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The Defence Of Insanity In Criminal Cases: Securing Justice For The Person Of Unsound Mind

Dr. Anand Prakash Tiwari (Asst. Professor) Department of Law,
DAV Degree College, Lucknow, Uttar Pradesh

ABSTRACT

The issue of criminal liability and mental illness is still a unsolved problem of criminal jurisprudence. Despite being various literature on various facets of this theme, many ideas are seen to exists in justification or explanation of the intensity under controversy. It however presents a problematic thing which deserve to careful analysis. This paper is proposed to examine the following aspects of The defence of insanity in Indian criminal law : Defence of insanity in Hindu and Muslim systems of legal juris-Prudence and modern attempts at codification culminating In section 84 of the Indian Penal Code,
1860. A review of the MacNaghten Rules to show the extent of their inclusion in the Indian Penal Cod alongwith the examination of the judicial interpretation and numerous case-law of over a time, with a multiple of fact situations, to determine the extent and scope of defence of insanity as available under this section. A discussion of some adjoining problems—like the problem of Burden of proof and its quantum—in relation to the defence of insanity. Shortcomings of the law of insanity and some suggestions for Its adaptation to reflect modern advances in medico- Psychic knowledge.

Keywords: Insanity , Criminal law, Unsoundness of mind , Defences, Intention.

INTRODUCTION

The question of criminal liability and mental Unsoundness being an unsolved issue of criminal laws, despite enormous literature on various facets of this specific area, some relevant ideas are emerges in justification or explanation of the intensity of this controversy.

However it still presents some fascinating problems which deserve careful considerations. The philosophical foundation of exempting insane persons when offending from criminal liability certainly may be traced to the functional limitations of the retributive theories and deterrent theories of punishment which is the foundation of provisions of the Indian Penal Code. The retributive theory understandable as a wish to alleviate feelings of revenge of the injured person in society generally, is pointless when we look at from the point of view of an Unsound offender that is unable to make discriminations by himself and is thus incapable of adjusting with societal requirements of behaviour. It is equally extinct that such persons can't be deterred from the commission of crime by the threat of punishment.

The function of testing the responsibility In such a case, becomes primarily to identify those who should be regarded as incompetent for the process of criminal justice with their inherent punitive elements and who, therefore, must be regarded only as the recipient of care, custody, and therapy. The development of psychiatry-behavioural - sciences and the correctional philosophy has been cautiously progressive towards emphasis on rehabilitation and reform as well as social protection of such persons rather than retribution and punishment of the insane persons. This shift emphasises from punitive aspect of criminal conviction to preventive-rehabilitative justice process that makes the question of determination of criminal responsibility as reformative. And the determination of responsibility to ascertain before reaching the dispositional stage whether or not the defendant fulfills the elements of the crime charged as defined which is known as mens rea which is a state of mind at the time of commission of the Offence. The mental state of mankind have a dominant role in all human behaviour. It is, therefore, natural that while considering the nature of any human conduct emphasis is laid on the working of the mental state of the subject whose act is being judged because nothing undermines the due respect for law more than a feeling of mind that the law is arbitrary in assigning guilt while committed by a person of Unsound mind. Therefore, a exhaustive examination of the state of mind relating to insanity is important.

The defence of insanity can not be understood in terms of consequences lonely. The foresight concept is now a part of criminal theory as a result of adoption of the theories of Bentham and Austin on the nature of "act " and "intention" formulated on the then predominant theories of psychology and moral philosophy. Later writers in criminal law have often neglected to reconsider their conclusions in the light of modern developments in psychology and philosophy. Contemporary philosophers have shown that "intention" is not too simple a notion to be adequately expressed merely in terms of foresight and desire is a very complex one which stands for very difficult ideas in different contexts. Any attempt to define blameworthiness in terms of foresight leads to super-ficiality and is inconsistent with psychological reality.

The M'Naghten Rules, which still being regarded as the continuing measure of insanity, incorporate a classical intellectual thought which is a century old thought.
Attempts at modernization have led to some modified form of criminal responsibility, still the significance of the M'Naghten Rules has impeded efforts at creative construction.
Even when scientific principles have exposed and partially clarified the complex web of psychological and physical states "insanity" concept, adherence to the illusory simplicity and precision of the M'Naghten Rules to the belief that complexities can be reduced to a Hampshas and has blocked legal change. The concept of insanity assumed more significant place in a heterogeneous country like India where mass illiteracy, ignorance and economical difference of people makes any uniform test of culpability difficult. The common law tradition of judicial redevelopment of old laws is helping to soften the rigidity of the M'Naghten Rules in the United Kingdom but the statutory limitations of the provisions of 1860 make such innovative modifications in India as very difficult.

