
**INSANITY AS AN EXCEPTION TO CRIMINAL LIABILITY -
A STUDY ON SECTION 84 OF THE INDIAN PENAL CODE**

1860

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ABSTRACT

“Criminal liability settles upon the limit of the individual to recognize what is legitimate and unlawful. Loss of this limit, through craziness for instance, stops the individual to be held responsible under the steady gaze of an official courtroom. Just clinical treatment will be looked for. Such legitimate technique communicates a philosophical decision most European overall sets of laws made toward the finish of the eighteenth century and which isn't without its own questions. However, the majority of the issues raised with regards to the craziness protection in English law center around the importance of madness. A similar methodology with French law reveals insight into the lawful technique embraced to figure out what is lawful and unlawful: the reasonable items of the procedural framework have a complex influence in forming the system in criminal law.”

Introduction:

“In India, Section 84 of IPC describes the safeguards accessible to the individual of an unsound brain. People of unsound personalities are defenceless in nature. There is a finished possibility of their misuse in a circumstance where they are not being looked for protection. The law that secures an unsound disapproved of individual and gives resistance from criminal obligation to the unsound disapproved of individual is known as the Law of Insanity. At whatever point a crazy individual perpetrates a wrongdoing because of the impact of his madness, he doesn't have a blameworthy brain to comprehend that what he is doing is something that is disallowed by law. The craziness law has demonstrated to be of handy significance in understanding the circumstance and the psychological situation of a insane individual and in certain sensible conditions allowed them exception from criminal risk.¹”

“As per the standard of the M'Naghten, it must be unmistakably illustrated, so as to build up the protection of insanity, that the denounced worked under a deficiency at the hour of the demonstration to such an extent as to be ignorant of the nature and nature of the demonstration he was doing. This clarification can't be taken as a full meaning of confirmation, as it neglects to clarify different parts of insanity.²”

“It is along these lines basic to take note of that the term madness has a specific significance in criminal law. It isn't really utilized in its clinical sense; however its legitimate noteworthiness must be comprehended. Subsequently, insanity as a barrier alludes to legitimate madness and not clinical insanity. The idea of 'lawful insanity' alludes to specific prerequisites to be met by the blamed by the principles set down in the law. Lawful insanity is a smaller idea than clinical insanity. Legitimate insanity is an idea smaller than clinical insanity. For instance, some dysfunctional behaviour, for example, schizophrenia, suspicion or lunacy may cover with the legitimate and clinical originations of insanity and may likewise be secured against insanity or insanity of psyche when different conditions are satisfied so as to fulfil lawful insanity standards.³”

Research Questions

¹ (2008)16 SCC 209

² (2011) 11 SCC 495

³ <https://blog.ipleaders.in/insanity-defence-indian-penal-code/>

1. What is the correct definition and interpretation of the insanity defence under Section 84 of the Indian Penal Code?
2. What is medical insanity and how is different from legal insanity. The admissibility of medically declared insanity in courts and how is it intertwined with legal insanity?
3. Who has the burden of proof in an insanity appeal, how is it treated under the Criminal Procedure Code?
4. How would *mens rea* play into the insanity defence as, it is a valid example of an unsound mind, without constituting an offence under the Indian Penal Code?
5. How would the assessment be carried out for the mental state of the accused during the time of commission of the offence? What are the various elements of the insanity plea that is ascertained, for it to be deemed valid, permissible and admissible by the court of law, under section 84 of the Indian Constitution?

Research Objectives:

1. To be ascertained what is the correct interpretation of the insanity defence and is it enumerated under section 84 of the Indian Penal Code, 1860. This will include the critical analysis of the medical insanity in terms of legal insanity.
2. To be ascertained whether the burden on proof is on the prosecution or the defence and different circumstances where the burden of proof is on the accused to prove he is not of sound mind, and how would it be admissible under the relevant sections.
3. To be ascertained that what should be the criteria for an insanity appeal and whether, when insanity is proved, the accused should be deemed not guilty under Section 84, because he is not of sound mind to even commit the offence.

