

INSANITY DEFENCE: A MEDICAL AND LEGAL GRAPPLE

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INTRODUCTION

For committing a criminal offence, *mens rea* (guilty mind) is generally taken to be an essential element of a crime. It is said *furisus nulla voluntus est*. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he is not capable of knowing what he is doing. For committing a crime, intention and the act both are considered, *actus non facit reum nisi mens sit rea*. A person of unsound mind cannot be said to have the basic norm of human behavior.²

The defence of insanity is recognized as defence against criminal liability. The general principle of criminal law imposes criminal responsibility upon a person, for it is founded on the conviction that a person who performs criminal act/omissions is himself responsible for it and its consequences. It is the presumption that a person is capable enough of understanding his deeds within the limits prescribed under criminal law. Contrary to this general presumption of law the defence of insanity holds as an exception to an insane individual. In order to hold criminally responsible, *mens rea* (guilty mind) is relevant consideration in determining the criminal liability of that individual. The lack of consequential understanding capability gives an insane person exemption from the criminal charge

Insanity is a sufficient defence to a criminal offence as it presumes that one who is insane doesn't have capacity to think and therefore cannot have guilty intention³. The legal acceptance of insanity as a defence challenges the constituents of insanity. It is not that the case that every individual suffering from any kind of medically recognized insanity is immune from criminal liability. Legal conception of insanity is different from medical conception of insanity.

¹ National University of Study and Research in Law, Ranchi.

² *State of Rajasthan v. Shera Ram*, (2012)1 SCC 602.

³ *Flanagan v. People*, 52 N. Y. 467

There is a difference between medical insanity and legal insanity. By medical insanity it is meant that the person's consciousness of the bearing of his act on those affected by it and by legal insanity person's consciousness in relation to himself.⁴

The dichotomy between the Medical and Legal community regarding the meaning and scope of the Insanity stands till date unresolved. While the medical experts consider every mental disorder as insanity, legal experts consistently uphold the validity of the statutory rules and refuse and avoid to approve their extension to cover the 'irresistible' or 'uncontrollable' impulse. The courts have also declined to enlarge their interpretation in other respects and perspectives. Thus it has held that words 'the nature and quality of the act' must be taken to refer only to the physical character of the act and not to distinguish between its physical and moral aspects and that 'wrong' means in effect 'punishable by law'.⁵

This research paper studies some of the major differences between medical and legal understanding of the term insanity. With this understanding of insanity, the article traces the roots of insanity as a defense and discusses the much famous Mc Naughten Rule recognized worldwide as the mother of insanity laws in modern times. Subsequently, the article takes up the comparative study of penal laws across the major countries concerning the defence insanity. Further the Indian position regarding insanity as a defence is analyzed in the light of Indian Penal Code along with case studies. Finally the article concludes with an assertion that Indian penal law relating to insanity as a defence is self sufficient needs no revisit.

Understanding different perspective of insanity: Medical and legal perspective.

From various laws across the globe it has been held that "mental disease" is an indeterminate and vague term-including conditions varying from mild indisposition to delirious states. Medicine and law approach this point in different ways. It is said that Locke's "Essay on Human Understanding" basically interested law is mainly has had a great influence on the legal attitude.

⁴ Baswant Rao, (1984) Nag 711

⁵ The British Royal Commission Report, 1953 para.229

Criminal law is mainly interested in the discussion of responsibility not in insanity per se. The form of insanity is a question of mental pathology and is not of particular about law. Law is concerned about the consequences (conduct) resulting because of insanity. Unsoundness of mind is currently an accepted notion of insanity by the medical experts. “Doctors with experience of mental disease contended that insanity does not only, or primarily affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and emotions. An insane person may therefore often know the nature and quality of his act and that it is wrong and forbidden by law but yet commit it as a result of the mental disease. He may, for example be overwhelmed by a sudden irresistible impulse, or he may regard his motives as standing higher than the sanctions of the law; or it may be that, in the distorted world in which he lives, normal considerations have little meaning or little value.”⁶ Medical concept of insanity can be defined as a mental abnormality due to various factors existing in varying forms. In wider connotation, it constitutes idiocy, madness, lunacy, mental derangement, mental disorder and every other possible form of mental abnormality known to medical science. However the legal conception of insanity widely differs from that of the medical conception⁷, and all kinds of insanity are not recognized by law⁸

Tracing the roots of Insanity defence.

