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The Law of Insanity Defence: Loophole for criminals

(By: Anuja Tripathy)

Abstract:

The insanity is a plea of defence in the Indian Legal system. It is a tool under the criminal law used by the accused person who suffers from mental illness or unsound minded person who commits a wrong unknowingly. The burden of proof of insanity is upon the alleged person before the court to provide sufficient evidence in this regard. Though it is used as a defence in criminal law there always been a constant war between the medical insanity and legal insanity. The alleged person if successfully proves the insanity then the person is devoid of any punishment, but to prove the legal insanity is harder and even more difficult to provide successful evidence in the court. In the Indian legal system there are certain requirements for criminal sanction for an individual i.e; (i) Mens Rea & (ii) Actus Reus. Mens rea refers to the intention or knowledge of wrongdoing that constitutes a crime, whereas Actus Reus refers to the act fitting within the criminal statute. Therefore in case of insanity defence comes into play when there is a mental disease, mental disorder or mental illness can interfere with an individuals ability to form mens rea i.e; in defence of insanity there will be absence of intention or knowledge of the wrong done by the alleged person (Mens Rea) or incapable of differentiating right from wrong behaviour. This article focuses on the growth of the defence of insanity in the criminal prosecution, recent supreme court judgements & how it has created a loophole for the criminals under the veil of section 84 of Indian penal code.

Keywords: Insanity defence, legal Insanity, Medical Insanity, section 84-IPC, burden of proof.

INTRODUCTION-

The Insanity defence as a plea was originated back in twelfth century, but then it was not used as an argument for defence to be not found guilty rather it was used as an method to plea pardon or mitigate the sentences for the alleged person. In the late thirteenth century ‘Complete Madness’ was first established as a defence of criminal charges by the common law court in England. In the
Eighteenth century the first test came into existence i.e.; the “Wild Beast” which was evolved from the definition of complete madness. Under the Wild beast test the defence of insanity was available to the person who is “totally deprived of his understanding and memory so as not to know what he [was] doing, no more than an infant, a brute, or a wild beast”\(^1\). This test was the first test to embark the insanity as a defence of plea for the alleged person which led the law of insanity.\(^2\) Following the test of ‘wild beast’ another test came into play i.e.; the Insane Delusion test\(^3\) this test was introduced to check that if a person is legally insane. The third test for the defence of insanity was “Good and Evil”\(^4\) test which was introduced to see the capacity of the alleged person to distinguish between the wrong and right. There are several test for the defence of insanity but the most important test is the “right and wrong” test which was formulated in the Mc’ Naughten’s case\(^5\).

**HISTORY OF LAW OF INSANITY**

The history of law of insanity can be traced back from the last three centuries i.e.; from 1700s. There are many test of insanity which evolved through these years from different cases of different facts and circumstances. The first Case of Law of insanity was dealt in the case of R v. Arnold (1724)\(^6\), in this case the defendant (Edward Arnold) was tried for the attempt to kill and even wound the petitioner (Lord onslow). The evidence produced in the court showed that the accused was suffering from mental disorder. Tracy, J. observed:

> “If he was under the visitation of God and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever.”

From the above case it was derived that a person can demand immunity if that person cannot deduce between the good and evil because of his unsoundness of mind and did not know the nature of the act done by him. From this case the test of “Wild Beast” was introduced.

The second test was introduced from the Hadfield’s case\(^7\). In this case Hadfield was tried for high treason in attempting to assassinate King Goerge III and Hadfield was discharged from the army on the ground of insanity. The test of Insane Delusion was evolved relying upon which the counsel on behalf of the accused defended Hadfield and proved that he only pretended to kill and is not guilty of the offence on the ground of the Insane delusion from which the accused was suffering. In the Bowler’s case\(^8\) the third test was introduced. In this case Le Blanc, J. Relied upon the jury

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\(^{1}\) Feigl 1995, 161.
\(^{2}\) R. v. Arnold. 1724, 16 St.Tr.695.
\(^{3}\) Hadfield Case. 1800, 27 St.Tr.128.
\(^{4}\) Bowler’s case. 1812, 1 Collinson Lunacy 673.
\(^{6}\) 1724, 16 St.Tr.695.
\(^{7}\) 1800, 27 St.Tr.128.
\(^{8}\) 1812, 1 Collinson Lunacy 673.
to decide when the offence was committed by the accused, whether he was capable of distinguishing right from wrong or was under an illusion. Though the test is not clear.

