

Insanity defence: A loophole in Indian legal system

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Abstract

Insanity defense remains an unsolved problem for most of the country's legal system and including the Indian legal system. Sometimes the criminal's insanity softens the desire of revenge against the criminal. Law of insanity is basically a legal or lawful aspect and not a clinical or medical aspect. Therefore, it implies that just experiencing from a mental turmoil is not sufficient to prove insanity. In this concept the person who is convicted or the accused has an obligation of proving the defense of insanity with the help of vital evidences. In insanity defense it is assumed that, while committing any crime, the defendant should be having any mental disorder due to which the individual was unfit and not equipped of knowing or understanding the nature of crime, hence making the accused not legally liable of offense, it is essentially used in criminal prosecution.

The term insanity defense has a long history and has progressed a lot. McNaughton's test or McNaughton's rule came across as the best method that describes insanity defense. This test stressed on "understandability of right and wrong" and "intellectual" but this test neglects the insufficiency to control, enticing drives or impulses. In India Section 84 of The Indian Penal Code, 1860 describes the law of insanity and talks about the provisions. McNaughton's rule is very similar to Section 84 of Indian Penal Code, 1860. Insanity law helps in understanding the mental position of a person who is insane and grant them exemption from criminal trials and punishment.

This study will tell you about the differences between clinical or medical insanity and legal insanity. Further on it will talk about the impact of insanity defense in India. This article will also focus on important judgements given by courts on insanity defense and will briefly discuss on legal procedure of law of insanity defense. There is a desperate need to set up a law across the country to provide for speedy and fair trial on the cases of insanity defense.

Keywords: criminal prosecution, defendant, insanity defense, legal insanity, medical insanity, section 84 Indian penal code

Introduction

Insanity defense can be referred as defense which is used by the defendant to argue in a criminal trial. In insanity defense the accused confesses about all the actions that he/she has committed but advocates a lack of responsibility due to mental illness. Subject of insanity defense is very wide in law of crimes it has been the cause of many debates and discussion. The act of violation of criminal law is regarded as a crime under the law, thus the person who does this violation shall be punished. The criminal law before holding a person in charge for a crime presumes that offender has knowledge about the crime. However if the offender does not have a knowledge about the crime then the law of Insanity defense is used it is a law which protects a person who is of unsound mind from any criminal liability against any criminal offences, it is also known as law of insanity. In India Section 84 of the Indian Penal Code, 1860^[1] describes about the defenses that is accessible to a person whose mind is unsound. This defense on lunacy depends on one fundamental principle that is excusing offenders who are mentally ill from criminal trials. Therefore, it is broadly acknowledged that ability to commit offense exempts a person of unsound mind from penalizing.

In Indian Legal System "Insanity defense" is a tool in criminal law used by criminals from taking accountability of a crime. A person who is of unstable mind are most pregnable in nature and there is a possibility that they can be exploited. Whenever a person who is vulnerable or insane

commits a crime due to his insanity this law protects an individual who is of unstable mind and provides a defense for criminal liability. Insanity defense has proved to be important in understanding the mental situation of an insane person.

The term "insanity defense" has changed a lot during recent times in terms of severity, it has changed through the years of strict guidelines then more lenient guidelines then again more strict. A person who is insane does not have any intention to commit an offense. Intention is an essential part to constitute an offense. The defendant has to prove the defense of insanity with the help of evidence.

Objective of the Study

The objective of this study is to critically discuss about Insanity Defense under Indian Legal System and discuss about the loopholes in insanity defense and critically analyze it. Examine the differences between medical insanity and legal insanity.

Method of Study

To accomplish this study analytical research method is used with the help of relevant case law. Literature available in form of journal, research paper, case laws to achieve the main objective of the study.

History of Insanity Defense in India

Insanity defense is existing since decades but it has taken a lawful place in last three centuries. There were many test which were used to pronounce an individual lunatic or

¹ Indian Penal Code (Amendment), 1860, No. 45, Acts of Parliament, 1860

insane such as

- The Wild Beast test ^[2].
- The Insane Delusion test ^[3].
- The test of capacity to distinguish between right or wrong ^[4].

