



INSANITY: PAST, PRESENT & FUTURE

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ABSTRACT

The Paper's primary focus had been on the history of Insanity. It aims to provide clarity on the topic of Insanity in both India and abroad. The paper will analyse the reasons behind the defences of Insanity and the outcome of such protection. It will discuss the various tests which were tested and developed over the years such as the *M'Naghten Test*, the *Durham Test*, the *ALI* rules. Later in the paper, we will discuss the § 84 of the Indian Penal Code and how it is implemented in India by the Judiciary on various forms of insanity. Considering the implementation of the IPC's test of Insanity we will try to deduce some other potential kinds of Insanity on which the § 84 may apply. Then the paper will briefly discuss the future suggestions on the matter of Insanity as concluding remarks.

INTRODUCTION

When I first started exploring the Laws of Insanity in India, I was perplexed. Not because the laws were too complex or arcane but rather that they could be explained in four words, "*Furious Absentis Loco Est*", these four words define the entire spirit of the legal insanity in India. How can, something as complex as Insanity, can be put down in such few words. Even in legal terms insanity could mean a whole lot more. It is the most horrifying of human nature and has led to equally horrifying crimes. Some people can be outright violent because of mental illness,

but they can also be someone who are aware of their act but cannot control.

The words above can be literally translated to "*A Mad-Man is like one who is Absent*", someone who does not have any presence or soundness of his own mind. The Indian Legal system uses the word "unsoundness" to broaden the area in which the insanity comes, also including the element of substance-induced insanity. The legal concept of insanity is drastically different from the medically understood terms. The subject of Insanity and mental illness are regrettably, have been some very under-researched and disregarded subjects. The Matter of Insanity is an intriguing phenomenon which if solved can save someone and can help them to get better. However, a mind is something humans have not been able to ever understand fully, thus, it is quite difficult to establish and prove in a court of law that the person who committed the crime was at the time, captured by insanity and was unable to coherently navigate his action with accordance to law of the land. However, the intention is not a clear-cut idea which can be perceived ordinarily rather it is an intangible thought process which can only be presumed by looking at the act, people demeanour, the circumstances, and other evidences and observing which, we can, without reasonable doubt, say that the accused is not abusing the plea. Insanity, an offensive word for mentally ill, is something which we cannot begin to understand and has far too many variables to narrow it down.

I will try to gain insight on the topic of insanity, as it was in the past and how it evolved to what it is today. Each branch of Insanity under law would be explained with examples and with help of not just legal



precedents and landmark judgements but also with the help of what the psychological community contemplates insanity to be under law.

UNDERSTANDING THE ROOTS OF INSANITY

“The healthy man does not torture others - generally it is the tortured who turn into torturers.”

THE OLD LAW AND REASON ON INSANITY
The concept of laws related to insanity embodies a very strange paradox. On one hand, we know that there is a dire need to revise the insanity laws, and on the other hand we know that a human can never truly understand a mind, which makes any laws related to insanity defense as loose and unscientific rules. The earliest recorded use of insanity plea in a criminal case can go as far back as 685 A.D where under the authority of Theodoric, the Arch-Bishop of Canterbury, a case was tried. Theodoric, writes in his book,¹ that a man committed the unlawful act of suicide under a fit of insanity, but was not considered a crime.

The common law of Roman, French and English had, from the ancient time, saved the insane, lunatics, *furiosus*, and *stultus*² from the harsher punishments of the law. Although each one had provided drastically different terms for mentally abnormal, they had specific protective and excuse defense for them. The law was laid down in such a way that if an insane person under madness,

commits what would amount to a felony, he is not punished, because of such insanity, with the same punishment as would have been meted out to other felons. It was believed that the person was already punished, by having to live a life laced with madness, insanity and delusions; The legal reasons assigned for such punishment were as follows: (i) that as the punishment for the felony is so harsh, it would not only be cruel but also would be a bad precedent for the common population, to give equal punishment to an insane.³ (ii) That as most felonies requires the element of *mens rea*, an insane person could not be said to have committed a felony as he is unable to form a *mens rea*. (iii) “a lunatic is punished by his madness alone.”⁵

