

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

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Insanity and Legal Provisions

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ABSTRACT

A set narrative is that in almost all criminal legislation, “mens rea” is necessary to hold criminal liability for the offence but there are some circumstances where it is not, and courts examine those cases under the impression of strict criminal liability. The present paper talks about the total immunity from criminal liability to the accused as provided in section 84 of IPC. If the accused satisfy the essential requirements of said section, then he will be able to take the benefit of the immunity provided by this provision. The very objective of these provisions is that a mad man is already facing the punishment of his own unsoundness of mind. There are some precedential situations in which the accused person can take the benefit from the general exception of section 84 of IPC. Many precedential catenae of cases are there in which the accused may be classified as suffering from medical insanity or legal insanity. But the court is merely concerned with the legal insanity and not medical. It is not necessary that in all these cases accused will be entitled to derive the protection under section 84 of IPC. The core effort in this research paper is related to elucidating the situations in which an accused can take protection under section 84 of IPC. Further, merely unsoundness of mind also does not make the accused entitled to take the protection rather impugned insanity must be at the very moment of the occurrence of the offence.

Keywords: *Strict Liability, Legal Insanity, Medical Insanity, Immunity, Mens rea, Offence.*

I. INTRODUCTION

In the substantive general penal code of India *i.e.*, IPC, 1860, insanity is defined as a general defence of the accused out of the many general exceptions to criminal liability provided by the IPC under chapter-IV of IPC, 1860. Section 84 of the Indian Penal Code states that an unsound mind person is completely immune from criminal liability if some offence has been committed by him under such unsoundness of mind. As this defence is based on the Latin maxim “*non compos mentis*” means “not having control of one’s mind”.³ It would not be justice to punish such a person who has neither control of his own mind nor malicious intention to commit such an act and to produce the desired consequence. The justification for providing complete

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³ *Non Compos Mentis*, WIKIPEDIA (June 28, 2022, 06:50 PM), https://en.wikipedia.org/wiki/Non_compos_mentis.

defence is that an unsound mind is not capable to form a criminal intention.⁴ This justification is constructed on the principle of “*actus non facit reum nisi mens sit rea*” which means “an act does not render a man guilty of a crime unless his mind is equally guilty.” Here it is clear that to hold a person criminally liable, *mens rea i.e.*, the guilty intention must exist at the very moment of the commission of the crime. Generally, if there is a lack of guilty intention then the accused will not be held criminally liable except in the case of strict liability. “*Mens rea*” is mostly considered an essential ingredient to constitute a crime.⁵

An unsound person is in a bad situation than a child as he may at least regulate and control his will and behaviour but a man can't do so.⁶ A mad person has no will – “*furiosis nulla voluntus est*” and he is like someone who isn't there– “*furiosus absentis low est*”. Thus, we can say that a person who is insane gets punishment for his own insane behaviour– “*furiosus furore sui puniter*”.⁷ Thus, if an act is an offence if committed by a person of sound mind, would not be an offence if the same is committed by a person of unsound mind because there is a lack of *mens rea*. Except in cases when *mens rea* is explicitly needed, the criminal law will not penalise any person who does not have it.

The well-referred statutory provisions of the Indian Penal Code have been crafted on the basis of the Neo-Classical school of Criminology to protect the victim of the offence and to punish the accused but there are some such provisions also which protect the accused under certain circumstances and section 84 is one of them which provides such privileges to the accused. But on the other hand, the State has also a duty-bound to protect society against the attacks of maniacs. For said purpose, Chapter XXV has been incorporated into the Cr. P.C., 1973 to detain such persons in the lunatic asylum.⁸

(A) Research Methodology

The present study is evocative and decisive. The research is based on secondary data sources such as books, papers, journals, e-sources, court judgments, and pertinent legislation.

