



INSANITY AS A DEFENSE TO CRIMINAL CHARGE – AN ANALYSIS

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Abstract

Persons suffering from unsoundness of mind are incapable of committing a crime as they lack the mental capacity to develop the required mental element, which is an essential ingredient to constitute any crime. Law exempts such persons from criminal liability provided they are incapable of understanding the nature, wrongfulness or illegality of such act. This article seeks to analyse the various tests applied by courts in determining liability of such persons and the procedure for their trial, detention and discharge.

I. INTRODUCTION

Unsoundness of mind is an absolute defence to any criminal charge as persons suffering from unsoundness of mind are deemed incapable of possessing the necessary *mens rea* to commit a crime. Section 84¹ of the Indian Penal Code, 1860 exonerates from criminal liability, a person of mental incapacity who does a criminal act. The settled position of law is that every man is presumed to be sane and to possess sufficient degree of reason to be responsible for his act unless the contrary is proved. The burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by section 84, lies on the accused who claims the benefit of this exemption *vide* section 105 of the Indian Evidence Act, 1872. The defence has to prove that unsoundness of mind was present to such an extent at the time of commission of the offence that the doer of the act could not know the nature of the act he was committing. The accused has to merely probabilise his defense by preponderance of probabilities.

II. RATIONALE BEHIND EXEMPTION

A person suffering from unsoundness of mind cannot control his will or regulate his conduct. Such persons are mentally incompetent to understand their actions or judge properly the repercussions of their acts therefore they cannot be held legally responsible for their actions. Punishment serves no purpose in case of such persons as they are incapable of understanding why they are being punished or that they are being punished at all.

The defence under section 84 of the Code is based on the principle that in order to constitute crime, the act should have been committed with 'guilty' intention, and if the doer of the act not knowing the nature of the act; the wrongfulness of the act; or the illegality of the act committed the same, he cannot be held responsible for it.

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¹ Indian Penal Code, s. 84. Act of a person of unsound mind- "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".

III. PRE REQUISITES FOR CLAIMING BENEFIT OF EXEMPTION UNDER SECTION 84 IPC

Unsoundness of mind

A person suffering from unsoundness of mind is *Non compos mentis* i.e. ‘not of sound mind’. *Compos mentis* means a composed mind. *Non compos mentis* means not having control or composure over one’s mind. Unsoundness of mind may be temporary such as in case of lunatics, permanent (idiocy), natural or supervening, by birth or by illness, e.g., Schizophrenics, and sometimes also by extreme consumption of, or addiction to alcohol or drugs.

Unsoundness to exist at the time of the commission of the offence

Whenever a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence, the accused was suffering from unsoundness of mind or not. The crucial point of time for ascertaining the state of mind of the accused is the material time when the offence takes place. In the case of *Amrit Bhushan Gupta v. Union of India*,² it was held that “unless the Court comes to the conclusion that the accused was insane at the point of time he committed the offence he cannot be absolved of the responsibility of the offence even if it is found by the Court that he was insane either earlier or in the later point of time of the commission of offence”. If the accused is at that crucial moment found to be laboring under such a defect of reason as not to know the nature of the act he was doing, or that even if he knew it, he did not know it was either wrong or contrary to law then section 84 applies. The state of mind which entitles the accused to avail the benefit of Section 84 of the Indian Penal Code is to be established from the circumstances which preceded, attended and followed the crime. There is a duty on the defence to prove the unsound state of mind of the accused at the time of commission of the offence. One who is subject to recurring fits of insanity will be entitled to exemption from criminal liability only if he was subjected to such a fit at the time of the commission of the crime. If he was capable of understanding the nature and consequences of his actions at the time when he committed the offence, he would not be entitled to the protection of Section 84 and would be liable to punishment.

Incapacity in the accused person to know

The words ‘incapable of knowing’ clarifies that an accused has to prove that he was rendered incapable of understanding his actions owing to unsoundness of mind. The capacity to know a thing a quite different from what a person knows. Whether he knew the nature his actions or not is immaterial because what is protected under Section 84 is an inherent or organic incapacity and not a wrong or erroneous belief which might be the result of perverted potentiality.

