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Insanity Defence: A Loophole For Criminals

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ABSTRACT

Section 84 of the Indian Penal Code, 1860 deals the defence plea for the person of unsound mind or insane. It can be said that if the accused person have committed a crime and he proves in the court of law that he was insane during the occurrence of crime then he may escape punishment. The law is open to misuse by criminals. The researcher through this article have tried to understand whether this law made years ago is serving any good at the present time or have mere become a loophole in the criminal justice system. This article deals with evolution of insanity plea, judicial perspective and other aspects regarding Section 84, IPC.

I. INTRODUCTION

Under the IPC, mens rea is an essential element in crime. However, in such offences where mens rea is missing and the act was carried out as a result of distinct persuasive circumstances, such cases falls within General Exceptions provided under the Penal Code under Section 76-106. As a result, the person is held legally accountable for his acts. If the defence is proved successfully in the court, exemption is given.

In criminal prosecution, the defence of insanity is used to show that the perpetrator had a severe mental illness when the act actually occurred. Resulting that the individual may not be aware of what they were doing in their conscious thought. In some situations, a person who is not mentally sick may attempt to avoid punishment by claiming insanity; however, insanity defence is granted in just a few circumstances.² Even though it was put in place for better justice, most people exploit the defence of insanity to avoid legal penalties. Such a condition creates a serious problem, as people will become increasingly involved in such crimes since there will not be any deterrence. The research question for this article is threefold: How insanity defence is a loophole for criminal? Whether it is appropriate everytime? When should Insanity Defence used? This article throws light on the concept of defence of insanity, its positive and negative

¹ Author is a student at Amity University, Kolkata, India.

² Parthasarathy Ramamurthy & Vijay Chatoth, How does India decides Insanity Pleas? A review of High Court judgements in the past decades, https://journals.sagepub.com/doi/abs/10.4103/IJPSYM.IJPSYM_373_18 (Visited on May 29, 2021).

effects and judicial approach on the same.

Insanity - Meaning

Insanity refers to a person's incompetency to comprehend the essence of their actions or to recognize that they are bad or illegal. It refers to a mental disease in which a person's mental capacities are harmed to the point that he is unable to comprehend the implications of his actions. It is challenging to define insanity in a way that meets legal requirements. Insanity is generally associated with mental illness or some form of mental ailment for the general public.

According to Black's Law Dictionary, the meaning of Insanity is "any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility".³ Insanity is a legal term, whereas "mental illness", "mental disorder", "mental defect" refers to an illness that requires psychiatric or psychological assistance. As a result, one can have a mental illness, disease or disorder without being legally insane; however one cannot be insane without having a mental illness.

II. INSANITY AS DEFENCE AND ITS TYPE

The plea of insanity is a defence in which a accused admits the crime done by him but claims that he is not responsible for it due to mental illness. It is more of an excuse rather than an explanation for what the person did. In a criminal trial, a defendant can plead this defence. An evaluation of the criminal's mentality has become an absolute necessity. In the context of "mens rea" as well the "state of mind" of the suspect is crucial in criminal law. When it comes to mens rea, emphasis is on the state of mind of a person who is not mentally ill. Consideration must be given to criminal's mental consciousness and not merely bodily actions. As an Insane person's state of mind is incapable of forming a criminal intent.

The "Insanity Defence" is a tactic employed in criminal law in India to absolve a suspect of a crime. It's predicated on the notion that the person was struggling with mental sickness and couldn't understand his acts. Insanity is of two types:

1. Permanent Insanity: A problem in which an individual undergoes a mental illness on a continuous basis. Past records and experiences can be used to demonstrate that the person is perpetually insane which makes the individual incompetent of comprehending the seriousness of any circumstance.
2. Temporary Insanity: A disorder in which a person becomes insane only once in a while or for a short span of time. Depression, anxiety disorders, schizophrenia and other

³ Black's Law Dictionary, 8th Ed., p.810.

transient mental illnesses are the examples of temporary insanity. In the defense of temporary insanity, there are two conceivable outcomes: “not guilty because insane” and “guilty but cannot be tried because insane”.⁴

According to Indian Penal law, to qualify the exception under section 84, it should be established that the suspect was experiencing a deficiency of understanding caused by insanity at the time of the alleged offence, leaving him incapable of grasping the essence of the conduct or that he was committing an illegal or unlawful conduct.⁵ A person's mental illness has never been accepted as an excuse for committing a crime. The mental condition of the suspect should be serious enough that he is completely unable to comprehend the essence of the offence.

