



Unsound Mind : Defence to escape offence

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UNSOUND MIND: DEFENCE TO ESCAPE OFFENCE ABSTRACT The term "unsound mind" has been widely and frequently used in Indian courts. However, no proper definition of the term has been given in any legislation. It has been left for the Indian judiciary to interpret a person of unsound mind based on facts and circumstances of the case.

Abstract:

The term "unsound mind" has been widely and frequently used in Indian courts. However, no proper definition of the term has been given in any legislation. It has been left for the Indian judiciary to interpret a person of unsound mind based on facts and circumstances of the case. The terms such as insane, lunatic, mentally ill, mentally disabled are synonymously used for the person of unsound mind. Sec. 84 of Indian Penal Code (IPC) deals with the acts of a person of unsound mind. This provision is based on the rules laid down in M'Naghten's case in England in the year 1834. The defense of insanity is based on legal insanity and not medical insanity. It means that suffering from a mental disorder is not sufficient to prove insanity and exemption can be granted only if cognitive faculties are affected. This research paper focuses on the provision of unsound mind in IPC based on the judgements rendered by Indian judiciary and discusses the principles laid down by Supreme Court in various judgments while dealing with the defense of unsound mind.

Keywords :

Unsound mind, insanity, lunatic, mentally ill, Sec. 84-Indian Penal Code, M'Naghten's case.

Introduction :

The general rule is that the commission or omission of acts in contravention with the criminal law are considered as crimes and are backed by penal liabilities. For constituting a crime, mens rea (mental state) is an essential element required to be fulfilled. The law of insanity is an exception to the general rule and a mentally unsound person may be exempted from criminal liability recognized by law upon fulfilment of required conditions. This is based on the Latin maxim

“Actus non facit riem, nisi men sit rea” which means no man can be proved guilty until he has a guilty mind. Punishing a person, who is not responsible for the crime, is a violation of the basic human rights and fundamental rights under the Constitution of India. It also brings the due process of law, if that person is not in a position to defend himself in the court of law, evoking the principle of natural justice.^[1] The defence of insanity has been a controversial subject in the law of crimes. This subject safeguard the insane persons from criminal liability when they are unable to understand the consequences of their act and are unaware that such acts are prohibited by law.

The question of insanity is really not a question of law; it is essentially a question of fact. The legal question is responsibility. From a survey of the history of insanity as a defence in the earlier law, if we may draw a deduction from the scant evidence, insanity is apparently a question of fact not gauged by strict rules. This change, however, and later we find insanity gauged by inflexible legal tests. Recent tendencies indicate a development towards a recognition of insanity not as a question of law, but as one of fact.^[2]

Research Methodology :

Researchers have adopted doctrinal method of research for completing the purpose of research. Doctrinal research is concerned with the innovation and expansion of legal doctrines with the help of textbooks or journal articles. Since the research is mainly concerned with legal concepts and doctrines on insanity, the doctrinal form of research is the most appropriate. Primary as well as secondary sources of information consisting relevant case laws and literature available in the form of articles, reports, journals, commentaries on Indian Penal Code written by eminent authors and online databases have been pursued.

Historical Background :

The concept of defense of insanity has been in existence since ancient Greece and Rome. But initially, it was not considered as an argument for the defendant to be found not guilty rather it was a way to mitigate a sentence.

However, first known recognition of insanity as a defense to criminal charges was noted in a English legal treaty in 1581 which states that, “If a madman or a natural fool, or a lunatic in the time of his lunacy kills someone, they cannot be held accountable”.

Courts Test for Legal Insanity :

Wild Beast Test : The “wild beast” test evolved in 18th Century, in Rex V. Arnold case, in which Defendants were acquitted if they understood a crime no better than an infant, a brute, or a wild beast”.

Good and Evil test : This test evolved in R v. Madfield. This laid down the “ability to distinguish between good and evil”.

M’Naghten Rule : The foundation for the law of insanity was laid down by the house of lords in 1843, in the case of M’Naghten case^[3]. The accused by the name of Daniel M’Naghten suffered from a delusion that Sir Robert Peel, the then Prime Minister of Britain had injured him. He mistook Edward Drummond, Secretary to the Prime Minister for Sir Robert Peel. He shot and killed him. The accused took the plea of insanity. The medical evidence showed that M’Naghten was laboring under a morbid delusion which carried him away beyond the power of his own control. He was held to be ‘not guilty by reason of insanity’ by the jury. However, his acquittal caused public excitement and considerable furor. The verdict was made a subject of debate in the House of Lords. In consequences of the debate, to make the law on the topic clear, a set of five questions were formulated and put to the house of lords for definite answer. Answers to these questions are known as M’Naghten rules. The second and third of the five questions and the answers thereto constitutes the core of law of insanity as an extenuating factor. The following main principles were enunciated by the house of lords in reply to the questions :

1. Every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is established.
2. To establish the defence of insanity, it must be clearly proved that at the time of committing the crime, the person was so insane as not to know the nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.
3. The test of wrongfulness of the act is in the power to distinguish between right and wrong, not in the abstract or in general, but in regard to the particular act committed.

