

THE INSANITY DEFENCE: LEGAL STANDARD AND CONTROVERSIES

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LIST OF ABBREVIATIONS

CrPC	The Criminal Procedure Code (CrPC)
CPA	Criminal Procedure Act
IPC	Indian Penal Code
DPSUs	Defence Public Sector Units
MSMEs	Micro, Small, and Medium Enterprises
AVMS	All-volunteer military system
DLIC	The Directorate of Low Intensity Conflict
DRDo	<u>Defence Research and Development organisation</u>
LIC	Low-Intensity Conflict
MMSE	Mini-Mental State Examination
MoCA	Montreal Cognitive Assessment
SLUMS	Saint Louis University Mental Status Examination
FCT	Five-Minute Cognitive Test
PTSD	Post-Traumatic Stress Disorder
NGRI	Not Guilty by Reason of Insanity"
NIMHANS	National Institute of Mental Health and Neuro Sciences
AIIMS	All India Institute of Medical Sciences AIIMS
ALI	American Law Institute

ABSTRACT

As per my research report on 'Insanity Defense : Legal Standard and Controversies', the insanity defense is a legal concept in criminal law which allows a defendant to argue they are not responsible for a crime due to a mental illness or defect at the time of offense. It's a controversial area, as it raises questions about free will, culpability and treatment of individuals with mental health issues. The legal standard for insanity varies by jurisdiction and it requires a significant impairment in mental functioning that prevents to defendant from understanding the nature of their actions or differentiating right from wrong. The insanity defense also known as the psychological condition defense and it is an affirmative defence by reason in an unlawful case and arguing that defendant

isn't responsible for their conduct due to insanity at the time of the felonious act. These provides a comprehensive disquisition of the insanity defense, assaying its legal foundations, difficulties, and broader counteraccusations. Excavating into literal elaboration, psychiatric perceptivity, and corner case law. Insanity defense is primarily used in 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 behavior, hence making them not legally accountable for crime. Insanity defense is a legal concept not a clinical. This means that just 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. An evaluating a defendant's mental status examination and briefly discuss the legal standards and procedures for the assessment of insanity defense evaluations.

Keywords: Criminal responsibility, Indian Penal Code Section-84, Insanity Defense, Legal Insanity, Medical Insanity

Chapter-1

INTRODUCTION TO THE INTENSITY DEFENCE IN INDIA

As per my research work on intensity in defence⁹⁸⁰ refers and scale the levels of engagement in military activities, including movements, operations and development of defense technology systems. In India, evident in the country's large military force, significant defense budget and growing focus on indigenous defense industrialized as well as advance of technology for low intensity conflict.

1.1 DEFINITION AND SCOPE

Insanity Defense in India

Section 84 of the Indian Penal Code, 1860 (IPC) provides for the defense of insanity and this is one of the general defenses available under the IPC. Derived from the M'Naghten Rule, the defense under section 84 states that person at the time of order of the offence was of unsound mind it is exempt if they didn't know the nature of the act or its penalty.

overview of the insanity defense

The defense under S.84 has two necessities and both must be met. By reason of this unsoundness of mind, the person was incompetent of knowing the nature of the act or that it was either wrong or contrary to law.

IT IS REQUIRED THE DEFENDANT TO SATISFY ANY ONE OF THE THREE INCAPACITIES:

1. Person did not know the nature of the act
2. Person knows the nature of the act; they do not know that the act is decently wrong; or
3. Even if the person knows the nature of the act, they do not know that the act is contrary to law.

once medical insanity has been established courts look at 'totality of circumstances' to determine legal insanity and whether the obligatory threshold for a successful defense has been met. However an active inquiry into legal insanity is rarely undertaken. Often courts infer legal insanity based on a host of factors, including the nature of the mental illness, (lack of) motive and behaviour of accused before, during and after the act.

UN SOUNDNESS OF MIND AT THE TIME OF THE COMMISSION OF THE OFFENCE

The term unsoundness of mind is undefined under the IPC⁹⁸¹. Various terms like 'lunatic', 'loss of mental equilibrium', 'madman', 'idiot' and 'insane' have been used synonymously, providing no clear direction towards understanding the term (*Bapu v. State of Rajasthan* (2007) 8 SCC 66). Unsoundness of mind must be present time of the commission

⁹⁸⁰ The insanity defense, also known as the mental disorder defense, is an affirmative defense by excuse in a criminal case, arguing that the defendant is not

⁹⁸¹ The Indian Penal Code (IPC) was the Official criminal Code Of the Republic Of India, inherited from British India after independence

of the offense. Currently there is no standardised procedure followed by psychiatrists in making a determination of a person's mental condition at the time of the offence. In the absence of prior records of the accused's undetected mental illness, psychiatrists have little material to rely on and may not have access to key witnesses in the life of the accused to fill in the gap.

INCAPACITY TO KNOW THE NATURE OR CONSEQUENCES OF THE ACT

Indian jurisprudence is unclear and inconsistent on the degree of incapacity that is required under S.84. In *Queen-Empress v. Kader Nasyer* (1896) ILR 23, Court held that unsoundness of mind which 'materially impairs' the cognitive faculties of the mind form a ground of exemption from criminal responsibility. The court in *Lakshmi v. State* (1958) SCC online All 208 required complete extinguishment of ability to know the nature or consequences.

TOTALITY OF CIRCUMSTANCES FRAMEWORK

Courts look at surrounding circumstances to infer legal insanity. As per these circumstances are the history of mental illness, lack of motive/weak motive, treatment post-arrest, behaviour on the day of the incident and subsequent conduct of the accused. While courts are unanimous in the relevance of inquiring into surrounding circumstances, they are inconsistent in determining the relevance and weightage of these circumstances.

Evidentiary requirements

A reading of S.105 with S3 of the IEA makes it evident that the standard of proof required is that of the preponderance of probabilities. As per accused has to establish on a preponderance of probabilities and they were of unsound mind at the time of offence because of which they were incapable of knowing the nature or consequence of their actions. It is not enough to make a mere claim of insanity and the defense must be able to prove on a preponderance of probabilities that the

accused was legally insane at the time of the commission of the offence. It is concluded that while the wording of S.84 is seemingly straightforward, S.84 jurisprudence is not consistent. Courts have assigned different meanings to what it means to successfully raise a S.84 defense. There are stark differences in the required mental state, the relevant time period of that mental state and the manner in which that mental state is to be established. Differences in each of those aspects then bring to bear a different burden on the person seeking to invoke the S.84 defense⁹⁸².

1.2 ROLE OF INSANITY OF DEFENCE IN THE CRIMINAL JUSTICE SYSTEM⁹⁸³ IN INDIA

In the Indian criminal justice system, the insanity defense, as outlined in Section 84 of the Indian Penal Code (IPC), allows individuals to be exonerated from criminal liability if they were of unsound mind at the time of the offense and, due to that unsoundness, were incapable of knowing the nature of their act or that it was wrong.

KEY HIGHLIGHTS ABOUT INSANITY DEFENSE IN INDIA:

- **Legal Insanity:** The focus is on legal insanity, which refers to the inability to understand the nature of the act or its consequences, rather than simply having a mental illness.
- **Burden of Proof⁹⁸⁴:** The burden of proving the defense of insanity lies on the accused. They must demonstrate, on a balance of probabilities and they are of unsound mind at the time of the crime.
- **"Unsoundness of Mind":** The IPC uses the term "unsoundness of mind" to describe the mental condition required

⁹⁸² 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 crime

⁹⁸³ The Federal criminal law, namely, Indian Penal Code, defines various types of crimes and prescribes punishment for each crime

⁹⁸⁴ The burden has been shifted to the defendant to prove the defense of insanity by clear and convincing evidence

for the defense to be successful. This generally means a state of mind where the person is incapable of knowing the nature of the act they are committing or that it is wrong or contrary to law.

- **Presumption of Sanity:** Every person is presumed to be sane unless proven otherwise. The accused must provide evidence to rebut this presumption and demonstrate their state of unsound mind at the time of the offense.
- **M'Naghten Rule:** The insanity defense in India, as codified in Section 84, is broadly based on the M'Naghten Rule, a legal standard that originated in English law.
- **Medical Evidence:** While the defense is primarily based on legal standards, medical evidence is often crucial in evaluating the accused's mental state at the time of the offense.

