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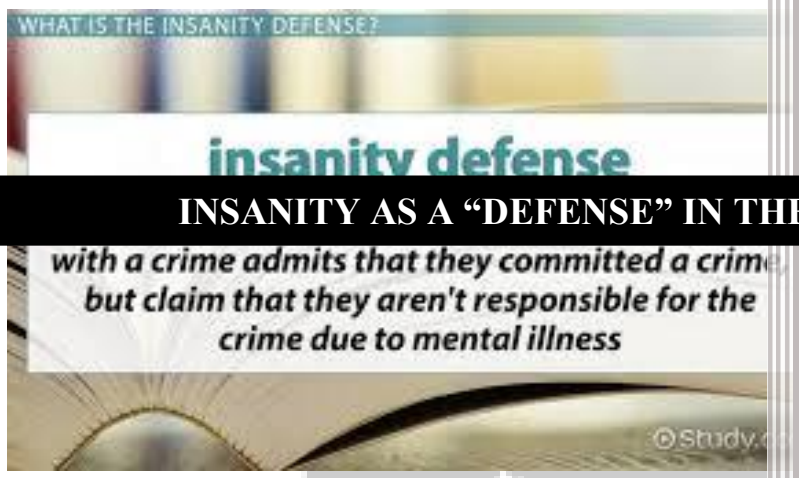

INSANITY AS A "DEFENSE" IN THE DISCIPLINE OF LAW

Edited By:

1) **Saumya Tripathi**
(Editor-in-chief)
Saumya@judicateme.com,
Saumya.judicateme@gmail.com
+91 9044382618

2) **Ritika Sharma**
(Student Editor)
ritika.judicateme@gmail.com

INSANITY AS A "DEFENSE" IN THE DISCIPLINE OF LAW

By, Vedika Gagrani, IInd Year, BBA-LL.B.
From, Symbiosis Law School, Noida

THE BASIC IDEA BEHIND THE CONCEPT OF INSANITY:

It is surely not easy to define the true meaning of the term "insanity" within precise and definite words. A general and a standardised meaning that is accepted universally follows that insanity is more like unsoundness or a derangement of the mind of an individual. Over the decades, different spheres of knowledge have formulated their own versions of insanity well suited to their salient features. If we talk about the legal sphere specifically, insanity is believed to be a mental illness of such a nature that an individual fails to distinguish between what is right and wrong in a given situation and often in many circumstances is triggered by an uncontrollable impulsive behaviour which leads him/her to carry out an act, the repercussions of which he/she is unable to understand at that point of time.

HOW HAS IT EVOLVED THROUGH THE YEARS?

Insanity as a defense has been in existence since many centuries; however, it took a legal position only since the last three centuries. There were various tests used to declare a person legally insane such as Wild Beast test, The Insane Delusion test, and "Test of Capacity to distinguish between right and wrong."

In 1843, Daniel Mc Naughten, a wood-turner from Glasgow, shot and killed Edward Drummond mistaking him for someone named Sir Robert Peel. Mc Naughten believed that he was persecuted by the Tories, and evidence was brought to show that he had been totally deluded on this subject for some time. The state of mind was apparent from the outset when he had to be coaxed, and finally tricked, into pleading "not guilty." After hearing seven medical witnesses testify that he was completely insane, the judge stopped the trial, the jury brought in the special verdict without summing up and without retiring,

and Mc Naughten was forcibly committed to the Bethlem Hospital.

Immediately thereafter, five propositions were drawn which were called Mc Naughten rules. These three tests laid the foundation for the landmark Mc Naughten rule. This Mc Naughten rule became a legendary precedent for the law concerning the defense of insanity. Even, in India, insanity defense law, Section 84 of the Indian Penal Code is solely based on the Mc Naughten rules. Since it is drafted, no changes have been made till now.

THE EMERGENCE OF THE DEFENSE OF INSANITY:

A provision related to Insanity Defense was first recorded in an1581 English legal treatise wherein, if a lunatic in the time of his lunacy kills someone, they cannot be held accountable. Insanity defense is primarily used in the cases pertaining to the criminal prosecutions. It is based on the assumption that at the time of the crime, the defendant was suffering from severe mental illness and therefore, was incapable of appreciating the nature of the crime and differentiating right from wrong behaviour, hence making them not legally accountable for crime. Insanity defense is a legal concept, not a clinical one (medical one). This means that merely suffering from a mental disorder is not sufficient to prove insanity. The defendant has the burden of proving the defense of insanity by a "preponderance of the evidence" which is similar to a civil case. It is hard to determine legal insanity, and even harder to successfully defend it in court.

