained in a Mental Hospital, the accused will usually be returned by the

authorities under Section 473, as soon as he is certified to be capable of making his defence. The practice in the Punjab Mental Hospital at Amritsar is for patients to be brought before the visitors committee at the half-yearly inspection, and if the Medical Superintendent considers that any person is capable of making his defence and of understanding the proceedings against him, he recommends that he should be put up for trial. If this recommendation is accepted by the committee, the patient is then sent back for trial.

12. Order of Magistrate for detention may be varied by Government—It should be noted that the orders of a Magistrate or Court for the detention of a criminal lunatic may be varied by the State Government—

(i) on a certificate under Section 474;

(ii) on an application by a friend or relative under Section 475.

13. Procedure when accused is of sound mind at the time of trial but was not so at the time of committing the offence—A second class of cases arises when an accused person appears to be of sound mind at the time of enquiry or trial, but there is reason to believe that he was of unsound mind at the time of committing the offence with which he is charged. In such cases the Magistrate must proceed to determine the facts with reference to Section 84 of the Indian Penal Code.

14. If the Magistrate finds reason to believe that he committed an act, while he was of unsound mind, which, but for such unsoundness, would be an offence, the Magistrate should—

(1) if he is competent to do so, try the case against the accused ;

(2) if the case is one which should be tried by the Court of Sessions or High Court, commit the case for trial by such Court, leaving it to that Court to deal with the matter.

15. If accused is acquitted on the plea of insanity he should not be released—If the plea is accepted, and the accused is acquitted on the ground that although he committed an act which would have constituted an offence if he had been of sound mind, he was insane at the time of committing it, the Court cannot order his release, but must order him to be detained in safe custody (Section 471, Criminal Procedure Code). The procedure is then the same as that given in paragraphs 7 and 8 above. Final orders for the release or detention of such a prisoner will be finally passed by the State Government under Section 474, Criminal Procedure Code.

16. Superintendent Jail to keep the prisoner under observation and to report the result thereof—In all cases in which insanity is pleaded or set up as a defence, the Superintendent of the Jail in which the convict is confined should be directed to keep the prisoner under observation and to report the result thereof to the High Court before the date fixed for hearing in that Court.

Part C
CRIMINAL LUNATICS—DETENTION

1. Medical history sheet to be sent to Government—The accompanying form (printed at the end of Chapter 17-C as an Appendix) has been prescribed by the State Government for all cases in which the papers of a criminal lunatic are sent to it for orders. Unless this form is completed, it is impossible to arrive at any safe decision regarding the period for which it will be necessary to detain him.

2. Same should be sent to Mental Hospital—The same form should invariably be used when a criminal lunatic is sent direct to a Mental Hospital by a Magistrate or Court. As observed above, the form should be filled up, as far as possible, after the medical examination in the first instance.

3. Memo, of principles to be observed in dealing with the cases of criminal lunatics—Attention is called to the following memorandum, embodying the views of certain experts as to the principles which should apply generally in dealing with the cases of criminal lunatics. This memorandum is only intended to indicate broadly the action which may ordinarily be taken. The case of every criminal lunatic should be considered separately and dealt with on its own merits, and if in any case the opinion of the others responsible for advise regarding it is that the principles embodied in the memorandum do not apply, the action recommended should be that which the special circumstances of the case suggest to the experience of the officers concerned as the most appropriate.

I. Recovered Criminal Lunatics

(1) If the crime be against the person, the cause, the use of intoxicating drugs, and the type of insanity, acute or chronic mania, a period of three years should be spent in an asylum free from all signs of insanity before any action is taken.

(2) If the crime be an offence against the person, the type of insanity, acute or chronic mania, and the alleged cause not the use of intoxicating drugs, a period of at least four year of complete freedom from insanity should be spent in an asylum before action is taken.

(3) If the crime be not an offence against the person, but the lunatic has at any time exhibited dangerous or violent tendencies, a period of at least four years should be spent in an asylum before any recommendation is made for his transfer to Jail or for his release.

(4) If the crime be not an offence against the person, and there is no history that the lunatic was any time aggressive, he may generally be treated much as if he were a non-criminal lunatic. This State Government will generally be guided in such cases by the recommendations of the Visitors and of the Superintendent of the Asylum in which the lunatic is confined.

(5) If the crime be murder and the type of insanity be melancholia, a period of at least six years' complete freedom from insanity should be passed in an asylum before action is taken.

(5) (a) If the crime be one against the person, and the lunatic has been originally confined in the asylum under the provisions of Section 466, Code of Criminal Procedure (Section 300 of new Code) and has subsequently sufficiently recovered to stand his trial and has been acquitted under Section 470 of the Code (Section 334 of new Code) it will be necessary that the lunatic shall be sent back to the asylum to undergo the same period of complete freedom from insanity in accordance with the above rules before a recommendation by the visitors can be made for the lunatic's release.

