

Insanity Defence Under Indian Penal Code Vis A Vis Modern Judicial Approach

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Abstract: The insanity defence is mostly employed in criminal cases. It is assumed that the accused was suffering from a severe mental condition at the time of the crime, making them unable of recognising the nature of the crime and distinguishing right from wrong behaviour, and hence not legally responsible for the crime. The defence of insanity is more of a legal concept than a clinical one (medical one). This indicates that simply having a mental illness isn't enough to establish insanity. The accused has the duty of establishing the defence of insanity by a "clear and convincing evidence" which is similar to a civil proceeding. Legal insanity is difficult to define, and even more difficult to properly defend in court.

KEYWORDS: Insanity Defence, Indian Penal Code, Section 84 Of Ipc, Lord Macaulay, Mcnaughton Insanity Defence.

I. INTRODUCTION

The concept of responsibility is linked to our deepest beliefs about human nature and dignity, as well as our daily experiences of guilt, innocence, blame, and punishment¹. Punishing someone who is not guilty for the crime is a violation of the Indian Constitution's core human and fundamental rights. It also invokes the principle of natural justice if that individual is unable to defend himself in a court of law.² The affirmative defence of legal insanity adheres to this fundamental concept, excusing mentally ill offenders who were unable to comprehend their actions at the time of the offence due to their illness.³ As a result, it is widely accepted that an individual's inability to conduct crimes exempts them from punishment. Most of the civilised nations recognise this⁴. Even in India, Section 84 of the Indian Penal Code (IPC) mentions insanity defence as the "act of a person of unsound mind." Meanwhile, several states in the United States (including Montana, Idaho, Kansas, and Utah) have recently abrogated insanity defence.⁵ This matter has sparked heated debate among medical, psychiatric, and legal experts all over the world.

In 2011, a significant research in Indian forensic psychiatry found that 4002 (79.6%) of 5024 convicts tested on a semi-structured interview schedule could be identified with either mental illness or substance use.⁶ Even after removing substance misuse, 1389 (27.6%) of the inmates had a serious mental condition. Another study from India paints a grim

picture of patients in forensic psychiatry settings, arguing that the referral, diagnostic, treatment, and certification processes should be streamlined.

ORIGIN IN THE LAW

There are mainly two conditions for criminal punishment against an individual in the legal system: mens rea and actus reus. The desire to do an act with a desired result (e.g., planning to pull the trigger and have the escaping bullet hit someone for a murder accusation) is known as mens rea, while the act itself is known as actus reus (e.g., someone needs to be dead for there to have been a murder). The insanity defence is based on the concept that certain mental illnesses or flaws can impair a person's ability to develop the necessary mens rea⁷.

II. EVOLUTION OF INSANITY DEFENCE IN INDIA

The Indian Law Commission of 1834 wrote the first Indian Penal Code under the auspices of the then Governor-General. Lord Macaulay, who created the commission's early proposal in 1837, is thought to have been influenced by Utilitarianism and the beliefs of English Jurist Jeremy Bentham. Lord Macaulay was a great believer of India having a criminal code even before he came to India.⁸

ACT IV OF THE LEGISLATIVE COUNCIL OF INDIA 1849

'An Act for the Safe Custody of Criminal Lunatics' was passed by the Indian Legislative Council in 1849. (Act IV of 1849). The statute recognised insanity as a reason for dismissal in

¹ Morse SJ, Bonnie RJ. Abolition of the insanity Defence violates due process. J Am Acad Psychiatry Law 2013; 41:488-95.

² Gostin LO, Larry OG. A Human Condition: The law relating to mentally Abnormal Offenders. Vol. 2. MIND; 1977.

³ Neville K. The Insanity Defence: A Comparative Analysis Senior Honors Theses. Paper 244; 2010. Available from: <http://www.commonsonline.edu/cgi/viewcontent.cgi?article=1219&context=honors>. [Last accessed on 2014 Nov 05].

⁴ Id. at 1

⁵ Gaur KD. Textbook on the Indian Penal Code. New Delhi: Universal Law Publishing; 2009.

⁶ Math SB, Murthy P, Parthasarathy R, Naveen Kumar C, Madhusudhan S. Mental Health and Substance Use

Problems in Prisons. The Bangalore Prison Mental Health Study: Local Lessons for National Action. Publication, National Institute of Mental Health and Neuro Sciences, Bangalore; 2011. Available from: <http://www.nimhans.kar.nic.in/prison/pg010.html>. [Last accessed on 2014 Nov 15].

