

PSYCHOLOGICAL DISORDERS:WHAT DOES THE INDIAN PENAL CODE,1860**LACK?****RHEA ANTHONY****ABSTRACT**

Section 84 IPC, 1860 embodies McNaughton rules wherein an act of a person who was of an unsound mind during the commission of a crime is not considered an offense. As we know, the ultimate aim of criminal law is to determine the liability and responsibility of an accused of his commission of a crime and grant him punishment. The legal investigation determines this liability by deducing evidence of the actual state of mind when the individual committed the criminal act. This paper deals with the drawbacks of the Indian Penal Code on its framing of provisions relating to the criminal liability against insane people and ignorance of the law in considering their psychological makeup during the commission of a crime. The incomplete justice they receive during their trial shows the judiciary's flaw in upholding their fundamental rights. This paper, in particular, talks about the trials and take on law about those people with a psychological disorder such as obsessions mainly to commit a crime, for example, serial killers. Widening the judiciary's scope in framing laws in which such insane people commit such acts for fun not to be held criminally liable is vital. The paper also aims to alter the part of just punishing the guilty, but rather equal psychological care to reinstate humanity.

Keywords: criminal liability, humanity, insanity, justice, obsessions, psychological disorders unsoundness.

INTRODUCTION

One of the most fundamental objectives of a criminal law system is to deter offenders from committing crimes in the future by imposing sanctions and in order to be presumed innocent, it must be beyond a reasonable doubt.¹ The defense of insanity is a legal concept primarily applied in criminal prosecutions as it is based on the assumption that at the time of the crime, the accused was mentally impaired and was hence incapable of understanding the consequence and nature of his/her conduct, creating an absence of guilty mind thereby making them not legally accountable for the crime.²

¹ Goldstein, J. and Katz, J., "Abolish the "Insanity Defense". Why Not?", 5 The Yale Law Journal, 876-853 (1963)

² Math, S.B., Kumar, C.N. and Moirangthem, S., "Insanity defense: Past, present, and future", 4 Indian journal of psychological medicine, 381 (2015).

The basic principle of Criminal law is "actus non facit reum nisi mens sit rea,"³ which means that an act does not make one guilty unless there is a criminal intent associated with it. However, it also means that a person may be legally responsible for his act although suffering under a delusion; there is a distinct difference between responsibility under the criminal law and responsibility as defined by medical terms, which differentiate between Sanity and Insanity.⁴

EVOLUTION OF THE DEFENSE OF INSANITY

The first recorded case of the defense of insanity can be found in an English legal treatise dated in 1581, which laid down that, "If a madman or a natural fool, or a lunatic in the time of his lunacy causes harm or kills an individual, they cannot be held legally accountable for their conduct"⁵ and cases of Hadfield and McNaughton shaped modern insanity laws.

In Daniel McNaughton's case was harboring a delusion that there was a conspiracy against him, his delusions were against the Tories and he decided to kill the Tory Prime Minister, Sir Robert Peel. McNaughton however mistook Edward Drummond for Peel, and he shot him in the back, and Peel died five days later. During the trial, Alexander Cockburn (defense counsel) asked Dr. Monro whether McNaughton's delusions were real or assumed, who confirmed that the delusions were real. All others who gave evidence in the court confirmed that McNaughton was insane. McNaughton was acquitted of murder and, considering insanity, was forcibly institutionalized for the rest of his life. In 1843, Lord Chancellor put five questions to a panel of His Majesty's judges; they were later interpreted as McNaughton's rules.

- Every man is presumed to be sane and possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved.
- An insane person is punishable "if he knows" at the time of the crime.
- To establish a defense on insanity, the accused who by a defect of reason or disease of his mind, is not in a position to know the nature and consequences of the act.

³ Sylvine, "Mens Rea And Actus Reus – Essentials Of A Crime", iPleaders Blog (Jan. 20th, 2021, 8:00 PM), <https://blog.iplayers.in/mens-rea-actus-reus-essentials-crime/>.

⁴ Journal of Criminal Law and Criminology ,Volume 18, Issued on 2 August, 1927: Legal Insanity in Criminal Cases Past, Present and Future by A. Moresby White

⁵ Quen, J.M., "*Insanity Defense How Far Have We Strayed.*", 5 Cornell JL & Pub. Pol'y, 27 (1995).

- The insane person must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real.
- It was the jury's role to decide whether the defendant was insane.⁶

McNaughton's rules emphasized "The perception of right and wrong" and that "intelligence" has a moral or tangible meaning governed by its structure. Lacks of control and unrestricted driving or desires are ignored. It was either a "test of knowledge" or a "test of right and wrong." If McNaughton's laws had been applied to McNaughton during the trial, he would not have been found guilty of insanity.

