

## UNSOUNDNESS OF MIND IN LEGAL PARLANCE

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### ABSTRACT

*The criminal law of India has been of magnificent nature since its inception. With the ever evolving society, the law becomes old and obsolete and needs rectifications and modifications which also increases the scope for the researchers to work upon the important sectors of crime. Therefore, the research has written the present research paper to bring forth the intricacies of the law of legal insanity.*

*The research traces back the Origin of the doctrine of legal insanity and how it has been imbibed under section 84 of The Indian penal code, 1860. The research goes on to discuss essential requisites of Section 84 and highlights the difference between legal and medical insanity. It also talks about other relevant provisions under Indian Evidence Act, 1872 and discusses the importance of burden of proof in Indian Criminal System. Not only this, the reason Section 84 is believed to be misused is discussed following the analytical and critical methodology. Last but not the least, the research ends with a few set of suggestions and conclusions for the readers.*

*It is believed that the research will not only help students but also academicians and members of the bar in serving and delivering justice of the society.*

## BACKGROUND AND INTRODUCTION

*Furiosi nulla voluntas Est, i.e.* a person with mental illness has no free will and therefore cannot do anything wrong.

For the first time the defence of insanity was recognised in criminal prosecution dated back to 1581 in an English Legal Treatise which stated that, “if a madman or a natural fool or a lunatic in the time of his lunacy, kills someone, they cannot be held responsible for the same.” The term wild beast was also introduced in the 18<sup>th</sup> century when the “wild beast” test was introduced which implied that if the understanding of the accused is no better than an “infant, a brute or a wild beast.” However, the same is not used in general parlance today. In India, however, the defence of insanity owes its origin to M’Naghten’s Rule of 1843 by virtue of which Section 84 was introduced in the Indian Penal Code, 1860.

Indian system of penal laws uses deterrence as a mode to constrain people from giving effect to crimes. Deterrence means effect act or omission barred by law is backed by penal sanctions or punishments. The criminal law holds a person liable for his acts or omission presuming that he had knowledge of the consequences and had guilty intentions while the committal was in process. This implies that intention and commission of the physical act are a mandate for the committal process. However, this is not an absolute rule. Chapter IV of the Indian Penal Code, 1860 provides for certain general exceptions wherein a person even though committed an act and even though had knowledge or intention of committing an act, cannot be held liable to the same because of the presence of certain circumstances which bars his conviction.

It is believed that every sane person understands the nature and consequences of his acts and possess some degree of rationality but a person of unsound mind or a person who is suffering from a mental disorder that he is incapable of understanding the nature of his act cannot be said to possess the basic norms of human behaviour because of their vulnerable nature.

Thus, Indian Penal Code, 1860 provides for a general exception under section 84 of the 1860 Code which provides a defense from criminal liability to a person of unsound mind. The reason behind providing such defense is that the person committing the act is not under the correct mental capacity required for understanding that the act or omission is prohibited under the law.

## RESEARCH METHODOLOGY

The paper is written by the author in Blue Book Citation format adhering to its 20<sup>th</sup> Edition. Both Primary as well as secondary material has been referred by the author. For primary resources, author has used various books, articles and web resources such as SCC Online and JSTOR etc. For the purpose of secondary research, author has studied various news articles in the Hindustan Times, Economic Weekly etc. for getting latest details about the topic of the research.

It is to be noted here that due to the current pandemic going on in the country, the use of books has been limited. However, e-books have been used.

The research is a **descriptive, Critical** as well as **analytical study**.

## INGREDIENTS OF SECTION 84 IPC

The section 84 of IPC states that “*Act of a person of unsound mind –nothing is an offence which is done by person who, at the time of doing it ,by reason of unsoundness of mind, is incapable to know the nature of the act or that he is doing what is either wrong or contrary to law .*”

A man concerning to claim exemption from liability of his wrongfulness must manifest that during the time of commission of offence the accused was “*non compos mentis*”<sup>1</sup> and also the soundness of mind was at a far sight. One must fulfil the ingredients mentioned in the section below:

- 1) Act must be executed by a person of unsound mind
- 2) Person must be unsound during the time of committing the act
- 3) Incapable to know the nature of the act
- 4) Incapability to know what is wrong or contrary to law

1) **Act must be executed by a person of unsound mind**– Section 84 of Indian Penal code uses the phrase “unsoundness of mind” as an alternative to the term “insanity”. No difference is seen between the two words here which may simply imply to an obstruction from a disease of the mind. The phrase has not been defined by the Code, 1860; however, various attempt have been made by