Research Methodology

Doctrinal Legal Research

“The doctrinal research is concerned with legal prepositions and doctrines. The sources of data are legal and various appellate court decisions. It means a research has been carried out by the way of analyzing the existing statutory provisions and cases by applying the appropriate logic and reasoning power and that has been carried out on a legal proposition. Diagnostic research studies determine the frequency with which something occurs or its association with something else. The studies concerning whether certain variables are associated are examples of

diagnostic research studies.”⁴

Formative Legal Research: “Formative Research helps researchers identify and understand the characteristics - interests, behaviours and needs - of target populations that influence their decisions and actions. Formative research is integral in developing programs as well as improving existing and on-going programs.”⁵

Secondary Research:

“Desk research or Secondary research is a research method that involves the usage of already existing data. Existing data is always summarized and collated to increase the overall effectiveness of research. Secondary research uses and involves research material published in research papers and similar documents. These documents are available in public libraries, on websites, data obtained from already filled in surveys etc. Some non- government and government agencies also store data that can be used for research purposes and can be retrieved from them. Secondary research is more cost- effective than primary research, as it makes use of the already existing data, unlike primary research in which data is collected first hand by organizations or businesses or they can employ a third party to collect data on their behalf.”⁶

Diagnostic Research

Determination of the frequency at which an event occurs is the base of Diagnostic Research, coupled along with checking its association with other things.

Whether certain variables when studied are seen to be aligned along with are examples of diagnostic research studies.

Sources of Data:

Factors of Data can be characterized into 2 types. Statistical sources refer to information that are accumulated for some official purposes and fuse censuses and authoritatively controlled surveys. Non-measurable sources refer to the assortment of information for other managerial purposes or for the private use.

⁴ Goundar, Sam. (2012). Chapter 3 - Research Methodology and Research Method.

⁵ Gounder, Sam. (2012), Chapter 3- Research Methodology and Research Method

⁶ Goundar, Sam. (2012). Chapter 3 - Research Methodology and Research Method.

Following are the two wellsprings of information:

1. Inside Source

At the point when information are gathered from reports and records of the association itself, it is known as the inside source.

2. Outside Source

At the point when information are gathered from outside the association, it is known as the outer source.

For instance, if a Tour and Travels Company gets data on 'Karnataka Tourism' from Karnataka Transport Corporation, it would be known as outer wellsprings of information.

Types of Data

A) Primary Data

Essential information signifies 'Direct data' gathered by a specialist. It is gathered just because. It is unique and progressively dependable.

B) Secondary Data

Optional information alludes to 'Recycled data'.

These are not initially gathered rather gotten from effectively distributed or unpublished sources.

Literature Review

Various legal databases will be used to achieve the aim of the Research Paper, answer the research questions and prove the various assumptions that, I have assumed. These sources are of utmost credibility and will accentuate the Research Paper throughout in a very gradual and procedural manner. The sources will be supported through citations in the form of footnotes.

Plea of Insanity in India as a defence in a Criminal Trial by Dr Raj Kumar Yadav⁷: “In

⁷ Roy, Caesar & Yadav, Dr Raj. (2015). PLEA OF INSANITY IN INDIA AS A DEFENCE IN CRIMINAL TRIAL – A CRITICAL OVERVIEW. Plebs Journal of Law. 1. 190-222.

criminal cases sometimes insanity is taken as a defence by the accused person. In India, section 84 of the Indian Penal Code, 1860 lays down the law relating to insanity. Section 84 uses a more comprehensive term 'unsoundness of mind' instead of insanity. This defence of insanity is not only applicable in India but also in other countries throughout the world. In strict sense legal insanity is different from medical insanity. The basis of the present defence of insanity is the well known M'Naghten Rule. Section 84 of the IPC is also based on this principle. Apart from this rule, irresistible impulse and Durham rule are also applicable to insanity concept. The doctrine of diminished responsibility has nowadays the latest issue relating to insanity."