II. ORIGIN OF SECTION 84 IPC

In the case *R v. Daniel McNaughten*,⁹ the House of Lords established the origins of section 84 of the IPC. The renowned McNaughten Rules were formed in this case by the House of

⁴ P S A PILLAI, CRIMINAL LAW 103 (2019).

⁵ RATAN LAL & DHIRAJ LAL, THE INDIAN PENAL CODE 112 (2020).

⁶ K D GAUR, TEXTBOOK ON INDIAN PENAL CODE 236-37 (2020).

⁷ *Id.*

⁸ K D GAUR, TEXTBOOK ON INDIAN PENAL CODE 237 (2020).

⁹ *R v. Daniel McNaughten* (1843) 8 E.R. 718.

Lords. These rules were framed on the basis of five questions about the defence of insanity which had been brought before the Lordships. McNaughten murdered Edward Drummond, who was the private secretary of Sir Robert Peel (then Prime Minister of England), by shooting. McNaughten produced some medical evidence in his support that he was in an unsound mind at the time of the crime. He said that he was in such delusion that he believed that only the Prime Minister was responsible for all my sufferings and in this confusion, he mistook Drummond as the Prime Minister and shot him dead. He was found not guilty after the court accepted his insanity plea. This decision, however, sparked a controversy in the House of Lords. As a result, it was determined to solicit the opinions of all judges on the pertinent legislation. Thus, when we make a comparison between the provisions contained in section 84 of the IPC and the answers given by the Jurists in said case, it becomes clear that section 84 of the IPC was constructed on some of those answers.¹⁰

III. MEANING OF UNSOUNDNESS OF MIND

In the IPC, the term ‘unsoundness of mind’ is not defined but commonly it is considered insanity. But in medical science, it is a mental disorder that harms the mental abilities of the man. It means we can say that insanity is another name for unsoundness of mind which may exist in various degrees and due to various factors.¹¹ A person who is afflicted with a mental disease is not automatically getting immunity from criminal culpability.¹² For the purpose of section 84 of the Indian Penal code, such insanity must be legal insanity. However, when it is proved that the accused was suffering from such disease at the time of the occurrence of the crime then section 84 may be applied.¹³ Thus, to take the advantage of section 84 of IPC it is necessary to prove that at the time the offence was committed; the accused was unsound of mind and not capable to understand the nature and consequences of his act.

By interpreting the provisions of section 84 of the IPC, unsoundness of mind means when a person’s state of mind is such in which he is not able to know the nature of his act and also, he is not able to judge his act whether it is wrong or contrary to law and such a mental status must be present at the time when the act was committing.¹⁴ Insanity in law, on the other hand, is very different from medical insanity. In law, insanity is defined as a mental disease that affects a man's cognitive ability, or intellectual ability, to the point that he is unable to know the nature

¹⁰ Sudhakaran v. State of Kerala, A.I.R. 2011 S.C. 265 (India).

¹¹ GAUR, *supra* note 8, at 2.

¹² Dr. Suresh Bada Math, *Insanity Defense: Past, Present, and Future*, NATIONAL LIBRARY OF MEDICINE (June 28, 2022, 08:40 PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676201/>.

¹³ P S A PILLAI, *Criminal Law* 105 (2019).

¹⁴ Indian Penal Code, 1860, s. 84, No. 45, Acts of Parliament, 1860 (India).

and consequence of his conduct.¹⁵ Idiocy, craziness, and crazy are common terms used to characterise mental disorders, mental diseases, and all other types of mental aberration recognised by medical research.

IV. TEST OF INSANITY

The key concerns about insanity include: how it is discovered and what the borderline between "sanity" and "insanity" should be drawn to provide a man with legal defence from criminal liability.

Several tests were offered for this purpose, as well as the types and degrees of insanity that can be used as a defence against an offence, from time to time. The "**Right and Wrong Test**" devised in *Mc'Naughten's* case is, perhaps, the most renowned of them.¹⁶

The law about insanity, in this case, may be taken in the form of responses made by 15 House of Lords judges to five questions posed to them to explain the law on the topic. Those issues, particularly the responses to the second and third questions, have gained in importance over time since they appear in the Penal Codes of almost every country inspired by common law.

