
DOES INSANITY COME WITHIN THE AMBIT OF UNSOUNDNESS OF MIND? : AN ANALYSIS OF SECTION 84 IPC,1860

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ABSTRACT

Indian criminal law involves three essential subjects to be referred to understand any provision in whole they are 1. Indian Penal Code, 1860; to understand the ingredients which is essential to constitute the offence, 2. Code of Criminal Procedure, 1973; to understand the procedure which has been prescribed by the law governing authorities and 3. The Evidence Act, 1872; to know about the types of evidences which are admissible in a court of law and how many types of evidences are there.

Insanity in Indian law has been prescribed under section 84 of Indian Penal Code, 1860 and is based upon the doctrine of *actus non facit reum nisi mens sit rea*. Criminal law has two essential ingredients name *mens rea* and *actus reus* and section 84 directly attacks on one of the ingredient which is important to constitute an offence i.e., *mens rea*. While section 84 does provide protection to the persons who have committed the act under unsoundness of mind but over the period of time the section has become opaque.

This paper tries to indicate the lacunas that are present in the section which provides a way out to the accused to escape from the punishment and while at the same time those who are really in need of that protection finds it difficult to prove their insanity.

Keywords: Insanity, Unsoundness of mind, Cognitive faculties, Mens rea, Criminal law, Defence.

INTRODUCTION

Under Indian Criminal law, certain exceptions are provided using which any act which normally falls under the ambit of criminal act will not constitute the same. These exceptions are provided extending from section 76 -106 of Indian Penal Code, 1860 under chapter IV. General defenses provided under Indian criminal law is broadly divided into two parts i.e., excusable acts and justifiable acts. Defence of insanity falls within the ambit of excusable acts.

A person suffering from insanity or are of unsound mind are vulnerable in nature. When an insane person commits a crime what he contemplates by the defence of insanity is that he lacked one of ingredients of crime i.e., *mens rea* and thus he had no guilty mind for the crime.

Insanity is provided under section 84 of Indian Penal Code under “*Act of a person of unsound mind*”. Section 84 contemplates that:

“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 act, or that he is doing is what is either wrong or contrary to law¹”.

The law of insanity has been developed in the year 1843 and till today we follow the same law and no changes are even proposed to be made in the law. The law is basically developed over two major legal maxims i.e., “*actus non facit reum nisi mens sit rea*” meaning a ,man is not guilty unless he has a guilty mind and “*furiosus nulla voluntas est*” meaning a person who is suffering from mental disorder cannot be said to have committed a crime if he does not know what he is doing.

In today’s world where people are suffering from different types of mental illness and with the advent of covid pandemic various mental health issues came to the forefront, in a time where mental health and mental illness are being recognized as a crucial element keeping the insanity defence under penal law vaguely defined and leaving the sufferers with no proximate result is a matter to be looked upon.

METHODOLOGY

¹ The Indian Penal Code, 1860, § 84, No. 45, Acts of Parliament, 1860, (India).

The method adopted by the researcher is the doctrinal method of research for the purpose of this particular research. Doctrinal research helps to formulate the legal ‘doctrines’ through the analysis of legal provisions. Doctrinal research is therefore concerned with the innovation and expansion of legal doctrines with the help of textbooks or journal articles. The present research can be called as doctrinal as it is a research which has been carried out on a legal proposition by way of analysing present statutory provisions and principles laid by legislative as well as judicial authorities. The researcher has used secondary sources of data used from various dynamic websites and texts books.

ORIGIN

This provision was developed through common law of England in the judgement of House of Lords in *R. v. Daniel Mc Naughten*² which is popularly known as Mc Naughten Rules. In the instant case Mc Naughten was charged with murder of then Prime Minister of England’s private secretary, he took the defence that he was under insane delusion that prime minister is the reason for all the problems and he mistook him for prime minister and committed his murder.

