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DEMONIC HAUNTING AND POSSESSION AS A DEFENCE IN INDIAN CRIMINAL LAW

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ABSTRACT

The defence of demonic haunting or possession presents a unique challenge within the Indian criminal justice system. Indian law primarily relies on the doctrine of mens rea and actus reus to determine the criminal liablity. The legal maxim " actus non facit reum nisi sit rea" translates to " an act does not make a person guilty unless their mind is also guilty". Under criminal law you need both the actus reus and the mens rea to be convicted of the crime.

BNS, IPC, CRPC and BNSS do not recognize demonic possession or hauntings as a valid defence, However Indian courte have granted legal protection in some cases where a person acted under good faith and perceived the victim to be a supernatural entity rather than a human being.

The courts have also distinguished such cases from situations involving mental illness under section --- and have rejedted attempts to misuse claims of possession or exorcism to escape criminal liability. This article examines how a person use demonic hauntings or possession as a defence and also the prevention of abuse within thr criminal justice system.

INTRODUCTION

The defence of demonic hauntings or possession has occasionally been raised as a mechanism to avoid criminal liability. such claims raise significant legal questions because they originate from belief system. Indian courts primarily establish criminal liability through two essential elements i.e. mens rea meaning a guilty mind and actus reus meaning guilty act.

These principles require court to determine criminal responsibility based on facts, evidence and rational legal reasoning, making it difficult to put up spriritual or religious explanations as legal defences.

The concept of ghosts or demonic hauntings as a defence remains both complex and controbersial. An accused may claim that they were possessed by a demon while committing a criminal act or may say that he say a demon and acted against what they genuinely believed to be a ghost or a demon. However, BNS does not contains any provisions recognizing demonic

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hauntings or possession as a legal defence. People might not be convinced of such claims and just think of It like an excuse for the criminal behaviour or act.

This article examines whether demonic hauntings or possession can constitute a valid defence under Indian criminal law. It analyses the scope of Section 17 [1]and Section 22 [2]of the Bharatiya Nyaya Sanhita, judicial decision recognizing the defence and the limitation imposed by courts to prevent misuse of such claims.

LEGAL DEFENCES AVAILABLE UNDER THE BHARATIYA NYAYA SANHITA, 2023

Defence of mistake of fact under Section 17 of the Bharatiya Nyaya Sanhita, 2023

1. **Section 17 of BNS** –

This section outlines that an act is not an offence if the person who believes that they are justified by law, in good faith, due to mistake of fact. This section examines the details of self defence and the lawful use of force under misinterpreted circumstances.

ESSENTIAL ELEMENTE OF SECTION 17:

1. Justified by law:

Individuals may act under the wrong impression that their actions are legal, especially in situations where they see threats or emergencies. The law understands that people often need to make quick decisions based on how they see the situation.

In Chirangi v. State;1952 CrLJ 1212[3] -

The court ruled that an individual acting under a bona fide, mistake of fact is absolved of criminal liability if they lack the required mens rea. In this case a father mistakenly believed his son was a tiger and killed him in a fit of delusion. The court negated criminal liability and accepted his mistaken belief.

2. Good faith:

A person can take defence only when he acts in good faith and with good intension and belived that his act is justified by law. The word justified, according to Black's law dictionary means the act "Done on adequate reason sufficiently supported by credible evidence, when weighed by the unprejudiced mind, guided by common sense and by correct rule of law". Good faith requires due care and attention but there is no universal standard of care and attention

[1] Bharatiya Nyaya Sanhita, 2023, s. 17
[2] Bharatiya Nyaya Sanhita, 2023, s. 22
[3] *Chirangi v. State* (1952) Cri LJ 1212

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applicable to all individuals in all circumstances. As pointed out in the case Emperor v. Abdeol Wadood Ahmed; ILR 31 Bom 293[4] –

"The standard of care and caution must be judged according to the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusion of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to the habits of reasoning." "The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acts .... The law does not expect the same standard of care and attention from all persons regardless, of the position they occupy -- See Bhawoo Jiwaji v. Mulki Dayal, ILK 12 Bom 377[5] "What is due care and attention depends on the position in which a man finds himself and vanes in different cases" -- see Po Mye v. The King, 1940 Rang LR 109 (at p. 118S): (AIR 1940 Rang 129 at p. 132)[6].