The history of the insanity as a defense can be dated back as early as government.

The first recorded usage of the insanity defense can be seen in Hammurabi’s code which dates back to around 1772 BC. It used some sort of insanity defense. ⁹

In the days of the Roman Empire, the government found most of the convicted people to be *non-compos mentis*, meaning without mastery of mind and not guilty for their criminal actions¹⁰

As time progressed, there have been some important phases of insanity defense before the emergence of the famous McNaughton case.

⁶ British Royal Commission Report,1953, Para 227

⁷ Am. and Eng. Encyl. of Law, Vol. 4, p. 693.

⁸ *Bharat Kumar v. State of Kerela*, (2010) 10 SCC 582.

⁹ “Mental State Defense.” (2008). *Forensic Psychological Services*. Retrieved from: http://www.forensicpsychology.biz/Mental_State_Defense.aspx

¹⁰ Borum, R., & Fulero, S. (1999). *Empirical Research on the Insanity Defense and attempted reforms: Evidence toward Informed Policy*. *Law and Human Behavior*, 23(3), 375-394.

- **Good and evil test**- First, there was the “good and evil” test, which originated in biblical and religious concepts. Those who were seen as unable to distinguish between good and evil were considered to be insane.
- **Wild beast test**- The next major step in the insanity as a defense began with the emergence of the “wild beast test.” In the 1724 British case of “*Rex v. Arnold*,” the judge ruled for the defendant to be acquitted by reason of insanity because he did not know what he was doing, and was doing no more than a “wild beast” could do.¹¹
- **Hadfield’s trial** - In 1800, advancement was made in the insanity as a defense with **Hadfield’s trial**. Hadfield had fired a pistol at the King during a play. He had missed the target, but was still tried in court. Hadfield was charged with treason. He pleaded insanity.

Up till this time, if a defendant was deemed not guilty by reason of insanity, the defendant would go free. In this particular trial if the defendant was under some sort of “delusion” during the time of the crime, they would be excused of their crime if the delusion was supposed to be true. He was found to be insane, and hence was acquitted. However, this led to the passing of the **Criminal Lunatics Act of 1800**.¹² This required a set procedure for defendants who were acquitted because of insanity. They were then required to be held in detention after trial until deemed alright to be released back into society.

In 1840, the standard for insanity was further made clear, by the case of *Regina v. Oxford*.¹³ In this particular case, it was seen that the defendant suffered from the effect of a “diseased mind,” and was “quite unaware of the nature, character, and consequences of the act he was committing.” This ruling redefined insanity, and set the judgment for the major rules on insanity that were soon to come.

Mc Naughten rule

Before the McNaughton Rules, there was no clear set way of regarding the insanity in the court room. In 1843, a man named Daniel McNaughton¹⁴ attempted an assassination on the Prime Minister, and accidentally shot the secretary of the Prime Minister. McNaughton

¹¹ Clark, R. (1995). Insanity and the Death Penalty. *Capital Punishment UK*. Retrieved from <http://www.capitalpunishmentuk.org/biblio.html>

¹² Moran, R. (1985). The Origen of as a Special Verdict: The Trial for Treason of James Hadfield. *Law and Society Review*. 19, 487-519. Retrieved from: <http://www.jstor.org/stable/3053574>

¹³ 7 Crim.App. 36 (1911).

¹⁴ *Queen v. M'Naghten*, 8 Eng. Rep. 718 [1843]

suffered from paranoia and delusions of prosecution. He had the belief that the government was out to get him.¹⁵

After a lengthy trial, McNaughton was later acquitted of his actions because he was deemed “insane.” Thus, he was not held accountable for the actions. This ruling outraged the public at large, and provoked for a redefinition of what “insanity” was. Therefore, the House of Lords met, and established the main idea that posed as the question concerning knowledge, “did the defendant know what he was doing, or, if so, that it was wrong?”