BACKGROUND

The M'Naughten law aims to limit the insanity defense from intellectual or psychological insanity, a fundamental failure to distinguish right from wrong. Another trial conducted by legislatures and courts since M'Naughten added to M'Naughten's law is another form of insanity called volitional insanity. Volitional insanity is experienced by mentally ill people who, or knowing that what they are doing is wrong, lack the mental balance at the time of the crime not to reconcile their actions with the law.⁷

Obsessions have been only used as a further substantiation of the crime itself rather than the basis of conviction. At best, obsession would amount to a motive.

As concisely reported by the FBI in 2005,⁸ different motives are listed below.

- Anger is a powerful incentive when the perpetrator shows anger or hatred towards a particular group of people, such as the homeless or the community at large.
- Financial gain is an incentive where the offender benefits from non-drug, gang, or organized crime.

⁶ Asokan T V. Daniel McNaughton (1813-1865). Indian J Psychiatry [serial online] 2007 [cited 2021 Mar 11];49:223-4. Available from: <https://www.indianjpsychiatry.org/text.asp?2007/49/3/223/37328>

⁷ Kaplan, John, and Robert Weisberg. 1991. Criminal Law: Cases and Materials. 2d ed. Boston: Little, Brown

⁸ Morton, R.J. 2005. Serial Murder: Multi-Disciplinary Perspectives for Investigators. National Center for the Analysis of Violent Crime. Washington, D.C.: U.S. Department of Justice.

- Ideology is a murderous motive to further the aims and ideals of a particular person or group.
- Power/thrill is the motivation when the perpetrator feels strong and happy when he kills his victims. The act of murder is the end in itself.
- Psychosis is a rare condition in which the perpetrator has a severe mental illness and kills directly due to the disease.
- Sexual harassment is a stimulus-driven by the sexual needs or desires of the offender.⁹

It is important to remember that if or not there was any specific motive or reason an individual has, serial killers and people with obsessions are compelled to commit crimes—that is, they do the crime because they want to and need to and hence lack remorse.

By reviewing insanity acquittal data and analyzing the substantive insanity defense and rules of evidence, one can conclude that insanity defense does not always provide an excellent option for crime prevention when mental health is at stake. There is an "element negation," which allows the defendant to acquire a complete acquittal based on the lack of men's rea for any crime charged. Because element negation is a viable protection against any crime and includes any evidence that will be used to provoke an insanity argument, mental disorder as evidence can be governed by criminal rules and evidence, which can protect against insanity, which may render the affirmative insanity defense a less appealing option.¹⁰

LEGAL INSANITY VS. MEDICAL INSANITY

An accused seeking to be acquitted of an offense under Section 84 of the Indian Penal Code must prove himself to be legally insane and not by medical terms. The difference between medical insanity and legal insanity lies in one's intellectual faculty that affects will or emotions. Only legal insanity comes under the preview of section 84 of the IPC. There are many types of mental illness, but nothing is recognized in law, except that the provisions of section 84 are satisfactory. When a person is not insane however is repulsive or under some obsessions and perhaps is under

⁹ Understanding What Drives Serial Killers, Their individual motives vary greatly. Scott A. Bonn Ph.D. Posted Sep 15, 2019, Understanding What Drives Serial Killers | Psychology Today. <https://www.psychologytoday.com/us/blog/wicked-deeds/201909/understanding-what-drives-serial-killers>

¹⁰ David L. Goldberg, ESQ, Volume: 28 issue: 1, page(s): 49-75, Issue published: March 1, 2000

some false delusion or passion, section 84 cannot be helpful to him. Hon'ble Supreme Court of India held in the case of Jai Lal Vs. Delhi Administration, AIR 1969 SC 15, that in order to determine whether the act committed is not an offense as contemplated in section 84, and to prove the same, the following elements must be present :

- a] the accused was of unsound mind at the time of the commission of the act; and
- b] because of his 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 law¹¹.

