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Judicial Interpretation of Unsoundness of Mind

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The law of insanity as a defense and the laws related to it are discussed in this paper. The first segment starts with a brief description of insanity as a defense before delving into the origins of Unsoundness of mind. It discusses various tests of Rule of Insanity, such as the Wild Beast Examination and the Insane Delusion Examination, the third test was established in the Bowlers Case and the M'Naghten Case, which established the Right and Wrong Test. The next section examines how India interprets the Law of Insanity and addresses clauses in Indian law from an Indian viewpoint. Then, using case law, this paper clarifies the distinction between legal and medical insanity. Moving on, there are 3 components that discuss the lack of understanding of the nature of the act, the inability to recognize what is right or wrong, and the burden of proof of insanity. Finally, an attempt was made to address the issue of Irresistible Impulse as a defense in both English and Indian law. Eventually, it was concluded by emphasizing how the insane should be handled, implying that they do not need to be punished but rather need medical care.

Keywords: *insanity, m'naghten, irresistible impulse, unsound.*

INTRODUCTION

In India's criminal law, insanity as a defense is still unresolved. It does, however, pose some interesting questions that need further investigation. As a consequence, only a small number of reports on prisoners' diagnostic profiles. A semi-structured interview program was used to assess 5024 inmates in a 2011 forensic psychology study, and the findings showed that almost 4k (79%) of them were identified with some disorder, a psychiatric condition, or a drug

addiction problem.¹ The practical prohibition of punitive and deterrent philosophies of penalty, which is described by the Indian Penal Code, 1860² ('IPC' hereafter), is based on M'Naghten's 1843 Rule, & could be a metaphysical foundation for the exclusion of delusional law breakers from prosecution.

There is a well-recognized concept called as "*actus non facit reum nisi mens sit rea*"³, which literally means that in the absence of a guilty conscience, a crime does not hold a suspect accountable. The motive or guilt conscience of the defendant is an important factor in the commencement of an offence, i.e., Mens Rea is required. The defense of insanity is a legal philosophy that applies to an individual who is not able to comprehend the circumstances related to the actions he took and not able to understand the consequence.

The defendant's insanity may be serious enough that he or she is unable to comprehend the essence of his or her action. Even if a person has a mental illness, he or she cannot be straightaway deemed as an insane person. That's simply not proof which is enough. The basis for insanity, in India's context, as a defence is introduced in Section 84 of IPC, 1860.⁴ The defendant still bears the burden of evidence. The Law Commission of India⁵ attempted to re-examine Section 84 in its 42nd report,⁶ however, no changes were made.

ORIGIN OF LAW OF UNSOUNDNESS OF MIND

Insanity statute has been used as a shield for many decades. However, it only became legal in the last three centuries. The concept of insanity law dates back to the 17th century. *R v. Arnold*

¹ BG Werlang and NJ Botega, 'A semi-structured interview for psychological autopsy in suicide cases' (*SciELO Brazil*, October 2003) <<http://www.scielo.br/j/rbp/a/PLTqCTvq8ggYZQHPjS5nqQC/?lang=en>> accessed 02 May 2021

² Indian Penal Code 1860, s 84

³ '*actus reus non facit reum nisi mens sit rea*' (*Oxford Reference*) <<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095349253?result=3&rskey=h5ZWVa>> accessed 02 May 2021

⁴ KM Sharma, 'Defence of Insanity in Indian Criminal Law' (1965) 7(4) *Journal of the Indian Law Institute* 325-383

⁵ 'Eighty-Fourth Report on Rape and allied offences some questions of Substantive Law, Procedure and Evidence' (*Law Commission of India*, April 1980) <<https://lawcommissionofindia.nic.in/51-100/Report84.pdf>> accessed 02 May 2021

⁶ 'Fourty-Second Report on Indian Penal Code' (*Law Commission of India*, June 1971) <<https://lawcommissionofindia.nic.in/1-50/report42.pdf>> accessed 02 May 2021

(1724)⁷, was the very first case to deal with the rule of insanity, where Edward Arnold made an attempt to murder or injure L. Onslow, and for which, he was arrested. The testimony pointed to the evidence that the accused suffered from a mental condition. J. Tracy made the following observations:

“If he was under the influence of God and could not differentiate between good and bad, and did not know what he’s done, he couldn’t has been guilty of any crime against any statute whatsoever.”