These questions were:

Question II.- What are the proper questions to be submitted to the jury when a person afflicted with insane delusions respecting one or more particular subject or person, is charged with the commission of a crime (murder, for instance), and insanity is set up as a defence;

*Question III.-In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?*¹⁷

The following were the responses to these questions:

*To establish a defence on the ground of insanity, it must be proved that at the time of committing the act the accused was labouring under such a defect of reason due to disease of the mind as not to know the nature and the quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.*¹⁸

Thus, Section 84 of the Indian Penal Code is drafted on the basis of the *Mc'Naughten rules* which are the second and third questions.

¹⁵ GAUR, *supra* note 8, at 2.

¹⁶ (1843) 10 Clerk & Fennelly 200-214 (HL); Revised Reports, Vol 59 8 ER 718.

¹⁷ K D GAUR, TEXTBOOK ON INDIAN PENAL CODE 238 (2020).

¹⁸ *Id.*

V. ESSENTIAL ELEMENTS OF SECTION 84

To take the advantage of section 84 of IPC, it must be proved that the accused was “*non compos mentis*” i.e., “insane at the time of the offence and that the insanity was of such a type and of a degree as to satisfy one of the section's conditions.”

These are:

“First, the accused was incapable of knowing the nature of the act, and

Secondly, the accused was precluded because of unsoundness of mind from understanding that what he was doing was either wrong or contrary to law.”¹⁹

The first part consists of two scenarios: automatism and factual errors owing to mental insufficiency as a defence. For example, if a lunatic slashed off the man's head laying on the road because that would be amusing to see him to seek for his head when he awakened. The act shows that he is completely unaware of the situation and what he was doing. And it will never let the victim come to his senses that the pleasure of separating the neck from the torso i.e., the man will die.²⁰

The second part consists of circumstances in which a man is unable to recognise the distinction between right and wrong due to such insanity. For example, in the *Shibo Koeri*²¹ case, where the accused killed his uncle with a sword on the neck and neck while chanting "victory to kali" and then attempted to hit others also. The court ruled that the case was under the latter portion of the section. A court is only interested in legal lunacy, not medical insanity.

VI. LEGAL INSANITY

The accused has to establish the existence of legal insanity to acquire the privilege under section 84, I.P.C. The rule allowing for insanity to be used as a defence must be proved that the accused was not capable to know the nature and results of his actions at the time of offence due to the mental illness.²² In other words, legal insanity means such insanity which makes the person incapable to know the act and its consequence and this incapacity is at the time of the crime, not before or after the incident.

VII. DIFFERENCE BETWEEN MEDICAL AND LEGAL INSANITY

For the purpose of the criminal law, the terms medical insanity and legal insanity are not

¹⁹ *Id.*

²⁰ *Id.*

²¹ (1905) 10 C.W.N. 725.

²² *Someswar Bora v. State of Assam* 1981, Cr.L.J. 51 (NOC).

synonymous with each other. There might be cases in which the accused may be suffering from medical insanity but it is not necessary that the accused would be entitled to take the benefit of section 84, the Indian Penal Code. To establish legal insanity, it is necessary that the essential elements of section 84 of IPC must be proved.²³ Medical insanity is completely based on medical grounds whereas legal insanity is based on those facts which the accused wants to prove in a court of law so that he may be exonerated of the accusation. If there exists any evidence which suggests that the accused is of unsound mind, it would be a case of medical insanity and not a case of legal insanity. Legal insanity (unsoundness of mind) enshrined in section 84, I.P.C., requires that the person who commits the offence must not be able to know the nature and consequence of his actions and this incapacity must be caused by some mental disease and this disease was existed at the time of the crime.²⁴