**Mc’ NAUGHTEN CASE**

In the Mc’ Naughten case we got the most appropriate test for the defence under section 84 of IPC i.e; the test of “Right and Wrong”. In this case Mc’ Naughten killed Edward Drummond thinking him of some other person. The court declared his acquittal as he was not sane but the jury considering him as insane admitted him to the mental asylum. After the judgment there was a discussion in the House of Lords where fifteen judges were called upon to decide upon the question of criminal charges of this case when the alleged person is not capable of understanding the nature of his act done or whether the act done by him is good or evil. Fourteen Judges out of fifteen have the same answer/opinion and is of majority which was given by Tindal C.J., these answers to the question are principle of Mc’ Naughten rule. The Principle laid down are:

The **First question** was to consider the criminal liability of the person acting under a delusion or partial delusion. To which the judges answered that the person acting under an insane delusion has the knowledge during the commission of the crime that it is contrary to law & will be punishable.

The **Second and Third question** was about the alleged person’s state of mind during the commission of the act. The judges answered it together that every man is presumed to be sane in every case and also presumed to have sufficient reason to be liable or punishable for the crime done. Also, it has to be proved beyond reasonable doubt that during the commission of the crime the alleged person was suffering from such defect or disease of mind as not to know the nature of the act done or doing, or if the person is aware that he didn’t know he was doing what was wrong.

The **Fourth question** was to consider the criminal liability of the alleged person who had acted under partial delusion or insane delusion as to existing facts. The Judges answered that if the alleged person is only under partial delusion and not insane in nature, the responsibility will be fixed to the facts when the delusion is real.

The **Fifth question** was regarding the relevance of a medical practitioners opinion as to the prisoner’s state of mind at the time of commission of crime. The Judges answered that the opinion of the medical man should be accounted only when the facts are not in dispute but the question is of substantial science only.

**DURHAM RULE**-

The Durham rule also known as product rule was adopted from the case of Durham v U.S\(^9\) by the

\(^9\) 214 F.2d 862 (1954)
circuit court of appeals- the District court of Columbia. The Durham rule is used in New Hampshire. In the case of Durham v U.S\(^{10}\), the defence set forth in the case stating:

“[A]n accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect”.

However, the court failed miserably to provide with a proper definition to the product, mental illness, mental disease. Therefore the Durham rule is not a test which can be applied easily rather it is difficult to apply. In the case of U.S v Brawner\(^{11}\), the circuit court of appeals- the district court of Columbia rejected the rule in the year 1972 which was override by the federal statute in the year 2010\(^{12}\). The Durham defence of insanity relies on the principles of **proximate causation**. The defence has two elements. **Firstly**, the defendant must have a mental defect or disorder. **Secondly**, the defence of insanity has to do with **causation**. If the criminal conduct is “caused” by the mental defect or disorder, then the conduct should be excused under the circumstances.

**SECTION 84 OF IPC:**

In the Indian law the defence of insanity is incorporated under section 84 of Indian Penal Code, 1860 as

84. Act of a person of unsound mind.—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\(^{13}\).

Section 84 of IPC deals with ‘unsoundness of mind’ rather than insanity. The use of the word ‘unsoundness of mind’ rather using insanity gives an advantage by artificially bringing within the scope different mind infliction which does not come under the purview of its meaning, but it stands on the same place with regard to the exemptions from the criminal liability. The scope of Insanity is narrower but the scope of unsoundness of mind carried a large are and thus is wider.

The essential ingredients of the general exception U/S.84 of IPC –

1. The act must be done by an insane person,
2. The person is incapable of knowing the nature of the crime committed by him,
3. The person doing the act must be suffering from insanity or mental illness or unsoundness of mind,
4. The person is incapable of knowing that the act is wrong or contrary to law.

In the draft penal code, Lord Macaulay suggested section 66 and 67 where section 66 stated as ‘nothing is an offence which is done by a person in a state of idiocy’ & section 67 states as ‘nothing is an offence which a person does in consequence of being mad or delirious at the time of doing

\(^{10}\) 214 F.2d 862 (1954),
\(^{11}\) 471 F.2d 969 (1972),
\(^{12}\) 18 U.S.C., 2010,
\(^{13}\) Section 84 of Indian Penal Code, 1860.
But after the Mc’ Naughten rule the Law commission replaced these two provisions with Section 84 of IPC.

**LEGAL INSANITY & MEDICAL INSANITY**

Section 84 of IPC states about the ‘unsoundness of mind’ where the legal test of mental disorder does not have any precise definition in the statute as to the meaning of ‘unsoundness of mind’ and ‘insanity’. Mental illness of a person is not exempted from the criminal liability and therefore there lies a difference between Legal insanity & Mental insanity. The court however deals with legal insanity. Mental insanity deals with mental illness i.e; a person suffering from mental illness is known as mental insanity whereas legal insanity is when a person is suffering from mental illness and lost their reasoning power during the commission of the act. So, Legal insanity is when a person is suffering from mental illness & specifically refers to the mental state of the person during the commission of the crime or the act done and has no link with psychiatric. To successfully plead the defence all the essential ingredients discussed above are to be satisfied and the burden of prove is upon the alleged person to prove beyond the reasonable doubt about the insanity.