It was during these times the focused codification on insanity in law was born. Before this, authors and jurisprudence scholars (Bracton, Coke, Fitzherbert etc.) had talked only briefly on the matters of mental insanity. The first legal document to devote exclusively on the laws relating to insanity was Brydall’s *Non Compos Mentis*⁶ (Law Relating to *Natural Fools, Mad-Folks and Lunatick Persons*) published in 1700. Even though Brydall’s work was devoted purely to insanity, it was just a compilation of the works of Coke, Plowden, Staundford and Bracton, and added nothing new to the matter.

Before 1800, any person acquitted on the grounds of insanity was not detained rather,

¹ 2 Benjamin Thorpe, *Ancient Laws and Institutes of England*, pp. 65.

² 1 Henry de Bracton, *De legibus et consuetudinibus Angliae*, (George E. Woodbine trans., Yale University Press 1915) (1569)

³ *Coke on Littleton*. 247b.

⁴ 3 *Coke’s Institutes of the Laws of England*, 54.

⁵ *Furiosus solo furore punitur*, see Black-stone’s Commentaries on the Laws of England Vol. IV, p 18 and 19; Amrit Bhushan Gupta Vs. Union of India (UOI) and Ors. AIR SC 608 (1977)

⁶ Brydall, *Law of Non Compos Mentis*, 1700.



he was simply allowed to go free as there was no law at the time which could keep the insane to be detained.⁷ It was after the trial of James Hadfield;⁸ the Criminal Lunatics Act 1800 was coded and enacted. However, during that times the medical profession had almost completely neglected the area of Lunacy and mental illness. It was not until the 15th-16th century that the medical profession classified the mental illness as any disorder without relating it to supernatural evil. The Bedlam institute in London, and La Pitié in France were some of the popular institutes (Prison) for the mentally ill. Still these people were chained, and were undesirables. The illness was nonetheless viewed somatogenically, treated as physical illnesses and were analogized with an insane animal (animalism) who did not have the capacity to reason and could not control themselves. But by 18th century the protest pressurized for moral treatment of these ill convicts.⁹ This was mainly done to detain the person who attempted to assassinate the King of Great Britain, King George III in the Dury Lane Theatre. James Hadfield¹⁰ was however, successfully acquitted on the grounds of insanity, by stating to his defense lawyer (Thomas Erskine) that he had a delusion that he must die by the hand of others. It was because of him the Act of Criminal Lunatics, 1800 was passed.

After Brydall the next prominent laws were created by Sir Matthew Hale, in which he

divided the insane's in three categories. In his Pleas of the Crown¹¹ he divided this incapacity in three classes (i) idiocy; (ii) *dementia accidentalis vel adventitia*; (iii) *dementia affectata*, or drunkenness. He further divided those in the second class i.e. *dementia accidentalis vel adventitia* with partial insanity of mind and, second, total insanity. On conviction he reached the solution that an insane may be excused if the disability is such that it deprives the offender of his use of common reason.¹²

THE TEST(S) FOR LEGAL MADNESS

*“Though this be madness,
yet there is method in't”*

The mind, as I have said above, a beautiful instrument which plays a major role in any action, conscious or sub-conscious, even the moral choices, taken by a man. The “intention” of an “act”, though understood by moral philosophers and psychologist, is still something the mind chooses to do thus, it would be inadequate to attempt to understand the “intention” merely by foresight and desire, rather should be observed by taking into account several very complex ideas and circumstances. Thus, there was a need to develop a way to examine an insane and assign, wherever needed, a guilty mind.¹³

The M'Naghten Test

The Hawkins Pleas of the Crown were the first treaties which provided for a legal test of insanity. Hawkins wrote the test, in his Pleas

⁷ Moran, Richard, *The origin of insanity as a special verdict: the trial for treason of James Hadfield (1800)*. Law & Society Review. Blackwell Publishing. 19 (3) (1985) p. 487–519.