² AIR 1977 SC 608.

This incapability may be due to arrested development of the mind, sudden fit of insanity or delusion or some other medically accepted ground.

In the case of *Lakshmi v. State*,³ the Court observed, “A person might believe so many things. His beliefs can never protect him once it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him to a wrong conclusion, he takes the risk and law will hold him responsible for the deed which emanated from him. What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is completely extinguished. Where such light is found to be still flickering, a man cannot be heard to plead that he should be protected because he was misled by his own misguided intuition or by any fancied delusion which had been haunting him and which he mistook to be a reality. Our beliefs are primarily the off springs of the faculty of intuition. On the other hand the content of our knowledge and our realization of its nature is born out of the faculties of cognition and reason. If cognition and reason are found to be still alive and gleaming, it will not avail a man to say that at the crucial moment he had been befogged by an overhanging cloud of intuition which had been casting its deep and dark shadows over them.”

Knowledge of nature of the act

Nature of the act refers to the physical nature and quality of the act, rather than the moral quality. It covers those situations wherein the doer does not know what he is physically doing. For example, a person who cuts another's finger under the delusion that he is chopping a vegetable; or a person who strikes another, and in consequence of an insane delusion thinks he is breaking a jar. In both these examples the accused is not aware of the nature of his act.

In the case of *Chirangi v. State*,⁴ the accused, Chirangi, Lohar, a 45 year old widower who was very much devoted to his 12 year old son, was tried for killing his son with an axe while they had gone to Budra Meta atop a hillock. In defence he pleaded that he killed his son under a delusion believing him to be a tiger who was about to attack. Medical testimony showed that it was possible for Chirangi, who was suffering from bilateral cataract prior to the relevant date, to have because of this disability mistaken 'bona fide' his son for a tiger. There was an abscess in his leg could have produced a temperature which might well have been responsible after the fall for a temporary delirium which might have created a secondary delusion to magnify the image created by the defect in vision. Chirangi suffered from cardio-vascular disease which would have resulted in temporary confusion, and the injury to his eyebrow could have caused a state of concussion during which he might have inflicted the injuries on his son without being conscious of his actions. All this showed clearly enough that Chirangi's fall combined with his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and was not his son. The appellant's conduct after the occurrence

³ AIR 1959 All 534.

⁴ 1952 CriLJ 1212.

was in consonance with that estimate, and it was manifest that he had had no intention of doing wrong or of committing any offence. Thus he was acquitted.

Knowledge of wrongfulness of act or the act being contrary to law

Knowledge of wrongfulness of act implies the lack of substantial capacity in the accused person to know or appreciate that his conduct is wrong. Section 84 applies where a person, as a result of mental disease or defect, lacks substantial capacity to know or appreciate either that the conduct was against the law or that it was against commonly accepted moral principles, or both. For example:

- (i) A person may kill a child under an insane delusion that he is saving him from sin and sending him to heaven. Here he is incapable of knowing by reason of insanity that he is doing what is morally wrong; or
- (ii) A person may under insane delusion believe an innocent man whom he kills to be a man that was going to take his life in which case, by reason of his insane delusion, he is incapable of knowing that he is doing what is contrary to the law of the land.⁵

In the case of *Ashiruddin Ahmed v. The King*,⁶ the accused had a dream in which he was commanded by someone in paradise to sacrifice his own son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle, but, finding a *chaukidar* nearby took his uncle to a tank at some distance and slowly told him the story. On these facts it was held by a Bench of the Calcutta High Court that the accused did not know that his act of killing his son was wrong as he was labouring under a belief that his dream was a reality. Acting under delusion of his dream, he made this sacrifice believing it to be right. Thus he was granted the defence of insanity under Section 84.

However, the above judgment has been criticized in later judgments. In *Lakshmi v. State*,⁷ the court observed, “We find ourselves unable to endorse this view of section 84, I.P.C., and must therefore, express our respectful disagreement with it. We are further of opinion that once this view is accepted to be correct, it will lead to serious consequences as it will be open to an accused in every case to plead that he had dreamt a dream enjoining him to do a criminal act, and believing that his dream was a command by a higher authority, he was impelled to do the criminal act, and he was therefore, protected by section 84. We are of opinion that such a plea would be untenable, and would not fall within the four corners of section 84.”

