INSANITY AS A DEFENCE: LOOPHOLE IN THE INDIAN JUSTICE SYSTEM

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ABSTRACT

The Indian legal system governs and takes care of the world's largest democracy. When the legal system has to deal with a wide variety of races, castes, classes and various other social distinctions, it becomes very difficult to make such a law which accommodates the needs of everybody. That is the reason many of our laws become vulnerable and the guilty takes advantage of it, to let themselves go scot free. One such contention can be seen under the Indian penal code which is known as insanity as a defence. Insanity as a defence can be described as that a person cannot be held guilty or accountable if he is not of sound mind. It is a necessary legal principle which ensures that a person who is of unsound mind and cannot comprehend the consequences pf his or he actions should not be punished. However for some people this has become a get out of jail free card, as those people who are not of unsound mind commit their crimes and hide behind the veil of insanity as a defence. It is common knowledge amongst most of the populace how unsoundness of mind is used to get out of the clutches of law. This research paper seeks to question whether the various measures taken up to avoid the misuse of this section are sufficient in themselves. This research paper also seeks to prove and find many other alternative measures or tests which might prove much more efficient than the present scenario. We can also draw comparison with other countries and take insight of their understanding of insanity as a defence.

Introduction

Punishing someone who is not guilty of the crime violates the Indian Constitution's core human and fundamental rights. It also invokes the idea of natural justice by providing due process of law if that individual is unable to defend himself in a court of law.[1]This basic concept is addressed by the affirmative defense of legal insanity, which absolves mentally ill defendants whose mental illness prevented them from reasonably comprehending their actions at the time of the crime. As a result, it is widely accepted that individuals' inability to conduct crimes exempts them from punishment. The majority of civilized nations recognize this. However, specific states in the United States (such as Montana, Idaho, Kansas, and Utah) have recently abolished the insanity defense. This topic has sparked heated debate among medical, psychiatric, and legal experts all over the world. This is because it has become a get-out-of-jail-free card for some people, as those who are not of sound mind commit crimes and hide behind the veil of insanity as a defense. The majority of the population is aware of how unsoundness of mind is employed to avoid the reach of the law.

In India, the use of insanity as a defence is still a concern in criminal law. It does, however, raise several intriguing issues that warrant more investigation. As a result, few studies look at the clinical picture of prisoners. In a 2011 forensic psychiatry research, 5024 prisoners were examined in a semi-structured interview program, and the results revealed that 4002 (79.6%) of them might be diagnosed with mental or drug use disorders.[23]

Current Indian Legal System

Modern criminal law is based on the belief that humans are morally responsible and not harmcausing agents. [4]To be held criminally accountable, two essential elements have to be proven, beyond a reasonable doubt, (a) the person committed the act (actus reus)[5] (b) in doing so, the person acted with his or her own free will, intentionally and for rational reasons (mens rea). The actus reus is simple to establish, but the mens rea is more challenging. As a result,

[1]Safiyat Naseem, INSANITY DEFENSE – A LOOPHOLE FOR CRIMINALS? HISTORY, CASES, ARTICLE : IPC, Writing Law, https://www.writinglaw.com/insanity-defense-a-loophole-for-criminals-history-cases-article-ipcnotes/

[2] Khushi Agrawal, Janhavi Arakeri, Insanity as a defence under the Indian Penal Code, IPleaders, (May 28th,

[3]), https://blog.ipleaders.in/insanity-defence-indian-penal-code/

[4] Math, S. B., Kumar, C. N., & Moirangthem, S. (2015). Insanity Defense: Past, Present, and Future. Indian journal of psychological medicine, 37(4), 381–387, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676201/

[5] Ashworth A, Horder J. Principles of Criminal law. Oxford, UK: Oxford University Press; 2013. [Google Scholar]

they strive to mask their true intentions under a veneer of lunacy. Psychiatrists may be called to help the court in assessing whether certain mental diseases impaired a person's capacity to develop the intent required to deem them legally liable.

