

# LEGALFOXES LAW TIMES

## INSANITY AS DEFENCE- Medico-Legal Analysis

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### ABSTRACT

Insanity as a defence derives from the concept that certain mental illness or derangement that may result in interference with an individual's ability to form *mens rea*. This defence is extremely important for people with absolutely no or little control over their actions, people with mental illness resulting in failure in distinguishing right from wrong. It is often argued that this defence should be abolished due to its excessive misuse by people with zero insanity. This research article, on the other hand, argues its relevance and importance to people with certain mental conditions and to safeguard people from their own mind. Our law argues that not a single innocent person should be punished, and that insanity as a defence is vital to this vision of Indian Legal Jurisprudence. This research was done by following an analytical approach and studying insanity as defence in law for various countries like United States, Australia and Switzerland besides tracing its origin and history.

The study supports insanity as a defence under Section 84 of the Indian Penal Code that states a person cannot be held liable if at the time of committing the crime the person was not of sound mind or could not control his or her actions or could not distinguish right from wrong. This defence is used by criminals to avoid harsh punishments. However, we cannot let its misuse alone to deprive those accused that need its safeguard. Proper medical involvement and accurate testing will result in a fair trial and a better judgement and make this defence a better defence.

### CHAPTER I: INTRODUCTON

Insanity has been used as a defence since the time of the Ancient Greeks and Romans. Its existence is from centuries and one of the most famous was the McNaughton case, which lead to

the origin of the M'Naughton Rule test. This law, made in English Courts, is now followed as a precedent all over the world. The 'Insanity defence' originated from the Latin maxims '*actus reus non facit reum nisi mens sit rea*'<sup>1</sup> and '*furiosus nullam voluntatem*'<sup>2</sup>.

According to Section 84 of the Indian Penal Code, 1860, when a person isn't in the right mind or is suffering from a mental disease or defect and has no capacity to understand the gravity of the crime or doesn't know right from wrong, then in such cases, he cannot be held liable for the crime. An accused may use this defence to save himself from punishment where there is no *mens rea*.

There are various tests like the M'Naughton Rules, the Durham rule of Insanity, the Irresistible Impulse test and the Model Penal Code test which helps the legal system to evaluate the accused's sanity. Psychiatrists play a vital role in determining these tests, but medical insanity is different from legal insanity. There are many countries which have insanity as a defence like India, the United States of America, Australia, Switzerland etc.

There are some negative and some positive effects of the 'insanity defence' which raises the questions of whether or not insanity defence should be abolished? And if not, what can be done so the misuse of this act can be minimised? The 'Insanity defence' is important for two reasons. First, for people who suffer because of their own mental health and second, for people misuse this defence to avoid punishment.

The burden of proof is extremely severe as it lies entirely upon the accused. It renders this defence one of the most complicated defences in criminal jurisprudence. Practically, it is very difficult to establish whether the accused at the time of committing the crime was of unsound mind or not.

## **CHAPTER II: CONCEPT OF THE INSANITY DEFENCE IN INDIA**

Insanity means when a person is not in the situation to understand what is wrong and what is not or suffering from mental illness which leads to abnormal behaviour. When the person doesn't know the severity of the act he or she is doing, then it is called insanity. Insanity in legal

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<sup>1</sup>An act doesn't constitute guilt unless done with a guilty intention.

<sup>2</sup>A person with mental illness has no free will.

terms is different from medical science. “Insanity in law means a disorder of the mind which impairs cognitive faculty, i.e., the reasoning capacity of a person, to such an extent as to render him/her incapable of understanding the nature and consequences of their action”.<sup>3</sup> People suffer from various mental disorders which lead them to do a certain activity which harms others and have no knowledge about his or her act or situation.

According to Section 84 of the Indian Penal Code, 1860, if a person cannot know the nature of the crime or act that he or she is doing, then that person cannot be liable for the crime committed. Every crime must consist of both ‘*Actus Reus*’<sup>4</sup> and ‘*mens rea*’<sup>5</sup> and when a person doesn’t have any intention to commit an offence then that means the crime isn’t enough to punish a person. When compared to any act of a child, a child still has some sense of right and wrong but a person who is of unsound mind may have no idea about right and wrong. So, to protect such people from punishment the ‘insanity defence’ was made and an accused can use this defence as an excuse for his or her guilty act.