The plea of insanity was accepted in his favour and was found not guilty. The issue raised to House of Lords and five questions were attempted to answer by House of Lords, a comparison of answers of question 2 and 3 are there in Indian law of *insanity* i.e.,

1. Caused by a disease of the mind
2. The accused did not know the nature and quality of his acts.

LEGAL TEST OF RESPONSIBILITY

The section inculcates the legal test of responsibility on the account that the person who has committed the crime was not aware of the *nature of the act* and act which he was doing was either *wrong* or *contrary to law*.

What is important here to note is the person must not know that the act which he was doing is *wrong* and *contrary to law*, both the ingredients must be present. The protection may not be available if the person knows what he was doing is wrong even if he did not know that it is

² R v. Daniel Mc Naughten, 1843 RR 59.

contrary to law and if he knows what he was doing was contrary to law even if he did not know that it was wrong³.

LEGAL INSANITY AND MEDICAL INSANITY

Section 84 more or less, embodies the principles laid down in Mc Naughton rules. Moreover, the word insanity is not used in the code. Section 84 used the word 'unsoundness of mind', which is not defined in the code. However, there appears no difference in the etymological meaning of the two terms- 'insanity' and 'unsoundness of mind' – as they mean a 'defect of reason arising from a disease of the mind'. The court in India have treated the expression 'unsoundness of mind' as equivalent to insanity.

1. At the time of doing the act.

There has been a distinction between medical and legal insanity. Section 84 provides the defence of *legal insanity* and is not concerned with medical insanity. A person will be considered legally insane when he not capable of knowing the *nature of the act* or what he was doing is *wrong* or *contrary to law*.

It must be proved that the accused was suffering from defect of mind *at the time of doing the act*. Insanity prior or after the commission of the offence is irrelevant in this context. The insanity of the accused may be considered by the court of law in three different context as per depending upon the time period, 1. at the time of commission of offence; 2. at the time of trial and; 3. insanity after conviction.

The third is of importance in affixing the punishment; the second determines whether the defendant can be tried, but the first, and the first only, has to do with the question of the defendant's guilt⁴.

2. Cognitive Faculties

Cognitive faculties are crucial components to our conscious experience of the world and of ourselves. Some of the components of cognitive faculties

³ Geron Ali, (1940) 2 Cal 329.

⁴ Edwin R. Keedy, Tests of Criminal Responsibility of the Insane, 1 J. Am. Inst. Crim. L. & Criminology 394 (May 1910 to March 1911).

include memory, logical intuition, induction, perception⁵. For a person to claim insanity defence under section 84 it is important to show that their cognitive faculties at the moment of commission of crime were so ruptured that they could not understand the nature of the act.

During seventeenth century cognitive faculties which includes memory, sense, imagination and understanding (or intellect) became the centre of arguments in metaphysics⁶. To understand whether cognitive faculties also affects intellect gained independently and the idea of “*pure intellect*”.

English common law provides the defence of insanity occurring from “*disease of mind*”. It has wider ambit as compared to disease of brain, it includes any derangement of the mental faculties affecting the functioning of mind and it shall result in impairment of mental faculties of understanding, memory and reasons. While Under Indian Criminal Law what is important is that The insanity for the purview of sec 84, should be of such a nature that it completely impairs the cognitive faculty of the mind, to such an extent that he is incapable of knowing the nature of his act or what he is doing is wrong or contrary to law⁷.

Under Indian Penal law, even if the person is not able to understand that what they are doing is either wrong or contrary to law will also enable them for the defence of Insanity. The law of unsoundness of mind is more relative concept but the problem exists in proving the degree of such insanity. Under Indian criminal law, one has to prove that he suffered from such degree of insanity which impaired his rational thinking process.

42ND LAW COMMISSION REPORT

There was huge hue and cry over the law of insanity and therefore in 1971 Law commission of India took over the subject to study upon and gave the decision that law of insanity in India is already a settled law and no further changes are required in the law⁸. The commission stressed upon the working of judiciary and the courts must look whether the person was suffering from “unsoundness of mind” “during the commission of the crime”.