The period when the offense was committed is significant in assessing the accused's state of mind. One of the facts is a person who is suffering from mental illness. Other elements to consider include:

- The motive for the crime.
- The accused's past mental health history.
- His state of mind at the time of the offense.
- The circumstances that occurred soon after the occurrence shed light on his mental state.[6]

Under India, the defence of insanity is recognised in Section 84 of the Indian Penal Code, which deals with crimes committed by those mentally ill. This section has a clause that allows the accused to claim insanity as a defence to criminal liability. "Nothing in a crime committed by a person who, at the time of committing it, is incapable of comprehending the nature of the conduct, or that he is doing any act which is either improper or contrary to law, because of unsoundness of mind," says Section 84. There is no definition of "unsoundness of mind" under the existing statute. The courts, on the other hand, have equated mainly this term with insanity. However, the word "insanity" has no clear definition, has multiple meanings in different situations, and refers to a wide range of mental illnesses.[7]Mentally ill people are not automatically immune from criminal liability. As a result, legal insanity and medical insanity must be distinguished. In this case, legal insanity indicates that the individual had mental illness and had lost their ability to reason when the conduct was committed. The nature of the behavior, or that he is doing anything that is either illegal or against the law, is portrayed in Section 84 IPC.[8]

[6] Dahyabhai Chhaganbhai Thakker v. State of Gujarat. 1964, 7SCR 361
[7] Hari Singh Gond v. State of Madhya Pradesh. 2008, 16 SCC 109
[8] Bapu @ Gajraj Singh vs State of Rajasthan. Appeal (crl.) 1313 of 2006. Date of Judgement on 4 June, 2007

The Apex Court, in Surendra Mishra vs. the State of Jharkhand, declared that an accused who seeks exoneration from guilt for an action under Section 84 of the IPC must[9] establish legal insanity, not medical insanity, in one of its historic rulings. It further said that the term "unsoundness of mind" is not defined in the IPC and is commonly used interchangeably with "insanity."

Apart from that, this section contains fundamental concepts or rules of criminal law, such as "Actus Facit Reum Nisi Mens Sit Rea," which states that an act does not render someone guilty unless the accused had a criminal purpose or did the act with a guilty mind.

As a result, if an offence is committed by a person who has been determined to be insane, it is assumed that the accused lacked mindfulness, rational thinking, or a guilty intent to commit a criminal act. As a result, the accused is not held criminally liable. However, a psychopath's mental abnormality or partial delusion, irresistible impulse, or compulsive behavior are not protected under Section 84 IPC.[10]

The role of M'Naghten rules:

In R v. McNaughton, the English Courts created the McNaughton's Test, which became the foundation of modern-day Insanity Law. McNaughton's rules were derived from these five assertions. The following were the proposals:

1. Until the opposite is shown, it is assumed that a criminal is sane.

2. A crazy person is punishable if they are aware of what they are doing at the time of the crime.

3. To establish an insanity defence, the accused must be unable to comprehend the nature and consequences of their actions due to their insanity.

4. That the illusions that the accused is experiencing are real.

5. In English law, the jury is in charge of determining whether or not someone is insane. The regulations underlined the need to observe an accused's "understandability" in a situation when they have committed a crime. It's a test to see if you know what's right and wrong.

[9] Ibid at 3
[10] Ibid at 6

The M'Naghten regulations are comparable to Section 84. There is a significant difference between the two. "The individual is believed to be sane unless the contrary is proven, and the conduct must be accompanied by a deficiency of reason caused by a "disease of the mind," and the person was oblivious of the type and character of the crime" according to the M'Naghten regulations phrase "quality" is not defined in Section 84. The term "contrary to law" is not defined in the M'Naghten regulations. Many Indian courts have applied the concepts set out in M'Naghten's case to Section 84 of the Indian Penal Code.

Arguments with respect to insanity as defense

In order for an insanity defence to function, the defence must agree that the crime occurred but that the prisoner did not do it. Because many communities do not wish to penalise those who do not truly understand what is good and wrong, the trial's review will focus on an individual's mental condition rather than the facts of the case where harm was committed.

Rather than seeing it as a flaw in our judicial system, many people see it as a remedy in instances when the accused is, in actuality, a person with mental disorders who needs help, even though legitimate cases with such concerns are rare at the moment.

This defence precludes capital punishment because an insane individual, even confessing his or her crime, is unable of comprehending the seriousness of what he or she has done, making capital punishment unjustified.