This paper, therefore, proposes to examine the following aspects of the defence of insanity in criminal law in India:

- Defence of insanity in Hindu systems of juris-prudence and modern attempts for modification in section 84 of the Indian Penal Code, 1860.
- A brief critical appreciation of the M'Naghten Rules to clarify the extent of their inclusion in the Indian Penal Code, 1860.
- An examination of the judicial interpretations of section 84 to find out the extent and scope of the defence of insanity as available under this section.
- A discussion of the problem of burden of proof in relation to the defence of insanity.
- Shortcomings of the law of insanity and some suggestions for its adaptation to reflect modern

advances in medico-psychiatric knowledge.

A socio-legal examination in above context is intended to assert a thesis that the M'Naghten Rules should be regarded only a guide around which the variations of life, education and thought reflecting mental disorders should be organized as defence to criminal liability. It is only when these variations are taken into account that the M'Naghten Rules will reflect a proper enforcement of criminal law in India.

Insanity in Ancient India

It is curious that though Indian literature is filled with ideas on various topics of criminal laws jurisprudence and the matters which are taken into consideration when inflicted punishment this do not appear to include direct reference to the plea of insanity as a mode of defence. An attempt is Nevertheless made to present such scattered material as this writer has found. In ancient Indian society legal and moral deliberation were mixed into each other. The Hindu philosophy says that the consequences of violation of a duty are to be borne by the person guilty of such violation. The nature of act be voluntary or involuntary, the perpetrator has to suffer the consequences of his acts without any exceptions. The rule of nature is self-operative against every breaches or violations. Thus, Whether the wrong is done in sanity or insanity, by an adult or an Infant, in normal or abnormal circumstances, the perpetrator has to suffer for his karma.
Further he may suffer either in the current life or in subsequent lives as his fate awards for account of his deeds. This theory of fate, karma it appears has an important role in the formulation of the theory of absolute Liability. However, one could rectify his misdeed by adopting penance known as prayascita. In case where a wrong has been committed by a child who can't understand the nature of his deeds and also very young to any penance, the duty of atonement is inflicted upon his guardians. The karma theory says that man is free to act, and The Vedic Sages were well prepare to appraise the ethical value of an act with respect to the intention of the doer. Thus, it is clear that the results of an act done with will or intention, without external constraints, was different from the one performed under compulsion. Now without going into the intricacies of what "free will" is, We may see what is understood by "compulsion."

The external compulsions are physical necessities, passions, and any other
circumstance or condition which forces the will, or deprives of its freedom. An act so compelled is not the same as it would have been if Done free of those circumstances or conditions. We find Duryodhan's Brother, Vikarna, in the Mahabharata speaking in defence of Draupadi when she was lost as part of a stake in a gambling game by Yudhisthira and was exposed to offend her dignity. Vikarna raised three Points on behalf of Draupadi of which one was that her being pledged by Yudhisthira was invalid in that it was made in the frenzy of gambling. Thus, it may be inferred that frenzy or other conditions leading to abnormality of mind were recognized grounds for changing attitudes towards a wrongful human act. The ancient rishis (sages) have always paid much consideration to The circumstances and conditions In which a sin is committed and took a consideration of the personality development of the sinner while Alloting danda (punishment) or prayascita (penance) for him. According to Manu, a child and an insane person, among others, is to be forgiven and Not punished for a crime.

Yajnavalkya is more specific in describing the conditions which Distort the working of the mind and ordains that no punishment be Imposed upon a person who has committed an offence under these conditions.

Thus the available literature in ancient Indian law does not make clear whether or not the insane person is fully absolved of his criminal liability. It appears that the concept of sin and the theory of absolute liability of each individual for acts committed by him did not admit of Such exception. However, it is apparent that great consideration is Shown in the ancient literature for the purposes of allotment of punishment or prayascita to an insane violator of social or Moral order.[1]

The Philosophical Basis of Exemption

The philosophical basis of exemption of insane offenders from criminal liability is perhaps traceable to the functional limitations of the retributive and deterrent theories of punishment which inspire the provisions of the Indian Penal Code. The retributive

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http://14.139.60.116:8080/jspui/bitstream/123456789/15153/1/012_Defence%20of%20Insanity%20in%20Indian%20Criminal%20Law%20%28325-383%29.pdf

theory, though understandable as a desire to alleviate feelings of revenge of the injured person in society generally, is pointless and unrealistic when looked at from the point of view of an insane offender who is unable to make elementary moral discriminations and is thus incapable of adjusting with social demands of behaviour. It is equally clear that such persons are not likely to be deterred from the commission of crime by the threat of punishment.