What is due care and attention depends on the position in which a man finds himself and it is not same in every case, A person may believe that the standard of care used in their situation cannot be the same for another. It varies from case to case .

In Ram Bhahadur thapa v. State of orissa; AIR 1960 Ori 161[7] -

The respondent firmly believed in the existance of ghost and that where the incident occurred was widely believed to be haunted on Tuesdays and Saturdays, reinforcing his belief. His complyer and landlord accompanied him to see the alleged ghost and when the group noticed a flickering light at a distance, one of him companions said “Here is the ghost”, after hearing this, ram acted immediately and attacked the figures genuinely believing to be ghost. The court here considered the respondent background. Beliefs and surrounding circumstances. The court held that the standard of due care and attention depends on the position in which a person finds themselves and varies from case to case. The court held that it was unreasonable to expect the respondent to stop and verify whether the figures were human being and although he possessed a torch and could have used it to identify the person, the court held that he had no reason to doubt his belief because it had been reinforced by those people accompanying him. The respondent was therefore protected under Section 79 [8]of the I.P.C.

In Keso Sahu v. Saligram Shah; (1977 CriLJ 1725)[9] –

[4] *Emperor v. Abdeol Wadood Ahmed* (1907) ILR 31 Bom 293
[5] *Bhawoo Jiwaji v. Mulki Dayal* (1888) ILR 12 Bom 377.
[6] *Po Mye v. The King* (1940) Rang LR 109; AIR 1940 Rang 129.
[7] *Ram Bahadur Thapa v. State of Orissa* AIR 1960 Ori 161.
[8] Indian Penal Code, 1860, s. 79
[9] *Keso Sahu v. Saligram Shah* (1977) Cri LJ 1725

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In the present case the court held that the accused proved that he in good faith and believing that the offence of smuggling rice was going on in the plaintiff's house thus brings the cart and Cartman to the police station. It turned out that suspicion was wrong. The accused is justified in pleading the defence of mistake of fact because he is doing the act in good faith and believing it to be justified by law.

3. Mistaken circumstaces:

The court may excuse actions taken under the belief that a situation warrants a particular response, even if that belief is mistaken. The key consideration is if the belief was honestly held and whether the individual acted reasonably under the circumstances.

JUDICIAL RECOGNITION OF MISTAKE OF FACT

Bonda Kui v. Emperor; 43 CriLJ 787[10] -

In the Patna decision the accused, who had been convicted Under Section 304 of I.P.C[11]. by the Lower Court, was acquitted on the ground that she believed in good faith at the time of her attack that the object of the attack was not a living human being but a ghost or some object other than a living human being, and the intention to do wrong or to commit an offence against a human being was not present in that case and so was protected under Section 79 of the IPC[12]

Waryam singh v. Emperor; 28 Cri LJ 39[13] -

The court said that if the accused believed In good faith at the time of the assault that the object of his assault was not a living human being but a ghost or some object other than a living human being then he cannot be convicted of an offence under Section 302[14] or Section 304 of the IPC[15]. The ground for such opinion is that mens rea or an intention to do wrong or to commit an offence does not exist in such a case and that the object of culpable homicide can be a 'living human being' only.

Defence of Mental Illness under Section 22 of the Bharatiya Nyaya Sanhita, 2023

2. **Section 22 of BNS**

It states "Nothing is an offence which is done by a person who, at the time of doing it, by reason of mental illness, is incapable of knowing the nature of the act, or that he is doing what is either

[10] *Bonda Kui v. Emperor* AIR 1943 Pat 64; 43 Cri LJ 787.
[11] Indian Penal Code, 1860, s. 304.
[12] Indian Penal Code, 1860, s. 79.
[13] *Waryam Singh v. Emperor* AIR 1926 Lah 554; 28 Cri LJ 39.
[14] Indian Penal Code, 1860, s. 302.
[15] Indian Penal Code, 1860, s. 304.