A few basic parts regarding the McNaughton Rule:

- There is a presumption, that the defendant is sane, and he is responsible for his criminal acts.
- At the time of the crime, the defendant must have been suffering from a “mental disease.”
- If the defendant has the knowledge of the nature of the crime, do they know what they did was wrong. (“United Kingdom House of Lords Decisions,” 1843).

The aim of the M'Naughten rule was to limit the defence of Insanity Defense to cognitive insanity¹⁶, a basic inability to differentiate between right and wrong.

Other tests formulated by legislatures and courts after M'Naughten have supplemented the M'Naughten rule with another form of insanity called volitional insanity. Volitional insanity is experienced by mentally healthy persons who, although know what they are doing is wrong, are so mentally unbalanced at the time of the criminal act that they are unable to conform their actions according to the laws.

The M'Naughten rule was adopted in most jurisdictions in the United States, but legislatures and courts eventually modified and expanded that definition. The definition of criminal insanity now varies from jurisdiction to jurisdiction, but most of them have been largely influenced by the M'Naughten rule.

Many jurisdictions although reject volitional insanity but retain cognitive insanity with a minor variation on the M'Naughten definition. Under the M'Naughten rule, a person is said to

¹⁵ Costanzo, M. (2004). *Psychology Applied to Law*. Belmont, CA:Wadsworth/Thomson Learning

¹⁶Kaplan, John, and Robert Weisberg. 1991. *Criminal Law: Cases and Materials*. 2d ed. Boston: Little, Brown.

be legally insane if she was so deranged that she did not know her act .Under many current statutes, a person is legally insane if he is so deranged that he lacks substantial capacity to appreciate the criminality of his conduct and lacks knowledge on her part.

The difference between the two definitions is largely considered to be theoretical. In theory, the latter definition is more lenient and easy because it requires only that a person lack substantial capacity to appreciate her behavior and conduct.

Comparative Study: Defence of Insanity in Major Countries

America-

In the United States of America *Durham Rule*¹⁷ explains that an accused is not criminally liable if his unlawful act was the result of any mental disease or mental defect. The word ‘disease’ is used in the sense of a condition and situation which is considered capable of either improving or deteriorating. Whereas the term ‘defect’ is used here in the sense of a condition not considered capable of either improving or deteriorating and which may be either congenital, or because of injury, or the residual effect of any mental or physical disease.

The American law Institute has suggested¹⁸ the following test:-

- A person is not responsible and liable, 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 because of his conduct or to conform his conduct to the requirements of law.
- As used in this article here, the term “mental disease or defect” does not include an abnormality manifested only by repeated criminal or other anti-social conduct.

Australia-

In Australia, the Criminal codes of some of the provinces like Queensland, West Australia etc. give the plea of “irresistible impulse”. The Tasmanian Criminal Code under section 16 states:-

¹⁷ *Durham v. United States* 214 F.2d.862

¹⁸ A.L.I. Model Penal Code, proposed Official Draft 1962 – Section 4.01

(1) A person is not criminally responsible and liable for an act done, or for an omission made, by him- (a) when afflicted with mental disease to such an extent as to render him not capable of :- (i) understanding the physical character and aspect of such act or omission; or (ii) knowing that such act or omission was one which he ought not to make; or (b) When such act or omission was done or made under an sudden impulse which by reason of mental disease, he was in substance deprived of any power to resist.

(2) The fact that a person was, at the time at which he is alleged to have done an act or made an omission, incapable of controlling his conduct generally, is relevant to the question whether he did such an “act or made such omission under an impulse which by reason of mental disease he was in substance deprived of any power to resist.”

France-

In France, article 64 of the Penal Code says that ‘there is no crime or offence when the accused was in a state of madness at the time of the act or in the event of his having been compelled by a force which he was unable to resist.’

Switzerland-

In Switzerland, article 10 of the Swiss Penal Code is to the effect that “Any person suffering from a mental disease, idiocy or serious impairment of his mental faculties who, at the time of committing the act, is incapable of appreciating the unlawful nature of his act or of acting in accordance with this appreciation cannot be punished.”