⁵ *Queen Empress v. Kader Nasyer Shah* (1896) ILR 23 Cal. 60.

⁶ AIR 1919 Cal 182.

⁷ AIR 1959 All 534.

IV. BURDEN TO PROVE INSANITY LIES ON THE ACCUSED

The doctrine of burden of proof in the context of the plea of insanity was stated by the Supreme Court in the case of *T.N. Lakshmaiah v. State of Karnataka*,⁸ in the following propositions:

- i. 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.
- ii. 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 Indian Penal Code. 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 party to civil proceedings i.e. on a preponderance of probabilities.
- iii. Even if the accused was not able to establish conclusively 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, 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.

In the case of *Butu @ Madhu Oram v. State*,⁹ the Court explained that accused is not to be called upon to prove the ingredients of section 84, IPC beyond reasonable doubt in order to get an acquittal. Though the burden lies on the accused to prove his insanity at the time of occurrence it will be sufficient if the materials on record lead to an inference that the requirements of section 84, IPC may be reasonably probable. Such an inference can be drawn from materials on record, past history of the accused, conduct of the accused during the occurrence and thereafter. Absence of motive though not a *sine qua non*, is a relevant factor for consideration.

V. 'MCNAUGHTEN RULES', THE 'IRRESISTIBLE IMPULSE TEST' AND THE 'DURHAM RULE'

McNaughten rules¹⁰ are principles expounded in 1843 by a panel of fifteen judges in the House of Lords in response to five hypothetical questions asked by the Lord Chancellor to understand the application of law to determine the liability for crimes committed by mentally challenged people. These principles lay down a standard to test the criminal liability of persons of unsound mind. The McNaughten rules also known as the "right-wrong" test, required the acquittal of defendants who could not distinguish right from wrong.

In 1929, the District Court of Columbia developed the "irresistible impulse" test which allowed a jury to inquire as to whether the accused suffered from a "diseased mental condition"

⁸ AIR 2001 SC 3828.

⁹ 1985 (II) OLR 398.

¹⁰ (1843) 8 E.R. 718.

that did not allow him or her to resist an insane impulse. It required a jury's determination that the accused was suffering from a mental disease and that there was a causal relationship between the disease and the act.

In the year 1954, the Durham rule was adopted by an American Court in the case of *Durham v. U.S.*,¹¹. Popularly known as the 'product test' the rule lays down that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect". This rule perpetuated the dominant role of expert testimony in determining criminal responsibility instead of a jury. However, in subsequent cases the courts overturned this rule and it was rejected by the federal courts, because of its broad spectrum and range which helped people such as alcoholics and drug addicts to seek exemption from criminal liability. The Indian law on insanity contained in section 84 of the IPC is loosely based on the McNaughten's principles.

VI. ASCERTAINING UNSOUNDNESS

When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.¹² The words "reason to believe" mean a belief which a reasonable person would entertain on facts before him. The burden lies on the accused to establish that he was suffering from the unsoundness of mind. The provisions regarding the enquiry in the unsoundness of mind are mandatory and the Magistrate is bound to enquire before he proceeds with the case. Such enquiry is to be held at the threshold.¹³ The plea of medical insanity must first be determined by recording the medical evidence.¹⁴ The mandate of Section 329 of the Code is that when the plea of insanity is raised before a Court it shall try the fact of unsoundness of mind and incapacity of the accused in the first instance. Sub-section (2) of this section makes, the preliminary trial, of this fact, a part of the trial before the Court.¹⁵

According to Section 2(w) of the Mental Healthcare Act, 2017 "prisoner with mental illness" means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison. The conduct of the accused, from the time of the commission of the offence upto the time the proceedings commenced, is relevant for the purpose of ascertaining as to whether the plea of unsoundness raised was genuine, bona-fide or an after-thought. Courts usually rely on the following to ascertain the state of mind of the accused at the time of offence.

- i. Presence or lack of motive.
- ii. Deliberation and preparation
- iii. Manner in which the crime was committed.

¹¹ 214 F.2d 862.