As said in an earlier prosecution, an individual would seek immunity if he was unable to differentiate between good and bad, he was unable to recognize the essence of the action taken by him. The “Wild Beast Examination” is the name given to this test.

In *Hadfield’s*⁸ *Case* (1800), the second test was developed. Hadfield got discharged from the military due to insane behavior & was prosecuted for treason in the form of an attempt to murder King George III. Lord Thomas Erskine, the accused’s lawyer, while defending him, demonstrated in court that Hadfield merely threatened to murder the King and should not be said to be guilty, citing the accused's mad illusions.

According to Erskine, insanity is measured by the presence of a predetermined delusional delusion, and the defendant's behavior was motivated by delusion, which is the primary explanation for his offense. The “Insane Delusion Examination” was the name given to this test.

Finally, in *Bowler’s*⁹ *Case* (1812), the third test was created. In this case, Le Blanc, J. argued that the jury would determine whether the accused performed the offense if the accused had the capacity to determine the difference between wrong and right, or whether he was influenced by a delusion. Following the Bowler case, the jury put a greater focus on the accused's ability to differentiate between right and wrong, differentiate b/w rights & wrongs, despite the fact that the test was not always straight forward.

⁷ *R v Arnold* [1992] 2 SCR 208

⁸ *R v Hadfield* (1800) 27 St Tr128

⁹ *R v Bowler* (1812) 1 Collinson Lunacy 673

M'NAGHTEN CASE

There have several instances, for example, the Wild Beast Test, the Insane Delusion Test, and so on. One of most critical, however, is the "Right and Wrong Test" established in M'Naghten's trial.

In 1843, an accused M'Naghten was suffering from persecution mania, and as a result of this illness, he believed that any problems he was experiencing were the result of British Prime Minister Robert Pel, and M'Naghten shot Mr. Drummond, thinking by accident that he was killing Prime Minister, who was the personal secretary of Prime Minister, and this occurred because M'Naghten was sick.

As a result, he pleaded insanity and was convicted by the House of Lords. This sparked a lot of public outrage, and the House of Lords responded by forming a special committee of judges and laying down ground laws for a plea of insanity, which became known as M'Naghten's Rules.

The following are the rules¹⁰:

- All are believed to be sane unless the opposite is proven to the Court's satisfaction.
- To assert the privilege of insanity, one must explicitly demonstrate that the person on trial was facing the problem (of disorder) or mental disease, the moment the crime had commenced.
- The person wasn't aware of his own actions at the time he performed them.
- At the time of the act, the offender was unaware that what he was doing was inappropriate.

INSANITY AS DEFENSE IN INDIAN LAW

Insanity is noted as one of the defences under Indian law under Section 84 of the IPC "insanity" as a wording, isn't taken note of in the present clause. The wording "mental soundness" is right

¹⁰ FindLaw's Editors, 'The M'Naghten Rule' (*FindLaw*, January 2019)

<<https://www.findlaw.com/criminal/criminal-procedure/the-m-naghten-rule.html>> accessed 05 May 2021

now, noted in the IPC According to it, the defense of insanity, also known as the defense of mental instability, stems from M’Naghten's rule.

No action is an action performed by a person, if such person is currently reluctant of the essence of what he’s doing or an action is performed by him or her, the action being against the laws of the region but these steps are taken due to a lack of the soundness of his or hers’ mind, acc. to Section 84 of the IPC, 1860.

Section 84¹¹ of the IPC’s essential components:

- An individual of an unsound mind should carry out the act.
- Such an individual was mentally unstable or unable to apply his presence of mind while he does an act.
- Such lack of ability may be due to the accused's unsound mind.
- Such a person lacked the ability to understand the essence of the act, or the act he was performing was either illegal or against the law.

If anything is ‘wrong’, it does not have to be ‘against the law’. The statutory and scientific definitions of insanity are vastly different. The legislation wouldn't recognize any kind of delusion or insanity as an acceptable explanation.

LEGAL AND MEDICAL INSANITY: WHAT'S THE DIFFERENCE?