In *Dayabhai Chhaganbhai Thakkar*, the Supreme Court ruled that the court must examine the circumstances that before, accompanied, and followed the offence in deciding whether the accused has proved his case within the meaning of section 84. The motive of the crime, previous mental health history, his mental condition at the time of the crime, and the events that transpired immediately after the crime that shed light on his mental state are all relevant facts.²⁵

VIII. IRRESISTIBLE IMPULSE

In criminal law, an irresistible impulse is an action which is done by a person who is unable to control the action. This term is generally used as a defence by the accused that he is not guilty of an offence because he was unable to control his actions.²⁶ Sometimes situations of mind are such that a person knows that he is committing a wrong but he cannot avoid committing wrong. In that situation, he becomes irresistible and lost his willpower, and the emotions and conscience to commit the act are beyond his control. This is referred to as an irresistible impulse.²⁷ Madness (Insanity) affects the reasoning abilities of our mind that guide our actions, it not only affects the reasoning abilities of the mind but also our emotions, which motivate our actions and the desire, by which our actions are carried out.²⁸

²³ PROF. S. N. MISHRA, INDIAN PENAL CODE, 208 (2022).

²⁴ PROF. S. N. MISHRA, Indian Penal Code, 203 (2022).

²⁵ Dayabhai Chhaganbhai Thakkar v. State of Gujarat, A.I.R. 1964 S.C. 1563 (India).

²⁶ G. WIESEN, *What Is an Irresistible Impulse*, MYLAWQUESTIONS, (June 07, 2022, 02:10 PM), <https://www.mylawquestions.com/what-is-an-irresistible-impulse.htm>.

²⁷ K S N MURTHY, CRIMINAL LAW INDIAN PENAL CODE 102 (2017).

²⁸ K D GAUR, TEXTBOOK ON INDIAN PENAL CODE 245 (2020).

IX. JUDICIAL APPROACH

*Ashiruddin Ahmed v. R. (1949)*²⁹, the Ashiruddin Ahmed case explains whether the accused was able to conceive the consequence and the nature of his conduct, or the act is either wrong or contrary to law. In this case, the accused was commanded in a dream by someone to scarify his son to take spiritual benefit. In pursuance of this dream, he took his five years child to the mosque. He killed his son by thrusting the knife in his throat there and thereafter went to his uncle. He took his uncle inside as there was a chowkidar there and told him the story to his uncle in a low voice. The court ruled that the accused had the right to be there under section 84 of IPC. However, in later decisions, the Ashiruddin Ahmed case has not been followed by the courts in India.³⁰

*Lakshmi v. State (1963)*³¹, in this case, the Court identified the difference between ‘not knowing’ and ‘inability’. The court held that if any person did not know his act whether it was right or wrong, would not be entitled to avail the advantage of section 84 of the Indian Penal Code. To avail of this immunity, it has to be established that the accused was unable to know the nature and consequence of his actions. Here this is clear that the mind is not in such a situation in which the accused be able to know the consequence of his act *i.e.*, right or wrong.³²

*T.N. Lakshmaiah v. State of Karnataka (2002)*³³, the facts of the case were that the accused led his wife and son to the bottom of the waterfall on the pretext of sightseeing. He pushed down his son who fell on rock 150 ft. below and instantly died. Thereafter he tied the sari of his wife around her neck, killing her by tightening a knot. Afterwards, he returned home. He was convicted of murdering his wife and son. On appeal, the Apex Court ruled that the accused did not take the plea of insanity when his statement was recorded under section 313 of the Code of Criminal Procedure, and also there is no other record showing that he was suffering from any mental disease at the time of filing the bail application. The opinion of the doctor also did not indicate such a mental disorders history.

*Dayabhai Chhaganbhai Thakkar v. State of Gujrat (1964)*³⁴, the Apex Court ruled that while assessing the facts whether the case is proved by the accused that his case satisfies the requirement of section 84 of the Indian Penal Code the court must take before, simultaneous and after situations into consideration. The crime’s purpose, the accused’s prior mental health

²⁹ Ashiruddin Ahmed v. R., (1949) 50 Cri. L.J. 255 (Cal).