The above following test substructure the formation of Mc Naughton rule or test. The Mc Naughton rule was created by the House of Lords in the mid-19th century. This test majorly concentrate on whether the accused knew about the complexion of the offense at the time of committing it. Hence, in order to be declared insane then the defendant must prove that the person who has committed a crime does not know the nature of the wrongdoing while committing it. In India Section 84 of The Indian Penal Code, 1860 is completely formed on the Mc Naughton test. It basically deals with “act of a person of unsound mind.” ^[5] “Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is not capable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” Section 84 incorporates Mc Naughton test as follows “Nothing is an offence which done by a person who is of unsound mind and does not know the nature of the act or what he is doing is right or wrong” ^[6]. The essential ingredients of insanity defense can be divided into 3 major parts. It is required for the defense to indicate:-

- That the individual must be of unsound mind or insane.
- Secondly, that the accused during the time of committing an offense was of unsound or unstable mind.

Thirdly, the accused during the crime was not competent of understanding the complexion of wrongdoing.

Characteristics of Insanity Defense

Positive Characteristics

- Insanity defense creates an environment of liability. In cases of insanity defense, the accused has to admit that he has performed a wrongdoing yet had no clue about what he has done. Insane accused is not capable of understanding what is right and what is wrong. Therefore the plea of insanity defense supports an insane accused.
- An insane individual can't be given a capital punishment who is accused of a crime and the accused confesses that he has done the crime.
- If the defendant proves that the accused is mentally unfit then there is a fair chance that the accused will not be punished any jail term.

Negative Characteristics

- Law of insanity can be very hard to demonstrate. It can be a test for respondent to demonstrate whether an accused is insane or not. Insanity defense cannot give any guarantee of relief to the accused.
- The law of insanity defense can be misused by a person

to escape from punishment. It is extremely hard to inspect whether the accused at the hour of committing a crime was of unsound psyche or sound mind.

- The trial cost of an insanity defense case will be very high due to the fact that to prove insanity both defendant and prosecution will hire a specialist who can find out that whether an accused is insane.
- In *Etwa Oraon vs. The State (Uttar Pradesh)* ^[7] In this case Honorable High Court of Patna said “That there is a minimal possibility that the accused may have been insane was insufficient to establish the kind of insanity mentioned in Section 84 of The Indian Penal Code, 1860. There were very insufficient evidences to prove whether the accused is insane or not.”

Insanity can be of 2 types

Temporary Insanity

It is a condition in which an individual is crazy for a limited period of time. Few psychological illness can be depression, anxiety etc. There are 2 possible end result in defense of temporary insanity, firstly it can be “not guilty because insane” also other can be “guilty but cannot be tried because insane.”

Perpetual Insanity

It is state in which an individual is insane for a very long time, this can be determined by person previous records proving that the person is insane for a very prolonged stretch of time and is not capable of understanding any kind of situation.

Legal Insanity Vs Clinical Insanity

Section 84 of Indian Penal Code, 1860 ^[8] sets out legitimate obligation test different from clinical test. The unstable condition of mind, makes an accused person exempt from criminal obligation, insanity defense differs in clinical and lawful perspective. As indicated by clinical test, every accused while carrying out a criminal offense is an unstable or vulnerable person, so therefore every accused must be exempted from criminal liability. While according to lawful perspective, an accused must be held liable of the crime that he has committed. So long as the accused realize that the offense done is unreasonable to law. According to the clinical perspective if a person who is under the influence of any drug commits a crime can use the plea of insanity under Section 84. Only the legal insanity (unsound mind or mental illness at the time of committing an offense) and not the medical insanity falls within the bracket of section 84.

Basically there are 3 things that law perceives in human brain i.e stirring, will and psychological. India Legal System only recognizes cognitive, which implies that accused is not competent of understanding the complexion of wrongdoing or crime and what is wrong and against the law.

The Supreme Court ruled out that people who are mentally not stable and are unable to seek protection from a criminal trial, as it is the responsibility of accused to demonstrate the existence lunacy at the time or hour of committing an offense. The consideration defense of plea so, therefore there has to be a distinction between clinical insanity and legal insanity. The test which should be implemented would be legal insanity and not clinical insanity.