III. EVOLUTION OF INSANITY DEFENCE

Since ancient Greece and Rome, laws dealing with insanity have been a part of the legislation. Insanity Defence was originally reported in 1581 “English legal treatise”, which said that if a “lunatic” murders someone while insane, they cannot be held liable. With the advancement of criminal jurisprudence, in the 18th Century the British Courts devised “Wild Beast” test, according to which the accused will not be held guilty if he had knowledge of “an infant or a wild beast”.⁶ It was the first legal statute that laid the groundwork for the law of insanity. It also marked the beginning of Defence of Insanity. After the “Wild Beast Test”, several tests were devised to determine if a person is legally insane including “Insane Delusion Test”⁷ and the “Good and Evil Test”⁸. These three tests were the primary rules dealing with Insanity Defence and they constructed the understructure for the famous McNaughton Test.⁹

In *R v. McNaughton*¹⁰, the English courts established the McNaughton’s Test, which is the cornerstone of legislations dealing with insanity and Section 84, IPC. In this case, Edward Drummond was killed by a man named McNaughton who mistook him for someone else. The court ruled his discharge on the grounds of his mental disorder. However, the jury declared him insane and recommended that he be sent to a mental asylum. Following this decision in 1843, there was a deliberation in “House of Lords”, during which McNaughton’s Rules were

⁴ Russell Covey, “Temporary Insanity: The Strange Life and Times of the perfect defense”, Available at: <https://www.bu.edu/law/journals-archive/bulr/documents/covey.pdf> (Visited on May 28, 2021).

⁵ Manas Shrivastava & Adatsa Hota, “Privacy and Legal Rights of People with Mental Illness”, available at: <https://www.ijlmh.com/wp-content/uploads/Privacy-and-Legal-Rights-of-People-with-Mental-Illness.pdf> (Visited on May 30, 2021).

⁶ *R v. Arnold*. 1724, 16 St.Tr.695.

⁷ *Hadfield Case*. 1800, 27 St.Tr. 128.

⁸ *Bowler’s case*. 1812, 1 Collinson Lunacy 673.

⁹ Suresh Bada Math, Channaveerachari Naveen Kumar & Sydney Moirangthem, “Insanity Defense: Past, Present and Future”, available at: https://www.researchgate.net/publication/283550855_Insanity_Defense_Past_Present_and_Future (Visited on May 30, 2021).

¹⁰ *R v. McNaughton*, (1843) 8 Eng. Rep. 718, 722.

established which are as follows:

1. “Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved.
2. To establish the defence of ground of insanity, it must be clearly shown that at the time of committing the act, the accused was so insane that he was incapacitated to know the nature of the act or that his act was wrong or contrary to law.
3. If the accused was conscious that the act was one which he ought not to do and if such act was contrary to law, then he is punishable.
4. A medical witness who has not seen the accused before the trial should not be consulted to assess the mental state of the accused.
5. Where the criminal act is committed by a person under some insane delusion, which conceals from him, the true nature of the act he is doing, he will be under the same degree of responsibility as he had imagined his surrounding situations to be.”

These rules formed precedents in the area of insanity defence. The guidelines underlines the need of observing an accused’s “understandability” in case when the person has committed a crime.¹¹In order to claim insanity, the accused must show that he was experiencing from a lack of judgment associated with mental illness, either because he was unaware of the character and nature of the crime, or because he didn't quite understand that his conduct were wrong.¹²

The term “insanity” is not defined anywhere in Indian legislations. Under Section 84 of the IPC, insanity defence is provided as “*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*”. The defence of insanity, according to the code, is based on McNaughton’s Rule.

Section 84 enshrines two essential maxim of criminal law, namely:

1. “Actus reus non facit reum nisi mens sit rea”- “the act is not culpable unless the mind is guilty”;
2. “Furiosi nulla voluntas est”- “a mad man has no free”.

As a result, no culpability is assigned to people suffering from mental illnesses because they

¹¹ Pratyush Pandey, “Insanity defence: A loophole for criminals”, available at: <https://lawtimesjournal.in/insanity-defence-a-loophole-for-criminals/> (Visited on May 26, 2021).

¹² Janhavi Arakeri, “Insanity as a defence under the Indian Penal Code”, available at: <https://blog.ipleaders.in/insanity-defence-indian-penal-code/> (Visited at May 27, 2021)

are incapable of rational thought or the essential guilty intent.

IV. BENEFICIAL EFFECTS OF INSANITY DEFENCE¹³

1. For the mentally challenged accused, the insanity defence is a lifesaver since their thinking is like that of a toddler who doesn't understand what they're doing and isn't aware of the implications of their actions.
2. Because an insane person who confessed to a crime was unable to appreciate the seriousness or nature of the offence, death penalty is not justifiable.
3. An activity against the legislation is an offense, and if an offense is done, the suspect is viewed as a lower human being. Once the offence is established, defence is taken. This defence gives relief to the mentally deficient individual.