There are some essential ingredients upon which we analyse and judge the insanity of a person. These are:

- When a person's act, who is insane, results in harm.
- The person doing that act at the time must be suffering from insanity or mental abnormality or unsoundness of mind
- The accused person should not have the capacity of knowing the nature of the act committed by him because of insanity
- The accused doesn’t possess the ability to understand that the act committed is wrong and what is right or is illegal in nature because of insanity.

According to this defence, the insane person either cannot be held liable for a crime or can be held liable partially for the act which leads to lesser punishment. The law provides safety of the insane person from their own mind and “in fact, a mad man is punished by his own madness”,

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<sup>3</sup> K D Gaur, *Textbook on Indian Penal Code, sixth edition 207* (Universal Law Publishing Lexis Nexis, 14<sup>th</sup> floor, building no. 10, Tower B, DLF Cyber City, Phase-II, Gurugram, Haryana, India, 2016).

<sup>4</sup>action or conduct which is a constituent element of a crime, as opposed to the mental state of the accused

<sup>5</sup>the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action, or conduct of the accused.

which is the literal meaning of the Latin maxim “*Furiosus furore sui punier.*”<sup>6</sup> On the other hand, other people need to be protected from such insane people. So, a provision has been made under **Section 330 of the Criminal Procedure Code, 1973** for the detention of such persons in “lunatic asylums”.<sup>7</sup> Insanity is of multiple types which results in derangement of the mind. For example, if a person is suffering from Schizophrenia then he/she might be hallucinating which may lead him or her to act in a wrong way without knowing about it.

In *Ashiruddin v. The King*,<sup>8</sup> the accused killed his five-year-old son with a knife because of an illusion that he was sacrificing his son because he thought that he was commanded by someone from paradise to sacrifice his child. So, he took his son to the mosque and cut his neck with the knife while believing it to be a dream. The Calcutta High Court allowed the defence of **Insanity** under **Section 84 of Indian Penal Code, 1860** because of the essential ingredient of the act that “the act that he committed was not known by him whether it is right or wrong”<sup>9</sup>, was fulfilled.

Such illusions, disorders, etc lead to the commission of crimes that have no *mens rea*. Thus this law may be said to be made to protect a person from himself. This section has been introduction for the protection of a person from their own insane mind because it’s not the fault of the person suffering from illness.

### **CHAPTER III: TESTS OF INSANITY**

The most significant inquiry that emerges then, is how it’s to be detected and what ought to be the differentiating line among 'sanity' and 'insanity' to expand a man the indictment of law from criminal prosecution?<sup>10</sup>

There are many types of tests that can determine if a person who is committing a crime is of unsound mind at the time of the act.

#### **1. McNaughton Rule Test:**

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<sup>6</sup> K D Gaur, *Textbook on Indian Penal Code, sixth edition* 206 (Universal Law Publishing Lexis Nexis, 14<sup>th</sup> floor, building no. 10, Tower B, DLF Cyber City, Phase-II, Gurugram, Haryana, India, 2016).

<sup>7</sup>*Ibid* 207

<sup>8</sup>AIR 1949 Cal. 182

<sup>9</sup> K D Gaur, *Textbook on Indian Penal Code, sixth edition* 210 (Universal Law Publishing Lexis Nexis, 14<sup>th</sup> floor, building no. 10, Tower B, DLF Cyber City, Phase-II, Gurugram, Haryana, India, 2016).

<sup>10</sup>*Ibid* 207.

This is the most famous and the first case which was introduced, *R v. McNaughton* (1843).<sup>11</sup> In this case, the accused was in the delusion that the then Prime Minister of England Sir Robert Peel hurt him or injured him. So, he wanted to kill him to save himself. Instead, Prime Minister's secretary Edward Drummond was shot dead by the accused on January 20, 1843, as he thought that Edward was Sir Robert Peel. The Court allowed the defence of insanity through five questionnaires which were asked by 15 Judges of The House of Lords for clearing the view on the subject. The House of Lords then gave the following dicta:

*"Every man is to be presumed to be sane, and ... that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from the disease of the mind, and not to basically nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong."*<sup>12</sup>

So, in order to declare a person insane legally, he should meet the criteria that he does not know what he is doing and what the act means and cannot differentiate between right or wrong.