Punishing a person, who is not responsible for the crime, is a violation of the basic human rights and fundamental rights under the Constitution of India. It also brings the due process of law, if that person is not in a position to defend himself in the court of law, evoking the principle of natural justice. This is recognized by the legislation of most of the civilized nations. Even in India, Section 84 of Indian Penal Code (IPC) deals with the "act of a person of unsound mind" and discusses insanity defense.

Very little research has been done on this topic in India however, there are few studies on exploring the clinical picture of the patients in prison. A landmark study in the forensic psychiatry of Indian setting occurred in 2011, in which 5024 prisoners were assessed on semi-structured interview schedule reported that 4002 (79.6%) individuals could be diagnosed as having a diagnosis of

either mental illness or substance use. After excluding substance abuse, 1389 (27.6%) prisoners still had a diagnosable mental disorder.

To address this issue of streamlining the process of evaluation of insanity defense and certification on the semi-structured assessment in the Indian context based on landmark Supreme Court decisions. In addition, it will also present a model for evaluating a defendant's mental status examination and briefly discuss the legal standards and procedures for the assessment of insanity defense evaluations⁹⁸⁵.

1.3 Historical Development of Insanity Defense in Criminal Cases in India⁹⁸⁶

The concept of insanity as a defense in criminal cases has been a subject of much debate and scrutiny within the legal and mental health communities. This defense raises complex ethical, legal, and psychological questions, highlighting the delicate balance between protecting society, holding individual accountable, and addressing mental health concerns.

The insanity defense varies across jurisdictions, and legal systems often adopt different standards to determine an individual's mental state at the time of the alleged crime. The two main standards used are the M'Naghten Rule and the Model Penal Code's substantial capacity test. The M'Naghten Rule focuses on whether the defendant knew the nature and quality of their actions or understood that what they were doing was wrong. Section 84 of the Indian Penal Code gives the statutory recognition to the defence of Insanity.

⁹⁸⁵ Insanity defense is a legal construct that under circumstances, excuses defendants with mental illness from legal responsibility for criminal

⁹⁸⁶ Criminal cases in India encompass a wide range of offenses, including murder, theft, assault, rape, and fraud, as well as less serious crimes like defamation and petty theft. Indian courts determine penalties like imprisonment or fines for those found guilty

ESSENTIAL ELEMENTS OF SECTION-84 INDIAN PENAL CODE

1. The person should be of unsound mind at the time of commission of the offence.
2. That due to the unsoundness of the mind the person is incapable of knowing the nature of the act, or that he is doing is either wrong or contrary to law.

BURDEN OF PROVE:

The burden of proving the defense of insanity rests on the accused. It is up to the accused to establish, on the balance of probabilities, that they were suffering from a mental disorder at the time of the offense.

It has been time and again held in a plethora of judgments that the courts are concerned with Legal Insanity and mere medical insanity cannot be held to be unsoundness of mind. The test of legal insanity attracts the mandate of Section 84 IPC.

The mere fact that the accused is odd, eccentric and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code. As per every type of insanity recognised in medical science is not legal insanity, every minor mental aberration is not insanity. Only legal insanity is contemplated under Section 84 of I.P.C.

The Court is only concerned with the state of mind of the accused at the time of the act and the antecedent and subsequent conduct of the man is relevant only to show what the state of

the mind was at the time when the act was committed.

JUDICIAL PRONOUNCEMENTS⁹⁸⁷:

1. The Hon'ble Supreme Court in *State of Madhya Pradesh v. Ahmadulla*, AIR 1961 SC 998 held that the crucial point of time at which the unsoundness of mind as defined in section 84 has to be established is when the act was committed.

2. The Hon'ble Supreme Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 Supreme Court 1563 have held that that when a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

3. The Hon'ble Supreme Court in the matter *Dahyabhai Chhaganbhai Thakker v. State of Gujarat*" (1964) 7 SCR 361, referring to Section 84 of IPC and the rule of evidence as contained in Sections 4, 101 and 105 of the Evidence Act held:

"It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts, and it always rests on the prosecution. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within

⁹⁸⁷ Judicial pronouncements refer to the formal statements or decisions made by courts regarding legal matters, including judgments, rulings, and orders.

the said exception lies on the accused; and the court shall presume the absence of such circumstances.

The doctrine of burden⁹⁸⁸ of proof in the context of the plea of insanity may be stated in the following propositions:

(1) 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.

(2) 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 a party to civil proceedings.

(3) 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 and 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."

4. That recently in the matter *Prakash Nayi @ Sen - Appellant v. State of Goa - Respondents 2023(1) R.C.R.(Criminal) 823* the Hon'ble Supreme Court held :

"4. Section 84 of the IPC recognizes only an act which could not be termed as an offence. It starts with the words "nothing is an offence". The said words are a clear

indication of the intendment behind this laudable provision. Such an act shall emanate from an unsound mind. Therefore, the existence of an unsound mind is a sine qua non to the applicability of the provision.

IMPLICATIONS AND FUTURE CONSIDERATIONS:

The use of the insanity defense raises questions about the intersection of mental health and criminal justice. As society's understanding of mental illness evolves, legal standards may need to adapt to ensure a fair balance between protecting the public and acknowledging the rights of those with mental disorders. Collaborations between legal and mental health professionals, ongoing research, and public discourse will play pivotal roles in shaping the future of insanity as a defense in criminal cases.

It is summarise that insanity defense remains a complex and contentious aspect of criminal law, navigating the delicate balance between justice and compassion. While it provides a legal avenue for individuals struggling with severe mental illness, its application requires careful consideration to prevent potential misuse. As society continues to grapple with the interplay of mental health and criminal responsibility, as per insanity defense will likely remain a subject of ongoing legal and ethical scrutiny.

CHAPTER-2

LEGAL FRAMEWORK⁹⁸⁹ OF THE INSANITY DEFENCE IN INDIA

2.1 SECTION 84 OF THE INDIA PENAL CODE

This Mc Naughten rule became a legendary precedent for the law concerning the defense of

⁹⁸⁸ The burden Of prOOOf requires a party tO prOduce evidence tO establish the truth Of facts needed tO satisfy all the required legal elements Of the dispute

⁹⁸⁹ Legal framewOrks cOmprise a set Of dOcuments that include the cOnstitutiOn, legislatiOn, regulatiOns, and cOntracts

insanity. Even, in India, insanity defense law, Section 84 IPC is solely based on the Mc Naughten rules. Since it is drafted, no changes have been made. However, in 1971, there was an attempt by the Law Commission of India to revisit the Section 84 in their 42nd report, but no changes were made. Section 84 of IPC deals with 'act of a person of unsound mind and 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.'

As per analysis of the Section 84 IPC, an essential ingredient can be listed. For the sake of easy understanding, the Section 84 IPC can be divided into two broad categories of, major criteria (medical requirement of mental illness) and minor criteria (loss of reasoning requirement). Major criteria mean the person must be suffering from mental illness during the commission of act. Minor criteria mean the person is:

- a. Incapable of knowing the nature of the act.
- b. Incapable of knowing his act is wrong.
- c. Incapable of knowing it is contrary to law.

Both major (mental illness) and minor (loss of reasoning) criteria constitute legal insanity.

Hence, Section 84 IPC fastens no culpability on persons with mental illness because they can have no rational thinking or the necessary guilty intent.

2.2 INTERPRETATION OF SECTION 84

SUPREME COURT DECISION ON INSANITY DEFENSE IN INDIA

Modern criminal law is based on the belief that humans are morally responsible and not harm causing agents. To be held criminally responsible, two essential elements have to be proven, beyond reasonable doubt, (a) the person committed the act (actus reus) (b) in doing so, the person acted with his or her own

free will, intentionally and for rational reasons (mens rea). Psychiatrists may be asked to assist the court in determining whether certain mental disorders affected a person's ability to form the intent necessary to make that person legally culpable.