¹² Code of Criminal Procedure (CrPc), s. 328(1).

¹³ *Dr. Jai Shanker v. State of HP*, AIR 1972 SC 2267.

¹⁴ *Gurjit Singh v. State of Punjab*, CrLJ 1505 (P&H).

¹⁵ *Ibid.*

- iv. Nature of weapon used.
- v. Attempt at concealment of the dead body, weapon of offence or other telltale signs.
- vi. Efforts to avoid detection or evade apprehension by authorities.
- vii. Conduct of the appellant immediately before the incident, at the time of the incident and shortly after the incident.
- viii. Subsequent conduct of the appellant and his conduct during the trial of the case.
- ix. Previous history if any of attacks of insanity, hospitalization or treatment of insanity.
- x. Family history of unsoundness if any as sometimes heredity plays a part.

In the case of *Raghu Pradhan v. State Of Orissa*,¹⁶ the accused pleaded unsoundness of mind as a defence to the charge of murdering his wife and minor children. He was also tried for assaulting a neighbor who tried to intervene and the constable who came to apprehend him. It was clear from the evidence of the witnesses and the discharge certificate that prior to the occurrence the appellant was becoming insane periodically and during that period he was assaulting persons at random for which he was being treated medically. It had also been proved that there was absence of motive for commission of such crime as he had cordial relations with his wife. PW 2 had categorically deposed that at the time of occurrence the accused was behaving like a mad man. The evidence of the A. S. I. (PW 16) also disclosed that immediately after the occurrence when he reached the place the accused was in a violent mood. Accused was sent for medical examination as his behaviour was abnormal. The opinion of the Doctor (PW 19), the medical report and opinion of D. W. 1 proved that immediately after the occurrence there was contusion in the brain of the accused which is one of the symptoms of insanity. Thus after considering all the materials on record, the Court concluded that when the appellant committed the offence, he was not in a position to understand the nature of his act owing to insanity at the crucial point of time. The facts, evidence and circumstances, indicated above would clearly make out a case of legal insanity as provided in section 84 of the Code.

VII. PREMENSTRUAL STRESS SYNDROME AS A DEFENSE TO CRIMINAL CHARGE

"Premenstrual stress syndrome (PMS syndrome) is a disorder afflicting many women.' The symptoms of PMS syndrome include excessive thirst and appetite, bloating, headaches, anxiety, depression, irritability, and general lethargy. Diagnosis depends on the timing of the symptoms rather than on their type, number, or severity; not all patients experience all possible symptoms. The symptoms develop and increase in intensity from seven to fourteen days prior to the onset of menses and disappear rapidly thereafter. PMS syndrome can range in severity from mild to incapacitating, in both a physical and psychological sense.¹⁷

Hormonal changes can cause women to commit crime during menstruation. Premenstrual tension is often accompanied by irritability, lethargy, depression and water retention, and these symptoms alone may be responsible for certain crimes, for example, irritability and loss of temper may lead to violence and assault, lethargy may lead to child neglect, and depression may

¹⁶ 1993 CriLJ 1159.

¹⁷ Marc P., "Premenstrual Stress Syndrome as a Defense in Criminal Cases", 32(1) *Duke Law Journal* 176 (1983).

lead to suicide.¹⁸ Menstrual psychosis is a term describing psychosis with a brief, sudden onset related to the menstrual cycle, often in the late luteal phase just before menstruation. The symptoms associated to it are dramatic and may include delirium, mania or mutism.¹⁹ Premenstrual dysphoric disorder (PMDD) is a very severe form of premenstrual syndrome (PMS), which can cause many emotional and physical symptoms every month during the week or two before you start your period.