² R vs Arnold. 1724, 16 St. Tr695.

³ Hadfield Case. 1800, St. Tr128.

⁴ Bowers's Case. 1812, 1 Collinson Lunacy 673.

⁵ Rancchoddas R, Thakore DK, Manohar V. Ratanlal & Dhirajlal's the Indian Penal Code. Gurgaon: Lexisnexis; 2013.

⁶ Indian Penal Code Manual.

⁷ *Etwa Oraon vs The State (Uttar Pradesh)*, A.I.R. 1961 Pat 355.

⁸ Indian Penal Code (Amendment), 1860, No. 45, Acts of Parliament, 1860

In the case of Hari Singh Gond vs. State of M.P.^[9] the Supreme Court held that Section 84 sets legal test of liability in the cases of mental insanity. There is no perfect definition of the term 'mind soundness' in Indian Penal Code, 1860. The court treats the term 'mind soundness' as insanity. However, insanity also does not have a definition in Indian Penal Code, 1860. Insanity basically describes the level of insanity. So every mentally sick individual is not a fact to exclude from criminal liability. The honorable Supreme Court also mentioned that proper distinction must be made between medical insanity and legal insanity, but the court is only anxious about legal insanity not clinical insanity.

- In the case of Surendra Mishra vs. State of JH^[10] it was held that 'a individual undergoing any mental illness is not that vey fact to excuse from any criminal liability.'

Obligation of prove under insanity defense

Under the Indian Legal System, every accused is assumed to be of sound mind and is responsible for act except if opposite is proved^[11]. Every person who have committed a crime knows the outcome of the act and every individual is assumed to know about the law. The first and the most import thing that a court considers while defending insanity is that whether the accused who have committed a crime have established that he was of unsound mind while committing the crime.

The obligation of proving the existence of Section 84 of Indian Penal Code, 1860^[12] would be on the accused. The accused has to prove by presenting evidences that can be oral and documentary, presumptions or admission in the court. The evidences should satisfy that individual was not fit to know about the nature of the crime while committing it. The Supreme Court has also entrenched the critical point of time at which the instability of mind should be established at the time when crime is committed and therefore burden of proving this lies on the accused.

- In Dahyabhai Chhaganbhai Thakker vs. State of GJ^[13] the honorable court carried on that if the individual who is accused and is not able to demonstrate that he was of unsound mind at the time of committing a crime, evidences which were presented in the court raised doubts in the court.

Insanity Defense under the Code of Criminal Procedure, 1973

Section 328 of Code of Criminal Procedure, 1973 describe about "the procedure in case of accused being lunatic". Under this section if the magistrate holding an inquiry believes that the individual against whom the investigation is held is of unsound psyche and also believes that he is not capable of formulate his defense, then the magistrate should inquire about the unsoundness of the person and the civil surgeon of the state shall examine them as directed by the state government and the civil surgeon shall write about the examination. If the magistrate thinks that the person is of unstable psyche and is not capable of making his defense

then the magistrate should record the findings.

Proceedings in case of an individual of unsound brain is tried before court lies under section 329 of Code of criminal procedure, 1970. Under this section if at the trail of a person before the magistrate is found to be not capable of making his defense and is not able to protect himself from law. If the magistrate is satisfied by the evidences presented by the person than the magistrate shall record the finding and postpone further proceedings of the case.

If a person is found to be insane or vulnerable and is not capable of making defense than the magistrate shall accept the bail and release the person, sufficient security must be given to that person he will be appropriately taken in supervision and will be kept away from doing any injury to himself or to any individual. In case, when magistrate don't accept the bail application than the accused must be taken to a safe custody. Release of an insane person is indicated under section 330 of the Code of Criminal Procedure^[14], 1970.

Critical analysis of law of insanity

The individual may not understand the complexion of the act while committing the crime then the accused will not be responsible for the crime. Similarly, if the individual knows about the act of nature but in any case did not realize that whether it was wrong or against the law but if the accused does not have a clue about the nature of the crime but knew that it was wrong and the crime is against the law then the accused is held responsible.