Mens Rea as Essential Element of Crime

The concept of insanity as a defense in criminal cases has been a subject of much debate and scrutiny within the legal and mental health communities. The insanity defense allows individuals accused of committing crimes to argue that, due to a severe mental disorder or incapacity, they should not be held criminally responsible for their actions. This defense raises complex ethical, legal, and psychological questions, highlighting the delicate balance between protecting society, holding individuals accountable, and addressing mental health concerns.

The concept of insanity as a defense has ancient roots, but it gained prominence in the 19th century with the famous M'Naghten case in England. Daniel M'Naghten, under the delusion that he was being persecuted, attempted to assassinate the British Prime Minister. The subsequent trial established the M'Naghten Rule, a legal standard stating that a defendant is not criminally responsible if, at the time of the crime, they were suffering from a mental disorder that rendered them incapable of understanding the nature and quality of their actions or knowing that what they were doing was wrong.

The Insanity defense varies across jurisdictions, and legal systems often adopt different standards to determine an individual's mental state at the time of the alleged crime. The two main standards used are the M'Naghten Rule and the Model Penal Code's
substantial capacity test. The M'Naghten Rule focuses on whether the defendant knew the nature and quality of their actions or understood that what they were doing was wrong. The Model Penal Code's test evaluates whether, due to a mental disorder, the defendant lacked the substantial capacity to appreciate the criminality of their conduct.

Section 84 of the Indian Penal Code gives the statutory recognition to the defence of Insanity. Essential Elements of Section 84 Indian Penal Code.

1. The person should be of unsound mind at the time of commission of the offence.
2. That due to the unsoundness of the mind the person is incapable of knowing the nature of the act, or that he is doing is either wrong or contrary to law.
3. The Basis of the Law : The MacNaghten Rules

The M'Naghten Case marks a culmination in the development of the law of insanity in England which had

hitherto presented a bewil-dering picture of confusion. Daniel M'Naghten was a paranoiac who believed himself to be persecuted by the Tories and to have been goad-ed beyond endurance to commit the alleged murder.

Suffering from delusions of persecution, M'Naghten had determined to kill Sir Robert Peel but shot and killed Edward Drummond, by mistake. He was tried, and acquitted on the ground of insanity. His acquittal evoked a public clamour. Many people believed that his story of delusion was a concoc-tion, and that the murder was a pure political assassination. A debate ensued in the House of Lords with a view to "strengthening the law." And it was induced to employ the unusual procedure of addressing a series of questions to the fifteen judges of England to ascertain the law on the subject.

The M'Naghten Rules

The judges's answers announced by Tindal, C.J. too long to be reproduced here, are now known as the M'Naghten Rules. They may be summarized as follows :

(1) The accused is presumed to be sane until the contrary is proved.

(2) It must be proved that the accused, when he committed the act, was labouring under such a defect of reason, from disease of the mind, as not to know, the nature and quality of the act he was committing, or, if he did know this, not to know that what he was doing was wrong.

(3) If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable.

(4) If the accused labours under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were ready.

Criticism of MacNaghten Rules

The assumption of the rule that a person, who intellectually appre-hends the distinction between the right and wrong of a given conduct, must be held criminally liable, was soon attacked,38 not only by eminent lawyers,89 but also by medical scientiests on the ground 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 the emotions." In the light of modern psychiatric developments, crimino-logical science and changing conceptions of guilt, the criticism and discussion4 discussion have assumed great significance in recent years. According to Professor Sheldon Glueck the rules proceed upon the following questionable assumptions of an outworn era in psychiatry. That lack of knowledge of the " nature or quality " of an act assuming the meaning of such terms to be clear) or incapacity to know right from wrong, is the exclusive or most important symptom of mental disorder ;

(1) That such knowledge is the sole instigator and guide of conduct, or at least the most important element therein, and consequently should be the sole criterion of responsibility; and

(2) That capacity of knowing right from wrong can be completely intact and can function perfectly even though a defendant be otherwise demonstrably of disordered mind.

Burden of Prove

The burden of proving the defense of insanity rests on the accused. It is up to the accused to establish, on the balance of probabilities, that they were suffering from a mental disorder at the time of the offense.. Section 105 of the Indian Evidence Act provides for the same.

Legal Insanity versus Medical Insanity

It has been time and again held in a plethora of judgments that the courts are concerned with Legal Insanity and mere medical insanity cannot be held to be unsoundness of mind. The test of legal insanity attracts the mandate of Section 84 IPC. A person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong a contrary to law. The incapacity of the person on account of insanity must be of the nature which attracts the operation of Section 84
I.P.C. The expression unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not per se exempted from criminal liability. The mere fact that the accused is odd, eccentric 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 affected his emotions or indulges in certain unusual
acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code. The medical profession would undoubtedly treat the accused as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act. Every type of insanity recognised in medical science is not legal insanity, every minor mental aberration is not insanity. Only legal insanity is contemplated under Section 84 of I.P.C.