An accused is protected under section 84 of IPC when he or she does not know the nature of the act and when he or she does not know whether the act was wrong or illegal. However, he is not protected if he knows that what he/she is doing is wrong, does not know that it is against the law, and if he/she knows that what he/she is doing is wrong even though he did not know it was wrong. However, when investigating a previous history of insanity, a trusted investigator must investigate the accused, subject him to a medical examination and present that evidence in Court. If this is not done, it creates a severe weakness in the prosecution case, and the benefit of the doubt should be given to the accused.¹²

The onus of proof can be discharged by the accused by producing evidence of his conduct before the offense and his conduct at the time of the commission of an offense or immediately after the said commission, along with the evidence of his mental condition, motive, and other relevant factors. Every person is presumed by law to know the natural consequences of his actions

Section 84 of IPC embodies the fundamental maxim of criminal law, i.e., *actus non reum facit nisi mens sit rea* that is an act does not constitute a crime done with a guilty mind and hence in order to constitute an offense, the intent, and guilty act must be proven but in the case of insane persons, no accountability should be put on them as they have no free will.

There are four kinds of persons that are be said to be non-compos mentis(not of sound mind), (1) an idiot; (2) one made non-compos by illness (3) a lunatic (4) a drunkard. An idiot is of defective memory from his birth, by a perpetual infirmity, without lucid intervals. A person made non

¹¹ Distinction between legal insanity and medical insanity from <https://advocatetanjay.com/2018/03/02/distinction-between-legal-insanity-and-medical-insanity/> accessed on 29th January,2021.

¹² Ibid.

compos mentis by illness is of unsound mind at certain intervals, and during such intervals, if they committed a crime, they are excused. An insane person is a person who has a mental disorder only at certain times and in strange situations, with causal gaps. Madness is permanent, while lunacy and insanity are spoken of as acquired insanity and stupidity as natural insanity.¹³

As section 84 of IPC explains, insanity defense as only unsoundness of mind that could impair the mind's intellectual faculties can only form a ground for exemption from criminal liability. However, what about those who have other psychological disorders? What about those who commit crimes out of their mental instability, urge, or even obsessions to commit a crime? The law recognizes nothing but incapacity to realize the nature of the act they committed and hence presumes that where a man's mind or his mental faculties of reasoning are not as developed enough to differentiate or perceive what he is doing is wrong, he must always be presumed to have intended the consequence of the actions he takes. Hence anyone with a mere abnormality of mind, partial delusion, irresistible impulse, mental disorder, psychological disorders, or compulsive behavior of a psychopath affords no protection under Section 84. The law contained in that section is still based on the outdated Naughton rules.¹⁴

A lucid interval of an insane person is not merely a cessation of his disorder's violent symptoms but a restoration of the mind's faculties sufficiently to enable the person to judge the act soundly. However, the expression does not necessarily mean the complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can act with such reason, memory, and judgment to make it a legal act; but merely a cessation of his disorder's violent symptoms is not sufficient.

The standard to be applied is whether, in ordinary instances, that is accepted by rational men, the action was right or wrong. Just the fact that the accused is egotistical, short-tempered, and unpredictable or that the physical and mental illness he is experiencing has weakened his mind and disturbed his feelings and will or that he has done some unusual acts in the past or that he has experienced occasional insanity. However, there was nothing unusual in his conduct or that his character was not good at all, which cannot be sufficient to attract the application of this

¹³ Archbold's Criminal Pleadings, Evidence and Practice, 35th Edition. pp. 31-32; Russell on Crimes and Misdemeanours, 12th Edition. Vol., p. 105; 1 Hale's Pleas of the Crown.

¹⁴ Sherall Walli Mohammed v. State of Maharashtra, (1972 Cr LJ 1523 (SC))

section¹⁵. Guwahati Court upheld the same principle and ruled that every mentally ill person is not ipso facto acquitted of a criminal offense. There is a clear distinction between legal insanity and medical insanity in law, and the burden of proof lies with the accused to prove his insanity. The burden is not as significant as that which throws prosecutors into evidence that the defendant has committed the crime against him. Legally, medical insanity can be proved by producing a prescription, medical/consultation history etc. To prove legal insanity, the defendant must examine witnesses who are aware of the defendant's history, whether in the past; he or she suffered from a mental disorder or insanity.¹⁶

Sanity is presumed by the Court when there is no evidence to the contrary submitted by those defending the accused. The legal presumption of insanity is the assumption that the accused did not have the mental capacity to commit a criminal intent, as well as to act deliberately and to plan a particular act, which may be dangerous, anger, hatred, revenge, or a bad situation, or knowledge of the nature and wrong of the act.¹⁷Needless to say, insanity cannot be inferred intrinsically from the nature of the act itself, but it must be proven extrinsically.¹⁸

The continuance or permanency of insanity in individuals must be determined from the evidence deduced as to the character and type of the insanity. The presumption that there could be a continuance of insanity cannot always be held valid when there is a question of temporary insanity asserted as a defense. These individuals feel no remorse or guilt after committing the crime and under the impression that what they do is right. In comparison, most of the authors say that psychopathy is one of the most dangerous mental diseases. It throws a conceptual and practical challenge to criminal law and the criminal justice system. Because of a lack of awareness and education among people, psychopaths are treated as demons and not humans. The public should understand that these people are not criminals but are victims of their condition as they are often unaware of their disease and its consequences. Hence, we can conclude that there is more of a punishing mentality rather than a reformatory one, who commit crime due to their

¹⁵ *Insanity as a defence in India and around the world*. [online]. Available at: <https://gradesfixer.com/free-essay-examples/insanity-as-a-defence-in-india-and-around-the-world/> [Accessed 29 Jan. 2021].