Medical insanity versus Legal Insanity⁹⁹⁰

Section 84 lays down the legal test of responsibility in cases of alleged crime done by a person with mental illness. There is no definition of "unsoundness of mind⁹⁹¹" in the IPC. The courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition, carries different meaning in different contexts and describes varying degrees of mental disorders. Every person who is mentally ill is not ipso facto exempted from criminal responsibility.

THIS ISSUE IS CLEARLY DEPICTED IN SECTION 84 IPC AS THAT PERSON INCAPABLE OF KNOWING:

- a. The nature of the act
- b. That he is doing what is either wrong
- c. Contrary to law.

In one of the landmark decisions, in the case of Surendra Mishra versus state of Jharkhand, the Apex Court has stated that an accused who seeks exoneration from liability of an act under Section 84 of the IPC is to prove legal insanity and not medical insanity. Further, it also said that expression "unsoundness of mind" has not been defined in the IPC, and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorders. Every person who is suffering from mental illness is not exempted from criminal liability.

The crucial point of time for determining the state of mind of the accused is the time when

⁹⁹⁰ Medical insanity refers to a mental illness or disorder diagnosed by medical professionals

⁹⁹¹ Medical professionals use terms like "mental illness" or "mental disorder" to describe conditions that affect a person's thinking, feeling, mood, and behavior.

the offense was committed. The person suffering from mental illness⁹⁹² is one of the facts for Section 84 IPC. However, other facts which also needs to be given importance are: Motive for the crime, the previous history as to mental condition of the accused, the state of his mind at the time of the offense, and the events immediately after the incident that throw a light on the state of his mind.

To summarize, it is not only the fact that the person is suffering from mental illness but it is the totality of the circumstances seen in the light of the evidence on record to prove that the person was also unable to appreciate the nature of the act or wrongdoing or that it was contrary to the law is appreciated in the court of law for insanity defense.

2.3 JUDICIAL PROCEDURES

Section 84 of Indian Penal Code, 1860 (8)⁹⁹³ sets out legitimate obligation test different from clinical test. The unstable condition of mind, makes an accused person exempt from criminal obligation, insanity defense differs in clinical and lawful perspective.

According to the clinical perspective if a person who is under the influence of any drug commits a crime can use the plea of insanity under Section 84. Only the legal insanity and not the medical insanity falls within the bracket of section 84. Basically there are 3 things that law perceives in human brain i.e. stirring, will and psychological. The Supreme Court ruled out that people who are mentally not stable and are unable to seek protection from a criminal trial, as it is the responsibility of accused to demonstrate the existence of lunacy at the time or hour of committing an offense. The consideration of defense of plea⁹⁹⁴ so, therefore there has to be a distinction between clinical insanity and legal

insanity. The test which should be implemented would be legal insanity and not clinical insanity

IN INSANITY DEFENSE, THERE ARE TWO ASPECTS OF PROVING AN OFFENSE, WHICH ARE AS FOLLOWS:

- a. Commission of crime
- b. Insanity defense.

The accused has to prove by placing material before the court such as expert evidence, oral and other documentary evidence, presumptions, admissions or even the prosecution evidence, satisfying that he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law.

The Supreme Court have ascertained that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this, lies on the appellant for claiming the benefit of the Section 84 provision.

PLEA OF INSANITY

The onus of proving unsoundness of mind is on the accused, hence the plea of insanity should be taken by the accused or by his lawyer or his family members or previous history of insanity is revealed, it is the duty of an honest investigating officer to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.

To summarize, the concept of insanity defense is a legal one and not a medical one. Although a psychiatrist's opinion is taken into account ultimately the decision to accept or reject the defense lays with the court the world over based upon the reasoning power of the defendant during the circumstances of the crime.

⁹⁹² A mental disorder, also referred to as a mental illness, a mental health condition, or a psychiatric disability

⁹⁹³ The Indian Penal Code (IPC), enacted in 1860, is the main criminal law of India. It was drafted by the first Law Commission chaired by Thomas Babington Macaulay and came into effect on January 1st, 1860. The IPC covers a wide range of offenses and is divided into 23 chapters and 511 sections

⁹⁹⁴ In law, a plea is a defendant's response to a criminal charge. A defendant may plead guilty or not guilty. Depending on jurisdiction, additional pleas

Legal perspective

The conception of 'insanity' as a legit defence began from the case of R v Arnold(1924). This case led to the establishment of the 'Feral critter Test, which assessed whether the indicted had the internal capacity to understand the nature of their conduct and distinguishing between 'right' and 'wrong'. This resolution laid the foundation for the legit description of 'insanity' and established the principles of 'McNaughton's Rule'⁹⁹⁵ which carry presuppositions of reason unless proven else, all individualities are considered stable and retain logic capabilities.

THE CASE OF HAZARA SINGH V THE STATE

It is acquainted conception of 'furious nulla voluntas est' which means that a madcap has no will. Then, a madcap was interpreted as a mentally ill person. Still, not all individualities with internal diseases can automatically assert this defence. In Bapu v the country of Rajasthan, the court purified that it's 'legit insanity' that needs to be proven, not "medical insanity".

In Dulal Naik v State (1987)

According to McNaughton's it was interpreted alongside Section 105 of the Indian substantiation Act, which states that the courts suppose a person to be stable and in full control of their faculties unless proven else. As per burden of evidence lies with the indicted and it also important to note that illness of mind before or after negotiating the offence doesn't qualify as a defence of insanity. It must be present-day during the offence itself.

LANDMARK JUDGEMENT RELATED TO MC NAUGHTON'S RULE UNDER INDIAN PENAL CODE

Amrit Bhushanv. Union of India

In the case of Amrit Bhushanv, Union of India(1976), the Supreme Court purified that the M'Naghten regulations outline and explain the tenure 'insanity' of the indicted, while Section 84 of the Indian Penal Code describes 'unsound

mind, 'which is considered original to insanity. This step was taken by the payload of the Indian Penal Code to give a thick interpretation of the tenure' unstable mind and also recognised the conception of non-compos mentis as a defence of insanity under felonious law.

- To assert the defence under Section 84, certain essential rudiments must be answered
- The indicted's mind should be unable of being apprehensive of the nature of the act.
- The act should be contrary to the law.
- The act should be innocently wrong.
- To establish the insanity or unsound mind of the defendant, it must be demonstrated that their cognitive capacities were bloodied to the extent that they didn't see the nature of their conduct or the consequences thereof.

Chapter – 3

LEGAL STANDARDS⁹⁹⁶ FOR INSANITY DEFENCE IN INDIA

In India, the legal standard for the insanity defense, as outlined in Section 84 of the Indian Penal Code (IPC), hinges on the individual's mental state at the time of the offense. A person is considered legally insane if, due to unsoundness of mind, they were incapable of understanding the nature of the act or that it was wrong or contrary to law. The burden of proof rests with the accused, who must demonstrate by a preponderance of probabilities, that they were legally insane at the time of the crime.

3.1 TEST OF 'COGNITIVE INCAPACITY'

A test for cognitive incapacity, also known as a cognitive assessment or cognitive test, is used to evaluate a person's thinking, memory and other cognitive abilities, these tests can help identify if someone has cognitive impairment or to assess the severity of existing impairment.

⁹⁹⁵ McNaughton's Rule, also known as the M'Naghten Rule, is a legal test used to determine the criminal responsibility of an individual based on their mental state at the time of the offence. It originated from the landmark British case R v. McNaughton in 1843.

⁹⁹⁶ Acting legally means respecting the applicable bodies of law in the firm's jurisdiction.

TYPES OF COGNITIVE TESTS:

- **Mini-Mental State Examination (MMSE):** This test assesses cognitive functions by asking questions about orientation, memory, attention and calculation.
- **Montreal Cognitive Assessment (MoCA):** The MoCA evaluates various cognitive domains, including attention, memory, language, and executive functions.
- **Mini-Cog:** A brief screening tool that assesses memory and visuospatial abilities.
- **Saint Louis University Mental Status Examination (SLUMS):** A screening tool designed to detect mild cognitive impairment, particularly in the early stages of dementia.
- **Five-Minute Cognitive Test (FCT):** This test assesses cognitive functions in a variety of domains, including memory, language, and executive function.