³⁰ B.M. GANDHI, INDIAN PENAL CODE 129 (2019).

³¹ Lakshmi v. State, A.I.R. 1963 All 534 (India).

³² GANDHI, *supra* note 28 at 7.

³³ T.N. Lakshmaiah v. State of Karnataka, (2002) 1 S.C.C. 219 (India).

³⁴ Dayabhai Chhaganbhai Thakkar v. State of Gujrat, A.I.R. 1964 S.C. 1563 (India).

history, the status of the mind at the time of the crime, as well the circumstances just before or after the occurrence shed light on his mindset other relevant facts also should be taken into consideration.³⁵

In this case, *Hari Singh Gond v. State of Madhya Pradesh (2009)*,³⁶ the accused was convicted for the murder of his wife by beating her with a stick several times. Accordingly, he threw a few grains on the fire due to which the house caught fire and Hiralal also got burnt. The Apex Court did not accept the plea of insanity as per section 84, I.P.C. because the behaviour of the accused was unusual as stated by the witnesses and held that-

*The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.*³⁷

X. CONCLUSION AND SUGGESTION

After discussing the various case laws and provisions, we find that the provision enshrined in section 84, I.P.C. is for the benefit of the accused who committed the offence under such a mental condition in which he is totally unable to understand the nature and consequence of his actions. In such situations, a man has no his own will to act. He is under control of such a mental condition which is actually not the production of his own mind. On the other hand, there is an individual also who suffers the loss from such an act. Here the victim is an innocent person. There might be some cases in which the involvement of the victim is at zero level but then also he suffers a loss. However, in such types of cases, the accused has no *mens rea* to commit such activities and to produce such a consequence. It would be an injustice to punish such a person. Actually, the accused is already punished for his unsoundness of mind. Here the accused needs care and not punishment. On the other hand, the court is also worried about the protection of society from harm caused by the accused's actions. Here court has to establish a balance between a victim's rights and the protection of society's safety from conceivable harm. A famous quote of Mahatma Gandhi 'hate the sin, not the sinner' is most suitable or relatable

³⁵ K. D. GAUR, TEXTBOOK ON INDIAN PENAL CODE 250 (2020).

³⁶ Hari Singh Gond v. State of Madhya Pradesh, A.I.R. 2009 S.C. 31 (India).

³⁷ *Id.*

here. The court should take the help in deciding cases and concerned laws in the matter of whether the accused mental capacity was such as required by section 84 of the IPC or not. There might be cases in which the accused's mental status was such that he can control his impulses but to take revenge he does not control his impulses. Parallel, there are so many cases in which the accused can neither control nor know the nature and consequences of his conduct. While a therapist is worried about the clinical treatment of individual patients. The court and the therapist should try to minimise the misuse of this provision. In some cases, the accused take the advantage of the provision by creating false and fabricated circumstances. The accused should not be allowed to misuse the law.

The Medical Training Initiative scheme in forensic psychiatry should be started on a very large scale. It is the duty of the State to provide good health and safety to its citizens. It should not be a mere duty on papers but rather must be formulated in the field. Government should start such psychiatric training programmes so that people may aware of such programmes and be benefited from them. Government and courts should focus on the treatment of such accused and not punish them. Persons who are suffering from such mental disease must be identified from the very initial stage and a fair and rapid preliminary, measurable psychiatry must be given to the most extreme significance. Courts also play a very important role in these types of cases. To decide the entitlement of the accused to the immunities given under the section 84 of the Indian Penal Code, the court should take the all-surrounding circumstances of the incident as that preceded, attended or followed by the crime and it is also right to say that said circumstances must be established by credible evidence and the court should use the plea of *non compos mentis* sparingly. If such measures are followed then there would not be a need for a trial of an unsound mind person for the commission of the offence nor innocent person suffer any loss.
