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Analysis of Defence of Insanity

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The Indian Penal Code, 1860 (IPC) details all the substantive facets of criminal law. One facet of them contains the 'General Exceptions' under Chapter IV. The Defence of Insanity is one such defence available under Section 84[1] of the IPC. It was incorporated in the code during the draft and hasn't been changed since. The provision uses the expression 'unsoundness of mind'. However, it has been construed in the same way as 'Insanity'. An accused can file an insanity plea against a charge against him. He'll have to prove that he was of unsound mind at the time of the commission of the offence and wasn't able to understand the nature of his act. But now this provision is 160 years old. The advanced mental conditions prevailing in the current society demand a change in the provision – a revision or an amendment. This article attempts to make a broad analysis of the provision and the interpretations of the defense of insanity made by the Indian Courts. Furthermore, it provides the author's view on the plausibility of the defense in the modern world.

Keywords: *defence, insanity, accused.*

[1] Indian Penal Code, 1860, s 84

INTRODUCTION

The ability to think strategically is what makes a human being superior to other animals. The mental capacity or the mind power helps in deciding the course of action and judging the consequences of action much before the execution. Thus, it is a principle in law that only those who have the intellectuality or mental capacity to do a crime would be guilty. To constitute a crime, there should be *actuaries* (an act) and *mens rea* (guilty mind). The Latin maxim *ActusReas Non FacitReum Nisi Mens Sit Rea* states the same. It means that a person won't be guilty of an act when there is no guilty mind. It was even reiterated in the case of *Ambi v State of Kerala*[2] a concept in the Indian Penal Code (referred to as IPC) that uses the meaning behind this maxim to provide the defence of 'Insanity'. Insanity is a general exception given under Section 84 of the IPC. In simple terms, insanity means madness. With respect to the law, it means that a person is so mentally ill that he cannot possibly understand the effects of his actions. Thus, this defence is available to an insane person who isn't in his right senses to fathom the consequences of the act. Two Latin maxims - *Furiosisnullavoluntasest*(a mad man has no will) and *furiosusabsentis low est* (a mad man is like who is absent) vindicates this defence. A man with no will and who is absent is unable to form criminal intent. And if there is no intent, then there is no *mens rea*; which means no crime has been committed. Thus, if an insane person commits a crime, then, under the law, he won't be held guilty of that crime. But, several aspects of this defence can be known only after a proper analysis of how this concept was developed.

HISTORY

The defence of insanity has been in the criminal law system for around three centuries. The first test to distinguish an insane person from a sane person was developed in the case of *R v Arnold*[3]. It is known as the 'Wild Beast Test'. In this, the defendant shot and hurt Lord Onslow and was brought before the court. All the medical evidence and witness statements indicated that he had some kind of mental illness, that he was insane. It was ruled by Judge Tracy that

[2] *Ambi v State of Kerala* (1962) 2 CriLJ 135
[3] *R v Arnold* [1724] 16 St. Tr. 695

the defendants would not be convicted if they understood the crime no better than "an infant, a brute, or a wild beast". If a person is incapable of distinguishing between good and evil and doesn't know the nature of his act, then he won't be guilty of any offence.[4] Then, a new test was developed in 1800 in Hadfield's case[5] which came to be known as 'The Insane Delusion test'. In this case, Hadfield was tried for attempting to assassinate the King. It was proved in the court that Hadfield suffered from an insane delusion. He acted under such delusion and didn't know the consequences of the act. Thus, the court used this test to determine who should get the defence. Another test was evolved in Bowler's case[6] which determined the capacity of a person to distinguish between right and wrong. But this test wasn't as clear as the other two. Out of the above 3 tests, the 'wild beast test' was widely used until the 1840s. Then in 1843, a new case - The M'Naghten case[7], set out a conclusive law for the concept of insanity. M'Naghten, under delusion, shot and killed the secretary of the PM. The court acquitted him on the ground of insanity. However, this caused public unsettlement, and the House of Lords referred the matter to a panel of 15 judges. They formulated a few principles to finally settle the law on the defence of insanity. They are called *M'Naghtenrules* and are given below:

- Every accused person is presumed to be sane until the contrary is proved.
- To successfully avail the defence, it must be proved that the accused was suffering from mental illness, due to which he was unable to understand the nature of the act he did or didn't know what he was doing was right or wrong.
- The test of the wrongfulness of the act is in the power to distinguish between right and wrong.