When studying the statutory rules regarding the defence of insanity of the major countries show that even ‘irresistible impulse’ can be considered to be insanity. The American and Australian penal laws says “The accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject, is that the accused must be capable, not only of distinguishing between right and wrong, but that he was not impelled to do the act by an irresistible impulse, which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetrate the deed, though knowing it to be wrong”¹⁹ The right-wrong act is insufficient because it doesn’t take much into account of psychic realities and scientific knowledge. And moreover it based

¹⁹ *Smith v. United States* 36 F2d 548, (1929)70 ALR 654

solely upon single symptom i.e., reason or knowledge only and so cannot be completely applied in all the circumstances. The mere ability to differentiate between right and wrong is no longer considered as correct test when defence of insanity is imposed.

Defence of Insanity under Indian law.

The defence of Insanity under Indian Penal Code (IPC) is provided under Section 84 which states:-“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” This Section is distillation of the principles explained by the House of Lords in the well known Mc Naughten’s Case. The essential ingredients of the section are-

- An act must be done by an insane person resulting into harm.
- The person doing that act at the time must be suffering from insanity or mental abnormality or unsoundness of mind
- The accused person should not have the capacity of knowing the nature of the act committed by him because of insanity or
- The accused person should be incapable of knowing his act to be wrong or contrary to law because of insanity.

This section uses the term ‘unsoundness of mind’ not ‘insanity’. But the term insanity carries different meaning in different context and describes varying degrees of mental disorder. As said by S.S.Huda²⁰ “The use of term ‘unsoundness of mind’ has the advantage of doing away with the necessity of defining insanity and of artificially bringing within its scope various conditions and affections of the mind which ordinarily do not come within its meaning, but which none the less stand on the same footing in regard to exemption from criminal liability” This section talks about two different mental conditions for claiming exemptions from criminal liability (i) owing to the unsoundness of mind, incapability of knowing the nature of the act, (ii) no knowledge because of the unsoundness of mind that the act done was either wrong or contrary to law.²¹

²⁰ S S Huda, Principles of Law of Crime in British Indian (ILL,1902,reprint1982)p271

²¹ K D Gaur, Criminal Law Cases and Materials, third edition, Butterworth India,1999.

It is settled that a distinction is to be made between legal and medical insanity²² as the courts are concerned with legal not medical insanity.²³

This section doesn't consider every case of insanity as a defence.²⁴ Coupled with the insanity of the accused there must be the additional fact that at the time of the commission of the act, he is under the influence of insanity, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.²⁵ The accused is not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law or the vice versa. The unsoundness of mind must exist at the time of commission of the offence and the onus of proving unsoundness of mind is on the accused.²⁶ Previous medical history is relevant and to be considered but first the conduct of the accused at the time of committing the offence has to be established.²⁷ Prior and subsequent incapacity can only form part of relevant facts in recording of evidence.²⁸

Drunkenness is not an excuse but *Delirium Tremens* caused by excessive drinking if it produces severe madness so as to render a person incapable of distinguishing right from wrong; then he is afforded a ground of excuse from criminal responsibility.²⁹ To claim exception of insanity under Section 84 of IPC, the accused must prove that at the time of doing the offensive act, there was no knowledge of the nature of it or the act to be wrong or contrary to law. Sudden impulsive fits of passion is not insanity.³⁰ The defence of insanity is available only in case of unsoundness of mind resulting in harm to others but sudden impulsive act though may be result of unstable mind is not exempted. Irresistible impulse is not a defence under section 84. The test to invoke the defence of 'unsoundness of mind' has been explained in *Lakshmi v. State*³¹ where motive and the conduct of the accused prior to as well as at the time of the incident is considered to be material to determine the question of insanity. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 IPC can only be established from the circumstances and

²² *Barelal v. State* AIR 1960 MP 102, 104

²³ *Jinappa v. State of Mysore* (1961) 2 Cr LJ 250, 1960 Guj 1, 3, 1960 Cr LJ 288.