PURPOSE OF COGNITIVE TESTS:

- **Screening:** Cognitive tests can be used to identify individuals who may have cognitive impairment and require further evaluation.
- **Diagnosis:** In conjunction with other assessments, cognitive tests can help establish a diagnosis of cognitive impairment or related conditions like dementia.
- **Monitoring Progress:** These tests can be used to track changes in cognitive abilities over time.
- **Assessing Severity:** Cognitive tests can help determine the severity of cognitive impairment.

These are:

1. **Section 84 of the IPC:** This section provides the statutory basis for the insanity defense. It states that an act is not an offense if, at the time of doing it, the person was, by reason of

unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law.

2. **Legal Insanity vs. Medical Insanity:** The legal standard under Section 84 focuses on the individual's ability to understand the nature and wrongfulness of their actions, not on a medical diagnosis of mental illness. Mere abnormality of mind or compulsive behavior is insufficient; the accused must demonstrate that their unsoundness of mind prevented them from understanding the act or its wrongfulness.

3. **Burden of Proof:** The accused has the burden of proving, by a preponderance of probabilities, that they were legally insane at the time of the crime. This means they must present evidence to convince the court that the mental condition they were experiencing rendered them unable to understand the nature or wrongfulness of the act.

4. **Totality of Circumstances:** Courts consider the "totality of circumstances" when evaluating the insanity defense, including:

History of mental illness: A history of mental illness can provide evidence supporting the claim of legal insanity.

Lack of motive: The absence of a clear motive for the crime can also be considered.

Treatment post-arrest: The accused's mental state after being apprehended can be assessed.

Behavior on the day of the incident: The accused's behavior before, during, and after the incident can be examined.

Subsequent Conduct: The accused's behavior following the crime can also be relevant.

3.2 JUDICIAL INTERPRETATIONS

- Section 84 of IPC deals with the act of a person of unsound mind whereas the same provision has been covered under Section 22 of the [Bhartiya Nyaya Sanhita, 2023 \(BNS\)](#).
- It states that 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.

- Section 84 IPC is one of the general defenses available under the IPC and provides for the defence of insanity.
- The word 'insanity' is not used in Section 84 of IPC.
- This section is legal insanity and not medical insanity. The crucial point of time for deciding the legal insanity is the material time when the offence took place
- In order to seek protection under Section 84 of IPC, it is necessary for an accused to prove that he, because of unsoundness of mind, was incapable of knowing the nature of the act or that the act was contrary to law.
- The crucial point of time of such incapability due to unsoundness of mind is the time when he committed the offence.
- His insanity prior to or subsequent to the commission of the offence is not in itself adequate to absolve him from the criminal liability.

3.3 ROLE OF EXPERT EVIDENCE⁹⁹⁷

- In *Rattan Lal v. State of M.P.*(2002), [Supreme Court](#) held that the crucial point of time at which the unsound mind should be established is the time when the crime is actually committed and whether the accused was in such a state of mind as to be entitled to benefit from Section 84 of IPC can only be determined from the circumstances that preceded, attended and followed the crime.

The plaintiff was caught setting fire to the field in an open land of Nemichand, when he was asked why he did it, he replied; 'I burnt it, do whatever you want.' The plaintiff was charged under Section 435 (mischief by fire with intent to beget damage) of the Indian Penal Code. According to the psychotic, he was an insane in terms of the Indian Lunacy Act, 1912.

⁹⁹⁷ An expert Of a particular subject is consulted to give his Opinion On the relevant subject and it is relevant in deciding the case

THE REPORT EXPLICITLY STATED THAT THE CRIMINATED IS:

- Remains depressed
- Doesn't speak
- He is a case of illicit depression and psychosis
- He requires remedy.

The trial court held that the criminated was not liable to be punished. An appeal was filed by the state, and the High court reversed the findings of the trial and held the criminated liable for the offence.

Chapter - 4

MENTAL ILLNESS AND CRIMINAL RESPONSIBILITIES

4.1 Understanding Mental Illness in India Law⁹⁹⁸:

Mental illness can significantly impact criminal responsibility, as it can affect a person's ability to form criminal intent (mens rea) or control their actions. Courts consider the defendant's mental state at the time of the crime to determine if they should be held criminally responsible.

MAIN FACTORS ARE:

- **Mens Rea:** Mental illness can interfere with the ability to form the necessary mental state (mens rea) required for a crime. For example, someone with a severe mental illness might not be able to understand the wrongfulness of their actions or control their impulses.
- **Control of Actions:** A mental illness could impair a person's capacity to control their behavior, making it difficult for them to avoid committing a crime.
- **Reason and Judgment:** Mental health conditions can affect a person's ability to reason, make sound judgments, and

⁹⁹⁸ Institute Of Health Metrics and Evaluation. Global Health Data Exchange (GHDx), (<https://vizhub.healthdata.org/gbd-results/>), accessed 14 May 2022)

understand the consequences of their actions.

2. Legal Considerations

- **Insanity Defense:** A person with a mental illness may be found not guilty by reason of insanity if they were unable to understand the nature of their actions or that their actions were wrong at the time of the crime.
- **Competency to Stand Trial:** Individuals must be deemed competent to stand trial, meaning they can understand the charges against them and assist in their own defense.
- **M'Naghten Rule:** This rule is often used to determine criminal responsibility, stating that a person is not responsible for a crime if, at the time of the act, they did not know the nature and quality of the act or did not know it was wrong.
- **Curren's Rule:** This rule focuses on whether the person had the capacity to control their conduct, even if they knew the act was wrong.
- **ALI Test (American Law Institute):** The ALI test considers whether a person lacked the capacity to appreciate the wrongfulness of their conduct or to conform their conduct to the requirements of the law.

3. Important Considerations:

- **Not all people with mental illness are criminals:** It's crucial to avoid the misconception that mental illness automatically leads to criminal behavior.
- **Mental health⁹⁹⁹ conditions can be a result of crime:** A mental health condition may arise as a result of experiencing a traumatic event, like being a victim of a crime.
- **Treatment and Rehabilitation:** Individuals found to have mental illness and

committed a crime may be subject to treatment and rehabilitation programs instead of traditional imprisonment.

4.2 CATEGORIES OF MENTAL ILLNESS

A mental illness is characterized by a clinically significant disturbance in an individual's cognition, emotional regulation, or behaviour. It is usually associated with distress or impairment in important areas of functioning. There are many different types of mental disorders. Mental illness may also be referred to as mental health conditions. This fact sheet focuses on mental disorders as described by the International Classification of Diseases 11th Revision (ICD-11). In 2019, 1 in every 8 people, or 970 million people around the world were living with a mental disorder, with anxiety and depressive disorders the most common (1). In 2020, the number of people living with anxiety and depressive disorders rose significantly because of the CoVID-19 pandemic. Initial estimates show a 26% and 28% increase respectively for anxiety and major depressive disorders in just one year (2). While effective prevention and treatment options exist, most people with mental disorders do not have access to effective care.

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⁹⁹⁹ [Mental Health and COVID-19: Early evidence Of the pandemic's impact.](#) Geneva: World Health Organization; 2022

disorders in just one year (2). While effective prevention and treatment options exist, most people with mental disorders do not have access to effective care. The insanity defense, or mental disorder defense, can be asserted in criminal cases when a defendant's mental state at the time of the crime is considered to have impaired their ability to understand the nature and quality of their actions or to know they were doing wrong.

CATEGORIES OF MENTAL ILLNESS

Psychotic Disorders: These include conditions like schizophrenia, which can involve delusions, hallucinations, and disorganized thinking, severely impairing a person's ability to grasp reality.

Severe Mood Disorders: Conditions like bipolar disorder or severe depression can, in some cases, be so debilitating that they affect a person's capacity to understand the consequences of their actions.

Dissociative Disorders: Dissociative Identity Disorder (formerly known as Multiple Personality Disorder) can sometimes be used, although the defense is often debated in court.

Post-Traumatic Stress Disorder (PTSD): While not always sufficient on its own, severe PTSD, especially if it leads to a psychotic break, may be considered.