⁷ A Canadian Example of Insanity Defence Reform: Accused Found Not Criminally Responsible Before and After the Winko Decision: International Journal of Forensic Mental Health: Vol 7, No 1

⁸ House of Commons, Parliamentary Debates (3rd series) (10 July 1833) vol 19, at cols 531 and 533.

criminal cases, as well as creating a legal structure for the secure care or incarceration of mentally ill persons convicted of criminal conduct. Experts believe that this Act was written by John Elliot Drinkwater Bethune, an Anglo-Indian lawyer who was designated to the Governor Generals Council in 1848.

The Nizamet Adalat in Calcutta recommended new statutes in 1845 to establish power for the custody of persons who had been released on grounds of insanity until they recovered from their condition. In response to this proposal, Act IV of 1849⁹ was passed. Bethune writing in 1848 noted that the 'Regulations and Acts of India are wholly silent about lunatics charged with the commission of offences. The law as practically administered in England is far from being a clear and satisfactory state and I think that the Act which is called for by the Nizamet Adalat, should not only provide for the custody of such persons but should lay down a Rule for the guidance of the courts in their judgment of such cases'. Section 1 of Act IV codified the defence of insanity: 'No person can be acquitted for unsoundness of mind unless it can be proven that, by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious and incapable of knowing, in doing the act, that he was doing an act forbidden by the law of the land'¹⁰. The drafting of this statute was strikingly similar to the McNaughton Rules' legal test for insanity, as well as the insanity defence recommended by the English Criminal Law Commissioners.

ENACTMENT OF INDIAN PENAL CODE

The repercussions of the 1857 Sepoy Mutiny highlighted the necessity for a standard criminal law. The Indian Penal Code was subsequently enacted as Act XLV in October 1860, after more than two decades of amendments and delays. The Indian Penal Code went into effect on January 1, 1862¹¹. This was the Commonwealth's first criminal code, and British colonial governments in Ceylon, the Straits Settlements, Singapore, Burma, and Brunei quickly adopted it. The Indian Penal Code was passed down to Pakistan and then Bangladesh after India's partition. Despite numerous revisions to the original criminal code, the insanity defence has remained intact in all countries that have adopted the Indian Penal Code since 1860.

III. VARIOUS INSANITY DEFENCES

McNAUGHTON INSANITY DEFENCE

The McNaughton insanity defence, often known as the right-wrong test, is by far the most widely employed insanity defence worldwide. It is also the oldest, having been founded in 1843 in England. Daniel McNaughton is the name of the person upon whom this defence is based. McNaughton was certain that England's Prime Minister, Sir Robert Peel, was plotting his assassination. When he attempted to shoot Sir Peel from behind, he accidentally killed Sir Peel's Secretary,

Edward Drummond. McNaughton was tried for murder, and the jury ruled him not guilty due to insanity, much to the surprise of the nation¹². Following public anger over the verdict, the British House of Lords devised an insanity test that is still in use in the present era.

The McNaughton insanity defence promotes cognitive character, emphasising the accused's awareness over his or her ability to control behaviour. There are two components to the defence. To begin, the offender must have a mental deficiency at the time the criminal conduct is committed. Depending on the jurisdiction, the mental impairment is referred to as a "defect of reason" or a "disease of the mind." Second, the judge or jury must determine that the accused did not know the nature and characteristics of the criminal act, or that the act was wrong, due to the mental deficiency. Psychosis, schizophrenia, and paranoia are types of mental disorders and diseases.

IRRISTABLE IMPULSE INSANITY DEFENCE

Over the years, this defence has lost credibility. The irresistible impulse insanity defence is sometimes considerably simpler to prove than the McNaughton insanity defence, resulting in more mentally disturbed offenders being acquitted. The first requirement is the same as McNaughton in jurisdictions that recognise the irresistible impulse insanity defence: the accused must have a mental defect or sickness of the mind. The second ingredient, on the other hand, introduces the concept of volition, or free will¹³. Even if the accused recognises that the action is unlawful, the accused's conduct is forgiven if the accused cannot control his or her behaviour due to a mental disability or disease. This is a milder approach than McNaughton, which does not absolve a accused who is aware of his or her wrongdoing.

SUBSTANTIAL CAPACITY TEST

It is the insanity defence created by the Model Penal Code. The Model Penal Code was completed in 1962. The substantial capacity test is as follows: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law". There are two parts to the defence. The first part, like the McNaughton and irresistible impulse insanity defences, requires the accused to have a mental disorder or defect. The irresistible impulse insanity defence, which supplements the McNaughton insanity defence, combines the cerebral and volitional standards. The considerable ability test makes it simpler to show insanity since both the cognitive and volitional criteria are lowered down to more flexible standards.