⁸ *R v. Hadfield*, (1800) 27 How. St. Tr. 1281.

⁹ Farreras, I. G., *History of mental illness*. In R. Biswas-Diener & E. Diener (Eds), Noba textbook series: Psychology. Champaign, IL: DEF publishers. (2020) <http://noba.to/65w3s7ex>.

¹⁰ (1800) 27 How. St. Tr. 1281.

¹¹ Hale, *Pleas of the Crown*, I, p. 29

¹² Homer D. Crotty, *The History of Insanity as a Defence to Crime in English Criminal Law*, California Law Review, Jan., 1924, Vol. 12, No. 2, pp. 105-123. (Jan., 1924)

¹³ K. M. Sharma, *Defence of Insanity in Indian Criminal Law*, Journal of the Indian Law Institute, p. 325-383.



of the Crown, for such disability as illustrated in Section 1.

“Sect. 1. As to the first point (in respect of their want of reason) it is to be observed that those who are under a natural disability of distinguishing between good and evil, as infants under the age of discretion, idiots and lunatics, are not punishable by any criminal prosecution whatsoever”¹⁴

This was the first time a test was laid down. The test was known as the “right and wrong” test.

This right or wrong test was not, strictly speaking, a test but rather questions which were raised so as to determine the mental condition of the perpetrator based on his environment, social, cultural and medical history. However, this case later evolved to something called *M’Naghten Rules* or *Test* or *right-wrong test* at the request of Queen Victoria.

The facts of the case which lead to evolution and creation of this Insanity Test are as follows: A man Daniel M’Naghten was convinced, delusionally, that the Prime-Minister of England, Sir Robert Peel wanted to murder him. To end the Paranoia, he shot Sir Peel’s Secretary, Edward Drummond, believing him to be Sir Peel. Drummond died on scene, and M’Naghten was arrested and tried for murder, but was acquitted by jury by the reason of Insanity.

After *M’Naghten* case the public pressurized the British House of Lords to develop a more permanent test for Insanity. The test developed, which is still intact and used

today, was based on defendant’s awareness, rather than his ability to control his actions. The law states that every person is to be treated as sane until anything contrary points otherwise then the judges are to ask five fundamental questions, each question ascertaining a certain fact or value which is crucial in determining whether or not the person was, at the time of crime, legally insane. The first and fourth questions allowed to understand the level of delusion of the defendant’s mind, the second and third question were referenced to questions submitted to the jury and the fifth question was conferred to an expert on the field of medical jurisprudence or mental disabilities. The questions that the test referred to were summarised in the judgement under the following words

“we have to submit our opinion to be that the jurors ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know what he was doing was wrong.”¹⁵

On what the word “wrong” symbolized the court explained that if the accused knew in his conscious mind that the act which he is about to commit is something he ought not to do and is contrary to the law of the land than

¹⁴ *Pleas of the Crown*, I, p 1.

¹⁵ Homer D. Crotty, *The History of Insanity as a Defence to Crime in English Criminal Law*, California

Law Review, Jan., 1924, Vol. 12, No. 2, pp. 105-123. (Jan., 1924).



the accused is punishable for whatever crime he is suspected for,¹⁶ the court further clarified that if the person on trial is suffering only from “partial delusions” and was in every other respect a sane man, notwithstanding that the party did the act, under the influence of insane delusion, of redressing or revenging some supposed (imagined) grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he consciously knew his act to be wrong according to the law of the land.¹⁷

However, the M’Naghten rules were criticized by both lawyers and the medical jurists. They stated that the insanity does not only, or primarily affects the cognitive or intellectual faculties, but rather it also affects the whole personality of the patient, including will and emotions.¹⁸ Further, according to Professor Glueck the rules proceed upon the following questionable assumptions of an outworn era in psychiatry: (1) that lack of knowledge of the “nature or quality” of an act (assuming the meaning of such terms to be clear) or incapacity to know right from wrong, is the exclusive or most important symptom of mental disorder; (2) that such knowledge is the sole instigator and guide of conduct, or at least the most important element therein, and consequently should be the sole criterion of responsibility;

and (3) that capacity of knowing right from wrong can be completely intact and can function perfectly even though a defendant be otherwise demonstrably of disordered mind.¹⁹