⁵ James Bishop, What are Cognitive Faculties, Bishop Encyclopaedia of Religion, Society, and Philosophy, accessed 20 December, 2022, <https://jamesbishopblog.com/2018/11/16/what-are-our-cognitive-faculties-components-definition/>.

⁶ 2, Gary Hatfield, The Cambridge History of Seventeenth Century Philosophy, pp 951-1002, 2000.

⁷ Dahyabhai Chhaganbhai Thakkar v. State of Gujrat, AIR 1964 SC 1563.

⁸ 42nd Law Commission of India, 1971.

It is further to be noted that law commission in order to define unsoundness of mind or insanity stated that:

“according to medical science, it is a disease of mind which impairs the mental faculty of a man. In law insanity means a disease of mind which impairs the cognitive faculties namely, the reasoning capacity of a man to such an extent as to render him incapable of understanding the nature and consequences of his act.”

The Law commission of India even admitting the fact that the expression ‘unsoundness of mind’ compared to the expression ‘disease of the mind’ and ‘mental deficiency’ used in the M’Naghten Rules is ‘somewhat vague and imprecise’, and thus failed to see any worth in proposing amendment in sec. 84. However over the century time span various new illness have come into existence and with the development of science and technology and work pressure people are facing various mental disorders. All of these have been looked out by the law commission of India which has become the prime focus of 21st century.

DEFENCE OF INSANITY IN ENGLAND AND INDIA : COMPARITIVE ANALYSIS

Researcher have carefully made an effort to compare English law and Indian law by taking a close look at both sections relating to the defence of insanity and taking into account the various criminal justice systems. In English law and Indian law, respectively, the terms "defence of insanity" and "defence of unsoundness of mind" have different meanings and approaches.

1. Presence of insanity

According to both Indian and English criminal laws, the accused must demonstrate that he was insane at the time the offence was done or committed in order to employ insanity or unsoundness of mind as a defence. The M’Naghten’s Rule uses the term "at the time of doing the act," and the Indian Penal Code uses the phrase "at the time of doing the act," but they both have the same legal implications and meaning. As a result, the main prerequisite is that the accused must have been insane at the time of the criminal conduct or while the offence was being committed. This is a very crucial test for legal insanity, as compared to medical insanity.

2. Defect of reasoning capacity

The second thing to take into account has to do with the flaw in reason. The Indian Penal Code, on the other hand, stipulates that a person must have been in a state of unsound mind at the

time of committing the crime. The M'Naghten's Rule, on the other hand, stipulates that a person must have suffered a defect of reason from disease of the mind at the time of committing the crime. As a result, we must investigate the precise definitions of the terms "sickness of mind" and "unsoundness of mind."

In English law, the idea of a mental illness can be used to argue that the mind, rather than the brain, is the subject of law. The crucial thing is that there must be some impairment of the mental faculties that affects how the mind works and causes problems with reasoning, understanding, and memory. The idea of a mental illness is undoubtedly more expansive than a mental illness of the brain. Therefore, it can be concluded that a disease of mind must be the root of the defect of reason.

This shows that the deficiency must not be of a transient character and must instead be caused by some internal degenerative or damage-causing processes, not by the impact of external variables⁹. Comparatively speaking, however, it should be emphasised that "unsoundness of mind" rather than "insanity" is the term used in the Indian Penal Code. Although the phrase "unsoundness of mind" under Section 84 is not defined, it can be claimed that it does not have the same meaning as "insanity" under English criminal law, which defines insanity as a defect of reason resulting from a mental illness.

In contrast to insanity, unsoundness of mind refers to a phrase that is more inclusive and includes not only people who have a defect in reason brought on by a mental illness, but also people who are unable to understand the nature of the conduct or who are unaware that the act is unlawful or against the law.

Unsoundness of mind is a relative notion, according to the interpretation of Section 84. When a person's mental abilities are compromised and they lose their capacity for reason, intelligence, and coherent reasoning, they are deemed to be mentally ill. Unsoundness of mind can happen for a variety of reasons and to varying degrees¹⁰.