Neurodevelopmental Disorders¹⁰⁰⁰: A severe neurodevelopmental disorders, if they significantly impair a person's ability to understand their actions, might be considered.

Substance Use Disorders: If chronic substance abuse has caused permanent and irreversible brain damage leading to mental illness or cognitive dysfunction, it may be considered under the concept of "settled insanity,"

IMPORTANT CONSIDERATIONS:

Severity and Impact: The insanity defense typically requires a mental illness that is

extremely debilitating and has a long history, particularly one involving psychosis.

Legal Interpretation: The specific requirements and standards for the insanity defense can vary between jurisdictions.

Not a General Excuse: The insanity defense is not a justification for actions committed by individuals who are simply anxious, mildly depressed, or having a bad day, according to Science Direct.

According to the law, punishing people who are not responsible for their crimes is unfair. The insanity defence is aimed at preventing such injustices in the case of individuals who are not responsible due to a mental illness. The insanity defence is one of the most intensely debated elements of the criminal law (Meynen, 2016). The mental illness clause is expressed by requiring that the relevant incapacities derive from a defect of reason that results from a disease of the mind.

From a philosophical perspective, it has been argued that it is not mental illness that reduces responsibility and it is the incapacity to conduct oneself in accordance with the law, regardless of the cause. Accordingly, the claim is that the mental illness clause can or should be replaced by the incapacity clause (e.g. Matthews, 2004; Vincent, 2008).

CHAPTER – 5

THE ROLE OF EXPERT TESTIMONY AND PSYCHIATRIC EVALUATIONS

5.1 FORENSIC PSYCHIATRY IN INDIA:

Forensic psychiatry is a subspecialty of psychiatry, in which scientific and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal, correctional, legislative matters. Forensic psychiatry is still in an infant stage in India and other developing countries. Law is the sanctioning discipline and Psychiatry is the therapeutic discipline. Forensic Psychiatry is reared as Cinderella in our country; "which is much neglected, ignored, misinterpreted, and misunderstood. Legislation

¹⁰⁰⁰ Laursen TM, Nordentoft M, Mortensen PB. Excess early mortality in schizophrenia. Annual Review Of Clinical Psychology, 2014;10,425-438.

forms an integral component in the implementation of Mental Health Care; there is a dynamic relationship between the concept of mental illness, treatment of the mentally ill, and the law. Legislations can also create enforceable standards for high quality medical care and improve access to care and protect civil, political, social, and economic rights of the mentally ill individual, including right to access to education, employment, housing, and social security."

The very important milestone in the mental health legislation in India is going to take place most probably by the beginning of the next year. The Mental Health Care Act which is going to be enacted and implemented soon in India is a progressive and a comprehensive Act. The Act defines the mental illness, mental health professionals, and mental health establishments in a very clear way. It has controlling authority, i.e. the review board in the state, central and district levels.

THE NEW CONCEPTS IN THE FORTHCOMING ACT ARE AS FOLLOWS:

- Changes in admission procedures which include emergency treatment
- The change of nomenclature of psychiatry hospitals to mental health establishments and mentally ill renamed as persons with mental illness.

All practicing psychiatrist and postgraduates should have a better understanding and knowledge about the interface between psychiatry and law. They should also be familiar with civil issues such as role of mental illness in assessing testamentary capacity, fitness to give witness, entering into contract and transfer of property of mentally ill, the right to vote and right to stand for election by mentally ill, the civil issues include marriage, and mental health and Indian legislations. The civil issues also include the fitness regarding the mentally ill to get driving license and accepting or donating organ transplants.

5.2 Challenges in Expert Testimony

Challenges in expert testimony revolve around ensuring the expert's qualifications, the reliability and admissibility of their opinions, and the potential for bias or misrepresentation. Experts must be qualified in the relevant field, and their opinions need to be grounded in credible scientific or technical principles. Potential biases, inconsistencies, and a lack of transparency can undermine an expert's credibility. Furthermore, legal frameworks and judicial standards like the Daubert standard influence the admissibility of expert testimony, requiring courts to assess its reliability.

Major Challenges

Qualifications: opposing parties may challenge an expert's qualifications if they lack the necessary expertise or experience in the relevant field.

Reliability: Experts must demonstrate that their opinions and methodologies are based on reliable scientific or technical principles, and that the findings are accepted within the relevant scientific community.

Bias and Impartiality: Experts must avoid any bias or conflict of interest that could undermine the objectivity of their testimony. Being perceived as a "hired gun" can also erode credibility.

Admissibility: The admissibility of expert testimony is influenced by factors like relevance, reliability, and the expert's qualifications. Courts may exclude expert opinions that are not considered reliable or are not relevant to the case.

Communication and Presentation: Experts need to communicate their findings in a clear and accessible manner, explaining technical concepts in a way that non-experts can understand.

Transparency and Disclosure: Experts must fully disclose the basis for their opinions, including the data, methods, and assumptions

they relied upon. This helps prevent "cherry-picking" favorable facts and ensures that the basis for their opinions is well-founded.

Ethical Business Practices: Experts must adhere to ethical business practices, including ensuring that their compensation does not influence their impartiality.

Inconsistencies and Contradictions: Inconsistencies in an expert's testimony can undermine their credibility, so it's crucial to have a consistent and well-documented track record.

5.3 Case Studies

Mental illness can significantly impact criminal responsibility, as it can affect a person's ability to form criminal intent (*mens rea*) or control their actions. Courts consider the defendant's mental state at the time of the crime to determine if they should be held criminally responsible.

'Neither alleged witness nor Bajrangji's 'bragging' can be relied upon as they are not gynaecologists'

The special fast track court, which tried the Naroda-Patiya massacre of the Gujarat 2002 riots case, has rejected the theory that the former State Bajrang Dal president, Babu Bajrangji, removed a foetus from a victim and killed it after "swirling it on the tip of his sword" during the riots.

Babu Bajrangji, who made 'admissions' in sting op, acquitted - The prosecution also accused him of instigating and being part of a mob that attacked the Muslim locality in Naroda Gam on February 28, 2002. Like former minister Maya Kodnani, Babu Rajabhai Patel alias Babu Bajrangji was also an accused in both Naroda Gam and Naroda Patiya massacres. Named as one of the key conspirators in Naroda Gam massacre case by the prosecution, Bajrangji was facing serious charges like murder, attempted murder, criminal conspiracy, instigating mob, rioting and unlawful assembly among others. He came to be known by his alias name, "Bajrangji", owing to his association

with Bajrang Dal, the youth wing of VHP, for many years. He, however, has not been associated with the Bajrang Dal for many years now.

In 2007, a private news channel had broadcast a sting operation related to the 2002 Gujarat riots in which many of the people were shown making claims about their roles in the riots. One of them was Bajrangji, who belongs to the Kadva Patidar sub-caste group of the Patidar community. In fact, the prosecution had relied on this sting operation and claims made by Bajrangji in it as his admission of the alleged act. Babubhai Patel, known by his alias Babu Bajrangji, is a leader of the Gujarat-wing of the Bajrang Dal, a Hindu right wing organization in India. He was a central figure during the 2002 Gujarat violence.

In 2007, the Indian journal Tehelka published a hidden-camera interview with Bajrangji, in which Bajrangji talks of his role in the violence against Indian Muslims in the Naroda Patiya massacre, a particularly intense episode of brutality during the 2002 Gujarat riots.

"We didn't spare a single Muslim shop, we set everything on fire ... we hacked, burned, set on fire ... we believe in setting them on fire because these bastards don't want to be cremated, they're afraid of it ... I have just one last wish ... let me be sentenced to death ... I don't care if I'm hanged ... just give me two days before my hanging and I will go and have a field day in Juhapura where seven or eight lakhs [seven or eight hundred thousand] of these people stay ... I will finish them off ... let a few more of them die ... at least 25,000 to 50,000 should die." he was heard saying.

