ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

CRITICAL ANALYSIS OF THE APPLICATION OF TESTS USED TO DETERMINE INSANITY WHILE DECIDING CRIMINAL LIABILITY UNDER SECTION 84 OF INDIAN PENAL CODE, 1860

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ABSTRACT

The Indian Penal Code, 1860 provides for situations where a person is exempted from any criminal liability for their action. Section 84 gives the defence of insanity wherein a person can establish, based on a test, that he was incapable of understanding that his actions were legally wrong. But the tests have not been reformed since their formation and have been shown to be unreliable in determining the insanity of a person. Additionally, if the tests are not applied uniformly in all cases, it leads to injustice and inconsistency in the decisions based on the approach taken by the judge presiding over the case, hence leading to bias. The purpose of the study is to analyse the way in which the cases, where the plea of insanity has been taken, have been dealt with by the judges. The paper intends to analyse the new tests which have not been taken into account by India and their possible efficacy in deciding a case. For the purpose of this study, the doctrinal method of research has been opted. The paper shows how the tests have become redundant and that new tests are available to make the process more efficacious. It also shows how the cases are decided by the bias of the judge rather than on the prescribed tests laid down in IPC. There needs to be a revision of such tests and to make their application more uniform in all cases in order to provide justice to both the victim and the accused.

Keywords: Bias, Defense, Efiicacy, Indian Penal Code 1860, Insanity, Redundant, Section 84, Tests, Uniform

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THESIS STATEMENT

It is contended that the application and interpretation of tests used to determine unsoundness of mind by the Judiciary to determine criminal liability under Section 84 of IPC are inconsistent.

RESEARCH QUESTION

To what extent are the tests uniformly applied by the Indian Judiciary, while determining unsoundness of mind to decide criminal liability under Section 84 of the Indian Penal Code, 1860?

RESEARCH OBJECTIVE

The present study seeks to analyze the new tests related to defense of insanity that have not been incorporated in India, in the light of the vagueness of the current tests applied by the courts with respect to Section 84 of the Indian Penal Code, 1860.

INTRODUCTION

Among the various defenses available under criminal law, one of the defenses is under Section 84 of the Indian Penal Code, 1860. The defense provides a safeguard for any person who suffers from unsoundness of mind. A person who commits an offense under unsoundness of mind is exempted from any liability accruing from such a criminal act. The provision states that there are certain elements to show whether a person was unsound at the time of the commission of the act or not. These elements are:

(i) the person committing the act should be unable to know the nature of the act
(ii) the person is unable to know that his acts are wrong or contrary to the law.

The wordings of the provision are very similar to the test laid down in the ***M'Naghten Case***[1]. This case formed the basis of the determination of insanity in England which then was followed by India. The test laid down principles which led to the formation of the right and wrong test[2]. This is essentially the ability to distinguish between good and evil. This test essentially states

[1] M'Naghten Case, (1843) 10 Cl & Fin 200, 8 ER 718.
[2] Bellingham's Case (1812) 1 Collison, Lunacy 636.

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that a person can be held liable for the acts committed by him if he was able to differentiate between what is good and evil or what is right and wrong in a legal sense at the time he was doing such an act.[3] In different words, if the accused had the capacity to know the nature and quality and also the character of the act and knew it was wrong.[4] countries like India have adopted similar wordings in the Indian penal code, 1860 under Section 84 to give defense under unsoundness of mind. There are several tests determined by the courts to establish insanity which will be discussed in the paper further. The applicability of these tests and the interpretation of several judgments will be done in the course of the paper.

LEGAL V MEDICAL INSANITY

Every mentally diseased person is not *ipso facto* exempted from criminal liability.[5] This is because the definition of insanity differs considerably from the medical definition.[6] The courts in India confine themselves to the enquiry as to whether the legal test of insanity has been met.[7] In a case of medical insanity there can be a certain diagnosis of insanity by a medical expert who can determine whether the person is insane or not, whereas, in a case of legal insanity, a medical condition affecting the mind is not enough to make him eligible to the defense of insanity and the absence of such a mental ailment does not render him ineligible for such a defence either. The defence is given based on the facts and circumstances of the case and by determining whether the actions of the accused fall under Section 84 of IPC or not.