A person can gain some relief from the court simply by claiming insanity. While he will be considered mentally ill both medically and criminally, he will not be prosecuted in the same manner as an accused person who is in his right mind. These two factors are the main reasons why insanity pleas are utilised when they are acceptable.

This defence is more like a "life-giver" for a mentally challenged individual since his or her situation is akin to that of a toddler who has no idea what he or she is doing and is unaware of the repercussions. As a result, levying severe penalties against such a person would be unethical. If a person truly has mental incapacity, his condition will be viewed as having led him to commit a capital offence, and the defence may be able to save his life.

Interpretation of insanity as defense in other countries

The Law of Insanity has been repealed in all nations due to the current abuse of this defence. Such defences have already been abandoned in countries such as Germany, Argentina, Thailand, and many English counties. An analogous example would be inappropriate to mention here, but considering the abuse of this defence in several situations when violent criminals have been acquitted on the basis of insanity just undermines the fundamental premise on which the legislation was founded.

The drawbacks of the Indian Legal System

The data revealed that lower court findings were based on documentation proof of mental illness previous to the crime and the opinion of a physician. Murder was the most prevalent crime (as murder carries a death penalty). The victim's wife was the most prevalent relationship, followed by a first-degree relative. Schizophrenia was the most commonly diagnosed mental illness. Women made up just 3% of the total number of insanity pleas. Another noteworthy statistic is that women had a higher success rate in insanity pleas. As a result of these factors, some people believe that the law has a role in imposing sexual stereotypes.

The study drew attention to a few key difficulties. They came upon some major challenges. The need of recording the different treatment processes by clinicians was obvious. However, in a poor nation like India, where mental health disorders are stigmatised, this is not the case. Due to a paucity of psychiatric institutions and the employment of unscientific religious rituals, as well as the usage of Ayurveda to treat mental diseases, documental proof is only available to the upper crust.

There is a dependence on psychiatric opinion, but no formal system for obtaining and analysing psychiatric data or opportunity for psychiatric examination has been established.The study also found that for people who sought psychiatric assistance before to committing a crime, the interval between the act and the previous psychiatric consultation ranged from one day to six months (the average being 275.2 days). The psychiatrist was new to the accused in the majority of cases (41 of 67), indicating that the majority of the accused had never seen a doctor before. In the case of insanity pleas in India, the higher court was much less likely to overturn the lower court's decision in the event of an appeal, according to the study.

Not only Indian psychiatrists see the urgent need for change in the field of forensic psychiatryIn the Bolabhai hirabhai case, the Gujarat high court emphasised the need of forensic psychiatry in the administration of justice. It also stated that forensic psychiatry is still underutilised in the

criminal justice system. The court noted that the single part of criminal culpability that emerges from mental illness has piqued the court's curiosity.

According to the expert view, the court should consider whether a person in this situation could have done the same crime if he had emotional equilibrium, average intellect, and suitable perception. It should also look at whether his mental condition was strong enough to counteract the aforementioned causes.The high court also praised Dr. Agarwal, who testified as a defence witness and provided an expert opinion. The doctor has 18 years of psychiatric experience, as well as clinical experience. It also chastised the trial court for failing to give the doctor's view the weight it deserved. The inadequacies of the Mental Health Act of 1987 were also highlighted by the court.

Criticism of M'Naghten Rule

The M'Naghten Rule has been chastised for a number of reasons. The following are some of the most important reasons:

1. It was established that if a person is unable to distinguish between good and wrong, he is mad. However, there are also medical circumstances in which a person knows 'what is right' but feels compelled to do evil. When a person can't stop themselves from doing something bad, it's known as 'irresistible impulse.' People suffering from manias and paraphilias, for example.

2. The regulation has been criticised for giving the defendant an easy way out.If somebody suffers from a serious mental illness, he can easily avoid criminal accountability, regardless of how much this illness assisted in the commission of the crime. There have been certain instances when the legal definition of insanity differs with the medical criterion for insanity.

3. It is also criticised since the M'Naghten rule only provides a legal definition of insanity and does not provide a medical one. The guideline does not define or define phrases such as temporary or permanent insanity. There might be a condition that is just transient and manifests itself at different times during a person's life.If somebody suffers from a serious mental illness, he can easily avoid criminal accountability, regardless of how much this illness assisted in the commission of the crime. There have been certain instances when the legal definition of insanity differs with the medical criterion for insanity.