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<sup>1</sup> Definition of *non compos mentis*: not of sound mind, Non compos mentis Definition & Meaning - Merriam-Webster

various authors to specify the meaning. Stephen puts insanity and unsoundness of mind on an equal position and states that “*A State of mind in which one or more of the above named functions (i.e. of intension and knowledge, willingness) is performed in an abnormal manner or not performed at all by reason of some disease of the brain or the nervous system*”. Comparatively, a more understandable and a wider term “unsoundness of mind” has been used which has the advantage of doing away with all the prerequisite of describing insanity. It also brings within its scope various conditions of mind which do not usually come within the meaning of insanity but having said that stand on the same footing regarding exemption from criminal liability. The phrase “unsoundness of mind” covers both congenital and natal-mental defects which include idiocy, delirium, mania, madness, melancholia, dements, hallucination and every other mental effect possible that the medical science is acquainted of with whatever name designated. It is corresponding to “non compos mentis” and can be provisional, perpetual or because of any other reason.

## **2) Person must be unsound while he committed the act -**

The foremost thing that court had to contemplate when insanity has been pleaded in defence is whether the accused was of unsound mind while he perpetrated the act. The critical stage during which the accused has suffered from unsoundness of mind is the time when the offence was committed. The fact that in former occasion the accused was of unsound mind intermittently or he was affected by the derangement of mind or he have been behaving like an insane person is inadequate to permit him exemption. In “*Rattan Lal v. State of Madhya Pradesh*”,<sup>2</sup> the court have clarified that the critical time when the accused underwent insanity or derangement of mind should be the exact same time when the crime was committed and was the accused in a state of mind to sanction the advantages of section 84 . In “*Kamla Bhuniya v. state of west Bengal*”<sup>3</sup> the accused was held guilty of murdering her husband using an axe. A case was registered against the accused. The investigating officer during the commencing of the case recorded that the accused was suffering from mental insanity at the time of incident. Medical examination of the accused was arranged and it was proven that there was no motive of murder. The accused neither made any attempt to flee away after the incident nor did she removed the weapons that were to blame. The prosecution failed to remove presence of *mensrea* in accused during the commission of the offence.

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<sup>2</sup> Rattan Lal v. State of Madhya Pradesh, 2002 (7) SC 627

<sup>3</sup> Kamla Bhuniya v. state of west Bengal, 2006 CriLJ 998

The accused was granted the benefit of section 84 and it was proven that the accused was insane during the commission of the offence. She was hence held guilty of culpable homicide instead of murder.

3) **Incapability to know what is wrong and contrary to law**– to avail the benefits of insanity given in the latter part of section 84 – “*or that he is doing what is either wrong or contrary to law*” the accused need not to be necessarily wholly insane, it is okay if his reason behind the commitment of act is completely extinguished. The incapability of the accused to know what is either “*wrong*” or “*contrary*” to law is necessary to give him the benefits of section 84. This has also made a participation in criminal law by acquainting the concept of partial insanity as a defence to criminal insanity. Although very few cases will be seen in which insanity is appealed as a defence of a crime in which differentiating between moral and legal wrong obligatory. However in many cases insanity is pleaded as a defence in many cases, but it is used as a defence in very few cases except for murder cases. Therefore this may not be the best way to make the decision in the case. The Indian penal code has used the phrase “*either wrong or contrary to law*” which gives rise to a controversy.

4) **Incapable to know the nature of the act** – the phrase incapacity to “know the nature of the act” stated in the section 84 of Indian penal code points out the state of mind when the accused is incapable of pointing out the effects of his behaviour in simple words the accused is unsound in every sense and he no longer have a capacity to appreciate the physical consequences of his acts.

### ORIGIN OF THE DEFENCE

Insanity is used as a defence since the few centuries. But it became a law since the past three centuries. It is clear that insanity was used as a legal defence since the early 1700s

The law came in force in 1724 in the case of *R v. Arnold*<sup>4</sup> Edward Arnold tried killing and even wounded lord Onslow and was accused for the same. It was clear that the accused was subject to a mental disorder. Tracy J observed

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<sup>4</sup> R v. Arnold, [1997] 2 All E.R. 548

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

Given in the case mentioned above, a person is not responsible for his wrongs if he is of unsound mind and cannot differentiate between good and evil and he is not aware about the nature of the act that was committed by him. This test is known as wild beast test.

### **M’NAGHTENS CASE ANALYSIS**

**Facts of the case:** Daniel M’Naghten seized a pistol and shot Edward Drummond, whom he mistook for British Prime Minister Robert Peel, fatally injuring him in the parish of Saint Martin, Middlesex, in January 1843. Five days later, Drummond died, and Mc’Naghten was charged with his murder. Due to his lunacy, he pled not guilty.