Section 84 IPC, more or less, embodies the principles laid down in the M'Naghten rules.^[4]

Analysis of Sec. 84 of Indian penal Code :

Sec. 84 runs as follows :

“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.”

Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of ‘unsoundness of mind’ in IPC. The courts have, however, mainly treated this expression as equivalent to insanity. But the term ‘insanity’ itself has no precise definition. It is a term used to describe varying degrees of mental disorder.^[5]

This provision embodies the fundamental maxim of criminal law “actus non facit reum nisi mens sit rea” (An act does not constitute guilt unless done with a guilty intention), In order to constitute crime, the intent and act must concur, but in the case of insane persons, no culpability is fastened on them as they have no free will (furiosi nulla voluntas est). It is necessary for the application of Section 84 I. P. C. 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) as a result of unsoundness of mind, he was incapable of knowing the ‘ nature of the act or that he was doing what was either wrong or contrary to law. It is not therefore every person mentally diseased who ipso facto is exempted from criminal responsibility.^[6]

‘At the time of doing it’ - It must be clearly proved that, at the time of the commission of the acts, the appellant (accused), by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offence, he was laboring under any such capacity? On this question, the state of his mind before and after the commission of the offence is relevant. It would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime.^[7]

‘Unsoundness of mind’ – Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease, or exist from time of birth, it is included in this expression. It is only ‘unsoundness of mind’ which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility.^[8]

Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible 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 behaviour or the behaviour is queer are not

sufficient to attract the application of Section 84 of the Indian Penal Code.^[9] There can be no legal insanity unless cognitive faculties of the mind are, as a result of unsoundness of mind are so affected as to render the offender incapable of knowing the nature of the act or knowing that what he' is doing is wrong or contrary to law. For the purpose of criminal law emphasis is therefore, on degree of unsoundness of mind."^[10]

'Nature of the act' - The word incapacity of "Knowing the nature of the act embodied in section 84 of the Indian penal code refer to that state of mind when the accused was incapable of appreciating the effects of his conduct. It would mean that the accused is insane in every possible sense of the word and such insanity must sweep away his capacity to appreciate the physical effects of his acts.^[11] If the evidence shows that the. accused was conscious of the nature, of the act, he must be presumed to have been conscious of its criminality.^[12]

'Either wrong or contrary to law' – If he knows the nature of the act, then he should be incapable of knowing that he is doing what is either wrong or contrary to law. If, being capable of knowing the nature of the act, he is capable of knowing that what he is doing is either wrong or contrary to law, then he would not be able to get the protection of the provisions of Section 84. It is his incapacity, after knowing the nature of the act, to know that what he is doing is either wrong or contrary to law, that would place him under the umbrella of protection of Section 84. If he knew that what he was doing was either wrong or contrary to law, then he would not be getting the protection of Section 84. For example, if he knew that what he was doing was contrary to law but he did not know that it was wrong, that would not be a case contemplated by Section 84. The use of the words "either" and "or" in "that he is doing what is either wrong or contrary to law" is significant. What is contemplated is the incapacity of the person to know either. If he knew either, then, naturally, he would not get the protection of Section 84.^[13]

Crucial point of Time :

The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of sec. 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.^[14] In this connection, the non-exhibition of feelings and the absence of secrecy on the part of the accused are stated to be strong indications of his insanity at that time. But these are only some of the relevant circumstances which have to be considered along with the other circumstances of the case and that by themselves they do not make out sanity or insanity. One may be a hardened criminal and not exhibit any signs of feeling at what he had done, while another may easily break down.^[15]

Burden of proof :

Every person is presumed to know the law and the natural consequences of his act. The prosecution, in discharging its burden in the face of a plea of insanity, has merely to prove the basic fact and to rely upon the normal presumptions aforesaid. It is then the accused who is called upon to rebut these presumptions and the inference in such manner as would go to establish his plea.^[16] The burden of proving the existence of circumstances bringing the case within the purview of s.84, therefore lies upon the accused.^[17] However, as in cases of proof of all General Exceptions, the accused need not prove the existence of insanity beyond reasonable doubt. All that he has to establish is the probability of the existence of insanity at the time of commission of the offence. It is enough for him to show, as in the civil case, that the preponderance of probabilities is in his favour.^[18]

The doctrine of burden of proof in the context of the plea of insanity was expounded by the Apex Court in the case of Dahyabhai Chhaganbhai Thakkar v. State of Gujarat ^[14], wherein the Court stated that :

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 IPC: 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 is not able to conclusively establish 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, 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.

Procedure for trial :

Chapter XXV of Criminal Procedure Code, 1973 Sections 328-339 deals with the procedure for the trial of person of unsound mind.