²⁴ *Surendra Mishra v. State of Jharkhand*, AIR 2011 SC 627 : (2011) 11 SCC 495 : (2011) 3 SCC (Cri.) 232

²⁵ 1976 Cri LJ (1418) (DB)

²⁶ *Geron Ali* (1940)2 Cal.329

²⁷ *Prakesh v. State of Maharashtra* 1985 Cr.L.J.196 (Bom).

²⁸ *Pratapgiri Shivgiri v. State of Gujarat*, (1964) 5 Guj LR 474 : ILR (1964) Guj 324.

²⁹ *Davis's Case* (1881) 14 Cox 563.

³⁰ *S.K. Nayar v. State of Punjab* 1997 Cr.L.J 772 SC.

³¹ AIR 1963 All 534.

situation which preceded and followed the crime.³² In *Sheralli Wali Mohammed v State of Maharastra*.³³ the Supreme Court held that the law presumes every person of the age of discretion to be sane unless the contrary is proved. The mere fact that no motive has been proved why the accused committed an offence, would not indicate that he was insane, or that he did not have the necessary *mens rea* for the commission of the offence.

In **42nd Law Report of India**³⁴ revisited Section 84 of the Indian Penal Code. The Law Commission discussed the issue of amending Section 84 considering the strong criticism to which the M'Naughten Rules have been subject in Britain by the various legal scholars and mental health experts. Further the Law Commission examined the issue in view of the recognition given to the plea of 'irresistible impulse' in the penal laws of some of the major countries. There were altogether three questions which were answered in the Law Commission Report, the questions were:

(1)Should the existing provision (Section 84) relating to the defence of insanity be modified or expanded or altered in any way?

(2)Should the test be related to the offender's incapacity to know that the act is wrong or to his incapacity to know that it is a punishable offence?

(3)Should the defence of insanity be available in cases where the offender, although aware of the wrongful or even criminal nature of his act, is unable to control himself from doing it because of his mental condition?

The first question concerning modification or expansion of insanity defence under Section 84 of IPC found strong opposition and criticism and said that even theoretically the present provision is adequate. The modification or expansion would result in a number of practical difficulties if the provision is made liberal as the decision would largely then depend on the medical opinion. Considering the Indian position, serious doubts were expressed as to whether medical experts of the requisite quality would be available all over India especially in the rural areas. Further there is no need for any modification to it as the present provision caused no practical difficulty as applicable to the Indian circumstances and situation. Regarding the second question, the opinion itself differed; some expressed that the test should be knowledge of what is "wrong" and while others opined that it should be knowledge of

³² *Dayabhai Chhaganbhai Thakkar v. State of Gujarat* AIR 1964 SC 1563.

³³ AIR 1972 SC 2443.

³⁴ June,1971.

what is punishable by law. The last question as to include “irresistible impulse” under Section 84 found little support as some of the opinions considered that “irresistible impulse” cannot be strictly insanity. However the main objection was that inclusion of “irresistible impulse” under Section 84 would make the trial more difficult for the judges than the present provision.

Conclusion

The drafting of Indian Penal Code by Lord Macaulay was no doubt impeccable. The Indian penal code under Section 84 uses the expression “unsoundness of mind” not “insanity. But it must be noticed that the Mc Naughten Rule refers to insanity as “disease of mind” which was the major cause for the rift of opinions and criticism of the rule in the courts. However under Section 84 of IPC, the expression “unsoundness of mind” is used that covers not only any form of insanity or mental disease, but also any form of mental deficiency, like idiocy, imbecility and even feeble-mindedness etc. After studying the defence of insanity of various major countries, the applicability of the defence of insanity seems to be working efficiently. This section before going for the applicability studies and examines the condition of the disease. Therefore the Law Commission was right in not suggesting for making any alteration or changes to the existing Section 84 of the IPC as it is felt that the existing provision cause no practical difficulties in conducting trial. Any changes that are suggested by the critics observing and aping the western legal system could lead to major medico-legal issues in conducting the trial. Thus the law of insanity under Section 84 of the IPC needs no modification or expansion or alteration so far the Indian circumstances are concerned.