¹⁶ Kalpana Patgiri v. State of Assam, reported in 2013 (5) GLR 139

¹⁷Understanding the dynamics of rationality in contemporary <https://nickledanddimed.com/2017/04/11/understanding-the-dynamics-of-rationality-in-contemporary-legal-and-economic-scholarship/> [Accessed on 20th January,2021]

¹⁸ Dorling, D. Gordon, D., Hillyard, P., Pantazis, C., Pemberton, S. and Tombs, S. (2008) *Criminal Obsessions: why harm matters more than crime*, London (2nd Edition) London: Centre for Crime and Justice Studies

psychological disorder or makeup and makes one question our laws as to whether it lack of necessary provisions for such people?

STATUS OF INSANITY DEFENSE IN INDIA

There is a need to create awareness, educate the masses about psychological diseases, and make separate punishment or reformative policies for psychopaths and mentally unstable individuals. There is the need to understand that sentencing all types of crimes in the same ways for different criminals will never serve the purpose of society. Crime rates cannot be controlled solely by knowing the cause of the crime and understanding the offender's personality disorder. To convert a guilty person into an innocent one, it is essential to understand the aspect of responsibility and excuses. Psychopaths and individuals with psychological disorders are asked to stand trial in the same way as other offenders. However, psychiatric treatment is only possible if individuals are adequately cared for and well protected during the time of sentencing of the psychopath.

However, it is seen that it must be a person is deprived of his understanding and reason and does not know what he is doing in order for his act to be exempted from being an offense against the state. The wrongful act must be accompanied by the intention to commit the crime, and which should mean that section will not impose any criminal liability upon an insane person as they can possess no rational thinking to differentiate between right or wrong or the necessary will or mens rea. However, neither is the question of mental illness and psychological state of mind irrelevant to the law or the causes of insanity, the latter being irrelevant to the question of responsibility. Law is concerned with the consequences resulting from insanity and not their very state of mind. Hence we see in law, it is presumed that every man is sane and possess a certain level of capability to reason and intellect to differentiate between right and wrong and that to establish a defense for insanity it must be proven that at the time of commission of crime, he/she was laboring under such a defect or disease of mind as not to know the nature of the act he committed and the gravity of the act he was doing.

So the paramount aim of a legal investigation should be to determine the question of liability and responsibility to punishment, especially as it relates to the time a person commits a criminal act. In law, legal insanity is the same as not being legally accountable. We therefore see that there is a distinct boundary between law and medicine.

OBSESSIVE CRIMINAL ACTS

An obsessive criminal act differs entirely from an ordinary criminal act, primarily how the crime was intended. There is no deliberation, no intention, or passion (anger, jealousy, or revenge) acting consciously in genuine obsession. Instead, there is an admission of an impulse that is gruesome, and with this there co-exists an aversion and defiance against giving way to it. It can also be noted that most of the obsessive criminal acts are usually harmless, inconsequential, or even absurd. However, in criminal acts, the motive of an individual is evident, the situation needed is favorable, and the right moment is sought; i. e., the act is well calculated. Genuine obsessive impulses to commit any crime are found in an individual's mental conflict wherein he/she is not aware of the causes to cause such impulse, whereas criminal impulses are usually purposefully well-motivated and designed.¹⁹

An actual obsessional person rebels against adhering with his/her servile instincts, which are quite unlike the normal criminal, who acts for selfish reasons and not influenced by any ethical reasons. Hence we can deduce that the act in a true obsessive person is subjective, i. e., due to a state of mind within the individual, which is his psychological makeup, while the act of a criminal person act is objective, i.e., it is done as the result of things outside the mental state individual that he/she is motivated to commit.

Clearly, the law cannot administer justice on the consideration that an individual was of the unconscious mental life, since one can notice that the unconscious of all people-sane and insane-are similar and it is their behavior and their conscious mental lives that they show the differences.