V. ADVERSE EFFECTS OF INSANITY DEFENCE

1. The insanity defence has really been frequently misapplied, with the guilty being released on the grounds of mental illness in a variety of situations and circumstances, which devalues the concept of law. Many countries, including Germany, Argentina, Thailand, and the majority of the United Kingdom, have eliminated this defence due to widespread abuse¹⁴.
2. Because the accused bears the burden of demonstrating insanity as a defence, proving and availing this defence is a difficult effort. While showing medical insanity is simple, legally establishing insanity is a complex effort that the accused must prove with tangible proof.
3. To avoid criminal liability, all of the essential factors must be satisfied under Section 84, but it is impossible to satisfy all of the criteria, and as a result, most insanity defence cases result in the accused being charged with criminal responsibility and penalised.¹⁵
4. As a consequence, the insanity defence is frequently misapplied because it is hard to determine if a person's thoughts was in a "sound or unsound" state of mind at the time the crime has been committed.

¹³ Anuja Tripathy, "The Law of Insanity Defence: Loophole for criminals" available at <https://ijlra.com/wp-content/uploads/2021/03/Anuja-Tripathy-1.pdf> (Visited on May 28, 2021).

¹⁴*Id.*

¹⁵ Saumya, "Insanity- A Real Defense or A Loophole", available at: <https://judicateme.com/insanity-a-real-defense-or-a-loophole/> (Visited on May 30,2021).

VI. INSANITY DEFENCE AND CRIMINALS: CRITICISM

Though the defence of insanity is scarcely utilised in criminal cases, still it is a disputed topic. The question that whether the defense of insanity is necessary, frequently arises in our minds. by proving insanity the accused person charged with terrible and grievous crimes be held not guilty of committing such crimes. When the defence of insanity is invoked, the suspect admits to his guilt and requests to be held not guilty based on his mental condition. Criminals at times claim insanity to evade punishment. The reality is that claiming insanity defense is, at best, a risky defence.

A fundamental rule of criminal law appears to be at peril. The defence of insanity is founded on the idea that punitive action are only acceptable if the defendant is deserving of them. As a key requisite for punishment, the person who committed the criminal conduct must have moral responsibility as a moral actor. When an individual's mental disease is serious enough that he can no longer manage their irrationality or compulsions, that individual is incapable of acting as a moral agent. It would be unjust to punish someone who is in such a dire situation.¹⁶

Section 84 views mental illness to be the same as cognitive impairments. Other types of mental illness are not admissible in court. Various mental diseases that qualify someone as mentally ill could impair his ability to work to the point where he loses control of his activities. Many crimes are perpetrated as a result of an outburst of rage or emotion. A person may only realise what he has done after committing the act. However, his actions were dictated by his emotions at the time. His cognitive abilities could be quite normal.

Although Section 84 seeks to treat mentally ill offenders properly, there are situations when false acquittals or convictions occur. As a result, broader ideas such as emotions, pre-act conditions, and so on must be included. The definition of legal insanity is being expanded to include more features of medical insanity. Instead of focusing on the criminal, the focus should be on eradicating the crime. On the contrary, in the wider interests of society, these criminals should not be released, but rather held in psychiatric facilities, with proper assessments of their mental health made to avoid any erroneous acquittals or convictions. In all such circumstances, a psychiatrist should be consulted, and the destiny of the individual should not be left to the discretion of a single judge. A judge may be required by law to render a specific decision. A doctor's opinion should be required.

¹⁶ Shrey Singh, "Insanity as a defence in IPC", available at: <https://lawsamjho.in/2020/03/03/insanity-as-a-defence-in-ipc/> (Visited on May 29, 2021).

VII. LANDMARK CASES RELATED TO INSANITY DEFENCE

In *Ashirudeen Ahamed v State*¹⁷, the court's approach was aimed at developing a new insanity test. It was decided that in order to be eligible for protection under Section 84 of the IPC, One of the following must be proven by the accused that: (1) he had no knowledge of the nature of the action charged, (2) he had no knowledge that the act was illegal, or (3) he had no knowledge that the act was unlawful.

In *Dayabhai Chhagan bhai Thakkar v. State of Gujarat*¹⁸ observed that the time period during which the crime was committed is crucial in evaluating the accused's mental state. Only the circumstances leading up to, during, and after the offence can decide if the suspect was in a mental condition that qualified him for the protection of section 84, IPC.

In *Bapu @ Gajraj Singh v. State of Rajasthan*¹⁹, the Supreme Court defined which ailments are covered by this defence and which are not. This defence does not apply to strange, egotistical, or irascible behaviour, or any illness that diminishes the intellect or affects one's emotions or willpower, according to the law. It's likewise insufficient if the accused has recurrent spells of lunacy or epilepsy but otherwise acts normally.