CHAPTER - 6

THE BURDEN OF PROOF AND LEGAL PRESUMPTIONS

6.1 BURDEN OF PROOF IN INSANITY CASES:

In insanity cases, the burden of proof typically rests on the accused to demonstrate their mental state at the time of the crime. This burden is not as high as proving innocence in a

typical criminal case; it requires demonstrating the accused was likely suffering from a mental disorder that affected their ability to understand the nature of the act or its consequences in IPC.

1. **Presumption of Sanity:** Indian law, like many jurisdictions, assumes that individuals are sane and responsible for their actions. This means the prosecution doesn't need to prove sanity beyond reasonable doubt.

2. **Burden on the Accused:** The accused has the burden of rebutting this presumption by demonstrating that they were, in fact, insane at the time of the crime. This is often done through medical evidence and expert testimony.

3. **Standard of Proof:** The standard of proof required to establish insanity is generally a "preponderance of the evidence," meaning it must be more likely than not that the accused was insane at the time of the crime.

4. **Legal Insanity vs. Medical Insanity:** It's important to distinguish between medical insanity (a mental disorder) and legal insanity (as defined by the law). Legal insanity, as per Section 84 of the Indian Penal Code, requires the accused to be incapable of understanding the nature of the act or its consequences due to a mental disorder.

5. **Evidence to Consider:** Courts consider various types of evidence to assess an accused's mental state, including:

- **Medical history:** Any documented history of mental illness.
- **Expert testimony:** Psychiatrists and other mental health professionals may testify about the accused's mental state.
- **Circumstantial evidence:** Actions and behaviors surrounding the crime may provide clues about the accused's mental state.

6. **Consequences of a Successful Insanity Plea:** If the accused successfully proves insanity, they may be found "not guilty by reason of insanity" and may be committed to a mental institution

for treatment rather than facing a typical criminal sentence.

6.2 Judicial Precedents on Burden of Proof

During judicial precedents on the burden of proof primarily establish that the party asserting a claim bears the initial responsibility of proving it, and the onus shifts only when specific exceptions or laws provide otherwise. In criminal cases, the prosecution has the burden of proving guilt beyond a reasonable doubt, and the accused is presumed innocent until proven guilty.

Key principles and relevant cases:

- **"one who asserts must prove":** The general principle is that the party asserting a fact or legal right must prove it.
- **Initial burden on the claimant:** In civil cases, the plaintiff typically bears the initial burden of proving their case.
- **Burden shifts in specific situations:** Laws or specific circumstances may shift the burden of proof to the defendant, such as when relying on an exception or special provision.
- **Criminal cases:** The prosecution bears the burden of proving the accused's guilt beyond a reasonable doubt.

RELEVANT CASES:

- **K.M. Nanavati v. State of Maharashtra:** This case highlights the principle that the accused is presumed innocent and the prosecution bears the burden of proving guilt, but when an exception is raised, the burden shifts to the accused to prove it.
- **Kali Ram v. State of Himachal Pradesh:** This case reinforces the presumption of innocence and the requirement of proof beyond a reasonable doubt.
- **S.S. Nanding v. State of Karnataka:** This case emphasizes that appellate courts should not impose new grounds of evidence beyond the trial record, further reinforcing the prosecution's responsibility to establish guilt.

6.3 Questions of 'Sanity Until Proven Insane:

Sanity and insanity are key concepts in criminal law that determine whether a person is capable of being held criminally responsible for their actions. Sanity means that the individual was capable of recognizing the wrongfulness of the act and controlling his or her actions at the time the act was committed. It is generally presumed that everyone is sane unless proven otherwise.

In contrast, insanity is a condition in which an individual cannot be held criminally responsible because, due to mental disorder, he was unable to recognize the wrongfulness of his actions or to control his conduct at the time of the act. This condition must be proven on the basis of a professional psychiatric assessment.

Assessment of Sanity: How is It Carried Out?

The assessment of sanity is a key step to help determine whether the offender was capable of understanding his actions and controlling his behaviour at the time of the offence. The process begins when [the court](#) orders a psychiatric evaluation. The distinction between temporary mental incapacity, for example caused by acute intoxication, and permanent mental disorder is also an important factor. The results of the assessment can significantly influence the decision on criminal responsibility, ranging from a possible acquittal on grounds of insanity to an order for treatment in a psychiatric hospital instead of a prison sentence.

EXTREME EMOTION OR INSANITY

As in the contrast, acting in a state of extreme emotion, such as hysterical fits, may be assessed as an act of full or reduced sanity, depending on the particular circumstances. The boundary between extreme emotions and insanity is assessed on the basis of expert reports, where psychiatrists and psychologists evaluate the overall mental state of the accused and his ability to react appropriately to situations. In practice, this line is often ambiguous and each case requires an individual approach.

The Relationship between Insanity and Drunkenness

Insanity and drunkenness are two distinct conditions, but in a legal context they can be interrelated. Drunkenness alone does not automatically imply insanity. The commission of offences under the influence of alcohol is very common and usually has no bearing on the assessment of insanity. A specific case arises where the state of intoxication is so severe that it leads to a significant reduction or loss of the ability to influence one's own behaviour and to understand the consequences of one's actions. [The Criminal Code](#) addresses these situations through the special offence of 'drunkenness'.

The situation would be quite different if someone poured alcohol on the offender without his knowledge or forcibly intoxicated him against his will. In such a situation, if the insanity of the person committing the offence were established, then he would not be liable for the offence.

CHAPTER – 7

THE OUTCOME OF THE INSANITY DEFENCE IN INDIA

7.1 NGRI (NOT GUILTY BY REASON OF INSANITY) AND CONSEQUENCE

A plea of "Not Guilty by Reason of Insanity" (NGRI) asserts that the defendant, at the time of the alleged crime, was not mentally capable of understanding the nature and quality of their actions or distinguishing right from wrong. If successful, this plea leads to the defendant being committed to a psychiatric facility, rather than prison.

- **The NGRI Plea:** This legal defense acknowledges that the defendant committed the act, but argues they were not criminally responsible due to a mental illness or defect at the time of the offense.
- **Legal Standards:** The specific mental state required for a successful NGRI plea varies by jurisdiction, but it generally involves a

demonstration that the defendant lacked the capacity to understand the nature of their actions or to distinguish between right and wrong.

- **Consequences of a Successful NGRI Plea:** Instead of being convicted and sentenced to prison, the defendant is typically committed to a psychiatric facility. They remain there until a mental health professional determines they are no longer a danger to themselves or others.
- **Differences from Incompetence to Stand Trial:** It's important to distinguish NGRI from an "incompetence to stand trial." Incompetence to stand trial refers to a defendant's lack of ability to understand the proceedings or assist in their defense at the time of the trial, while NGRI focuses on the defendant's mental state at the time of the crime.
- **Duration of Psychiatric Commitment:** The length of time a person spends in a psychiatric facility following an NGRI plea can vary significantly, depending on the nature of the offense, the individual's mental condition, and the specific laws in the jurisdiction.
- **"Guilty but Mentally Ill":** Some jurisdictions offer a verdict of "guilty but mentally ill," which allows for both punishment and treatment.

As per my study aims to explore the differences between two groups of murderers: individuals who committed murder and were found not guilty by reason of insanity (NGRI) and individuals who committed murder and were found responsible and guilty. The comparison is made from a broad perspective by examining socio demographic factors and psychiatric factors as well as criminological and forensic factors. The characteristics of the NGRI group found here can help to identify risk groups and to develop and implement prevention programs for people with mental disorders who are at risk of violent behavior.

There is, however, a dearth of studies examining the criminological aspects of not guilty by

reason of insanity (NGRI) murderers or comparing NGRI and guilty murderers and the murders they commit. Therefore, the aim of this study, which was conducted in Israel, is to fill this lacuna by exploring the characteristics of murderers and murder cases and analyzing and clarifying the differences between NGRI and other murderers.