The Irresistible Impulse Test

The first introduction of irresistible impulse test was in 1929, in the Smith' case, the irresistible impulse test was added as a supplementary test for determining criminal responsibility in the District of Columbia. In Smith it was held that the mere ability to distinguish between right and wrong was no longer the correct test where the defense of insanity was interposed. In this case the court said: the accused must be capable not only of distinguishing between right and wrong but that he was not impelled to do the act by an irresistible impulse which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetrate the deed, though knowing it to be wrong.”²⁰

The man should be totally deprived from his choice of committing or resisting the actions of his own self.²¹ His mind should not be in control of his body at the time of offence. This defense is to some extent much broader than the M’Naghten defence, but as we saw in the wordings of Professor Glueck: that the

¹⁶ Homer D. Crotty, *The History of Insanity as a Defence to Crime in English Criminal Law*, California Law Review, Jan., 1924, Vol. 12, No. 2, pp. 105-123. (Jan., 1924).

¹⁷ Homer D. Crotty, *The History of Insanity as a Defence to Crime in English Criminal Law*, California Law Review, Jan., 1924, Vol. 12, No. 2, pp. 105-123. (Jan., 1924).

¹⁸ W. Friedman, *Law in a Changing Society*, Berkeley and Los Angeles: University of California Press, (1959), p. 80.

¹⁹ Sheldon Glueck, *Psychiatry and the Criminal Law*, 12 The National Committee for Mental Hygiene, (1928) p. 575, 580.

²⁰ *Smith v. United States*, 36 F.2d 548, D.C. Cir. (1929).

²¹ *United States v. Kunak*, 17 C. M. R. 346, 359 C. M. A. (1954).



capacity of knowing right from wrong can be completely intact and can function perfectly even though a defendant be otherwise demonstrably of disordered mind.²² Thus it could still be true that even though the man was not in control of his body he still had the knowledge of rightness and wrongness of his actions.

Now I think that this defence is flawed as it ignores whether the man did so intentionally and with mens rea or not. It only carries a specific aspect of the broad nature of insanity i.e. impulse. Thus, it is considered unsatisfactory²³ by the English courts, and was also abolished as a defence by the American court of law in *Attorney General for State of South Australia v. John Whelan Brown*.²⁴

The Durham Test

The Durham test emerged from the momentous case of *Durham v. United States*²⁵ the facts of the case were as follows: Monte Durham was arrested and charged with housebreaking. He was then adjudged of unsound mind and committed to a hospital. Six months later, Durham was released on the certificate of the hospital's superintendent, which stated that Durham was mentally competent to stand trial. Thereafter, the trial court convicted Durham of housebreaking on the grounds that there was no evidence of Durham's state of mind. Thus, the trial court held that the presumption of sanity prevailed, despite numerous testimonies alleging otherwise.

The *Durham* Test relies on ordinary principles of proximate causation. The defense has two elements. First, the defendant must have a mental disease or defect. Although these terms are not specifically defined in the Durham case, the language of the judicial opinion indicates an attempt to rely more on objective, psychological standards, rather than focusing on the defendant's subjective cognition. The second element has to do with causation. If the criminal conduct is "caused" by the mental disease or defect, then the conduct should be excused under the circumstances.

It was a great improvement over the previously known tests as it declared that a person is not criminally liable if the act committed by him was a product of mental disease or mental defect.²⁶ And it also made the medical testimony on the defendant's mental disability permissible in the court of law.²⁷ Unlike M'Naghten Rules it does not undermine the medical testimony in favour of the defendant's capacity to make a moral choice.²⁸

However, the court of law feels that the terms used frequently in the *Durham* Test, such as "disease" and "Defect", are not clearly defined and thus covers a very large area. Whereas in M'Naghten Test everything is presented with much clarity.²⁹ And it relied too much on the medical professional's testimonies, which is against the nature of a jury trial. Therefore, the Durham test was abandoned in *United States v. Brawner*.³⁰

²² Sheldon Glueck, *Psychiatry and the Criminal Law*, 12 Mental Hygiene, (1928) p. 575, 580.