Another crucial case to be noted is *Durham v the United States*[8], in which Judge David Bazelon didn't follow the M'Naghten rules. A new rule was adjudicated in this case, according to which there would be no criminal liability if the illegal act was the product of mental disease.

[4] *Ibid*
[5] Hadfield's case [1800] 27 St. Tr. 128
[6] *Bowler's case* [1812] 1 Collinson Lunacy 673
[7] M'Naghten [1843] 8 Eng Rep 718
[8] *Durham v United States* [1994] 214 F. 2d. 862

However, it was overturned in *United States v Brawner*[9] with the reason being that 'Durham's rule' put a substantial weightage on the psychology experts than the jurors. The M'Naghten rules were also incorporated in the IPC under Section 84 to provide the Defense of Insanity. An interesting fact to note is, there is no direct mention of the term 'insanity' in the said section. Rather 'unsoundness of mind' has been used in the section. However, there is no definition for the same in the IPC. But there is practically no difference between both the terms. Both of them refer to defects of reason arising from a disease of the mind.[10] It is equivalent to the legal term '*non compos mentis*', which means 'not of sound mind'. It, therefore, includes an idiot, one who is made non compos by illness, a lunatic, a madman, and one who is drunk.[11]

ESSENTIALS

The accused must be in a state of unsoundness of mind at the time of the commission of the act:

The insanity should exist at the time of committing the offence. The existence of unsoundness of mind prior to or after the commission of the offence is neither relevant nor *per se* sufficient to bring his case under the ambit of section 84, though it may be taken into consideration to decide whether the accused was insane.[12] It is upon the accused to establish that he was insane at the time of committing the offence.[13] It was also held by the Supreme Court in *State of M.P. v Ahmadulla*[14]that the burden of proof lies on the accused. According to the M'Naghten rules, the accused is presumed to be sane. So, it is his duty to rebut such presumption and establish his plea.[15] It is enough to create a reasonable doubt in the minds of the judge. The accused, therefore, has to establish the existence of insanity at the time of the commission of the offence.

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[9] *United States v Brawner* [1972] 471 F. 2d. 969
[10] K.I. Vibhute, *PSA Pillai's Criminal Law* (14th ed. LexisNexis, 2020) 104
[11] Debashree Saikia, Insanity Defence in Criminal Law in India' (2018) 1(3) International Journal of Law Management and Humanity, <https://www.ijlmh.com/wp-content/uploads/2019/03/Insanity-Defense-in-Criminal-Law-in-India.pdf> accessed 07 February 2022
[12] *Ratan Lal v State of Madhya Pradesh* (1971), AIR 778
[13] *Kuttapan v State of Kerala* (1986) Cr. LJ 721 (Ker)
[14] *State of M.P. v Ahmadulla* (1961) AIR 998
[15] *Jai lal v Delhi Administration* (1969), AIR 15

The facts and circumstances of the case are also crucial to prove the unsoundness of mind. Concerning such proof, the court in *Dahyabhai Chhaganbhai Thakkar v State of Gujarat*[16]stated some factors which could be relevant in determining the insanity of the accused. They are the behavior of the accused before and after the commission of an offence, the motive, previous history of mental condition, state of mind at the time of the offence, and the events that happened immediately prior to and after the offence.[17] Thus, the most significant and pivotal aspect to ascertain in a plea for taking the defence of insanity is to discern the presence of unsoundness of mind at the time of the commission of the offence.