In the matter of *Regina v. Craddock*,²⁰ the accused Sandie Craddock was an East London barmaid with 45 prior convictions. She was accused of stabbing a fellow barmaid thrice in her chest, in a fit of rage. She pleaded diminished responsibility owing to premenstrual stress syndrome. Craddock was convicted only of manslaughter and released on probation. A year later Craddock was re-arrested for an attempt to murder a policeman. Convicted on three new charges, Craddock again argued premenstrual stress syndrome to mitigate her sentence and again received probation which was also upheld in appeal. The Indian law on PMS induced insanity is not well developed. However in the case of *Kumari Chandra v. State of Rajasthan*,²¹ three children were taken by the accused who was their *bhua* (aunt) from school on the pretext of showing them a temple. She further instructed them to follow her so as to show them the well of Nasia also. Thereupon, she took all the three at the well and then pushed them into the well. Two children could be pulled out alive while one drowned. In appeal against the judgment of a trial court convicting her under sections 302 and 307 IPC, she pleaded insanity triggered by premenstrual stress syndrome. The court ruled that, “The appellant has been able to probabilize her defence that at the time of incident she was suffering from unsoundness of mind and was labouring under a defect of reason triggered by premenstrual stress syndrome. Even if the material placed before the court is held to be not sufficient to discharge the burden under Section 105 of the Evidence Act,²² it still raises a reasonable doubt as to the existence of *mens rea* on the part of the accused-appellant, thus making out a case for extending benefit of doubt to her.”

VIII. LEGAL INSANITY DIFFERENT FROM MEDICAL INSANITY

Every person suffering from mental disease cannot be allowed to avoid responsibility for a crime by invoking the plea of insanity. A person whose cognitive faculties are so impaired as to make it impossible for him to know the nature of his act or that what he was doing was wrong

¹⁸ Dalton K., “Menstruation and acute psychiatric illnesses”, 1(5115) *Br Med J*. 148–149 (1959).

¹⁹ Brockington IF, “Menstrual psychosis: a bipolar disorder with a link to the hypothalamus”, 13(1) *Current Psychiatry Reports* 193–7 (2011).

²⁰ 1981, 1 C.L. 49

²¹ Criminal Appeal No. 44/1987, High Court of Rajasthan, Date of Decision: 01.08.2018

²² S. 105. Burden of proving that case of accused comes within exceptions.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustration (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

or contrary to law, is exempted from criminal responsibility and comes within the purview of legal insanity.²³

Legal insanity means incapability of a person to understand the nature or consequences of his actions at the time of the commission of the offence. Medical insanity deals with a person's behavior and conduct at all times. A person subject to fits of insanity will be termed as medically insane. Mere abnormalities of mind, partial delusion, irresistible impulses or compulsive behavior of psychopaths all constitute instances of medical insanity. It includes cases where insanity affects the emotions and the will subjecting the offender, while the cognitive faculties are left unimpaired. A person subjected to fits of insanity will get the defence of legal insanity only if he was subjected to the fit of insanity at the time of the commission of the crime. It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground for exemption from criminal liability. In order to constitute legal insanity the nature and extent of the unsoundness of mind required is such as renders the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. It is only legal insanity that is a total defence to a criminal charge. Medical insanity needs to be accompanied by legal insanity in order to be accepted as a defence.

IX. CONCLUSION

Insanity does not render a person inhuman. Human rights continue to vest in all human beings irrespective of their mental condition. Persons of unsound mind who commit a criminal act are not criminals. They do not deserve punishment, however, they require medical help. They can be a source of threat to the society and to their own selves, thus it is important to keep them under supervision. Punishment cannot reform them so they are to be placed either in safe custody or delivered to some relative or friend or be kept in an asylum.

Whenever a person is acquitted on the grounds of insanity, the court shall specifically state its findings whether the act had been committed by the accused or not.²⁴ Upon acquittal such persons are to be kept in safe custody in such place and manner as the court deems fit. Some friend or relative may be allowed to keep the person upon their making an application and furnishing security to the Court that such person shall be properly taken care of and prevented from doing injury to himself or any other person.²⁵ But, where it is not possible for a mentally ill person to live with his family or relatives, or where a mentally ill person has been abandoned by his family or relatives, the appropriate Government shall provide support as appropriate including legal aid and to facilitate exercising his right to family home and living in the family home.²⁶ Under Section 27, a person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under the law and it shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical

²³ *Shama Tudu v. State* (1986) (I) OLR 506.

²⁴ *Supra* note 12 at s.334.

²⁵ *Id.*, s. 335.

²⁶ The Mental Healthcare Act, 2017, s.19(2).

officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.²⁷

²⁷ *Id.*, s. 27.