²³ Friedman, *Law in a Changing Society*, 167 Report, Chicago Law Review (1959) p. 168.

²⁴ (1960) AC 432 (PC).

²⁵ (1954) 214 F. 2d 862.

²⁶ *Durham v. United States*, (1954) 214 F. 2d 862.

²⁷ Douglas, *The Durham Rule: A Meeting Ground for Lawyers and Psychiatrists*, 41 Iowa L. Rev. 485 (1956).

²⁸ Peter Brett, *An Inquiry into Criminal Guilt*, Law Book Company of Australasia, (1963) p. 166.

²⁹ *Davis v. United States*, 165 U.S. 373 (1897).

³⁰ 471 F.2d 969 (1972).



Substantial Capacity Test

Also known as the Model Penal Test for Insanity, it was a proposal by the American Law Institute which combined the leniency of the Durham Test, clarity of the *M'Naghten* Test and the *Irresistible Impulse* Test to create something which balances what the court needs and what includes all who are insane by nature and not just by law. The Proposal was thusly: "(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. (2) The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."³¹

Therefore, by such combination of facets, they could overcome what the other tests failed to answer. Such as the emphasis on the cognitive, which was not in *M'Naghten* and the removing the sudden compulsion which is in the irresistible impulse test. It further not focuses on the medical professionals but rather guides the jurors by proper definitions unlike Durham test. And finally, of particular import is § 4.01(2) of the Code. There, the use of the insanity defense for psychopaths and sociopaths is expressly proscribed.

However, it never truly became a popular defense and only some portions of it were adopted by the courts.

THE PRESENT: INDIA

The Indian Law has since ancient times recognized insanity. It is something which was not termed but rather which was only

known. We can find it in the texts written by ancient *rishis* and *sants*. An account of *Mahabharat* and *Ramayana* also mentions insanity, only in passing. In *Mahabharat* We find Duryodhana's brother, Vikarna, speaking in defence of Draupadi when she was lost as part of a stake in a gambling game by Yudhishtira. Vikarna raised three points on behalf of Draupadi of which one was that her being pledged by Yudhishtira was invalid in that it was made in the frenzy of gambling. Thus, it may be inferred that frenzy or other conditions leading to abnormality of mind were recognized grounds for changing attitudes towards a wrongful human act. Similarly, *Yajnavalkya* also talks about insanity and punishment, declaring that no punishment should be given to a person whose mind is not in the right workings.³²

The Indian Penal Code on Insanity

The Indian law is, like always, a masterpiece. It on insanity gives an all inclusive form of rules. Section 84 of the Indian Penal Code reads as follows: "*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.*"

Such are of the wordings of Section 84, which include all, regardless of the nature of insanity, temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, etc. The expression "unsoundness of mind" include "insanity," "madness" or "lunacy" for the definition of each of these may differ in degree and kind.

³¹ *Model Penal Code* § 4.01 (Tent. Draft No. 4, 1955).

³² Yajnavalkya, *Dandaviveha of Vardhamana*, (Kamla Krishna ed. 1931) p. 38.



Under Section 84, the test of insanity embodies two conditions which if fulfilled, would exempt a man from responsibility of his wrongful act. These conditions are: (i) that his unsoundness of mind was such that he was "incapable of knowing the nature of the act," or (ii) that it had precluded him from understanding that the act he was doing was wrongful.³³

The first condition it seems, is one which explores the offender's consciousness with the act done. And second reflects on the consciousness of a person in relation with his own mind.³⁴ Situations like automatism, mistake and simple ignorance such as can occur only in gross confusional states are covered by the first condition, whereas the second condition embraces cases where mental disease has only partially extinguished reason. This latter condition is of marked significance as it is usually the test in numerous cases which may or may not be already tested and are precedential.³⁵

It is obvious that the Indian Penal Code gives assents to the M'Naghten test by themselves including tests of insanity in the two conditions. It would not matter, subjectively, whether the level of Insanity or rather the degree of insanity is of different level, as long as the person is fulfilling the conditions of § 84, they would be exempted from criminal responsibility of their act.