According to Section 84 of Indian Penal Code^[15], 1860 the term "incapacity to know the nature of crime" means that the accused is unable to under the effects of the crime committed and theaccuse is insane and such insanity removes the ability to understand the nature of crime committed. In order use the defense of insanity it isn't vital that the denounced must be completely unstable or insane. The accused is required to establish that he was unable to understand whether the wrongdoing was right or illegal. Section 84 of Indian Penal Code1, 1860 introduced a concept of fractional insanity as a defense against the criminal insanity. In any crime, insanity can be pleaded by the accused but yet it is only pleaded in murder cases. The expression "unsoundness of mind" under Section 84 of Indian Penal Code1, 1860 covers not only any form of insanity or mental issues but also any kind of mental deficiency like madness or idiocy etc. This section basically examines the condition of disease.

In dealing with cases involving law of insanity, a proper distinction must be made between the cases in which insanity defense is more or less proved, in cases of insanity, the question is only the degree of irresponsibility. Advantages of this section is only available when it's proved that the individual was of unsound mind. It is menacing to admit that the defense of insanity upon arguments is obtained from the nature of the crime. The criminal law recognizes the incompetency to acknowledge the nature of the act and assumes that the accused mind is sufficiently less and the accused don't understand a thing.

In Sheralli Wali Mohd. vs. State of MH^[16] the court held that the bare fact that no motive has been proved on why the

⁹ Hari Singh Gond vs State of M.P., (2008) 16 SCC 109.

¹⁰ Surendra Mishra vs State of JH, (2011) 11 SCC 495.

¹¹ State of M.P vs Ahmadull. AIR 1961 SC 998.

¹² Indian Penal Code (Amendment), 1860, No. 45, Acts of Parliament, 1860.

¹³ Dahyabhai Chhaganbhai Thakker v. State of GJ. 1964, 7SCR 361.

¹⁴ The Code of Criminal Procedure, 1973, (2 of 1974), section 330.

¹⁵ Indian Penal Code (Amendment), 1860, No. 45, Acts of Parliament, 1860.

¹⁶ Sheralli Wali Mohd. vs. State of MH (1973) 4 SCC 79.

accused murdered his wife and children and had no aim to run away when the door was broken, would not specify that the accused was insane or the accused did not have necessary mens rea for committing the offense.

Conclusion

The term 'insanity defense' has become a loophole for criminal in Indian Legal System. Law of insanity has many advantages like, it is popularly used defense to escape from wrongdoing and it almost impossible to prove psychological condition of any person at the hour of the offense. Law of insanity defense is not concerned with mental insanity but is only concerned with legal insanity. It is impossible to prove the psychological condition of any person at the time when crime was committed. The cases of insanity defense are very complicated because here the accused agrees to have committed the crime and avoids getting punished and this raises brows of any right minded person.

In spite of the fact section 84 deals with mentally unstable offender but sometimes there may be false acquittal and conviction. Hence, there is a need to include concepts like emotions, pre act situation etc. Legal insanity should also include some more aspect of medical insanity, strain should be on removing crime rather than removing a criminal. Most of the criminal who are insane are emotionally vulnerable and they usually don't fear from punishment. These criminal should not be free and must be detained in psychiatric hospitals and proper evaluation must be made to steer clear of any false acquittals and conviction. There should be some provisions made where a criminal who is insane must be examined by psychiatrist. Opinion of a psychiatrist must be mandatory in the eyes of court. Psychiatrist might be requested to help the court in choosing whether certain mental disorder makes the person liable for the offense or not and to provide speedy trial psychiatrist may be given utmost importance.

Courts are not able to adapt more neoteric way in deciding the responsibility of a psychotic person who has committed a crime and there is no provision which legalize the courts to do so. The plea of insanity should be a good defense only when there is evidence of unsound mind. Crimes committed by a person due to anger and jealousy cannot use insanity plea. To prove the insanity plea there shall be some evidences which can be oral as well as written for supporting the legal provision mentioned under section 84 of Indian Penal Code¹, 1860. It's high time and some reforms must be made by the states by making stricter laws regarding insanity.

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