Murder among the Mentally Ill

Studies from the last two decades have reported a significant correlation between mental disorders, mainly psychotic disorders, and tendencies toward violent behavior (Fazel et al., [2009](#), [2014](#); Whiting et al., [2022](#)). Most individuals with mental disorders who were involved in violent crimes were diagnosed with schizophrenia. Their violent acts generally took place during a psychotic episode in which they felt threatened by delusions and hallucinations, which are the main psychotic characteristics associated with violence (Peled et al., [2001](#)). Kim ([2019](#)) examined the crime prevalence in Korea among individuals with schizophrenia compared to the general population. She found that while the crime rates among individuals with schizophrenia were significantly lower than among the general population in most types of crimes, including violent crimes other than murder intellectual crimes and theft and they were significantly higher in murder (about five times), arson (six times), and drug-related crimes (two times). These data are significantly higher than the prevalence of schizophrenia among the general population (American Psychiatric Association, [2013](#)).

The Legal Aspect of Insanity

Insanity is an issue which straddles two different fields of science: medicine and law. The legal system comprises two general requirements for criminal sanctions: *mens rea*, the intention to commit a crime, and *actus reus*, the actual crime committed and related behaviors. The insanity defense, which exists in the criminal law of many countries, refers to the belief that certain mental disorders or states can affect the individual's ability to form *mens rea* and

understand the wrongness of their action (Feurstein et al., 2005). In other words, the law also recognizes that there are situations in which a person may commit an offense under the influence of a mental disorder, meaning an illness that impairs a person's judgment and reality testing, i.e., psychotic disorders.

A better understanding of the distinction between the groups could lead to more accurate conclusions in psychiatric opinions, enabling people who need hospitalization and psychiatric treatment to receive it and preventing people who are responsible for their actions from escaping punishment.

7.2 Psychiatric Institutions in India

In India, several mental health institutions provide specialized care, including the National Institute of Mental Health and Neuro Sciences (NIMHANS) in Bangalore, the Central Institute of Psychiatry in Ranchi, and the Institute of Human Behaviour and Allied Sciences in Delhi. Other notable institutions include the Lokopriya Gopinath Bordoloi Regional Institute of Mental Health in Tezpur, the Institute of Mental Health in Chennai, and the All India Institute of Medical Sciences (AIIMS) in Delhi. It is estimated that there are 3800 Psychiatrists, 898 Clinical Psychologists, 850 Psychiatric Social Workers and 1500 Psychiatric Nurses in the country. Recent estimates for State/UT wise details of trained mental health personnels are not available. There are three centrally run mental health institutes, 40 State run mental hospitals and 398 Departments of Psychiatry in various medical colleges across the country equipped to treat patients suffering from mental illness.

As per Mental Healthcare Act, 2017 is a key piece of Indian legislation aimed at protecting the rights of individuals with mental illness and ensuring they receive appropriate mental healthcare. Passed on April 7, 2017 and implemented on May 29, 2018, it decriminalized attempted suicide and established a rights-based approach to mental healthcare.

THE MENTAL HEALTHCARE ACT, 2017

ACT No. 10 of 2017

[7th April, 2017.]

An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.

WHEREAS the Convention on Rights of Persons with Disabilities and its optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008;

AND whereas India has signed and ratified the said Convention on the 1st day of October, 2007;

AND whereas it is necessary to align and harmonise existing laws with the said Convention.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:--

(1) This Act may be called the Mental Healthcare Act, 2017.

(2) It shall extend to the whole of India.

(3) It shall come into force on such-date¹ as the Central Government may, by notification in the official Gazette, appoint; or on the date of completion of the period of nine months from the date on which the Mental Healthcare Act, 2017 receives the assent of the President.

(1) In this Act, unless the context otherwise requires,--

(a) "advance directive" means an advance directive made by a person under section 5;

(b) "appropriate Government" means,--

(i) In relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government;

(ii) In relation to a mental health establishment, other than an establishment referred to in sub-

clause (i), established, owned or controlled within the territory of--

(A) A State, the State Government;

(B) A Union territory having legislature, the Government of that Union territory;

(c) "Authority" means the Central Mental Health Authority or the State Mental Health Authority, as the case may be;

7.3 HIGH PROFIL CASES: Devinder Singh Case

Devinder Singh vs State on 17 January, 1969

(1) This judgment will dispose of Criminal Appeal No. 9 of 1968 and Murder Reference No. 3 of 1968. Devinder Singh, appellant in the said Criminal Appeal, was convicted for an offence under [Section 302](#), Indian Penal Code, by Shri Rajinder Nath Aggarwal, Sessions Judge, Sirmur, Bilaspur and Simla Districts, and was sentenced to death, by his judgment, dated 27-3-1968. It is against that judgment that the Appeal has been preferred by Devinder Singh, and the learned Sessions Judge has made the Reference to this Court regarding the confirmation of the sentence passed by him.

(2) The appellant, Devinder Singh, aged about 22/23 years was committed to the Court of Sessions to stand his trial on a charge under [Section 302](#), Indian Code, by the Magistrate, I Class, Bilaspur, by an order, dated 6-7-1967. The charge framed against Devinder Singh was as follows : "THAT you, on or about 24th day of April, 1966 in the evening at Khameri forest, near Kosrian village, intentionally caused the death of your wife Mst. Piaro alias Piar Kaur by beheading her and thereby committed an offence punishable under [Section 302](#) of Indian Penal Code and within the cognizance of the Court of Sessions, Bilaspur."

(3) The charge against the accused Devinder Singh was that he had intentionally caused the death of his wife Mst. Piaro alias Piar Kaur by beheading her. According to the prosecution, accused Surinder Singh had caused the death of his wife Pier Kaur by beheading her, and that the head and the headless body found in the

jungle were those of Piar Kaur. The first question, therefore, that arises for determination in the present case is, as to whether the said head and the headless body were those of Piar Kaur. As regards the head, it was stated by Dr. S. P. Kanwal (Public Witness -1) in his postmortem examination report (Exhibit PA) as well as in his evidence that it was decapitated, and was devoid of all soft parts, ears, eyes, nose, mouth contents and skin of scalp, and was found two furlongs away from the body. The brain was spread over the ground around the skull. He further stated that the head was severed at the highest point of its attachment with the neck at first cervical vertebre. He did nto state that the said head was the head of the headless body that was found at the distance. No other witness identified the head as that of Piar Kaur. There is thus no evidence that the said head was that of the headless body found in the jungle or that it was of Piar Kaur. (After further discussing the evidence, His Lordship continued (5) From the above conclusion it would also normally follow that the prosecution failed to establish even the death of Piar Kaur.

As per all the above reasons, we hold that the prosecution has failed to establish that the appellant, Devinder Singh, caused the death of his wife, Piar Kaur, by beheading her. We, therefore, allow the appeal (Criminal Appeal No. 9 of 1968) filed by Devinder Singh, set aside the conviction and sentence passed by the learned Sessions Judge, and acquit the accused of the charg against him and we direct that the accused be set free immediately The Criminal Reference No. 3 of 1968 made by the learned Sessions Judge is not accepted.

CHAPTER - 8

**CRITICISM AND REFORMS OF INSANITY DEFENCE
IN INDIA**

The insanity defense in India, particularly section 84 of the Indian Penal Code, faces significant criticism due to its inconsistent application and reliance on outdated legal principles and Reforms are needed to modernize the understanding of mental illness

and its impact on criminal responsibility, ensuring a more equitable and effective application of the law.

Even, in India, insanity defense law, Section 84 IPC is solely based on the Mc Naughten rules. Since it is drafted, no changes have been made. However, in 1971, there was an attempt by the Law Commission of India to revisit the Section 84 in their 42nd report, but no changes were made.

8.1 Criticism of Insanity Defence in India

- **Inconsistent Interpretation:** The M'Naghten rule, which forms the basis of the insanity defense, has been interpreted inconsistently, leading to varying outcomes in similar cases.
- **Outdated Theories:** The defense relies on outdated notions of the mind and its understanding, which are not always aligned with modern scientific understanding of mental illness.
- **Vagueness and Arbitrariness:** The lack of a clear, uniform standard for determining legal insanity introduces vagueness and arbitrariness into the legal process.
- **Difficulty in Determining Mental State:** Accurately determining an individual's mental state at the time of the crime can be challenging, leading to potential misapplications of the defense.
- **Potential for Abuse:** The defense can be misused by hardened criminals to evade punishment, raising concerns about the fairness of the system.