(6) If the crime be attempt to commit suicide, the type melancholia and if the lunatic has not exhibited any violent tendencies while under observation, some relaxations of the rules may be permitted according to circumstances, age, period of detention, etc.

II. Unrecovered Criminal Lunatics

(7) If the crime be an offence against the person, the type chronic mania of the irritable aggressive kind, it will seldom be possible to release the lunatic during continuance of insanity except in advanced age and on exceptional security.

(8) If the crime be not an offence against the person, or, if an offence against the person, of trivial nature, and the lunatic has never exhibited aggressive symptoms, he may generally be treated much as if he were a non-criminal lunatic, and the State Government dealing with his case under Section 474 of the Criminal Procedure Code (Section 338 of new Code) will be guided mainly by the recorded opinion of the Superintendent of the Asylum as to the propriety of releasing him, and by the recommendations of the Visitors.

4. Criminal lunatics should not be sent to a Jail but to a Mental Hospital—In the case of lunatics confined in jails. Sections 473 and 474 of the Code of Criminal Procedure (Sections 337 and 338 of new Code) assign certain functions to the Inspector General of Prisons ; and Section 471 provides that the State Government may empower the officer in charge of a jail to discharge these functions. In practice however all criminal lunatics should be sent to Mental Hospital and not to a jail.

APPENDIX

FORM NO. 117

Medical History Sheet of Lunatics

N.B.—The ultimate responsibility for the preparation of this form rests with the committing officer who must see that the requisite information is supplied by the Police and the Medical Officer without undue delay.

Questions to be Answered by Police alone

1. Name of patient in full, and caste or race.
2. Name of patient's father.

3. Sex and age of patient.
4. Marks whereby the patient may be identified.
5. Married or single or widowed.
6. Condition of life and previous occupation (if any).
7. Religion.
8. Place of birth and recent place of abode.

(Here the name of village, police station and district and length of residence should be stated.)

9. Whether homeless or living with relatives.

(This heading should show the names and addresses of the relatives or persons legally bound to maintain the lunatic (if any), and whether they are able and willing to take charge of him or to bear the cost of his maintenance in the asylum, and, if not, why not.)

10. Previous history and habit.

(in this, the mode of life the patient led, history of any particular illness which may have helped to produce this condition of mind, his temperament or any habit of taking or smoking any drug or any ground for supposing that the insanity is hereditary, should be mentioned in the case of criminal lunatics, also the nature of the crime, the detailed circumstances under which it was committed, how he came to be arrested by the Police and the section under which the lunatic was charged and the result of trial, in addition to other particulars which may be available.)

11. Whether any member of patient's family has been or is affected with insanity.

12. Whether the attack is the first attack of insanity or not.

13. Age (if known) at onset of first attack.

14. Duration and nature of any previous attacks.

15. Supposed cause of insanity.

(State here whether he is addicted to any spirits or drugs, and if so, for how long he has been so addicted and what is the quantity habitually taken. Whether he is a member of any particular religious or political society.)

16. Supposed exciting cause of present attack.

(Under this heading should be stated whether the lunatic suffered from loss of property, loss of relatives, domestic trouble, or ill health immediately before the attack.)

Questions to be answered by Police and Medical Officer

1. Duration of existing attack.
2. Whether suicidal.
3. Whether dangerous to others.

Questions to be answered by Medical Officer alone

1. State of bodily health.

(In this the general health of the patient as well as any abnormality of feature or development should be entered. It is desirable that special mention be made as to whether the patient is or is not suffering from any tubercular disease).

2. Symptoms exhibited.
3. Whether subject to epilepsy or any other disease.

Part D
NON-CRIMINAL LUNATICS

1. Reception order when passed—Reception orders are dealt with in Chapter II of the Indian Lunacy Act, 1912. The most important provisions relate to—

- (a) Reception orders passed on a petition.
- (b) Reception orders passed on a Police report or information otherwise received by a Magistrate.

2. Who may pass reception order—Such orders may be passed by a District Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the 1st Class specially empowered in this behalf by the State Government [*Vide definition of 'Magistrate' in Section 3(6) of the Act*].

3. Reception orders petition—Reception orders passed on a petition are dealt with in Sections 5 to 11. The most important provisions to be noted by Magistrates are—

- (a) The petition should be in the prescribed form (Form 1 in Schedule I of the Act). It should be presented by a relative ; if not reasons must be given.