Insanity Defense: Past, Present Future by Suresh Bada Math⁸: "Insanity defence is primarily used in criminal prosecutions. It is based on the assumption that at the time of the crime, the defendant was not suffering from severe mental illness and therefore, was incapable of appreciating the nature of the crime and differentiating right from wrong behaviour, hence making them not legally accountable for crime. Insanity defence is a legal concept, not a clinical one (medical one). This means that just suffering from a mental disorder is not sufficient to prove insanity. The defendant has the burden of proving the defence of insanity by a preponderance of the evidence which is similar to a civil case. It is hard to determine legal insanity, and even harder to successfully defend it in court. This article focuses on the recent Supreme Court decision on insanity defence and standards employed in Indian court. Researchers present a model for evaluating a defendant's mental status examination and briefly discuss the legal standards and procedures for the assessment of insanity defence evaluations. There is an urgent need to initiate formal graduation course, setup Forensic Psychiatric Training and Clinical Services Providing Centres across the country to increase the manpower resources and to provide fair and speedy trial."

Protection of Persons with Mental Insanity under Constitutional and Criminal Law in India: Substantive and Procedural Aspects⁹: "The law relating to mental insanity is scattered in many Acts in India, viz., the Indian Lunacy Act, 1912, the Indian Penal Code, 1860 (Section 84), the Code of Criminal Procedure, 1973 (Sections 328 to 339) etc. Multiplicity of laws concerning a particular subject creates confusion as well as difficulty for the common man. Commenting on the baneful effect of proliferation of laws Lord Gardiner once sarcastically

⁸ Bada Math, Suresh. (2015). Insanity Defense: Past, Present, and Future. *Indian Journal of Psychological Medicine*.

⁹ See R. Deb, "Reform of the India Lunacy Act" 17 *Journal of the Indian Law Institute* (1975) pp. 398-409 at p. 401. See also, The House of Commons, *The Law Commission Seventh Programme of Law Reform* (1999) pp. 18 and 43.

observed that if one wanted to know one's rights and liabilities as a tenant in England one had to study about fifty-four Acts of Parliament, hundreds of statutory rules and when he had done that, he had still to wade through hundreds of decisions of courts of the law. He further observed that, it was his aim therefore, to consolidate and simplify the laws in such a fashion as to be able to hold a single volume and say Here are the laws of England. Whether this pious desire of Lord Gardiner would ever be fulfilled still remains a doubtful proposition but one fact becomes crystal clear from this somewhat unusual story. It only shows that even a person well versed in law feels confused if he has to search a number of Acts for getting the requisite information on a particular subject."

Insanity as a Defence to a Criminal Charge by Vageshwari Deswal¹⁰: "Persons suffering from unsoundness of mind are incapable of committing a crime as they lack the mental capacity to develop the required mental element, which is an essential ingredient to constitute any crime. Law exempts such persons from criminal liability provided they are incapable of understanding the nature, wrongfulness or illegality of such act. This article seeks to analyse the various tests applied by courts in determining liability of such persons and the procedure for their trial, detention and discharge."

Interpretation of Insanity under Section 84 of Indian Penal Code:

"The defence of insanity is used by the defence to save their clients from capital punishment. It is based on the assumption that at the time of the crime, the defendant was suffering from severe mental illness and therefore, was incapable of appreciating the nature of the crime and differentiating right from wrong behaviour, hence making them not legally accountable for the crime. The insanity defines is a legal concept, not a clinical one (medical one). This means that just suffering from a mental disorder is not sufficient to prove insanity. The defendant has the burden of proving the defence of insanity by a preponderance of the evidence which is similar to a civil case. It is hard to determine legal insanity, and even harder to successfully defend it in court.¹¹"

Section 84 deals with the defence of insanity and is defined under the act as, "Nothing is an offense which is done by a person who, at the time of doing it, by reason of unsoundness of

¹⁰ Associate Professor, Faculty of Law, University of Delhi. She may be contacted at vdeswal@lc2.du.ac.in. Inputs for this article have been taken from Vageshwari Deswal, *General Principles of Criminal Liability* (Taxmann Publications, New Delhi, 2013).