Additionally, for a defense of legal insanity, the accused should be insane at the moment when the crime was committed. Proving a previous medical insanity that the accused suffered 6 months before the commission of the act, will not provide him with any defense against the liability. Therefore, in essence, legal insanity prevails over medical insanity when considering the question of unsoundness of mind and hence, the opinion of the judge prevails over the medical examination report of the medical expert.

[3] Alberty v State (1914) 10 Okla. cr. 616, 140 Pac. 1025; Smith v STate (1909) 95 Miss. 786, 49 So. 945.
[4] Schwarcz v. State (1902) 65 Neb. 196, 91 N. W. 190; Genz v. State (1896) 59 N. J. L. 488. 37 Atl. 69.
[5] Barelal v. State, AIR 1960 M.P. 102.
[6] Ramdulare v. State, AIR 1959 M.P. 259, 260.
[7] Sharma, K. M. "DEFENCE OF INSANITY IN INDIAN CRIMINAL LAW." *Journal of the Indian Law Institute* 7, no. 4 (1965): 325–83. http://www.jstor.org/stable/43949854.

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M'NAGHTEN RULE

The case of M'Naghten is probably the most significant and imperative to be understood before any of the other tests can be examined in the light of jurisprudence and applicability under the Indian judiciary. The brief facts of the case were such that the person M'Naghten was accused of murdering the secretary of the Prime Minister, Mr. Edward Drummons. He pleaded the defense of insanity in his trial. He stated that he was supposed to murder the Prime Minister, Rober Peel, himself but accidentally killed his secretary. On asking why he wanted to do so, he answered that he was asked to do so by voices in his head. After taking expert opinions, the court came to the conclusion that M'Naghten was not in a sound state of mind. The medical evidence said that people who are usually of sound mind might be affected by delusions and even though they might have a perception of what is right and what is wrong, their acts might not be in their control.[8] The principles laid down in the case to determine the liability of an accused pleading the defense of unsoundness of mind are:

1. Every individual is to be considered sane unless proven otherwise.
2. In order to establish insanity as a defense for the accused, it must be proven that the accused was so insane at the time of the commission of the act that he was incapable of understanding the nature and quality of his actions. Contrary to this, if he knew this, he did not know that the act he was committing was wrong.
3. The test of the wrongfulness of the act is not the ability to distinguish between right and wrong in a general capacity but in relation to the act committed specifically.

The first principle of the test puts the onus of proving innocence through insanity on the defense. The second principle brings together elements of both the Wild Beast test and the Good and Evil Test.

WILD BEAST TEST

Developed in 1724, the test was established in the case of ***Rex v. Arnold*** case.[9] Arnold was alleged to have feloniously shot and wounded Lord Onslow. He was considered to be a madman for years when he was in prison. Mr. Justice Tracy said:[10]

"When a man is guilty of a great offence, it must be plain and clear, before a man is allowed

[8] Moran, Knowing right from Wrong - The Insanity Defence of Daniel McNaghtan (1981); Report of the Royal Commission on Capital Punishment 1949-1953, at Ch 4.
[9] Rex v. Arnold (1724) 16 How. St. Tr. 76.
[10] Ibid, at p. 764.

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such an exemption; therefore it is not very kind of a frantic humour or something unaccountable in a man's actions, that points him out to be such a madman as is to be exempted from punishment; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than a brute, or a wild beast, such a one is never the object of punishment; therefore I must leave it to your consideration, whether the condition this man was in, as it is represented to you on one side, or the other, doth shew a man, who knew what he was doing, and was able to distinguish whether he was doing good or evil, and understood what he did…"

Thus, in this case the accused's responsibility was said to depend upon whether he was totally deprived of his understanding and memory and knew what he was doing "no more than an infant, than a brute, or a wild beast." The judge in the Arnold case declared that a prisoner who is mentally affected cannot be freed unless it is proven that he was completely deprived of any understanding and memory and it is made clear that he does not know what he is doing any more than an infant, a brute or a wild beast would.