3. Inability to know nature of act

According to English criminal law, it is crucial for an accused person claiming insanity to demonstrate that he was either unaware of the nature and seriousness of his actions or that he

⁹ Card, Cross and Jones, Criminal Law, (18th edn, 2009, Oxford University Press) 630.

¹⁰ Dr. Hari Singh Gour, The Penal Law of India, (9th edn, 1980, Allahabad Law Publishers) 183.

had no idea they were wrong. According to Indian law, the accused must also be incapable of understanding the nature of the act or have no knowledge that it is unlawful or against the law due to mental insanity.

At this point, there is a clear distinction between the terms "did not know" under the M'Naghten Rules and "incapable of knowing" under the Indian Penal Code. Here, it seems that one's capacity for knowing something differs greatly from their actual knowledge of it. Therefore, a person cannot be protected by the Indian Penal Code if they have the mental capacity to understand the nature of their actions. According to English law, the only issue at hand is whether the accused was aware of what he was doing. This demonstrates that the standard for determining mental instability under section 84 of the Indian Penal Code is more stringent than the one under English criminal law.

4. Wrong v. Contrary to law

However, in order to claim insanity or unsoundness of mind as a defence, the accused may need to meet the next requirement if he is still cognizant of the physical nature or quality of his act at the aforementioned stage. The third circumstance is that he was unaware that what he was doing was improper. The role in M'Naghten's Rule is this. He is doing what is either wrong or against the law, as stated in the Indian Penal Code. Since the alternative phrase "contrary to law" is provided in the provision, it can be argued that the term "wrong" under Section 84 cannot be understood to mean "contrary to law." However, it can be claimed that both the Indian Penal Code and the M'Naghten's Rule sections offer the accused the opportunity to defend himself by claiming insanity or unsoundness of mind.

Accordingly, under English criminal law, even if the accused is aware of the type and quality of his actions, he may be excused from criminal liability if he has no knowledge that his actions are unlawful. In contrast, under the Indian Penal Code, the accused has the option of proving either that he was unaware that his actions were unlawful or that they were against the law. Because "contrary to the law" is present, the term "wrong" might be understood to signify morally incorrect. Accordingly, the accused must demonstrate under the Indian Penal Code that he was not aware that his actions were immoral or unlawful because of his insanity¹¹.

¹¹ Staley Yeo, 'The insanity depends in the criminal laws of the common wealth nations', 2008 Singapore Journal of legal Studies, 252 : <http://www.law.nus.edu.sg>> accessed 28 December, 2022.

5. Position of Diminished Responsibility

Given that it concerns the accused's mental condition, diminished responsibility and the crime of insanity go hand in hand. The Homicide Act, 1957, in particular, placed emphasis on this defence, but it should be remembered that it only applies to murder offences, whereas insanity can be used to defend against any type of criminal prosecution. According to Section 2 of the Homicide Act, 1957, diminished responsibility may be used as a defence to murder, allowing the accused to receive just a manslaughter conviction rather than a full acquittal.

It cannot be pleaded in a defence to a charge of murder; unlike insanity, it is not a general defence and is not necessary for offences other than murder. Since 1957, the relevance of M'Naghten Rules has been considerably lessened because most defendants would prefer a manslaughter conviction on the basis of diminished responsibility than an acquittal due to insanity. It doesn't matter if the accused understood what he was doing or might have known it was wrong, unlike the insanity defence. If he is successful in proving his innocence, he will be found guilty of manslaughter rather than murder¹².

Indian criminal law does not have a statutory defence of diminished culpability, in contrast to English law. This is clear from Indian Penal Code Section 300, which deals with the crime of murder. For the crime of murder, there are five unique exceptions, but none of them include the defence of diminished culpability. Therefore, it is proposed that the same defence of unsoundness of mind under Section 84 must be raised by the accused whenever he kills someone and is experiencing a mental disorder that affects his ability to take responsibility for his actions.