The Supreme Court in *Hari Singh Gond v. State of Madhya Pradesh*²⁰, observed that in circumstances of claimed insanity, Section 84 of the IPC establishes the legal test of responsibility. The courts, "on the other hand, have largely equated this term with insanity. However, there is no clear meaning of the term "insanity." It is a phrase that is used to characterize various levels of mental illness. As a result, a mentally ill individual is not automatically exempt from criminal liability. It's important to distinguish between legal and medical insanity." The court is only focused in legal insanity, not medical insanity.

The the Supreme Court in *Surendra Mishra v. State of Jharkhand*²¹ held that the suspect must establish "legal insanity", not "medical insanity", so as to be exonerated from criminal culpability under Section 84.

The Supreme Court in *Shrikant Anandrao bhosale v. State of Maharashtra*²², held that "when a plea of legal insanity is set up, 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

¹⁷ *Ashiruddin Ahmed v The King*, 1949 CriLJ 255.

¹⁸ *Dayabhai Chhaganbhai Thakkar v. State of Gujarat* AIR 1964 SC 1563.

¹⁹ *Bapu @ Gajraj Singh v. State of Rajasthan* (2007) 3 SCC Cri.509.

²⁰ *Hari Singh Gond v. State of Madhya Pradesh*, (2008) 16 SCC 109

²¹ *Surendra Mishra v State of Jharkhand*, AIR 2011 SC 627

²² *Shrikant Anandrao bhosale v. State of Maharashtra*, (2002)7 SCC 748

of mind as to be entitled to the benefit of section 84 of the IPC can only be established from the circumstances which preceded, attended and followed the crime. Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception.”

In *Lakshmi v. State*²³, it was observed that “Section 84 lays down is not that the accused claiming protection under it should not know an act to be right or wrong, but that the accused should be “incapable” of knowing whether the act done by him is right or wrong. The capacity to know a thing is quite different from what a person knows. The former is a potentiality, the latter is the result of it. If a person possesses the former, he cannot be protected in law, whatever, might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity, and not a wrong or erroneous belief which might be the result of a perverted potentiality.”

VIII. BURDEN OF PROOF

In a situation where insanity is pleaded as a defence to a criminal charge, the accused has the burden of evidence, according to section 105 of the Indian Evidence Act, 1872. The burden of proof in criminal proceedings is always on the prosecution and never transfers, according to a well-established precept of criminal law. This is derived from the basic concept that the accused is presumed innocent until the prosecution proves otherwise, and that the accused is given the benefit of the doubt. If the accused's insanity defence is to be accepted, he must show not only that he was mad in general, but also that he was mad at the time the offence was committed, according to Section 84.

In *State of MP v. Ahamadullah*²⁴, the court stated that “the general presumption in law is that every person is sane during the commission of the offence. The prosecution is not required to contest or prove sanity of the accused. The burden of proving the existence of circumstances bringing the case within the purview of Section 84, therefore lies on the accused.” The accused's only responsibility is to prove the existence of insanity at the time of the offence. It is sufficient for him to demonstrate, as in a civil action, that the majority of evidence is in his favour.²⁵

IX. CONCLUSION

An inference drawn from the research is that Section 84, IPC incorporates M'Naughton Rules.

²³ *Lakshmi v. State*, AIR 1963 All 534

²⁴ *State of Madhya Pradesh v. Ahamadullah*, AIR 1921 SC 998

²⁵ *Bhikari v State of Uttar Pradesh*, AIR 1966 SC 1

The Section deals with insanity, which is a defence that covers all types of incapacity, whether “temporary or permanent”, “natural or supervening”, “arising from disease or existing from birth”, and is based solely on the suspect's behaviour, which is the sole criterion for assessing criminal guilt.²⁶ It is difficult to detect a person's mental state when they are committing a crime, and it is therefore difficult to establish their mental condition. Also, it is extremely difficult for an insane person to prove his defence. Simultaneously sane person also using this plea to get away from punishment. The situation becomes barrier for the law to serve its main purpose thereby turning it into a loophole. Another thing that make this law a loophole is that the court have to determine mens rea in this case, which in itself is very complicated. It is not appropriate to use it every time. The plea of insanity should only and only be raised in genuine cases. Though it is on the discretion of the court at the end but there must be fair use of the laws made for the benefit of the general public. It is fair to conclude that the law of insanity has lost its initial vitality and has now become a mechanism for criminals to avoid legal consequences. In view of advances in medical sciences, particularly in the field of psychiatry, Indian courts have often urged for a more progressive approach in the application of the Penal Code's definition of "unsoundness of mind".²⁷

²⁶ Seema Dahiya, “Insanity as a defence under Indian Penal Code Different Dimension”, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/132449/14/14_chapter%208.pdf (Visited on May 29, 2021)

²⁷ KD Gaur, “Textbook on Indian Penal Code” 223 (Universal Law Pvt. Ltd, New Delhi, 2016)