**ASPECTS OF INSANITY DEFENCE**

**Positive aspect of insanity defence:**
1. For the accused person who is mentally challenged, insanity defence is like a ‘life giver’ to them because their mind is like a child who does not know what they are doing and is not acknowledged with the consequences of the act done.
2. The defence of insanity prevents the Capital punishment or any rigorous punishment because an insane person who has confessed the crime was incapable to understand the gravity or nature of the act committed and therefore capital punishment will be not be justifiable.
3. Commission of any act which is contrary to law is a crime and when a crime done the accused is considered a lesser human and when the crime is proved is imposed with punishment but this defence provides relief to the person who is actually mentally challenged.

**Negative aspect of insanity defence:**
1. The defence of insanity has been widely misused in a lot of the cases and circumstances, where the accused gets acquitted on the ground of unsoundness of mind/insanity which demeans the concept of law. Many countries have abolished this defence on the ground of gross misuse, like Germany, Argentina, Thailand & most of the countries in England.

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2. As the burden of proving the defence of insanity is upon the accused person and proving and availing this defence is a very challenging task, though proving medical insanity is easy but legally proving the insanity is a difficult task for which the accused has to prove with concrete evidence.

3. Under Section 84 all the essential ingredients are to be fulfilled to escape the criminal liability committed by the accused person but it is difficult to satisfy all the ingredients and in result of which most of the cases of the insanity defence the accused is charged with criminal responsibility and punished.

4. Therefore, the defence of insanity is misused as it is difficult to examine the mind of the person at the time of commission of the crime whether it was sound or unsound state of mind activity.

So, in such cases the liability to rely upon the facts and circumstances are upon the judges prudence and in that case the law loses its potential.

**CASE LAWS OF LAW OF INSANITY**

In Kamala Bunya v. State of West Bengal, the accused was charged for the murder of her husband with an axe. A suit was filed for her to be insane at the time of commission of the act, the investigating officer made a record of her mental insanity at the initial state. Therefore the accused attracted the section 84 i.e; the defence of insanity because neither she attempted to flee nor she made any attempt to remove the murder weapon. The accused was proved insane at the time of the commission of the act and was held guilty for culpable homicide and not for murder.

In the case of Bapu@gajraj Singh v State of Rajasthan\(^{17}\), the apex court held that this does not comes under section 84 of IPC and further the abnormal behaviour of the appellant requires medical treatment and hence the treatment should be done from a good mental hospital as this was the case of medical insanity.

In the case of Surendra Mishra v State of Jharkhand\(^{18}\), the apex court held that the appellant was suffering from the disease of Schizophrenia which is not any unsoundness of mind or does not attract the section 84 of IPC at the time of the commission of a crime. Therefore the person was not exempted from the criminal liability because he was suffering from Legal Insanity.

In the case of Hari Singh Gond v. State of Madhya Pradesh\(^{19}\), the Supreme Court noticed that Section 84 of IPC gives the legal test of responsibility in cases of mental insanity. There is no proper definition of ‘mind soundness’. But ‘insanity’ the term itself does not give any proper definition. In this case it was notified that this word is used to describe various mental disorders,

\(^{17}\) MANU/SC/7754/2007.
\(^{18}\) (2011) 3 SCC (Cri.) 232.
\(^{19}\) (2002) 7 SCC 748.
where the judgment is that the person is liable to recurring fits of insanity. In the case of *Anandrao Bhosale v. State of Maharashtra*\(^{20}\), the Hon’ble Supreme Court of India held that when the unsoundness was to be proven is the time when the act/crime was committed and the burden of proving lies on the party who is claiming the benefit of Section 84. In the case of *T.N. Lakshmaiah v. State of Karnataka*\(^{21}\), the Apex Court observed that the burden of proof was on the accused and he is only to satisfy the probabilities which makes it similar to that of civil cases.

**CONCLUSION**

*There can be no conclusion to the defence of insanity which has become a loophole for the criminals to escape the criminal responsibility committed by them by pleading insanity. One can never determine the state of mind of a person during the commission of the crime and hence it is not possible to prove the mental status of a person. India is a democratic country and the judicial system is a single integrated system who is the one to be blamed for which this defence lose its stark. It would not be wrong to state that the law of insanity has lost its original zeal and now has become a loophole for criminal to escape legal consequences. Therefore we should look towards more straightforward laws and test to erase such loophole from the legal system which will rather punish the criminals for the act done and will help the innocent from the liability. It is high time for the criminal to misuse the defence now the state should make stricter laws which will punish the real culprits and differentiate between the violent crimes and insane crimes.*


\(^{21}\) 1998 (2) ALT Cri 26, ILR 1998 KAR 1136, 1998 (2) KarLJ 661