GOOD AND EVIL TEST

Evolved in 1800 in the case of ***R v. Hadfield***,[11] the test said that insanity must be decided on the basis of the ability of a person to distinguish between good and evil. Hadfield was indicted for high treason in the shooting at King George III. It was contended that Hadfield was a soldier and was severely wounded in the head in battle. He was discharged from the army on the ground of insanity.[12] The judgment agreed to acquit the defendant on the plea that he could not distinguish between good and evil and that the Wild Beast Test is unreasonable in that sense.

AMBIGUITY ON INSANITY

There have been various cases in relation to the question of lunacy and insanity during the commission of the crime and the insanity plea has been taken many times. The M'naghten rules have been referred to in many such cases but the decisions have varied upon a certain level of personal interpretation of the judge. The right and wrong test of which the criterion, if the accused had the capacity to know right from wrong, is used in India as well is not a very reliable

[11] R v. Hadfield, (1800) 27 St. Tr. 128.
[12] Crotty, Homer D. "The History of Insanity as a Defence to Crime in English Criminal Law." *California Law Review* 12, no. 2 (1924): 105–23. https://doi.org/10.2307/3475205.

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test. A number of text writers and medical experts, however, have regarded this test as quite inadequate and even in contradiction with certain characteristics of the disease.[13]

Though the M'Naghten rule is the primary test that is used to determine insanity, the case only interpreted the word "wrong".[14] The Canadian position is much more alike to this interpretation of "wrong" given in the case. Therefore, the other cases must also be given due consideration to deal with this particular issue. English Courts interpret "wrong' as meaning "legally wrong"[15] and on the contrary, the Australian Courts have interpreted the meaning of wrong so as to mean "morally wrong".[16] There is essentially a vast difference between the two types of wrong. They are not interchangeable and the major difference is that one is punishable while the other is not. You cannot punish an act which is only morally wrong.

The primary problem that the researcher wants to highlight through the paper is the ambiguity in the judgments that arise due to the ambiguity in the rule itself. It is at the discretion of the judge how strictly or loosely the tests are applied and which facts warrant the defense to be provided and which don't. But this is where it becomes vague and gives arbitrary power to the judge where there is no law governing the matter but the personal perspective of the judge. The letter of law is vague to the extent that it does not give any parameters to assess the capability of the accused to distinguish between right and wrong or to know the nature of the act.

Apart from the criticism of the rule itself, the administration of the rule can also be criticized as they are inequitable between judge and witness. The Judge is free to ignore the Rules if he so wishes, but if he so wishes he can always tie the medical witness down to them as strictly as he likes.[17] Even though the medical evidence does not prove or disprove the guilty mind of an accused taking the defense of insanity, the matter rests upon the judge whether the judge wants to take into account the medical evidence strictly while giving less importance to the facts of the case itself.

The problem also arises of what is labelled wrong while deciding the right and wrong differentiation ability of a person. As stated briefly in the paper earlier, 'wrong' and 'contrary

[13] 3 Witthaus & Becker, medical Jurisprudence (2nd ed.) 432, 448, 449; Parsons v. State (1886) 81 Ala. 577, 2 So. 854; Lee v. State (1902) 116 Ga. 563, 42 s. E. 75
[14] R v Mathew Oommen (1994) 30 CR (4th) 195 at 202)
[15] R v. Windle (1952) 2 QB 826; R v. Holmes (1953) 1 WLR 686.
[16] Stapleton v. The Queen (1952) 86 CLR 358; The King v Porter (1933) 55 CLR 182
[17] Slater, Eliot. "The M'naghten Rules And Modern Concepts Of Responsibility." *The British Medical Journal* 2, no. 4890 (1954): 713–18. http://www.jstor.org/stable/20330320.

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to law' are different terms as everything that is wrong cannot necessarily be contrary to law. Many cases, to provide for all exigencies, have elaborated upon the test by interpreting wrong to mean both legal and moral, or either legal or moral.[18]

The inadequacy of this rule has led to courts adopting a complement or alternative to the right and wrong test, by which a person is excused from criminal liability if, by reason of mental disease, he was irresistibly driven to commit the crime, although he may have realized that the act was wrong.[19] Irresistible Impulse theory, is a variation to the M'Naghten rule; some consider it to be a separate test altogether. Indian law has not yet incorporated this as a defense under criminal law.