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wrong or contrary to law"

Claims of demonic haunting may be seen as manifestation of underlying mental health issues, such as psychosis or any other mental disorder. In such cases the court may be more likely to consider a defence pf insanity or diminished responsibility under Section 22 of BNS[16] rather than demonic hauntings.

In the case of Sanjay Nagorao Pote v. State of Maharashtra; CRIMINAL APPEAL NO. 148 OF 2016[17] -

Sanjay killed a man named vitthal, claiming he was under divine instruction to exorcise a ghost from vitthal's body. Pote argued that he lacked mental intent to commit the crime, citing insanity under section 84 of the IPC[18]. The High court here had examine Pote's behaviour around the time of the crime, before, during and after the incident. It revealed unusual actions and signs of mental insanity, suggesting he as not fully aware of his actions. The court overturning the lower court decisions granted protection under Section 84 of the IPC[19] and was acquitted of the offences committed by him.

POTENTIAL FOR ABUSE

Allowing demonic haunting as a defence could potentially lead to abuse, as the accused may use it as an excuse for their criminal actions. Such claims could undermine the integrity of the criminal justice system and also weaken public confidence in the administration of justice by allowing individuals to avoid punishment on the basis of unverifiable supernatural claims.

In the case of Mr. Mohammed Furkhan Mohammed v. State of Maharashtra; 2004 (2) MhLj 800[20] -

Mr. Mohammed was accused of raping a 18 year old girl who had mental disability. The accused claiming to be an exorcist, said he engaged in sexual intercourse with her as a part of an exorcism ritual to drive out the ghost from her body. His counsels argued that he was legally insane and acted without intent, asserting he was possessed by a ghost and was not aware of his actions. The court had to examine whether a claim of ghost possession and mental instability could serve as a defence for a heinous crime committed during exorcism. After reviewing the evidence the court no evidence that the accused was of unsound mind and the court ruled out that the accused did not lack mens rea and took advantage of the young women vulnerable state

[16] Bharatiya Nyaya Sanhita, 2023, s. 22.
[17] *Sanjay Nagorao Pote v. State of Maharashtra*, Criminal Appeal No. 148 of 2016 (Bombay High Court).
[18] Indian Penal Code, 1860, s. 84.
[19] Indian Penal Code, 1860, s. 84.
[20] *Mohammed Furkhan Mohammed v. State of Maharashtra* (2004) 2 Mh LJ 800.

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by pretending to perform an exorcism. The court stated that claiming to be "possessed by a ghost" was no excuse for his actions.

CONCLUSION

The defence of demonic haunting or possession occupies a unique and controversial position within Indian criminal law. While the Bharatiya Nyaya Sanhita (BNS) does not expressly recognise demonic hauntings or possession as an independent defence, judicial decisions demonstrate that an accused may nevertheless receive protection where the essential requirements of a defence are satisfied. The courts have consistently recognised that criminal liability depends upon the intent or mens rea and that a guine mistake of fact made in good faith may attract protection available under Section 17 of the BNS[21] and where an ccused is incapable of understanding the nature of their action due to mental illness, Section 22 of the BNS[22] may provide a valid defence.

The decisions discussed in this article illustrate that Indian courts do not determine criminal liablity on the basis of supernatural beliefs alone, instead, they examine the surrounding circumstances i.e. the accused's state of mind, the existence of good faith, due care and attention and the evidence placed before the court. The judiciary, at the same time, remains vigilant against attempts to misuse claims of demonic possession or hauntings as a means of avoiding the liability.

Therefore, demonic haunting or possession is not a defence recognised by Indian criminal law in itself. Rather, legal protection arises only where the facts of the case satisfy the statutory requirements of recognised defences.

[21] Bharatiya Nyaya Sanhita, 2023, s. 17.
[22] Bharatiya Nyaya Sanhita, 2023, s. 22.