Section 84 of the Indian Penal Code deals with the act of a person with an unsound mind. It lays down that if a person while doing an act by the reason of unsoundness of his/her mind, cannot understand the nature and the repercussions of the act or whether they are contrary to the law, then such an act would not be considered to be an offence. On a constructive analysis of the above mentioned section, it can be broadly divided into two segments: the first essential segment is that the individual must be suffering from 'mental illness' while the commission of the act takes place by him/her. Secondly, the person should be 'incapable of understanding' the nature and the subsequent consequences of the act committed.

Thus, it can be safely assumed that for insanity to be well established in the legal arena, it must have these two very important gauges clinched, i.e., a) Mental illness and b) Loss of reasoning at the particular time.

Another quite interesting turn to Section 84 of IPC is how gracefully it embodies a set of legal maxims along with detailing out the essentials to prove legal insanity. It incorporates two legal maxims: "*Actus non facit reum nisi mens sit rea*", which means that no act can be explicitly labelled as guilty unless and until the intention of the person behind the act is powered by guilt itself. In addition to this, another maxim consolidated by the aforesaid Section is "*Furiosi nulla voluntas est*" which means that, if a person of an unsound mind/ suffering from mental illness has committed an act contrary to the law governing him/her, then he/she will be assumed to have no free will at the given point of time. In order to be held liable on the grounds of insanity, the most major element to exist is *mens rea* or a guilty intention in layman's terms. If the factor of *mens rea* does not exist, then the individual ceases to be held liable for all the acts enacted by him/her.

*Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under the shelter of Section 84, IPC.

A DELIENATED ANALYSIS OF THE ESSENTIALS:

1. Person should be suffering from mental illness:

   It is through this key that law draws a fine line between medical insanity and legal insanity. Only a mere medical check-up or an examination by a medical practitioner is not sufficient. It must be established that there was an ingredient of unsoundness of mind which led to the act being committed in a wrongful way.

   This distinction is further elaborated in the case of ***State Of Maharashtra vs Sindhi Alias Raman, S/O Dalwai***[1] wherein it was stated that "if the person or the individual had some vague idea that the act in force or yet to be executed is either wrong or violative of the law, then the defense of Section 84 would naturally be not available to him/her."

   In the case of ***Surendra Mishra v. the State of Jharkhand***[2]**,** it was pointed out that "every person who is suffering from the mental disease is not *ipso facto (by that very fact or*

[1] (1987) 89 BOMLR 423

[2] (2011) 11 SCC 49

act) exempted from criminal liability."

2. Motive for the crime/ Intention of the person behind committing the act:

Another crucial constituent which calls for recognition is the intention of the person. It is imperative that the person should absolutely have zero or negligible clue about the essence and the aftermath of the venture. Similarly, if he knew the nature of the act but did not know whether it was wrong or contrary to the law, he is not liable. On the other hand, if the person did not know the nature of the act but knew that it is wrong as contrary to the law, he is held responsible. Mere absence of motive for a crime and howsoever atrocious the crime may be, in the absence of plea and proof of legal insanity, cannot bring the case within the ambit of Section 84 , IPC (as stated by the Supreme Court in ***Bapu Gajraj Singh vs State of Rajasthan***[3] ***and Shera Wali Mohammed v. State of Maharashtra***[4]).

PLEA OF INSANITY:

While pursing the appeal or the defense of insanity, the burden or the onus of proof lies on the person against whom the case has been filed / defendant as put by the legal terms. If the accused is putting forward the arguments from his side on the grounds that he was of unsound mind and that the act that has come into existence had no ill intentions from his side, then he must under all the circumstances prove that the liability stands to be excused for him. It is very necessary that a standard evaluation of the party pleading insanity or unsoundness of mind is done at a right time during the trails.

There are three conditions to be satisfied in any case where a defense of insanity is raised that the accused was suffering from the disease of the mind – disease of the mind is a legal term and not a medical term. The law is concerned with the question whether the accused is to be held legally responsible of his acts. This depends on his mental state and its cause complying with legally defined criteria.

If the accused's defect of reason is to be effective in establishing the defense of insanity, the insanity must affect his legal responsibility for his conduct as such he is not able to realised that what he was doing

[3] Appeal (crl.) 1313 of 2006

[4] 1973, 4 SCC.

is wrong. Wrong here means something that is contrary to law. Where the person knows the nature or quality of the act and knows he was doing wrong, then the fact that he was acting under a strong impulse will not entitle him to a defense under the rules.