The substantial capacity test, unlike the McNaughton insanity defence, does not require full incapacity to grasp or know the

⁹ Bingham of Cornhill. Speech at Dinner for HM Judges, Speech presented at: The Mansion House, London 22 July 1998. London: Judiciary of England and Wales. Available at: https://web.archive.org/web/20070927120512/http://www.judiciary.gov.uk/publications_media/speeches/pre_2004/mnsion98.htm (Accessed on 8 Aug 2019)

¹⁰ Banerjee TK. Background to Indian Criminal Law. Bombay: Orient Longmans, 1963.

¹¹ Kolsky E. Codification and the Rule of Colonial Difference: Criminal Procedure in British India. *Law Hist Rev* 2005; 23(3): 631-83.

¹² Wondemaghen M. Depressed but not legally mentally impaired. *Int J Law Psychiatry*. 2014 Mar 1;37(2):160-7.

¹³ Materni MC. Criminal punishment and the pursuit of justice. *Brit J Am Leg Stud*. 2013; 2:263.

difference between right and wrong. However, the accused must be mentally ill in some way, not completely. Criminality is the "wrong" in the substantial capability test, which is a legal rather than a moral wrong. Furthermore, unlike the overpowering impulse insanity defence, the accused must be unable to conform his or her behaviour to legal criteria in a substantial, not entire, way. Another distinction is the use of the word "appreciate" rather than "know" in the significant capacity test. As previously established, appreciation has an emotional component, so that evidence about the accused character or personality is significant and presumably admissible in favour of the defence.

DURHAM INSANITY DEFENCE

The Durham Defence is also known as the product test or the Durham rule. Generally speaking, the Durham insanity defence is based on standard proximate causality assumptions. There are two parts to the defence. The accused must first have a mental condition or defect. Although these concepts are not specified in the Durham case, the judicial opinion suggests an attempt to depend more on objective, psychological norms than on the accused's subjective knowledge. The second point to consider is causation. If a mental condition or defect "causes" criminal behaviour, the behaviour should be pardoned under the circumstances¹⁴.

IV. MODERN JUDICIAL APPROACH TOWARDS INSANITY DEFENCE

Every individual who is suffering from mental disorder is not always exempted from criminal charge. In the case of *Hari Gobind Singh v. State of Madhya Pradesh*¹⁵, According to the Supreme Court, Section 84 establishes the legal standard for determining responsibility in circumstances of claimed mental illness. In IPC, there is no definition of 'mind soundness.' The courts, on the other hand, have largely equated this term with insanity. However, there is no specific definition for the term "insanity." It is a phrase that is used to define different levels of mental illness. As a result, no mentally sick person is automatically immune from criminal liability. It's important to distinguish between legal and medical insanity. Legal insanity, not medical insanity, is the focus of a court.

In the case of *Surendra Mishra v. State of Jharkhand*¹⁶, 'Every person experiencing mental illness is not ipso facto protected from criminal punishment,' it was stated. Moreover, the Supreme Court decided in another case that "it is the totality of the circumstances considered in the light of the recorded evidence" that would indicate that the act was committed under Section 84 of the IPC. It was added: "The unsoundness of the mind before and after the incident is a relevant fact."

Unsoundness of mind must have existed at the moment the Act was committed. When proving insanity, the first question to ask is whether the accused has proven that he was insane at the time of the crime. Section 84 of the penal code does not utilise the term "insanity." In *Rattan Lal v. State of Madhya Pradesh*¹⁷, The court has established that the crucial point in

time for determining unsound mind is when the crime is committed, and that whether the accused was in such a state of mind as to be entitled to Section 84 benefits can only be ascertained from the conditions that preceded, attended, and followed the crime.

In other words, the behaviour preceding, accompanying, and following the occurrence may be important in evaluating the mental state of the accused at the time of the offence, but not those occurring later. The benefit is given only when it is proven that the accused was suffering from such a defect of reason, resulting from a mental illness, that he did not recognise the form and degree of the conduct he was committing, or that even if he did know, it was wrong or against the law. In *Santosh Maruti Mane v. The State of Maharashtra*¹⁸, Because there was insufficient evidence to show that the accused was oblivious of his actions, the supreme court pronounced him guilty.

MEDICAL INSANITY V. LEGAL INSANITY

In circumstances of alleged crime committed by a person with mental illness, Section 84 establishes the legal test of responsibility. The IPC contains no definition of "unsoundness of mind." However, the courts have largely equated this term with insanity. Furthermore, the term "insanity" has no specific definition, has multiple meanings in different situations, and refers to different levels of mental illness. Mentally ill people are not automatically free from criminal misconduct. It's important to distinguish between legal and medical insanity. Legal insanity, not medical insanity, is the focus of a court. "Medical insanity" refers to anyone who is suffering from any type of mental illness; however, "legal insanity" implies that the person suffering from mental illness also has a lack of reasoning ability. The term "legal insanity" refers solely to a person's "mental state" at the time of committing a crime. This is a legal term that has nothing to do with the various psychological illnesses.