It has become a view that even when a person is capable of understanding the nature of the act being right or wrong and yet he is driven to commit such an act due to an irresistible impulse. The mere fact that the accused had acted on the basis of some sudden impulse resulting from mental illness without any concrete motive, and that overwhelms his conscience and judgement will not, in general, afford a basis for a plea of insanity. The circumstances of any act being motiveless are not a ground based on which the existence of an irresistible influence can be inferred.[20]

It is argued that to increase the opportunity for pleading insanity as a defense, is to open the door for abuse.[21] Certainly some workable test or rule of law, which the jury may readily apply, should be established. If then, we exclude the irresistible impulse theory, it will be seen that, in effect, the courts are applying merely a test of responsibility or what may be termed legal insanity, which admittedly fails to include many forms of mental diseases if judged by medical standards.[22] In the case of ***Kannakunnummal Ammed Koya v. State of Kerala***[23], the judgment was against the accused and it was stated that merely losing self-control due to excitement or irresistible impulse cannot provide defense under Section 84 of IPC.

[18] People v. Carlin (1909) N. Y. 448, 87 N. E. 805.
[19] Commonwealth v. Cooper (1914) 219 Mass. 1, 106 N. E. 545; Banks v. Commonwealth (1911) 145 Ky. 800, 141 S. W. 380.
[20] Sonawane, Ajay M, and Radhika S Bhonsle. Defense of Insanity in India and England: Comparative Legal Paradigm
[21] "Insanity as a defence to a Criminal Charge." *Columbia Law Review* 16, no. 2 (1916): 150. https://doi.org/10.2307/1110838.
[22] "Browne, Medical Jurisprudence, 11; 3 Witthaus & Becker, Medical Jurisprudence, (2nd ed.) 432.
[23] Kannakunnummal Ammed Koya v. State of Kerala, 1967 CriLJ 494

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This shows that even though Indian Criminal Law is centuries old, there is no effort to change the rules or to devise a new one that would fit such cases. The consequence of the present law is that every case where insanity has been pleaded as a defence has to be fitted into the straight jacket of this section notwithstanding the current advances in psychiatric knowledge.[24]

The Diminished Responsibility principle is also a development that is applied by certain countries. The provision was derived from the English Law[25] which has also been introduced into the law of New South Wales.[26] This provision qualifies the defendant not to be absolved through and through, but to be found guilty only for manslaughter. But such a defense is not available in India as is clear from Section 84 of the IPC and also Section 300 of IPC which provides exception for murder but does not include any reference to the diminished responsibility.

This gives rise to only two outcomes possible to a scenario wherein this defense has been pleaded: first being, the accused will be considered guilty and will be given the prescribed punishment as per the crime; second being, the accused will be considered as a person who was suffering from unsoundness of mind at the time the act was being committed and for the reason, he will be absolved of full responsibility for his crime. This is not the case in diminished responsibility, wherein, if the accused succeeds in this defense, the accused will not be completely absolved of murder but will get punished for manslaughter. As the term "diminished responsibility" suggests, this diminishes the liability of the accused to gives him some relaxation considering his state of mind.

The determination of the defense of diminished responsibility involves several questions, some of which are to be decided by the triers of fact alone, others which are to be answered by triers of fact with the assistance of medical witnesses.[27] Given the confusion that can arise here, a model was suggested in the case of ***R v. Byrne***[28]. "The English Court of Appeal propounded a model which requires the accused to prove three elements, which are:

[24] Sharma, K. M. "DEFENCE OF INSANITY IN INDIAN CRIMINAL LAW." *Journal of the Indian Law Institute* 7, no. 4 (1965): 325–83. http://www.jstor.org/stable/43949854.
[25] S 2(1) of the Homicide Act 1957 (UK)
[26] S 23A of the Crimes Act 1900 (NSW); S Yeo, "Reformulating Diminsihed Responsibility: The New South Wales Experinece" (1999) 20 SingLR (forthcoming).
[27] Yeo, Stanley. "IMPROVING THE DETERMINATION OF DIMINISHED RESPONSIBILITY CASES." *Singapore Journal of Legal Studies*, 1999, 27–47. http://www.jstor.org/stable/24867778.
[28] R v. Byrne, [1960] 2 QB 396 at 403-404.