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Reforms

In today's legal system, a thorough examination of the patient's medical history, prior medical history, family and personal history, premorbid personality, and drug misuse is essential. More significantly, a thorough investigation of his cognition, behaviour, emotions, and perception before, during, and after the occurrence should be done. It is necessary to determine the accused's level of legal understanding and the nature of the offence committed. If necessary, a cognitive functioning exam should be conducted using open-ended questions rather than leading questions. Psychiatry's importance grows as a result of this.However, there are no established degree programmes or institutes in forensic psychiatry in India at the moment. As a result, there is a pressing need to develop educational institutes of this type to suit the needs of the times we live in. Judicial officers, police officers, correctional officers, and human rights workers should all get training or basic education in forensic psychiatric concepts.

Despite the fact that India's new mental healthcare act of 2017 aimed at considerable reforms in the domain of criminally insane rehabilitation (which had decriminalised suicide). However, the concerns surrounding the insanity plea persist at both the national and international levels. It is well acknowledged that nations with an inquisitorial criminal justice system do better than countries with an adversarial criminal justice system when it comes to the insanity plea.

In Scandinavian nations, the plea is still handled more successfully by a board made up of people with judicial, psychiatric, and human rights backgrounds. The human condition is far from simple, especially when it comes to legislation; the human species still has no understanding of its own mind. The only way to ensure that mankind's oldest defence argument has a brighter future is to combine scientific and legal advances.

A change in the legal test

What we require is change in the way of thinking, instead of focusing our approach towards defining insanity on the basis of M'naghten Rules, we should focus on other approaches as well, which includes:

a) The Model Penal Code test

The Model Penal Code Test originated in the late twentieth century. This Test was made to be much more flexible than other tests available at the point of time. This tests presents that there should be two conditions either of which should be fulfilled in order for the test to prove that the individual was insane at the time of the crime committed, these two conditions are-

- That the individual is unable to grasp the consequences of his actions
- In the present Condition his behaviour cannot be corrected so as to not cause harm to the society in the foreseeable future.

The tests check for any mental disorder which the person is suffering from and how his mental disorder caused this individual to commit the crime that he did.

b) Irresistible Impulse Test

The Irresistible Impulse Test states that the individual who is using insanity as defence should not be held liable even though he was fully aware of his actions only because he was unable to control his movements and since he did not control his action this would provide for absence of mens rea. Since, it was created from the Criticisms of M'Naghten Rules It states that McNaughton rule does not factor in the cases where the individual is aware of his actions but cannot control his impulses due to mental trauma or disorder or any other reason.

c) Durham Test for Insanity

This test also brings to light that the individual should not be held liable if he is suffering from mental illness. Since, it means that there is the absence of ill intention to do harm. Hence, any action done by this person is not a crime since there is only action but no intention. This Test is only applicable in New Hampshire.

Conclusion

As of now, we can all agree that the Insanity Defense has become a common defence for criminals to use in order to get away with any crime. It is nearly hard to establish a person's mental state at the moment the crime was committed. The Indian judicial system's redundancy is partly to blame, because it only adds fuel to the fire, causing this defence to lose its lustre,

and all that counts are word games. These situations are more problematic than any other since the accused chooses to commit a crime yet avoids the penalties, which raises the eyebrows of any rational person.

For these reasons, it is reasonable to infer that the Insanity Defence Law has lost its initial fervour and has now become a weapon for criminals to avoid legal repercussions. The establishment of more clear legislation and exams is now one of the treatments accessible to deal with these flaws. The first step toward change may be a process that distinguishes between violent and insane offenders, with the former being the true perpetrators. Reforms in this area can only be achieved if states enact stronger legislation to control such affairs, and it is past time for serious changes in these provisions.

While a psychiatrist is concerned with the medical treatment of individual patients, courts are concerned with the society's protection from the dangers posed by these people. In order 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, the psychiatrist must understand that the totality of the circumstances must be considered in light of the evidence on record in order 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 in a court of law for insanity defence.