The legal obligation test, as opposed to the medical test, is outlined in Section 84 of IPC. A loss of will is clearly affected not only by a failure to understand maturity but also by a morbid mental state. From a medical and legal standpoint, this morbid mental illness offers an escape from criminal liability. From a medical standpoint, it is possibly right to assume that a person who performs a criminal act is insane, necessitating their release from criminal liability; but, from a legal standpoint, an individual must be treated equally as long as they are capable of distinguishing between wrong and right and are mindful that the act, they are doing is unlawful.

¹¹ *Indian Penal* (n 2)

The Apex Court ruled that “mentally ill” persons can’t claim relief from a criminal proceeding unless the side is able to fulfill their duty to show insanity at the moment the offence occurs. In practice, this implies that not all mentally ill people are immune from getting punishment. There should definitely be a difference b/w medical and statutory insanity. Supreme Court also observed that a psychopath’s mental abnormality, partial illusion, irresistible desire, or compulsive conduct will not be enough to protect from criminal prosecution as granted by Section 84 of the IPC, 1860. The Court claimed that Section 84 of the IPC., 1860, the exemption from crime’s liability granted to people having unsoundness of mind, does not extend to these various accused people because they would bear the burden of establishing insanity in Section 105 of the Indian Evidence Act.¹²

In *Hari Singh v State of Madhya Pradesh*¹³, Supreme Court held that; Section 84 establishes the instances of assumed cognitive insane behavior, the moral basis for assessing guilt is the level of care. The word “mind soundness” isn’t specified in the IPC In contrast, the judges have closely linked this concept with insanity. That being said, the term “insanity” has no specific definition. It is a term put down for the use of various standards of mental disorder. Therefore, being mentally unwell doesn’t mean you’ll be left off the hook in an instant. It needs to be proved, but at the same time, medicinal & statutory insanity must be defined. The judge’s attention is on legal insanity rather than medical insanity.

In *Surendra Mishra v. State of Jharkhand*¹⁴, ‘again stated that being mentally unwell doesn’t mean you’ll be left off the hook at an instant without proving the state at the time of the offence,’ the court ruled.

Moreover, *Shrikant Anandrao Bhosale v. State of Maharashtra*¹⁵, for deciding whether an offense was performed under Section 84 of the IPC, the S. C. asserted that “it is the entirety of the conditions

¹² *Indian Penal* (n 2), s 105

¹³ *Hari Singh v State of Madhya Pradesh* AIR 2009 SC 31

¹⁴ *Surendra Mishra v State of Jharkhand* AIR 2011 SC 627

¹⁵ *Shrikant Anandrao Bhosale v State of Maharashtra* (2002) 7 SCC 748

as seen in the light of the recorded facts” that will show the offense happened. “The unsoundness of the mind before and after the event is a meaningful statistic” , it then added.

LACK OF UNDERSTANDING OF THE ACT'S NATURE

To obtain a defense, one must demonstrate that insanity has impaired the cognitive faculty that guides one’s behavior. Insanity influences not just our intellectual capabilities, but it also affects our feelings, which in turn influence the behavior; however, under Indian law, like the English law, only makes exceptions for insanity cases that affect only our cognitive faculties; cases where insanity influences our emotions are not considered exceptions because if insanity influences our cognitive faculties, a person is not capable of controlling his or her actions.¹⁶

INABILITY TO RECOGNIZE WHAT IS RIGHT OR WRONG

It is not necessary to meet both of the conditions listed in the section in order for using insanity as a protection; a person who can understand the essence of the act but cannot understand what he did wrong or something which was not permitted by law, can still use the insanity defense. This exception is especially relevant in cases where mental illness has resulted in partial insanity. Situations such as delusions, *for example*, cannot be acquitted on the basis of insanity because the delusions induced the individual to believe certain things that, if they existed, would have excused his act.

INSANITY; BURDEN OF PROOF

The prosecution often bears the burden of proving the offence; the prosecution must prove the offence. However, the accused bears the burden of proving the elements mentioned in Section 84 of the IPC read with Sec. 105 of the Evidence Act.