¹¹ Section 84, IPC; by, Dr. Prateek Rastogi

mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

“After evaluating and analysing the insanity sections, the essential ingredients can be divided into three parts. It is necessary for the application of Section 84 to show —

1. That the accused was of unsound mind;
2. That he was of unsound mind at the time he did the act and not merely before or after the act; and
3. That as a result of unsoundness of mind he was incapable of knowing the nature of the act and that what he was doing was either wrong or contrary to law.

Further is the explanation and relevant case laws for each of these sections for a better understanding as to how the courts decide and evaluate all of these ingredients.”

“Unsoundness of mind is used to describe only those conditions that affect the cognitive capacity of an individual. So, every person who is mentally ill is not relieved from his responsibilities. Here the law makes a distinction between medical and legal insanity. There is a great difference between legal insanity and medical insanity, merely the doctors examination cannot be used to gain benefit but it is to be proved that the accused as a result of unsoundness of mind he was incapable of knowing the nature of the act and that what he was doing was either wrong or contrary to law.”

This distinction is further elaborated in the case of State Of Maharashtra vs Sindhi Alias Raman, S/O Dalwai ... on 4 August 1987¹², it was noted that,

“There is a clear distinction between legal insanity and medical insanity. Medical insanity may be of various types, kinds, and degrees. To what extent medical insanity affects the cognitive faculties of a person will naturally depend upon the nature of that insanity. A person may be suffering from some form of insanity recognized by the doctors as such, but that form of insanity may not necessarily be the unsoundness of mind contemplated by Section 84 of the I.P.C. If despite the insanity, which the doctor may find in a particular person, that person is able to recognize the nature and the quality of the act for which he is tried or if he is capable of knowing that what he was doing was either wrong or was contrary to law, then the benefit of

¹² (1987) 89 BOMLR 423

Section 84 of the I.P.C. naturally would not be available to him.”

Medical Insanity and Legal Insanity: Difference

“The law regarding insanity/unsoundness of mind has been discussed elaborately in the recent judgment of the Apex Court in *Surendera Mishra Vs. State of Jharkhand*¹³. The law laid down therein, as stated earlier, as would be applicable to the present case, may be underlined here under: -

- The accused has to prove legal insanity and not the medical insanity.
- Every person who is suffering from mental disease, is not ipso facto exempted from criminal liability.
- The onus of proving insanity or unsoundness of mind which is one of the exceptions mentioned in Chapter IV of the CrPC, lies on the accused on preponderance of probabilities. To discharge the onus, the accused must prove his conduct prior to offence, at the time or immediately after the offence, with reference to his medical condition. Whether the accused knew that what he was doing was wrong or it was contrary to law is of great importance and may attract culpability despite mental unsoundness having been established.
- The accused has to prove legal insanity beyond all reasonable doubt.”

Hari Singh Gond Versus State of Madhya Pradesh¹⁴

“Every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1872 (in short the ‘Evidence Act’) and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (*See Dahyabhai v. State of Gujarat*¹⁵),. In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be

¹³ AIR 2011 SC 627 : (2011) CriLJ 1161

¹⁴ AIR 2009 SC 31

¹⁵ AIR 1964 SC 1563

proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:”

“Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case: Would the prisoner have committed the act if there had been a policeman at his elbow? It is to be remembered that these tests are good for cases in which previous insanity is more or less established. These tests are not always reliable where there is, what Mayne calls, inferential insanity.”

“Under Section 84, IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly, every person is also presumed to know the law. The prosecution has not to establish these facts.”

Mens Rea and the Insanity Defence

“In the legal system, there are two general requirements for criminal sanction against an individual: *mens rea* and *actus reus*. *Mens rea* refers to the intent to commit an act and have a

desired consequence (e.g., intending to pull a trigger and having the escaping bullet hit someone for a murder charge), and *actus reus* refers to the act fitting within the criminal statute (e.g., someone needs to be dead for there to have been a murder).”

The insanity defence derives from the idea that certain mental diseases or defects can interfere with an individual's ability to form *mens rea* as required by the law.