## **2. The "Irresistible Impulse" Test:**

It tests whether the accused is capable of resisting the impulse to commit the act or not i.e. whether a person has no control over his actions, even while knowing the act is wrongful in nature, and is compelled to do an offence which is contrary to law. This test can be best used in testing manias and paraphilias.<sup>13</sup> So, the accused pleads not-guilty by giving the reason that he has no control over himself. Giving punishment to such a person who has committed the offence without any intentions is odd. We can say that many people in asylums are in a condition where they know about right and wrong but cannot control themselves.

## **3. The Durham Rule (The "Product" Test):**

We can say that this rule developed the way of researching insanity as a test and gave a better understanding and better results. Unlike the McNaughton rule, it is more specific in nature as it approaches the determination of insanity in a more scientific and psychological method. The

<sup>11</sup>8 ER 718, Volume 8

<sup>12</sup>Available at: <https://criminal.findlaw.com/criminal-procedure/the-m-naghten-rule.html> (last visited on May 8, 2020; 15:24)

<sup>13</sup>Available at: [https://www.law.cornell.edu/wex/insanity\\_defense](https://www.law.cornell.edu/wex/insanity_defense) (last visited on May 8, 2020; 18:49)

name of the test is derived from the name of a man named Monte Durham. He was a 23-year-old who used to come in and out from prison and medical institutions. The researchers said, “He was accused of breaking in and some other criminal act. It was difficult to identify his illness by old methods of analysis”.

This rule was introduced for developing future insanity tests that would help in determining cases of insanity.

#### **4. Model Penal Code Test:**

This test was published in America which is the mixture of McNaughton rule and Durham’s rule. This test helps in knowing the cognitive functioning of the brain and helps where the accused was legally insane at the time of the crime or not.

So, these are the different tests which with the help of psychologist and psychiatrist are used in insanity analysis.

### **CHAPTER IV: HOW IS LEGAL INSANITY DIFFERENT FROM MEDICAL INSANITY**

As mentioned above, medical insanity is different from legal insanity. “By medical insanity, it means the capacity which a person’s consciousness can take the burden of the act he has done, and others affected by him while legal insanity means what is the relation of the person's mind or consciousness to himself.”<sup>14</sup>

In medical terms, insanity affects the person in many ways like their cognitive functioning, intellectual faculties, and overall personality. In legal terms, the main objective of the law is to see the consequences of the act done by the insane person. If a person is suffering from any mental illness that doesn’t mean he cannot be held liable for a crime. In law, insanity can be used as a defence only when the person is in that state of mind *during the commission of the act* such that there can be no question of the existence of *mens rea*.

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<sup>14</sup>The British Royal Commission Report, 1953 para.229

“In wider connotation, it constitutes retardation, madness, lunacy, mental derangement, disturbance, and each different types of abnormality best known to medical science”<sup>15</sup> and “all kinds of insanity are not recognized by law.”<sup>16</sup> An insane person may know the nature of the act he is doing but is unable to control himself from it. Sometimes, an insane person doesn’t even know what he is doing because of mental disorders. Psychologists, Neurologists and Psychiatrists play a vital role in understanding this. We can know the mental state of a person with their help through various tests. A Psychiatrist’s main aim is to see that the patient is getting proper treatment but on the other hand, the court’s motive is to save society from future crimes.

Knowing the past mental health of the person is important for the overall judgement of his mental state. In the testing of insanity to use it as a defence, it is necessary to assess the mental state usually for weeks or months for a proper result. The court has shown interest to use neurology for tests. It is most crucial to know for certain that when the crime was committed, whether or not the person was of unsound mind as justice depends on it.