(b) There must be two medical certificates, on separate sheets of paper, one of which must be from a Medical Officer—'Medical Officer' is defined in Section 3(8) as a Gazetted Medical Officer in the service of the Government and includes a medical practitioner so declared by the State Government for the purposes of this Act (Section 5).

(c) If the lunatic is not dangerous or unfit to be at large, no order may be passed, unless it has been ascertained that the Mental Hospital is willing to receive him, and some person undertakes to pay for his cost of maintenance (Section 11).

4. Reception orders passed otherwise—Sections 13 to 16 deal with orders passed otherwise than on petition. Such orders may be passed on the ground that person presented is—

(a) dangerous by reason of lunacy;

(b) not under proper care and control; or

(c) cruelly treated or neglected by any relative or other person having charge of him.

Reports under (a) may be presented only by the Police. Information under (b) and (c) may be given by the Police or any other person.

5. Period of detention for medical examination—Section 16 gives the Magistrate power to order detention up to ten days to enable observation by a Medical Officer. If further time is required, there must be a fresh order, in the same way as with remands; but the total period of detention must not exceed thirty days from the date on which the person has first been brought before the Magistrate.

6. Copy of reception order to be sent to Mental Hospital—A certified copy of every reception order must be sent to the Medical Superintendent of the Mental Hospital.

7. Questions to be put to medical witnesses in case of suspected insanity—For questions which may suitably be put to a medical witness in case of persons suspected of insanity. See Chapter 18, "Medico-Legal Work" Part D, Appendix B, VIII.

8. Inquiry as to the domicile of the lunatic—A Magistrate making a reception order under Section 14 or 15 of the Act, shall, after ascertaining that accommodation is available, direct the reception of the lunatic into the Mental Hospital at Amritsar. He shall, in all cases, make strict inquiry as to the domicile of the lunatic, and shall see that entry to that effect is made in the medical history sheet (Form 9, page XLVII, in the Appendices to the Punjab Mental Hospital Manual) or is communicated as soon as possible to the Medical Superintendent of the Hospital in which that lunatic is to be admitted.

9. Admission of a lunatic in the Mental Hospital in another State—The Magistrate or Courts exercising jurisdiction in any State may send lunatic or any class of lunatics to a Mental Hospital in any other State in accordance with general or special orders of the State Government made in that behalf with the consent of the Government of that State (Section 85).

In all such cases he shall first satisfy himself that accommodation is available, and that the cost of maintenance will be paid (Section 11). In order to effect the earliest possible treatment of the patient action shall be taken as soon as possible and the Magistrate shall furnish to Government in writing full details as to domicile, reasons for the admission, fees agreed to etc.

10. Action to be taken on subsequent discovery of the domicile of the lunatic in another province—As soon as it is known that a lunatic, who has been admitted to the Punjab Mental Hospital, is domiciled elsewhere than in the Punjab, the fact with details of the case should be brought to the notice of the State Government, so that action for the removal of the lunatic may, if advisable, be initiated early with the Government of the State of domicile under Section 35 of the Act.

11. Documents to be sent when lunatic is to be admitted to Mental Hospital—No patient can be admitted to the Punjab Mental Hospital unless accompanied by the following documents:

(a) In the case of patients admitted under Sections 13 to 16 of the Indian Lunacy Act, IV of 1912, a Detention Order authorising his detention for observation for a period of not exceeding 10 days, a Police report, and a statement of particulars should also be sent.

(b) In the case of a patient who has been kept under observation at a jail or Civil Dispensary prior to admission to the Punjab Mental Hospital, the following documents are necessary:

(i) Copy or the original order for detention.

(ii) Medical certificate of observing Medical Officer.

(iii) Final Reception Order bearing the seal of the Court, and dated within seven clear days of the Medical Certificate.

(iv) Police report or statement of particulars.

(v) In the case of patients who have not been admitted within 14 clear days of the Medical Certificate, a certificate should be sent stating the reasons and where the patient has been confined pending his removal to the Mental Hospital.

(c) In the case of patients admitted under Sections 5 to 11 of the Indian Lunacy Act—

(i) Two medical certificates, dated not more than 7 clear days before (ii).

(ii) Application of relatives or friends and statement of particulars.

(iii) Reception order bearing the seal of the Court.

Note—Patients must be admitted within 14 days of the date of the Medical Certificate—*vide* Punjab Government Letter No. 396-A (Home—Jails) dated the 26th September, 1914,

Committing Magistrates are further referred to Punjab Government Letter No. 17652-Medical, dated the 31st May, 1928, and are informed that, in accordance with the orders contained in paragraph 11 above, it will be necessary to report to Government all instances in which Committing Magistrates fail to comply with the provisions of the Indian Lunacy Act, 1912, which have been summarised in this order.