The accused must be incapable of understanding the nature of the act or that what did was wrong:

Another major requirement for availing the defence of insanity is that the insanity must impair the mental faculty of the accused in a way that he is incapable of comprehending the nature of the act or that it was illegal.[18] If the accused didn't know the character of the act, and if he can establish that in court, it would be considered that he was incapable of knowing the nature of the act. However, if an idiot or insane person knew the nature of the act, he would be punished. The term 'nature of the act' means that the person is ignorant of the external agencies and the properties associated with the act he committed. A good example, mentioned by Sir James Stephen, is of an idiot who cut off the head of a man whom he found sleeping because he thought it would be funny to watch the man searching for his head. Any normal person could ascertain that his fun would be lost because the man would die.[19] These two essentials, therefore, form the crux of section 84 of the IPC. The accused tries to prove his insanity in accordance with these essentials while the court considers the facts of the case to ascertain whether the accused should be given the benefit of this exception. If he succeeds, the

[16] *Dahyabhai Chhaganbhai Thakkar v State of Gujarat* (1964), AIR 1563
[17] *Ibid*
[18] *Ibid*
[19] *Baswantrao Bajirao v Emperor* (1949) Cri.LJ 181

court would then acquit him but it shall order such person to be detained in an asylum or with the safe custody of a friend who would take proper care of him.[20]

SCOPE OF INSANITY

The Supreme Court of India has laid down various principles to give a lucid direction to the scope of insanity. It is imperative to understand what kind of mental disorders can attract this defence because not every sick person can be relieved from liabilities in case of an offence. If the accused is conceited, odd, has weak intellect due to some kind of illness, or has queer behaviour, he won't get the defence.[21] This implies that every person who is suffering from a mental disease is not *ipso facto* exempted from criminal liability.[22]

Medical and Legal Insanity

Albeit thin, there is a distinctive line between legal and medical insanity. The court is only concerned with legal insanity, and not medical insanity.[23] Medical insanity isn't covered under the ambit of section 84. Medical insanity refers to all kinds of mental disorders that affect the working of a person's brain. In other words, disorders that make a person unsound or insane. Mere proving this will not invoke section 84. To do so, it is necessary to prove that the accused suffered from legal insanity. Here, 'legal insanity' means that the mental illness resulted in the incapacity of the accused to understand the nature of his act. He didn't know whether the act was right or wrong. Therefore, the person seeking the shelter of this defence must prove that he was legally insane.

Intoxication

Intoxication is a separate exception under Section 85 of the IPC. It gives defence against a crime committed due to involuntary intoxication. However, there is no specific provision for heavy intoxication or intoxication caused by smoking ganja. If due to excessive drinking or

[20] Code of Criminal Procedure, 1973, s 343
[21] *Surendra Mishra v State of Jharkhand* AIR 2011, SC 627
[22] *Hari Singh Gond v State of M.P.* AIR 2009, SC 31
[23] *Ibid*

smoking, a person is unable to understand the nature of his act, he would be considered to have unsoundness of mind. Such a person would be entitled to the defence of insanity, provided he proves the presence of insanity at the time of the commission of the offence. However, simply losing control as a result of smoking *ganja* or any other intoxicating material will not give him the shelter of section 84.[24]

Irresistible Impulse, Mental agitation, and Fury

Cases, where an offence is committed in a fury or extreme anger, will not attract the defence of insanity. The simple reason is, fury or anger changes emotions and not the mental capacity. Similarly, an act done as a consequence of sudden impulse[25] or mental agitation[26]won't be considered valid to invoke section 84 unless it is due to unsoundness of mind. Mere agitating behaviour with no evidence of insanity doesn't mean that a person has no *mens rea*. In such cases, the accused (maybe due to stress or agitation, or anger) commits an offence with a guilty mind. There is no 'unsoundness of mind' factor involved. Thus, he will be held guilty and shall be liable for punishment prescribed for such offence. Irresistible impulse is a kind of mental disorder in which the affected person can differentiate between right and wrong but can't stop himself from committing the act. Basically, the person loses self-control and will instead of the mental capacity of reasoning. As such, the commission of an act due to a mere irresistible impulse inundates the conscience and judgment of the accused. But it is generally not considered as a basis for getting the defence of insanity because there is no legal insanity. The affected person knows the nature of the act, and can even ascertain what is right and wrong. Thus, as per the rules of insanity, this doesn't come under the ambit of section 84.