In 1916, in English the case of ***R vs. Codere***[5] , the Court of criminal appeal explained the principles:

1. An objective moral test must be applied in cases where insanity is pleaded. The test of insanity is "the objective standard adopted by the reasonable mean";

2. In act is wrong according to that standard if it is punishable by law;

3. The accused must be deemed "to know he was doing what was wrong" if he was aware that act was one which was punishable; and

4. The words "nature and quality" do not refer to the moral aspects of what the offender was doing but solely to the physical facts.

ROLE OF PLEA OF INSANITY UNDER A CRIMINAL TRAIL:

For over several decades, the defense of insanity has acted like a shield for many of those accused of committing a wrongful act, incapable of understanding what he or she was doing, or in determining right from wrong. Since our criminal system generally requires that most defendants had some knowledge or intent when committing a criminal act, the insanity defense provides relief for those deemed incapable of forming such mental states. In terms of criminal law, the mental capacity of the defendant may be in question: (1) at the time he committed the act alleged to be criminal; (2) at the time of the trial; or (3) during the stage of punishment. The first question is concerned with whether, at the time of the commission of the act alleged to constitute a crime, the defendant was suffering from such mental disorder as not to be punishable for the act. On the other hand, the question of mental responsibility at the time of the trial or during the stage of punishment gives rise to a different legal problem. If the defendant is found to be insane at any stage of the proceedings or during punishment, such finding will put an end to the trial or preclude sentences or further punishment. However, if the defendant recovers his sanity, the proceedings will be carried out in their

[5] (1916) 12 Cr App R 21

normal course. Thus, a person who lacks the rational capacity of thinking and understanding in certain circumstances is recognized by the criminal law as not being liable for his criminal acts and thus is excused from convictions. The principle or presumption of rational capacity operates as one of the preconditions and prerequisites for fixing the criminal liability. In India, such type of shield is available under Section 84 of IPC. It is to be noted that Section 84 does not mention the term "insanity", it rather talks about "unsoundness of mind". A well believed reason behind this change of terms is that the former comes out to be restrictive while the latter is more successful in providing a wide coverage. Any kind of mental derangement caused by any reason whatever may be unsoundness of mind but the same may not be insanity always. The Indian set of criminal laws provides with more breathing space as compared to the laws on insanity prevalent in different countries. It gives the liberty to the accused to prove himself under the fact that either he did not know that the act was wrongful in nature or that it was contrary to law in any way.

AFFIRMATIVES OF HAVING THIS DEFENSE:

The aforesaid defense has a positive side attached to it from the point of view of the accused as it provides them with a relief and a platform to prove their innocence. In a nutshell, it gives them a fair chance to escape the liability and helps those who have grave cognitive issues. It comes up as a big helping hand in cases involving minority or capital punishment for the defendant to seek an acquittal or a reduction in their sentencing/ degree of punishment to a great extent.

HOW IS THIS DEFENSE EMERGING AS A BIG LOOPHOLE?

As relieving and liberal as it may sound, the plea of insanity does come with one strong negative characteristic at the other end of the slide. This one negative trait balances out all the other positive traits. It creates a loophole for some people to escape liability without bearing much at their ends since it is very difficult to prove. Often, it is perceived that insanity pleas are a clever ploy. Probably one of the greatest abuses of the insanity defense is the surprise defense which is raised for the first time during the trial, frequently catching the state by surprise and necessitating a continuance of the trial until the next term of court. The disposition of a defendant who is acquitted by reason of insanity poses a problem

where legislators have experienced great difficulty in synchronizing humanitarian considerations with practical justice and expediency.

CONCLUSION:

Although Section 84 attempts to deal with the concept of unsoundness holistically, there is such much more to it that still needs to be explored. With the times changing and new type of cases coming under the light, it is very important to enhance and broaden the scope of this section so that it includes every ingredient that will help it to be just and fair and deal with a wide range of cases at the same time. The concept of emotions, pre and post act situations, other external forces etc must also be taken under the umbrella to have a greater analysis of the same. At the like time, with the number of criminal cases increasing in the country, these sections must be brought under the magnifying glass to suggest any further improvement or the removal of certain terms as suited to time so that a quicker mode can be adopted to decrease the pendency of the cases and to establish a fast-track system catering to the legal requirements of the country.