The issue differs from English criminal law in that the English Homicide Act of 1957's provision of diminished responsibility offers the accused the option of pleading diminished responsibility or insanity as a defence. It will depend on how bad of a mental disorder the accused person is suffering. Since the Indian Penal Code merely outlines a generic definition of insanity, it is possible that, if it can be demonstrated medically and legally, diminished responsibility is one of the categories of insanity.

¹² Sutherland, Reid and Thompson, 'Discussion Paper on Insanity and Diminished Responsibility' (2003) 122, Scottish Law Commission, Edinburgh University Press : <http://www.scotlaw.gov.uk> accessed 29 December, 2022

A person who is mentally ill cannot be found guilty of manslaughter under Indian law; instead, he will be judged not guilty and dealt with in accordance with the Criminal Procedure Code's rules. As a result, the researcher contends that section 84 of the Indian Penal Code has to be changed in order to be consistent with English law and to incorporate the defence of diminished culpability.

OBSERVATIONS

While there is substantial difference between the Indian and English defence of insanity, Indian legal system has left the ambit open to be interpreted by the courts but over the period of time courts have failed to include or understand different types of insanity which is developing in the modern era of science.

Indian courts does not take into account irresistible impulse or automatism as a defence under insanity. What it takes is whether the person at the time of commission of the offence was under such delusion because of which they were not able to understand wrong or contrary to law. To prove whether the accused at the time of commission of the offence was insane can be done through previous medical history but there has been various instances where just for societal acceptance refrain from going to psychiatrist or psychologists because of which they cannot prove their insanity or insane delusion with reliable document proof.

There are various behaviour disorders also prominent of all is “*dissociative identity disorder*” or also known as multiple personality disorder. These different personalities are called *alters*, there can be upto 4 alters of a person. These alter personality when in possession form takes control of the person and acts like an outside agent and compels the person to act or speak in a different way.¹³ While in non-possession state the person acts just like a normal human being and they feel like an observer to their own body. Indian Courts does not consider DID within the ambit of insanity. While English courts did considered DID within the ambit of insanity, the first time DID has been recognised as a mental insanity is in the case of **State v Milligan**¹⁴.

CONCLUSION

Even though the ambit of Indian defence of insanity is wide and somehow vague which has

¹³ MSD MANUAL Professional Version, David Spiegel, <https://www.msmanuals.com/en-in/professional/psychiatric-disorders/dissociative-disorders/dissociative-identity-disorder> , accessed 31 December, 2022.

¹⁴ State v Milligan, No 77-CR-11-2908 (Franklin County, Ohio, December 4, 1978).

been done purposefully to empower the courts to consider the facts and circumstances of each case and then decide on basis of that but still, Indian courts have not changed their look towards the law of insanity and is still continuing with the age-old practice of insanity which has been developed in M’Naghten’s case.

With the increase in work pressure and screen timing and also with the advent of pandemic, there has been substantial changes in all the sectors of life. Increased importance has been given to mental health and various new branches of insanity has been came to be known but Indian courts have failed to take into considerations all these changes and have failed to cope up with the changing environment of modern era. The law has made a division between legal and medical insanity but the criteria to distinguish medical and legal insanity does not hold that much value. To prove that one’s cognitive faculties has been destructed at the time of commission of offence is a subjective criteria to be evaluated. Primary importance should be given to the person’s behaviour, the way of life and the manner in which a person works.

Also, legislature should dive into the matter to look at the possible loopholes and lacunas because of which the victim is being treated as the accused. More research should be made on the insanity topic and automatism, irresistible impulse and certain behaviour disorders should also get included in the ambit of “unsoundness of mind”. The word “unsoundness of mind” should get a formal definition provided the definition should not be exhaustive but rather inclusive which will give the basic idea of the term and the courts will also have the power to interpret it as and when requirement is need as per the facts and circumstances of the case.

Even though the Indian defence is wide enough for interpretation but still the courts follow the narrow concept of interpreting the section. Legal professionals have worked with the utopian idea of leaving the concept vague but the actual working and functioning of the defence is not upto the mark and thus needs reformation.