Citing the same reasons, English Courts have also ruled the same in *R v Haynes*[27]and *R v Burton*[28]. The same is the case in India as well. Irresistible impulse is not a ground for taking shelter under section 84 of the IPC. In *Queen Empress v Lakshman Dagdu*[29], the Bombay High

[24] *Ajmer Singh v* State (1953), AIR 76
[25] *Ramedin v State of M.P.* (1996) Cr.LJ 370 8(MP)(DB)
[26] *Gouri Shankar v State* (1965) 68 Bom LR 236
[27] *R v Haynes* [1859] IFF 666
[28] *R v Burton* [1863] IFF 838
[29] *Queen Empress v Lakshman Dagdu* (1886) ILR 10 Bom. 512

Court held the accused guilty of murder stating that he was conscious of the act. He must have committed the act due to an irresistible impulse, but that is insufficient to attract section 84. In the case of *State of Kerala v Ravi*[30], the accused stabbed and killed a girl. Then he pleaded that he had acted in a fit of impulsive insanity. The High Court, however, refused the plea because irresistible impulse doesn't cause cognitive impairment and said that the accused knew the nature of the act, hence, he is guilty. Therefore, whenever a crime is committed in furtherance of mental agitation, fury, anger, or irresistible impulse, there is no ground for securing the defence of insanity unless the cause could be attributed to 'unsoundness of mind'.

IS IT TIME TO CHANGE THE LAW?

Since the drafting of this section, there have been no changes in the provision. Of course, the courts have provided several rulings to determine the scope of this defence, but there is still a lot of confusion surrounding the section. Using a straightjacket formula, the courts only consider those cases where the accused was suffering from acute cognitive impairment. The degree of damage or the emotions associated with such mental disorders is not considered. During the trial of an insanity plea, a psychiatrist's evaluation is absolutely necessary. It helps in determining the mental state of the accused, and whether he suffers from insanity. Dozens of new mental conditions have been identified by psychiatrists and psychologists that affect the mental health of a person. But there is ambiguity regarding what all could be considered for the workability of this defence. The reason behind it is the term 'unsoundness of mind'. Although it is a wide term, there are so many meanings and interpretations that there is no clarity as to what the term exactly means. It is vague and doesn't define exactly the mental state of the accused at the time of the commission of the offence. Even the Law Commission of India admitted this fact. It considered the expression 'unsoundness of mind' as 'somewhat vague and imprecise, but it didn't propose any change in the provision.[31] Thus, there is a need for reform in the provision for the defence of insanity. The M'Naghten rules were based on the situation prevailing in the 19th century. The science,

[30] *State of Kerala v Ravi* (1978) KLT 177
[31] Law Commission of India, *Indian Penal Code* (Law Com. No. 42 1971) 93 <https://lawcommissionofindia.nic.in/1-50/report42.pdf> accessed 07 February 2022

health, lifestyle, mental conditions, etc. have all changed drastically in 180 years. 'Volition', 'emotional', and 'mental psychology' are the most imperative aspects of a human mind and have major importance in today's world. The law needs to be changed in order to measure insanity or mental disorders in a more streamlined manner. As pointed out earlier, the current law doesn't look at the degree of loss of self-control. If an accused is suffering from a mental disease, which has been proved to be of a serious nature, but he is aware of what is right or wrong, he can be convicted for the offence he commits. There must be reasonable developments and amendments in the law to cater to such cases. A commission of psychiatrists, psychologists, behavioural experts, and law fraternities should be set up to present such changes. A healthy change should be made - one that doesn't allow any abuse of the provision but at the same time, caters to the modern psychological and medicinal evolutions.