Under Sec. 328, a Magistrate holding an enquiry, if has reason to believe that the person before him is of unsound mind and consequently incapable of making his defence, then he is enjoined upon to enquire into such unsoundness of mind and shall cause such person to be examined by Civil Surgeon of the District or such other medical officer as the State Government may direct. Such Civil Surgeon or Medical Officer is thereafter to be examined as a witness. Pending this enquiry, the Magistrate may deal with such a person in accordance with the provisions of Section 330 of the Code, which talks of release of the person of unsound mind pending investigation or trial. If Magistrate is of the opinion that person is of unsound mind, he is to record his finding to that effect and then postpone the proceedings in the case.

Section 329 of the Code, on the other hand, provides the procedure in case of person of unsound mind tried before Court. This section makes it clear that in a trial before Magistrate or Court of Session, if the accused appears to be of unsound mind and consequently incapable of making his defence, then the Court shall, in the first instance, try the fact of such unsoundness of mind and incapacity and if satisfied in this regard, shall record a finding to that effect and shall postpone further proceedings. Section 329 was amended by the Criminal Procedure Amendment Act, 2008 and Section 1(A) was inserted which says that if during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, the Court shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind.^[19]

Judgments on different instances of insanity :

Irresistible Impulse : The Supreme Court in *Sheraliwalli Mohammed v. State of Maharashtra*[7], it was held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have the necessary mens rea for the offence. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84.

In *Sidheswari Bora v. The State of Assam*,^[20] a Bench of Guwahati High Court where the accused killed her ailing child of three and there was also some evidence elicited in cross-examination to show that the accused had suffered from mental derangement two years prior to the incident, it was held that the mere fact that the murder was committed on a sudden impulse or as a mercy killing was no ground to give her the benefit of Section 84, I.P.C., even though both euthanasia (mercy killing) and irresistible impulse would entitle the accused in England to get the benefit of diminished responsibility and her crime would be treated as manslaughter.

“Irresistible impulse” is perhaps a defence Under Section 84 IPC when on account of such impulse the accused is incapable of knowing the nature of the act he is doing and what he is doing was either wrong or contrary to law. Such impulse or abnormal urge to perform certain activity due to mental disease might be covered by Section 84 IPC. The accused has made out a prima facie case of irresistible impulse the plea has to be taken into consideration in deciding the question of giving benefit of Section 84.^[21]

Insane Delusion: In *Raval Mohanbhai Laxmanbhai vs State Of Gujarat*,^[22] the accused killed his wife. In the last ten days before the incident, he had hallucination that someone is going to kill him. Even a sorcerer was also called to remove the effect of ill spirit. It was held that the accused was of unsound mind at the relevant time and the benefit of Sec. 84 was granted to him.

Schizophrenia: In *Satish vs State of Haryana 2013*, the accused asked his father for some money. Upon denial, he inflicted blows on him and his mother with Rapri. Upon examination by Board of Doctors, it was found that he has been suffering from Schizophrenia and was acquitted.

In *Ram Swarup Thakur vs State of Bihar*,^[23] the appellant killed his 3 years old son. He was also sent to mental hospital for two years and was found sane to make his defence. Thereafter no evidence was put forward by prosecution and he was acquitted.

Epilepsy : In *Satwant Singh vs The State Of Punjab*,^[24] the accused killed under the influence of epileptic fits. Held that he was entitled to protection under Section 84.

In *Jai Chand And Anr. vs State Of H.P.*,^[25] the accused shot his wife as she was quarreling from his father. The defence put forth that he suffered from epilepsy seizure. Upon examination, it was found that he was of sound mind at the time of commission of the offence and no protection of Sec. 84 was given.

Conclusion and suggestions :

Section 84 of IPC is based on the principles laid down more than 150 years ago in M’Naghten’s case. Indian judiciary strictly apply these principles and refuse to depart from it. Hence, in the current scenario where medical science and psychiatry has advanced so much, the provision has become obsolete. There is a need to widen the scope of legal insanity and include some aspects of medical insanity and the courts need to take liberal approach while dealing with defence of unsound mind. The views of psychiatrists and medical practitioners in determining the extent of person’s ability to commit crime out of the mental illness also needs to be taken into account. Further, the definition of “unsound mind” has to be intelligibly and undoubtedly defined under ‘the IPC so as to give proper and standard use of the term for defence and to avoid controversies.

In a plea of unsound mind, the defendant even though is a person of unsound mind but has committed a crime and he can’t be set free and let go of his crimes. He should be placed under the watch of a medical practitioner in a psychiatric hospital in order to avoid any false acquittals or convictions.

The Doctrine of Diminished Responsibility or Diminished Capacity, is a defence by accused for committing a crime out of abnormality of mind as to substantially impair his responsibility. It has been recognized in many countries and Indian courts can also adopt and introduce the same.

To sum up, a broader and reformative amendment to Section 84 is required to address the modern times.

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