In simple terms, legal insanity indicates that the person was suffering from mental illness and had lost the ability to reason at the time of the conduct. This issue is clearly depicted in Section 84 IPC as that person incapable of knowing:

- a. The nature of the act, or
- b. That he is doing what is either wrong or
- c. Contrary to law.

Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 IPC.

BURDEN OF PROOF IN INSANITY DEFENCE

Unless the contrary is proven, every man is supposed to be sane and to have a fair level of reason to be responsible for his actions. Everyone is assumed to be aware of the natural repercussions of their actions. Similarly, everyone is assumed to be aware of the law. The prosecution is not required to prove these facts¹⁹.

In insanity Defence, there are two aspects of proving an offense, which are as follows:

¹⁴ Math SB, Kumar CN, Moirangthem S. Insanity Defence: Past, Present, and Future. Indian J Psychol Med. 2015;37(4):381-7.

¹⁵ Hari Singh Gond vs State Of M.P on 29 August 2008.

¹⁶ Surendra Mishra v. State of Jharkhand. 2011, 11 SCC 495.

¹⁷ Shrikant Anandrao Bhosale vs State of Maharashtra on 26 September 2002.

¹⁸ Rattan Lal vs State of Madhya Pradesh on 20 August 2002.

¹⁹ Babu @ Gajraj Singh vs State of Rajasthan. Appeal (crl.) 1313 of 2006. Date of Judgement on 4 June 2007.

- a. Commission of crime and
- b. Insanity Defence.

The prosecution always bears the obligation to prove the occurrence of an offence, and this never changes. The prosecution is required to show this beyond a reasonable doubt. However, the accused would be responsible for showing the existence of circumstances (Section 84 IPC) for insanity defence (Section 105 of the Evidence Act), and the court would presume the absence of such conditions²⁰. The accused must show that he was incapable of knowing the nature of the crime or that what he was committing was either wrong or against the law by presenting evidence to the court, such as expert testimony, oral and other documented evidence, presumptions, admissions, or even prosecution proof.

In a recent case, *Devidas Loka Rathod v. State of Maharashtra*, The Supreme Court debated the law governing the plea of insanity under section 84 of the Indian Penal Code. The accused may present all material information, whether oral, documentary, or circumstantial, to the court, but his burden of proof is no more than that of a party in civil proceedings, according to the court²¹. The accused must only prove his case by a clear and convincing evidence, after which the burden of proof shifts to the prosecution to prove the exception's inapplicability.

V. ARGUMENTS AGAINST INSANITY DEFENCE

The following are the arguments used by those who favour eliminating or severely restricting the insanity defence:

- a) The fundamental phrases in the numerous insanity tests are so ambiguous that they enable speculation and instinctive moral judgments masquerading as facts.
- b) Allowing expert witnesses to speak in tendentious terms about the distinction between those who are personally reprehensible and those who are not has little or no validity in psychology.
- c) Treatment of people as individuals liable for their actions, rather than passive victims 'playing a sick role,' is more intensely desirable.
- d) The insanity defence differentiates against people who commit crimes due to factors other than mental illness or defect influencing their dispositions.

Ultimately, insanity defence opponents say that, in practice, it is a 'rich person's Defence' because the variety of expertise required to present a credible defence is frequently only available to the wealthy. They suggest that these limited psychiatric resources should be used to treat those who have been hospitalized or convicted.

VI. CONCLUSION

To prevent the various conflicts and uncertainties that emerge in comprehension and differentiating between the 'mental disease' and the exact insanity of mind pursued by the Code or the so-called 'legal insanity' to make the defence accessible to the accused, a well-defined definition of the term 'mental insanity' is proposed.

Psychiatrists may be called to assist the court in establishing whether a person's ability to develop the intent required to make them legally liable was impacted by certain mental conditions. The medical field classifies a patient's mental state on a scale ranging from very ill to perfectly healthy. The legal terminology, on the other hand, is categorical in nature, either criminally liable or not. While a psychiatrist is engaged with the medical treatment of individual patients, courts are preoccupied with the society's protection from the dangers posed by these patients.

To demonstrate that the individual was also unable to acknowledge the character of the act or wrongdoing or that it was blatantly illegal, the psychiatrist must understand that it is not only the fact that the individual is severely mentally ill, but also the totality of the conditions as seen in light of the evidence on record. Above all, there are few forensic psychiatric informal training and clinical service centres in the country. Forensic psychiatry must be prioritised to ensure a fair and timely trial.

²⁰ State of Rajasthan v. Shera Ram @ Vishnu Dutta. 2012, 1SCC602.

²¹ Sudhakaran v State of Kerala. 2010 (10) SCC 582.