In this case, the accused believed that a band of people wanted to assassinate him, and that the incident was orchestrated by England's then-Prime Minister, Sir Robert Peel. The defendant was afflicted with paranoid delusions. He mistakenly shot Mr. Edward Drummond, the Prime Minister's secretary, one day, believing him to be Sir Robert Peel. He was apprehended and charged with the crime of murder. He claimed insanity as his defense.

Evidence indicating the accused's insanity was presented throughout the trial. The accused was also said to be insane, according to the witnesses. As a result, the Court acquitted the accused.

**Issues:** Following were the issues framed in the present case:

- a. What is law in regard to alleged crime committed by people suffering from insane delusions in relation to one or more specific subject or people?
- b. Whether a person who commits an offence as a result of an irrational delusion about existing facts forgiven as a result of this?

**Analysis:** In my opinion, that notwithstanding the accused did the act complained with a view, under the influence of insane delusion of redressing or revenging some supposed grievance or

injury, or of producing' some public benefit, he nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your lordship to mean the law of the land.

Various tests have been taken between different time intervals for example wild beast test, insane delusion test etc. right and wrong test is however, the most important.

The house of lord debated McNaughton's hearing and eventual release fifteen judges were appointed to decide for criminal culpability where the accused is incapable in understanding the nature of the act and also respond to the questions raised. Identical answers were given by fourteen judges Tindal CJ gave the view of the majority and answers to these questions were referred as McNaughton's rule

Following principles were ruled down under this case-

1. If the person was aware what he was doing or only had a partial delusion, then he is subject to be punished.
2. Every man is presumed to be sane and to know what he is doing and that he is responsible for the wrongdoings.
3. To establish an insanity defense, it must be it must be proved that the accused was in such a state of mind at the time of the crime that he was unable to know the nature of the act committed by him.
4. A person with a significant medical knowledge or a medical professional who is familiar with the disease of insanity cannot be asked to express an opinion since the questions must be decided by the judge.

### **DIFFERENCE BETWEEN LEGAL INSANITY AND MEDICAL INSANITY**

A legal test of responsibility is conducted for the accused under section 84 of IPC. Unsoundness of mind and insanity are on the same plane as treated by the courts. The term insanity have no exact definition that is capable of defining various degrees of mental illness. Everyone who is mentally ill may not get the immunity for criminal liability. A difference between legal insanity and mental insanity is made. The court does not concerns medical insanity and is only concerned about legal insanity. A person suffering from mental illness is called mental insanity. Moreover a

person who is suffering from mental insanity with a loss of reasoning power can be called as legally insane. Mental state of a person during the time he committed the crime can also be called as legal insanity. This is a legal process which can vary from some psychiatric diagnosis.

That is to say, legal insanity connotes that while the crime was committed the accused should be suffering from mental illness and should face illusion in reasoning things.

This is illustrated in section 84 IPC that the person is lacking the ability of knowing the following:

- a. The nature of the act
- b. That he is doing what is either wrong or contrary to law

*“Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behavior of a psychopath affords no protection under Section 84 IPC”<sup>5</sup>*

In one of the landmark decisions, in the case of *Surendra Mishra v. The State of Jharkhand*<sup>6</sup>, a person seeking immunity of an act under section 84 of IPC will have to prove legal insanity and not medical insanity as mentioned by the Apex court. Furthermore the phrase “unsoundness of mind” is used as an alternative for insanity and no precise definition is given. Every person suffering from mental illness is not given the relief from criminal liability. If the accused is conceited, irascible, odd, and doesn’t have a quite brain or that when the accused suffered from mental illness affected his intelligence or sensation in any way or that he gets mental attacks /fits in intervals this type of abnormal behavior is not enough to give him immunity from criminal liability under section 84 of IPC.

The accused in the apex court landmark judgment went through mental uncertainty even before and after the incident but we cannot predict from this that the probability of the accused did not know nature of his act or that it was either wrong or contrary to law while the crime was committed, hence he was not given the immunity for his act. Similarly in a case, regardless of having a medical history of insanity proved in the court, the accused showed consciousness of guilt the accused secreted the weapon, locked the door in order to hide from the police, hence the insanity defense was rejected.

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<sup>5</sup> Bapu @ Gajraj Singh vs State of Rajasthan. Appeal (crl.) 1313 of 2006

<sup>6</sup> Surendra Mishra v. The State of Jharkhand 2011 11 SCC 495



Outlining everything, a person suffering from medical illness is a fact but to get the insanity defense the accused would have to prove that he was unable to determine the nature of the act or that his wrongdoing were contrary to law.