The courts look for the existence of legal insanity and not medical insanity like in the case *Surendra Mishra v. State of Jharkhand*,<sup>17</sup> the Supreme Court held that the court wants legal insanity as proof and not medical insanity which is under Section 84 of Indian Penal Code. The accused pleaded not-guilty for the murder of the victim. The court says that the accused is merely conceited, odd and if his brain is not in the right state or if the mental or physical ailments from which he suffered have rendered his intellectual abilities and attacked his emotions or if he indulges in certain unusual acts, or has fits of insanity or short intervals or if he was suffering from epileptic fits and there was abnormal behaviour at times, all these instances are not enough to consider the accused’s appeal.

So, the above case states that only medical insanity isn’t sufficient as a plea for an insanity defence.

## **CHAPTER V: THE DEFENCE OF LEGAL INSANITY IN MAJOR COUNTRIES**

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<sup>15</sup> Eshita, “Insanity Defence: Medical and Legal Grapple, Vol:2, Page: 6; Available at: <http://www.droitpenaleiljcc.in/PDF/V2I2/4.pdf> (last visited at 12 May 2020; 15:20)

<sup>16</sup> *Bharat Kumar v. State of Kerela*, (2010) 10 SCC 582.

<sup>17</sup> AIR 2011 11 SCC 495

**United States of America:**

According to the *Durham Rule*, an individual who is affected by mental illness or defect cannot be held liable for a crime which is against the law. American law suggests that “When a person does not have the potential to understand the gravity of his own actions and to know or understand the crime he has done, he may use the plea of insanity.” Here, the term ‘mental disease/illness or defect’ does not include an abnormality manifested solely by recurrent criminal or other anti-social behaviour or act. “As a result of his actions or to adapt his conduct to the necessity of law then, the person can’t be held liable”.<sup>18</sup>

**Australia:**

In Australia, the courts allow for a plea of ‘irresistible impulse’ according to The Tasmanian Criminal Code under Section 16 in some provinces like Queensland, West Australia, etc, which states that if a person isn’t mentally stable or suffering from a mental disease and does something wrong, where he knows the nature but cannot control it due to mental disease and lacks the power to resist or control his impulse or when a person doesn’t even know the nature and consequences of the act or cannot differentiate between right and wrong due to mental disease, then he can't be held liable for that crime.

It also raises the question of what kind of disease he was suffering from which rendered him to do such an act where he cannot control himself. Such diseases like Schizophrenia or Necrophilia etc, brings the urge to commit a certain act which becomes difficult to control even after understanding the nature of the act.

**Switzerland:**

As per Article 10 of the Swiss Penal Code, if a person is suffering from a mental disease, or is mentally deranged and incapable of distinguishing right from wrong at the time of committing the act, then he cannot be liable for the crime or act he has done. When a person doesn’t know the nature of the act he is doing, then also he cannot be punished. In Switzerland, it is not enough to know if the person knew whether the nature of the act was right or wrong:

<sup>18</sup>Eshita, “Insanity Defence: Medical and Legal Grapple, Vol:2, Page: 6; Available at:<http://www.droitpenaleiljcc.in/PDF/V2I2/4.pdf> (last visited at 12 May 2020; 15:05)

*“The acknowledged standard nowadays, with the incredible headway in medical science as an edifying effect regarding this matter, is that the accused must be skilled, of recognizing right and wrong as well as that he was not compelled to conduct the act by an irresistible impulse, which implies before it will legitimize a decision of vindication that his thinking powers were so far deposed by his disease or defect state of mind as to deny him of the self-discipline to oppose the insane impulse to execute the deed, however realizing that it generally will not be right”<sup>19</sup>*

So, the existence of both factors must be proved, i.e., not knowing right from wrong coupled with an irresistible impulse.

## **CHAPTER VI: SHOULD INSANITY BE ABOLISHED?**

There are two types of insanity, the first is permanent and second is temporary. In **permanent insanity**, a person is always insane or suffers from a mental disease or mental defect permanently and continuously. In **Temporary insanity**, on other hand, a person can have moments of lucidity interspersed with mental episodes where he or she doesn't know what he is doing. Hence, in case of temporary insanity, it gets difficult to identify whether at the time of commission the person was of unsound mind or not.