Reforms:

- **Modernize Understanding of Mental Illness:** Update the legal framework to align with modern scientific understanding of mental illness and its impact on cognitive function and decision-making.
- **Establish Clearer Criteria:** Develop more precise and objective criteria for determining legal insanity, reducing reliance on subjective interpretations and individual case variations.

- **Streamline the Legal Process:** Improve the efficiency and accuracy of the process for determining mental state at the time of the crime, potentially through the use of expert psychological evaluations.
- **Capacity Building:** Train judges, lawyers, police officers, and prison personnel on forensic mental health and the defense of insanity to minimize prejudices and stereotypes.
- **Focus on Rehabilitation:** Move away from a punitive approach and focus on rehabilitation and treatment for individuals with mental illness who have committed crimes.
- **Consider Alternatives:** Explore alternative options to the current insanity defense, such as diminished capacity or diminished responsibility, which may better reflect the range of mental impairments that could affect criminal culpability.

8.2 Reform Efforts

- The Mental Healthcare Act of 2017 in India aimed to improve mental health services and protect the rights of individuals with mental illness.
- Some legal scholars and practitioners have advocated for a more nuanced approach to the insanity defense, recognizing that not all mental illnesses equate to an inability to understand the nature and quality of an act or distinguish right from wrong.
- There is a growing emphasis on building capacity among relevant stakeholders to better understand and address the challenges associated with the insanity defense.

Insanity defense is primarily used in 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 behavior, hence making them not legally accountable for crime. Insanity defense is a legal concept, not a clinical one (medical one). This means that just 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. Researchers present a model for evaluating a defendant’s mental status examination and briefly discuss the legal standards and procedures for the assessment of insanity defense evaluations. There is an urgent need to initiate formal graduation course, setup Forensic Psychiatric Training and Clinical Services Providing Centers across the country to increase the manpower resources and to provide fair and speedy trial.

Modern criminal law is based on the belief that humans are morally responsible and not harm causing agents. To be held criminally responsible, two essential elements have to be proven, beyond reasonable doubt, (a) the person committed the act (b) in doing so, the person acted with his or her own free will, intentionally and for rational reasons.

Section 84 lays down the legal test of responsibility in cases of alleged crime done by a person with mental illness. There is no definition of “unsoundness of mind” in the IPC. The courts have, however, mainly treated this expression as equivalent to insanity. But the term “insanity” itself has no precise definition, carries different meaning in different contexts and describes varying degrees of mental disorders.

8.3 Plea of Insanity

To summarize, the concept of insanity defense is a legal one and not a medical one. Although a psychiatrist’s opinion is taken into account ultimately the decision to accept or reject the defense lays with the court the world over.

CHAPTER 9

INSANITY DEFENCE: INTERNATIONAL AND COMPARATIVE PERSPECTIVES

9.1 Global Approaches to the Insanity Defence

The global approach to the insanity defense varies significantly, with different jurisdictions adopting diverse tests to determine if a defendant’s mental state at the time of the crime renders them legally insane and therefore not criminally responsible. The two main categories of tests are cognitive and volitional, with various iterations and integrations of both.

- **M’Naghten Rule:** It is widely used in common law jurisdictions, requires a defendant to have been unable to understand the nature and consequences of their act, or to know that it was wrong, due to a defect of reason or disease of the mind.
- **Irresistible Impulse Test:** This test focuses on volitional impairment, arguing that the defendant, even if knowing the act was wrong, could not control their actions due to a mental illness.
- **Substantial Capacity Test:** This test considers whether the defendant had a substantial capacity to appreciate the wrongfulness of their actions or to conform their conduct to the requirements of the law.
- **Durham Rule (Product Test):** This test, used in some US jurisdictions, focuses on whether the defendant’s mental illness was the product of their mental disease or defect.

Integrationist and Abolitionist Approaches:

- **Integrationist Approach:** Jurisdictions integrate cognitive and volitional components into their tests, providing a more comprehensive assessment of a defendant’s mental state.
- **Abolitionist Perspective:** Legal scholars and reformers advocate for abolishing the insanity defense entirely, arguing that it is difficult to define and apply and can be abused.

International and Comparative Perspectives:

- Different legal systems around the world have adopted different variations of these tests, reflecting varying understandings of criminal responsibility and the role of mental illness.
- The insanity defense is also debated in international criminal law, with questions about its application and the procedures for handling defendant found not guilty by reason of insanity.
- The use of neuroscience and neuroimaging in evaluating mental state at the time of the crime is also a growing area of discussion, raising questions about the scientific basis of the insanity defense.

It is summarized that an insanity defense is a complex and controversial area of law, with a wide range of approaches and interpretations across different jurisdictions. Understanding these diverse approaches is crucial for appreciating the legal and ethical debates surrounding the intersection of law, mental illness, and criminal responsibility. An International Criminal Law, a mixing of the separate constructs of trial capacity and criminal incapacity has had the potential to cause confusion, especially where both issues are raised simultaneously at a trial.

International and Comparative Perspectives

- **International:** Insanity defense is applied within the framework of international criminal law, including the International Criminal Court and other international tribunals. It also considers the impact of international human rights standards on the insanity defense, such as the Convention on the Rights of Persons with Disabilities.
- **Comparative Analysis:** Insanity defense across a variety of national legal system highlighting both similarities and differences in its legal formulations, procedural requirements, and disposition of individual found not guilty by reason of insanity. It considers how different jurisdictions define mental illness, what types of mental conditions are considered relevant

to the defense, and how the defense is evaluated and applied in court.

MAJOR CONTROVERSIES AND ITS IMPACT OF DEFENSE OF INSANITY

Positive Impact

- It is argued that the insanity defense provides an occasion for individualities with internal ails to admit applicable help, indeed though similar cases are fairly rare.
- As per research insanity defense generally prohibits the use of capital discipline for those who have committed a crime while unfit to completely comprehend its inflexibility due to their internal condition.
- It has likened the situation of a mentally ill defendant to that of a youthful child who doesn't understand the consequences of their conduct. An assessing harsh penalties on similar individualities would be considered unethical by some.

Negative Impact

- As per defense of insanity has been abolished in numerous countries due to its abuse in certain cases, which undermines the abecedarian principles of the law. Although it's impracticable to give an illustration, in some cases, violent culprits have been acquitted on the base of insanity, which goes against the original purpose of the legislation.
- As mentioned before in this essay, it's the responsibility of the indicted to prove insanity as a defense, which is challenging to do fairly. Although it may be easier to establish medically, it is indicted must give factual substantiation to prove legal insanity as per Section 84 of the Indian Penal Code.

CONCLUSION

It is concluded that Insanity Defense is a popular defense for culprits to use to

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avoid execution for any offense still, determining a person's internal state at the time of the crime is delicate. Due to the excrescencies in the Indian legal system, this defense loses its effectiveness malefactors who admit to committing a crime yet escape discipline through this defense pose a significant problem. A mental disease or defect is an abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls".

Thus, it's pivotal to apply stricter rules to manage similar issues, and significant reforms in this area are long overdue. Balancing of insanity defence affirms that an illicit defendant isn't criminally liable for their illegal acts exactly to their insanity. A defendant affirming an insanity defense does not argue whether they committed the alleged crime. Defense is whether the law should hold them liable for their illicit conduct since they didn't have the internal state to commit the crime. As per Illicit Law, complainant has the burden of evidence in proving a miscreant is shamefaced beyond a reasonable misdoubt. Utmost crimes bear the complainant to prove two effects. Indian Penal law defines insanity under Section-84 which states that any Act of an existent of unsound mind. Insanity defense is primarily used in felonious executions. When a person is unfit to understand effects, he's said to be of unsound mind. According to Section 84 is analogous to the M'Naghten regulations, with a subtle perfection between the two. As per final through it is concluded by M'Naghten Regulations, a person is guessed to be stable unless proven else. Mental disease alone does not absolve a defendant from responsibility for his criminal acts. Something more is evident. The term "Insanity" in the law describes a state of nonresponsibility and is not related to the presence or absence of psychosis. The insanity defense has a long history and is evolved after many tests that have been tried and tested.

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