### **BURDEN OF PROOF**

Chapter IV of the Indian Penal Code, 1860 is to be read together with section 105 and Section 4 of the Indian Evidence Act, 1872. In the court of law, every man is presumed to be sane and that he can get hold of his acts unless the contrary is proved, the accused should know the consequences of the act that he committed and similarly it is presumed that every person should know the law. The prosecution does not have to establish these facts.<sup>7</sup>

The burden of proof for the commission of an offence remains on the prosecution and never shifts. Nevertheless the burden to prove the circumstances of section 84 IPC to get the immunity for his acts lies in the hands of accused (section 105 of Indian Evidence Act, 1872 ) such circumstances are presumed to be absent by the court. The accused will have to prove his insanity by placing material like expert evidence, oral or other documentary evidences or even the prosecution evidence, that persuade the fact that he was incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law. The Supreme Court of India have decided that the time at which unsoundness of mind should be established is the time during which the crime was actually committed and the burden to prove this is on the appellants hands for claiming the benefits of section 84 provision. In *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*<sup>8</sup> the accused was not able to conclude that weather he was insane while he committed the offence, the evidence that was presented in front of the court raised a doubt in the court's mind as it consider one or more ingredients including *mens rea* of the accused in such case the court would sanction the accused to perform on the ground of general burden of proof lies on the prosecution and was not discharged. Even though the burden remains on the accused, he is does not have to prove the same after all reasonable doubt but should satisfy the dominance of probabilities. The burden of proof registered upon him is not higher than that lies upon a party to civil proceedings

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<sup>7</sup> State of MP v. Ahmadull, AIR 1961 SC 998.

<sup>8</sup> Dahyabhai Chhaganbhai Thakker v. State of Gujarat, 1964 SCR (7) 361

## MISUSE OF DEFENCE OF UNSOUNDNESS OF MIND: INDIAN SCENARIO

**Furiosi nulla voluntas Est, i.e.** a person with mental illness has no free will and therefore cannot do anything wrong. This Latin maxim has been ever since used under the defense of unsoundness of mind. However, what needs to be seen is that how this maxim has been subject to misuse. Even when it has been established that the act is committed by the accused, the accused gets acquittal in the defense that he did not understand the nature and consequences of his acts.

It is very difficult for the judiciary to actually understand whether or not the accused suffered from a lunacy at the very time of commission of the offence. The judiciary thus relies upon the evidence of medical conditions and statements of witnesses.

In an adversarial form of litigation followed in India, judges cannot ask for the enquiry of their own. They give their decisions on the merits of the case and evidence put forth them. They are the adjudicators of an offence. Thus it becomes very difficult for the judges to judge the mind of the accused not when he is standing before the court but when he was committed the crime. It is not possible for him to judge the mind of the accused with 100 percent accuracy from some acts done by the accused in the past. Therefore, he relies on the medical reports and other evidence submitted.

On above everything, an adversarial system does not allow for the judge to base the decision upon what he thinks is true, it is based upon what is provided in court and what can be deduced from that as truth.

This gives certain edge to the defense lawyer and puts the prosecution in difficult position to prove the sanity of accused beyond all reasonable doubts. Prosecutions sometime may not be able to prove the sanity of the accused with the help of evidences and this provides defense, an advantage.

It would thus be not wrong to state that our judicial system is based on evidence and not truth. The Judge is to dispense justice based upon what is provided inside court and not based upon his personal volition.

## CONCLUSION AND RECCOMENDATIONS

Wherefore in the light of the above mentioned information gained, the research concludes that there cannot be a straight jacket formula to determine insanity. Psychology is the only science without a definition because every mind is different from the other and the acts of mind cannot be split up into compartments. In order to keep up with the modern day science, the law needs to be molded and evolved according to the needs of the society. Every act of insanity cannot be fitted into the M’Naghten’s Case. There is a great need to modify and rectify the rule. And in accordance with the same, section 84 of the Code also needs rectifications. Following are certain suggestions that the researcher had put forward:

- a. The term unsoundness of mind needs to be defined to avoid the confusions that arise between different words that share a similar meaning. Judiciary has a very important role in this interpreting step.
- b. Another important amendment that the researcher herein suggests is incorporation of the partial defense of diminished responsibility for the insane person committing murder. It is an interesting fact to note that the same has been incorporated under English Law.
- c. Certain mental disorders for example automatism are not recognized under Section 84 as a defense which should also be incorporated. With the ever evolving disorders, the definition of unsoundness of mind needs to be elaborated and expanded further.