So, it is evident as to why genuine obsessions cannot be taken as an excuse for a commission of a criminal act. In genuine obsessions, we can also notice that compulsion plays an essential factor. It may take the form of ceremonials, scruples, fears, obsessional doubts, or compulsive acts.²⁰ Hence we can derive an interdisciplinary aspect on both psychology and law. A person's psychological characteristics often go unnoticed; that is, a medically insane person is not necessary given the legal insanity defense. He/she is treated like any other criminal person who

¹⁹ Albert J. Reiss, Jr , Why are Communities Important in Understanding Crimes, 1986 by University Of Chicago

²⁰ John F. W. Meagher , Journal of Criminal Law and Criminology, Crime and Insanity the Legal as Opposed to the Medical View and the Most Commonly Asserted Pleas Volume 14 | Issue 1 Article 6, 1923.

has remorse, though what they require is treatment and care or return into society with the same mental state with no signs of reformation. Hence, there must be a way into bringing in a provision in IPC for such people, instead of just the mental state, which is hard to prove and act of the person. Aggravating and mitigating factors must be given due consideration before granting punishment and deterrent measures.

STAND OF LEGAL SYSTEM

Law is concerned to know whether the accused's mental state negates the existence of necessary mens rea. The legal test is directed to the condition of the intellectual or cognitive faculties of an individual. The law presently is that a person of unsound mind may be criminally liable²¹ if he/she intends to do a criminal act and can know what the act is and that the act is unlawful, but commit it anyway, he will be liable.

As of now, in India, there is no separate law to treat or psychologically disordered people who are victims of their mind since, as per law, medical insanity could be proved by adducing evidence and producing the medical prescription, certificate etc., but the law is not concerned with such proof inasmuch the law is concerned with legal insanity only. To prove the legal insanity, the prosecution has to adduce evidence of witnesses who know about the history of the accused that he was subjected to mental disorder or insanity in the past. In India, there are only a few provisions that are specified in various laws for a individuals experiencing mental illness, e.g., in IPC; sec. 84 of IPC deals with the law of insanity made from using the Mc. Naughten guidelines of England which use a more comprehensible term, 'unsoundness of mind' rather than insanity. It has been scrutinized as obsolete since it does not protect the human behavior arising out of abnormality of mind or partial delusion, obsession, irresistible impulse or the impulsive behavior of the psychopath.

Hence, we see that the current provisions of law have no objective for reformations rather a more deterrent or retributive form of punishment. One can see that the reformatory approach to curb crimes could reform the convicts to protect the fundamental rights they a human are entitled to. Psychologists, sociologists, and physiologists developed this theory, as we know, in order to

²¹ Characteristics Of Murder In Mental Disorder, by L. P. Varma and B. K. Jha, Published Online on 1 Apr 2006

create a system wherein the convicts could be reformed and released back into society as reformed citizens.

Also by rehabilitating such individuals, it would bring about fundamental changes in such offenders and their behavior since in such centers through education and psychological treatment to offenders help them reduce the likelihood of future criminality.

Hence, the law must be shaped in such a way to accommodate such individuals, too, so that they get an opportunity to reform as well as receive enough treatment for their disorders and this should be done so that they feel guilty for their actions and would further be guided by a moral compass the next time there is the likelihood to commit a crime.

CONCLUSION

As we know, our country's criminal justice system is based on the simple principle of "abhor the crime, not the criminal." There are huge debates on how a deterrent or retributive punishment system must be followed; however, looking further into the issue, we see how different individuals have contrasting intellectual makeup and commit crimes due to their inability to differentiate right and wrong. These individuals are deprived of free will and reasoning and have been forgotten to be included or considered persons of unsound minds. In turn, they are denied the vital help required for them to recover from their state of illness. As we know, the defense of insanity has undergone significant changes, and to this day, it continues its importance. However, to maintain its consistency, zeal, and importance in the modern Indian context, it needs to be further amended to include its practices of helping people who do not have free will because there is a 'diseased state of mind. In order to uphold these laws as well as to prevent its misuse, the courts must provide a comprehensive interpretation and appropriate explanation of legal insanity and its elements, since many times we see cases wherein it is found difficult to prove 'legal insanity' during the commission of a crime. Such interpretation will make it easier for both the accused to plead with his case and the judge to decide the case. Finally, the size of S. 84 should be expanded to include protection against automatism, obsessive impulses, etc., as the English criminal justice system recognizes. Apart from various concerns about the protection of people with psychological illness amending the provisions would also serve as 'life-giving'

protection in bonafide cases which as a result, it is crucial in maintaining the moral and ethical integrity of the criminal law system.



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