



Criminological Aspects of the Unsoundness of Mind of a Person in India

KEYWORDS

Mens-rea, insanity, lunatic, unsoundness, offence, delusion, defence & Cognitive.

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ABSTRACT *The word 'insanity', solely a sociological and medico-legal concept which is seen to be a social and medical inadequacy of a person to understand the nature and consequences of the act done by him. The Mens Rea i.e. an evil mind is one of the essentials of crime, there may be no crime without an evil mind and the concurrence of act and guilty mind constitutes a crime. But in the case of an insane person, who is incapable to understand the nature of the act, will not be punished because not having any guilty mind to commit the crime. In India, we bears the similarities in the criminal liability with the English law as having based on the McNaughton rules. The present paper, the will attempt to analyse the concept of insanity in criminological sense in the light of some statutory and judicial annotations in Indian scenario.*

Introduction

Mens-rea is one of the essential element of crime⁴ but in the case of insane person, he does not have the sufficient mens-rea to commit a crime, will not be held guilty. The English law on insanity is based on the McNaughton rules and the Indian Law that is codified in the Indian Penal Code, 1860 (IPC), s. 84, based on the McNaughton rules.

Medically insanity is a disorder that exists in various degrees⁵ in mind and impairs the mental facilities of a man⁶. It is popularly denoted by idiocy, madness, lunacy, mental derangement, mental disorder and all other forms of mental abnormalities. Insanity in medical terms encompasses much broader concept than insanity in legal terms.

In legal sense, insanity refers the is incapability of a person to know the nature of the act or of realising that the act is wrong or contrary to law⁷. There are four kinds of person who may be said to be of unsound mind. Firstly, idiot is one who had defective mental capacity and infirmity by from birth; another of illness; a lunatic or a madman those who become insane and whose incapacity might be or was temporary or intermittent having intervals of reason⁸; and the last is drunkenness which is covered under IPC.⁹

Development of the Law Relating to Insanity as a Defence

The insanity as a defence has a long history and some of its test are as under-

Wild Beast test: It was the first test to check insanity that was laid down in the case of Arnold Case in 1724. Justice Tracy, a 13th century judge in King Edward's court, first formulated the foundation of an insanity defence when he instructed the jury that it must acquit by reason of insanity if it found the defendant to be a madman which he described as 'a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast, such a one is never the object of punishment'¹⁰.

Good and Evil test: This test was laid down in the case of R vs. Madfield.¹¹ The test laid down in this case is 'the ability to distinguish between good and evil'.

McNaughton :- The law relating to the defence of insanity is to be found in the rules set out in McNaughton¹² rules under which everyone is to be presumed sane and responsible for their crimes until contrary is proved. It must be clearly proved that at the time of committing the act, the accused did not

know what he was doing was wrong¹³. Where an offence committed by a person under insane delusion, the criminality must depend on the nature of the delusion (partial or total).¹⁴

The Constituent elements of the Defence

Following conditions to be satisfied in any case where a defence of insanity is pleaded –

(1) As the accused was suffering from the disease of the mind in a legal term and not a medical term. The leading decision on what constitutes a disease of the mind was given in the case of Sullivan¹⁵ in which a distinction was drawn between insane and non insane person automatism.

(2) Where a disease gave rise to such a defect of reason that he did not know the nature and quality of the act he had committed, or if he did know, that he did not know that what he was doing was wrong. Wrong here means something that is contrary to law¹⁶.

In 1916, in the case of R vs. Codere¹⁷ the court of criminal appeal explained the principles:

(1) an objective moral test adopting the objective standard by the reasonable men must be applied in cases where insanity is pleaded.

(2) the accused must be deemed to know the nature of the act which was punishable as well .

(4) the words 'nature ' refer to the physical facts and not solely the moral aspects.