One way that psychiatrists get involved in insanity cases is through their patients. This would necessitate the unfortunate event where a patient is involved in a criminal matter. The patient and his or her counsel choose to make his or her state of mind at the time of the alleged incident an issue and you, as the treating physician, are called to testify.

The other common way psychiatrists end up playing a role in these cases is as a consultant who is serving to evaluate the individual as well as the circumstances of the crime. In such a case, you are actually seeing the person under a court order or at the request of one of the attorneys, and it is quite different than seeing a patient, especially when issues such as confidentiality come up.

When a defendant is found not guilty by reason of insanity it does not mean he or she necessarily goes free. Commonly, states have requirements for treatment or institutionalization after such a finding. Some states require such confinement for the length of time the person would have received if convicted as a minimum, so he or she may end up spending more time confined than if he or she did not raise such a defence. Like other areas of the law, this varies from state to state.

The insanity defence is a significant area at the nexus of law and psychiatry. This introduction merely provides a glance at the issues that run deeper.¹⁶

Assessment for Mental State During Crime

“In order to use the defence of insanity under the latter part of Section 84, namely or to do what is either wrong or contrary to the law, it is not necessary that the accused should be completely insane, his reason should not be completely insane, his reason should not be completely extinguished. What is required, is to establish that although the accused knew the physical effects of his act, he was unable to know that he was doing what was either wrong or contrary

¹⁶ Articles from Psychiatry (Edgmont) are provided here courtesy of **Matrix Medical Communications**

to the law. This part of Section 84 has made a new contribution to criminal law by introducing the concept of partial insanity as a defence against criminal insanity. However, as a practical matter, there would probably be very few cases in which insanity is pleaded in defence of a crime in which the distinction between moral and legal error would be necessary. In any crime, insanity can undoubtedly be pleaded as a defence, yet it is rarely pleaded except in murder cases. Therefore, in a case, this fine distinction may not be very useful for the decision. The Indian penal code has advisably used either wrong or contrary to the law in Section 84, perhaps anticipating the controversy.”

“Irresistible impulse is a sort of insanity where the person is unable to control his actions even if he has the understanding that the act is wrong. In some cases, the Irresistible Impulse Test was considered to be a variation of McNaughton’s rule; in others, it was recognized to be a separate test. Though the Irresistible Impulse Test was deemed to be an essential corrective on McNaughton’s selective perception, it still had some criticisms of its own.

The psychiatrist must make an effort to assess the mental state of the accused at the time of the infraction. The psychiatrist must make an effort to assess the mental state of the accused at the time of the offence. You should try to get a detailed description of the incident through open questions. It would be prudent to ask the accused to provide a detailed report of their behaviour, their emotions, their biological, professional and social functioning from 1 week before the crime and to be informed up to 1 week after the crime. Psychiatrists should also examine the defendant’s behaviour before, during and after the commission of the crime, which may provide clues about the patient’s complete mental state. The mental state test should be done without important questions. The psychiatrist must ask open-ended questions and must refrain from asking important questions. The inexperienced psychiatrist can easily fall into the trap of the sick. Therefore, it is advisable to admit the patient and perform a serial examination of the mental state and serial observations in the ward.”

“Considering the nature of the evaluation and the law assumes that everyone is healthy unless proven otherwise, it is prudent to begin the evaluation in the same direction. The psychiatrist must initially resist the definitive diagnosis. The diagnosis should be kept open or the temporary diagnosis should be considered. After collecting information from all possible sources, depending on the series mental state examination, the observation of the serial department, psychological tests and laboratory investigations, the psychiatrist must make an objective and honest evaluation and give his or her opinion on the diagnosis of the patient’s

life and current mental state. You must also make a sincere effort to oppose the defendant's mental state during the commission of the crime.”

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4. LexisNexis may give touchy individual data to specific clients who have finished a thorough record actuation process. Clients that get this data may incorporate law implementation offices, administrative country security offices, banking and money related administrations organizations and protection bearers, legal advisors, and state and neighbourhood governments¹⁹.”
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