¹⁶ Kiranpreet Kaur, ‘General Criminal Defences: Insanity, Infancy and Intoxication. Part-1’ (*Mondaq*, December 2019) <<https://www.mondaq.com/india/crime/878294/general-criminal-defences-insanity-infancy-and-intoxication-part-1>> accessed 07 May 2021

To assert the defense of insanity, the defense must show that the accused was mentally ill at the time the event occurred, and the rules for the burden of evidence in instances of insanity are as follows:

- The prosecution must show beyond a possible suspicion that the offence was committed with mens rea by the accused.
- The presumption of insanity is debatable.
- The accused may use oral, circumstantial, or documentary proof to rebut the presumption of sanity and invoke the protection of Section 84 of the IPC at any time, and the accused does not have to demonstrate the features of section 84 of the IPC beyond a reasonable doubt.

Even if the accused is unable to determine the elements of Section 84 as to the actions committed by him, the Court is also left in doubt. The Court would then be free to acquit the defendant on the grounds that the prosecution's general standard of evidence had not been met.

IRRESISTIBLE IMPULSE AS A DEFENCE

Irresistible impulse is protection by reason, in this case, some kind of insanity, in which the defendant claims that they should not be held legally responsible for their illegal acts because they were unable to regulate them, even though they thought they were wrong.¹⁷

Under Indian Law

Where there's ample potential to distinguish b/w wrong and good, the very presence of an overwhelming desire doesn't normally justify obligation. The irrepressible inclination isn't counted in the classification of insanity unless it isn't covered by Section 84 of the IPC, 1860.

¹⁷ FindLaw's Editors, 'The Irresistible Impulse Test' (*FindLaw*, 15 February 2019)

<<https://www.findlaw.com/criminal/criminal-procedure/the-irresistible-impulse-test.html>> accessed 08 May 2021

In *Kannakunnummal Koya v. State of Kerala*¹⁸ (1967), it was determined that insanity must be proved at the time of the crime in order to claim an exemption under Section 84; mere lack of self-control due to passion or irresistible compulsion, even if proven in a court of law, is not a defense under Indian law. Further, in *Ganesh v. Shrawan*¹⁹ (1969), the point that the accused committed the murder on an irresistible impulse was brought up with no identifiable purpose is insufficient to accept the insanity defense.

Under English Law

In *Lorena Bobbitt*²⁰ (1993), it was held that, irresistible instinct was created as a defense where the defendant grabbed a knife from the kitchen to injure her husband by cutting off his genitals while he was asleep. Her attorneys argued that she'd been the victim of domestic violence by her husband during their marriage and that he had even threatened her before she performed this crime. Despite knowing the repercussions, she was unable to restrain her behavior and requested that she be subjected to an overwhelming urge. Since she was suffering from temporary mental instability, she was found not liable.

CONCLUSION

A person's insanity doesn't really make them inhuman. Human rights continue to be vested in all people, regardless of their mental state. Criminals are not those who are mentally ill who commit a crime. They do not deserve to be punished, but they do need medical attention. They can pose a risk to society as well as to themselves, so it is essential to keep them under control. Since punishment will not reform them, they must be held in safe custody, given to a family or friend, or committed to an asylum.

When an individual is convicted on the basis of insanity, the Court must state expressly whether the crime was committed by the accused or otherwise. Following their acquittal, such

¹⁸ *Kannakunnummal Koya v State of Kerala* 1967 Cri LJ 494

¹⁹ *Ganesh v Shrawan* (1969) 71 Bom LR 643

²⁰ Staff, 'John Wayne and Lorena Bobbitt Trials: 1993 & 1994: - Lorena Bobbitt's Trial Begins' (*JRank* 1994) <<https://law.jrank.org/pages/3594/John-Wayne-Lorena-Bobbitt-Trials-1993-1994-Lorena-Bobbitt-s-Trial-Begins.html>> accessed 08 May 2021

individuals must be kept in secure custody in whatever location and manner the court considers appropriate. Upon making an application and providing security to the Jury that the person will be adequately cared for and prevented from harming himself or others, a friend or family may be entitled to hold the person. However, if a mentally unstable person cannot live with his or her family members, or if a mentally sick person has been discarded by his or her family members, the appropriate government must provide care, including legal assistance, to enable the mentally unstable person to exercise his or her right to a family home and to reside in the family home. An individual with a mental disorder is entitled to free legal care under Section 27²¹ in the ability to practice all of his legal rights.

²¹ Mental Healthcare Act 2017, s 19(2)