The person may be unable to understand the nature of his act or might have a total loss of cognitive faculties. Not every Medically Insane would pass under the Indian Penal Code's test as legally insane and be awarded

exemption. As Justice Tracey remarked in *William Edward Arnold, Jr. v. State of Tennessee*,³⁶ "it is not every kind of frantic humor or something unaccountable in a man's actions, that points him out to be such a mad man as is to be exempted from punishment ; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute or a wild beast, such a one is never the object of punishment," Such definition thus, also includes any voluntary substance abuse, substance-induced insanity. Such as the crime committed under the influence of *ganja* or of alcohol might also be considered insanity if the person's mind is degraded to such degree that it has obliterate perceptual or volitional capacity.

Further acts under delusions, Where a person believes or hallucinates some imaginary facts and commits acts under such belief; schizophrenia, where a person loses in touch with reality and is induced with a kind of split mood personality; epilepsy induced automatism, where the accused suffers from loss of consciousness, and in such period commits a crime; somnambulism, where the person commits the crime on himself or another in close vicinity while in a deep stage of sleep cycle, and thus having no knowledge of the crime;

These are some of the cases where a person may be considered exempted from liability if proved that he was insane by the definition of § 84.

³³ *The Indian Penal Code*, 1860, § 84.

³⁴ *Emperor v. Katay Kisan*, (1924) 1 Cr. L.J. 854, 856.

³⁵ KN Pillai, *Essays on the Indian Penal Code*, The Indian Law Institute, (1962).

³⁶ (1724) 16 St. Tr. 695, 704.



Some other insanity which I believe would come under § 84 are: CTE or Chronic Traumatic Encephalopathy, where a person (mostly athletes) suffers repeated concussions which leads to irreparable brain damage and can lead to cognitive impairment, dementia, hypomimia, depression, impulsive behavior etc. and can lead to suicidality or other criminal acts.; Alien Hand Syndrome, where a person's either hand acts with their own free will and is been unable to be controlled by the mind, and such hand may commit murder of his own bearer or others; PTSD, or Post Traumatic Stress Disorder, where a person, mostly someone who has served or is in a stressful job, suffers from hallucination and delusions in which he/she lives some traumatic experience from past, and in course of such episode commits a crime; DID or Dissociative Identity Disorder, where a person due to some trauma, develops different personalities who many times have different moods, expressions, voices and ideas, and such identity commits a crime without the knowledge of the primary self.

FUTURE & CONCLUSION

“Fantasy abandoned by reason produces impossible monsters”

A person who is insane is himself a victim and is punished enough throughout his life. However, if we consider this, we can see that without an insanity test people would use insanity defence as a mockery of the criminal justice system.

I believe that the current insanity test in India is better then most others as it not only attempts to remove the narrowness but also tries to improve the definition of who might be considered as legally insane. The Indian

courts had formulated their reasoning based on the test, unlike that of the Jury system where such task lies in the hand of the jury. Still, there is need to increase the relevancy of the medical profession's input, which may solve cases much faster and with more expertise. Further, a medical examiner would, if practiced and experienced, might also be able to distinguish between the man's condition as fake or real and give a name to the illness.

Further the courts should also include a partial defence for the person with diminished responsibilities. The Indian courts can in certain circumstances use the precedent laws made by the English courts. The Indian courts had not been able to approach certain mental illnesses because of the newness or the rareness of such disease. Thusly, a list of all the illness should be comprehensively prepared on which the defence of § 84 can be used.

Mayhaps a person who comes before the court is not at all insane, or perhaps he is. The court should take great caution and deliberation in the proceedings so that they may not go against the very essence of justice and harm the party who should be saved, and save the party, who is the criminal.

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