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1. That at the time of the killing, the accused was suffering from an abnormality of mind. The existence of such abnormality of mind is to be determined by the trier of fact, being a matter of degree not capable of scientific measurement. Accordingly, the trier of fact is entitled to determine the issue in a broad commonsense way and not necessarily in accordance with the medical evidence. Thus, the trier of fact is not bound to accept the medical evidence should there be other material before her or him which, in their judgment, conflicts with or outweighs it.
2. That the abnormality of mind arose from a condition of arrested or retarded development of mind, or from any inherent cause, or induced by disease or injury. This element is a matter which must be determined by expert evidence. That does not mean that the expert evidence will fail in its purpose "merely because the psychiatrist cannot be persuaded to adopt the statutory terminology."[29]
3. That the abnormality of mind substantially impaired the accused's mental responsibility for the killing. This element, like the first, is to be determined by the trier of fact since it involves a matter of degree which is not capable of scientific measurement. Furthermore, this element raises a moral rather than a scientific question. While medical evidence is admissible for the purpose of informing the trier of fact of the mental incapacity of the accused at the time of the killing, it is for the trier of fact alone, not a medical expert, to determine whether the incapacity was sufficiently severe to warrant reducing the charge of murder to culpable homicide not amounting to murder."[30]

In ***Walton v. The Queen***, it was held that:

The jury are entitled and indeed bound to consider not only the medical evidence but the evidence upon the whole facts and circumstances of the case. These include the nature of the killing, the conduct of the accused before, at the time of and after it and any history of mental abnormality.[31]

Such a provision must be incorporated in India in order to make the work of the judiciary easier while deciding the liability of the accused and determining the unsoundness of mind of the accused with proper set criteria which are not vague and ambiguous.

[29] R v. Purdy, (1982) 2 NSWLR 964 at 966.
[30] Yeo, Stanley. "IMPROVING THE DETERMINATION OF DIMINISHED RESPONSIBILITY CASES." *Supra*
[31] Walton v. The Queen, (1978) 66 Cr. App. R 25 at 30.

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In Massachusetts, the rule for insanity accepted is the M'Naghten-irresistible impulse rule, which is basically the M'naghten test incorporating the irresistible impulse rule, the Durham test and the test proposed by the American Law Institute.[32] This was applied in the case of Commonwealth v. Chester,[33] where the accused was on trial for the murder of his girlfriend. Though the advocate for the accused pleaded not guilty, the accused testified that he wanted to be given death punishment by way of electrocution in the electric chair. The psychiatrists who examined his state of mind had conflicting opinions. The accused was found sane but then in an appeal, the counsel claimed that the lower court failed to apply the Durham test but the Supreme Judicial Court rejected the Durham standards.

Durham rule requires that a finding of not guilty by reason of insanity ensue if the act was the product of mental disease or defect in the defendant; "It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. We use 'disease' in the sense of a condition which is considered capable of either improving or deteriorating. We use 'defect' in the sense of a condition which is not considered capable of either improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of physical or mental disease."[34]

CONCLUSION

In essence, it can be said that there is an immediate need to revise the centuries-old rules that are incorporated in Indian law that provide for the unsoundness of the mind as a defense. The new tests and rules interpreted and applied by different courts in other countries must be taken into consideration to expand the meaning of unsoundness of mind to include different impulses. A the same time the interpretation of the existing rule must be made narrow and more precise in order to not leave any scope of ambiguity in the test and to make sure there is no arbitrary application of such tests to the whims and fancies of the presiding judge over the matter.
Thus, all in all, the defense of insanity and Section 84 of IPC need to be modified in a way that makes sure there is no injustice to either the victim who alleges to have been wronged by the accused or the accused himself who claims to have been a person suffering from unsoundness of mind. Justice needs to be served equitably and uniformly, not arbitrarily.

[32] "The American Law Institute's Insanity Test." *Duke Law Journal* 1959, no. 2 (1959): 317–23. https://doi.org/10.2307/1371206.
[33] Commonwealth v. Chester, 150 N.E.2d 914 (Mass. 1958).
[34] Durham v. United States, 214 F.2d 862, 875 (D.C. Cir. 1954).