The rule is that to establish a defence on the ground of Insanity, it must be clearly proved that commission of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or if he did know it that he did not know he was doing what was wrong. The act, apart, there should be some clear and distinct proof of mental delusion or intellectual aberration existing previously or at the time of the perpetration of the crime. The derangement must be shown to one which impairs the cognitive faculties of the accused, that is, the faculty of understanding the nature of his act in its bearing on the victim or in relation to himself, that is, his own responsibility for it. The Court is only concerned with the state of mind of the accused at the time of the act and the antecedent and subsequent conduct of the man is relevant only to show what the state of the mind was at the time when the act was committed.

Judicial Pronouncements

1. The Hon'ble Supreme Court in State of Madhya Pradesh v. Ahmadulla[2] held that the crucial point of time at which the unsoundness of mind as defined in section 84 has to be established is when the act was committed.
2. The Hon'ble Supreme Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat[3] have held that that when a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.
3. The Hon'ble Supreme Court in the matter Dahyabhai Chhaganbhai Thakker v. State of Gujarat"[4]while referring to Section 84 of IPC and the rule of evidence as contained in Sections 4, 101 and 105 of the Evidence Act held:

"It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never

shifts, and it always rests on the prosecution. But, as Section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under

Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall

[2] AIR 1961 SC 998
[3] AIR 1964 Supreme Court 1563
[4] (1964) 7 SCR 361

presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court. Such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to' discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in s. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution, and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."[5]

The doctrine of burden of proof in "the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the. Accused was not able to

establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

[5] https://www.lawfinderlive.com/Articles-1/Article138.htm?AspxAutoDetectCookieSupport=1

4. The aforesaid provision is founded on the maxim, actus non reum facit nisi mens sit rea, i.e., an act does not constitute guilt unless done with a guilty intention. It is a fundamental principle of criminal law that there has to be an element of mens rea in forming guilt with intention. A person of an unsound mind, who is incapable of knowing the consequence of an act, does not know that such an act is right or wrong. He may not even know that he has committed that act. When such is the position, he cannot be made to suffer punishment. This act cannot be termed as a mental rebellion constituting a deviant behaviour leading to a crime against society. He stands as a victim in need of help, and therefore, cannot be charged and tried for an offence. His position is that of a child not knowing either his action or the consequence of it."

Implications and Future Considerations

The use of the insanity defense raises questions about the intersection of mental health and criminal justice. As society's understanding of mental illness evolves, legal
standards may need to adapt to ensure a fair balance between protecting the public and acknowledging the rights of those with mental disorders. Collaborations between legal and mental health professionals, ongoing research, and public discourse will play pivotal roles in shaping the future of insanity as a defense in criminal cases.

Conclusions

The insanity defense remains a complex question of criminal law jurisprudence while
struggling for the delicate balance between justice and compassion. While it provides a legal avenue for individuals struggling with severe mental illness, its application requires thoughtful consideration to prevent potential misuse. The mental health and criminal responsibility, the insanity defense will likely remain a subject of ongoing legal and ethical scrutiny for society.

The foregoing discussion is a brief survey of the judicial review of the defence of insanity in Indian criminal law. The basis of the defence and the underlying philosophical assumptions of the relevant provision of the Indian Penal Code have also been examined. The problem of insanity has assumed a new significance due to developments in modern scientific thought. The ancient Hindu literature, as also the Muhammadan jurisprudence, do not have any specific references to the plea of insanity, although some stray references are available. The foregoing analysis examined the
tests of insanity adopted by the courts while interpreting section 84 of IPC and pointed out the unfavourable social implications. The Indian law recognizes the traditional M'Naghten Rules where only the impairment of the defendant's "knowledge" is taken into account; there is no enquiry into the degree to which the defendant's self-control is impaired. The defendant can be convicted despite a proved severe mental illness, if he is aware of what he was doing and that his act was evil. An examination of some illustrative cases revealed that an immense dearth exists between mental illness as a medical fact and legal insanity as a casuistic formula. No amount of moral, mental or educational deficiency is permitted to excuse an offence, although in the more enlightened manner the High Courts served to mitigate punishment when the legal test was not satisfactorily met. The law continues to search for and find "a wicked and malignant heart. " The two important problems of the nature and extent of burden of proof to establish insanity were examined in the light of the Supreme Court decision. The Supreme Court judgment does not seem to be clear on the point whether the acquittal is due to the benefit of doubt or that the plea of insanity is assumed to be established.