Indian Law on Insanity

The Indian law relating to insanity has been codified in the IPC, s. 84 and also supported by the McNaughton rule. IPC, s. 84 deals with the law of insanity on the subject. This provision is made from the McNaughton rules of England. But, IPC, s. 84 uses a more comprehensible term 'unsoundness of mind' instead of insanity. Huda says the use of the word 'unsoundness of mind' instead of insanity has the advantage of doing away with the necessity of defining insanity and of artificially bringing within its scope different conditions and affliction of mind which ordinarily do not come within its meaning, but which nonetheless stand on the same footing in regard to the exemptions from criminal liability¹⁸. The benefit of this provision may be taken only if at the time of committing the crime, the offender by reason of unsoundness of mind was incapable of knowing the real nature of his act or that the act was morally wrong or contrary to law¹⁹.

Burden of proof

The principle that the court follows is that 'every person is sane unless contrary is proved'²⁰ and the onus of proving insanity is upon who is pleads it as a defence.²¹ However, this requirement of proof is not heavy as on the prosecution to prove the offence and is based on balance of probabilities.²²

Provisions of the CRPC

The procedure for the trial of insane person is laid down in the Code of Criminal Procedure, 1973, Chapter XXV. Code of Criminal Procedure, 1972, vide ss. 328 to 339 regarding examination of an insane person by a medical officer, postponement of the trial of the case, released on bail, detaining in safe custody, resume the inquiry after the person concerned ceases to be of unsound mind or having capable of making his defence, acquittal on the ground unsoundness of mind at the time of committing the offence and sending to a public lunatic asylum.

Judicial Interpretation

In some of the cases where defence is accepted, are *Etwa Oraon vs. The State*²³ *Bolabhai Hirabhai vs. State of Gujarat*,²⁴ *Nitai Naik vs. State*,²⁵ *Kanbi Kurji Durba Vs. State*,²⁶ *Kamla Singh vs. State*²⁷ & *Thangadurai Nadar Vs. State*.²⁸

On the other hand in some cases like *Albert Collins vs. State*,²⁹ *Parmanada Patra vs. State*,³⁰ *Barelal vs. State*,³¹ *Sarka Gundusa vs. State*,³² *Genda Oraon vs. State of Bihar*,³³ *In re: Rajagopala Aiyangar*,³⁴ *In re: Govindaswami Padayachi*,³⁵ *Pulu Mura vs. State of Assam*,³⁶ *Chellan vs. State*,³⁷ *Ram Singh vs. State of Chattisgarh*,³⁸ *Dhaneswar Pardhani vs. State of Assam*,³⁹ *Amruta Gunda Shinde vs. State of Maharashtra*,⁴⁰ *Shaik Ahmed vs. State of Andhra Pradesh*,⁴¹ *Anand Narayan*

Mallav vs. State of Maharashtra,⁴² *Gujraj vs. State*,⁴³ *Lakshmi vs. State*,⁴⁴ *In re Manickam*,⁴⁵ *In re Kulandi Thevar*,⁴⁶ *Velusamy vs. State of Tamil Nadu*,⁴⁷ *State of Maharashtra vs. Gourishankar Kawadu Shende*,⁴⁸ *Ratanlal vs. State of MP*,⁴⁹ *Dayabhai Chhaganbhai Thakkar vs. State of Gujarat*,⁵⁰ *Ashiruddin vs. King*,⁵¹ *Laxmi vs. State*,⁵² and *Hazara Singh vs. State*,⁵³, the defence of insanity was rejected by the courts.

Conclusion

The Indian law on insanity is based upon the McNaughton rules which considers the legal conception of insanity is different from medical. It lead a person incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. The McNaughton rules are entirely obsolete and misleading. Since insanity does not only affect the cognitive faculties but affects the whole personality of the person including both the will and the emotions. The Law Commission of India in its report after considering the desirability of introducing the test of diminished responsibility under IPC, s. 84 gave its opinion in the negative due to the complicated medico-legal issue it would introduce in trial. There are three compartments of the mind - controlling cognition, emotion and will. IPC, s. 84 only exempts one whose cognitive faculties are affected. The provision is regarded as too narrow, and makes no provision for a case where one's emotion and the will are so affected as to render the control of the cognitive faculties ineffectual. The Courts must also adopt a broader view of the insanity and introduce the concept of diminished responsibility. The Indian Law of insanity must be amended and the concept of diminished responsibility must be inserted.

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