### **There are some positive aspects of insanity as a defence:**

- If a person has not committed the crime with intention and had no control over his mind, then this act comes as an aid for the accused.
- This act provides safety from capital punishment to the person who doesn't know the gravity of the crime he or she has committed.
- This act gives a chance to the accused so that he can get better from his illness rather than making his mind worse by giving punishment where there is no *mens rea* and has no idea about the gravity of act he has committed.

### **There are also some negative aspects of the defence of insanity:**

- It is difficult and challenging to prove the mental state of the person during the commission of the crime and especially fulfilling the ingredients of Section 84 of IPC.

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<sup>19</sup>*Smith v. United States* 36 F2d 548, (1929)70 ALR 654

- Nowadays, the misuse of this defence has an increasing rate. Accused are often using this defence as a loophole or excuse for avoiding punishment.

So, because of the people who are out there and misusing this defence for their own beneficial reasons, doesn't mean that the person who is a victim should not get the benefit of this defence.

Mental disease is very complex in nature, so a person who is suffering from such disease should get a chance to improve themselves. So, this section should not be abolished.

## **CHAPTER VII: BURDEN OF PROOF**

A person is always presumed to be 'sane' under the law until it's proven that a person has done something which is contrary to law. It is upon the judge to decide whether a person is responsible for his or act acts unless the contrary is proved.<sup>20</sup> We can say that this defence is more complex than any of the other available defences. It is extremely difficult to prove legal insanity. The burden of proof is always on the hands of the accused. When the situation occurs that the accused must prove his legal insanity, then that means the accused has done the crime and he has accepted it.

In *Anandrao Bhosle v. the State of Maharashtra*,<sup>21</sup> the husband killed his wife and had a family history of psychiatric illness and was suffering from Schizophrenia and the court held that the burden of proof lies on the accused party who wants the advantage of Section 84 of Indian Penal Code, 1860 and the person should be of unsound mind while committing the crime.

So, it depends on the defendant how to prove the legal insanity by hiring a psychologist and justifying about the series of events which shows that the person was of unsound mind. The court also hires a psychologist or psychiatrist to verify the insanity of the person. Secondly, it depends on the judge to decide whether the person is legally insane or not.

## **CHAPTER VIII: CONCLUSION**

Insanity as a defence is provided for in Indian law under Section 84 of Indian Penal Code, 1860, which states that a person who is legally insane cannot be held liable for the crime

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<sup>20</sup> Insanity defence: A loophole for criminals; Available at: <http://lawtimesjournal.in/insanity-defence-a-loophole-for-criminals/> (last modified at 12 March 2020).

<sup>21</sup> AIR 2002 SCC 219.

he has conducted. We understood that if a person doesn't have the power of resistance or the knowledge of the act he or she has carried out then the insane person needs a chance to get treated or improve his or her mental condition.

There are 4 tests mentioned for proving that the person is legally insane which are the M'Naughton Rule, the Durham Rule, the Irresistible Impulse Test and the Model Penal Code test which help the Court in determining the accused's insanity at the time of committing the crime and according to the provision of the Indian Penal Code. Psychologists, psychiatrists and neurologists play an important role in concluding legal insanity. Medical insanity and legal insanity are different. Medical insanity focuses on the welfare of the patient whereas legal insanity focuses on the welfare of the society against the commission of future crimes.

Many other countries in the world have this law like the United States of America, Australia etc and its applicability of this defence seems fine. According to me, this defence is appropriate and should not get abolished because some criminals misuse this defence as a loophole to avoid capital punishment. People should not suffer because some people take advantage of the law. This is in line with Sir Blackstone's ratio that "*better that ten guilty persons escape than that one innocent suffers.*"<sup>22</sup>

There is no fault in Indian law, but courts should consider establishing a more accurate testing procedure so that it would not be difficult to decide whether a person is misusing the law or not. This defence is becoming a tool for criminals to avoid punishment and needs to be stopped to ensure justice prevails, and this can be achieved with proper medical involvement.

The burden of proof lies on the accused party and it is extremely difficult to determine conclusively whether at the time of committing a crime, the person was of unsound mind or not. This makes this defence very complicated in nature as compared to other defences. Therefore, greater medical approach and involvement can make this defence more justice oriented.

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