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INSANITY DEFENCE: A MADNESS

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ABSTRACT

Often some research on a subject matter can trigger you to do a lot of scrutinizing to know more about it, and this is one such topic. "Insanity Defence" is a means in criminal law of the Indian Legal System to protect an accused from the culpability of a wrongful offence. A person, who is completely unaware of his surroundings, or oblivious about the distinction between right and wrong, shouldn't be punished. "Actus non facit reum nisi mens sit rea" - as per this legal maxim, for any action to be considered unlawful, the accused person should do it with a guilty mind, along with the physical act. It is an infringement of fundamental and human rights, under the Constitution of India, when a person is punished for an offence for which he is not accountable.

To analyze and comprehend the concept of such defence of insanity, we shall look into the evolution of the rules and principles of unsoundness of mind or insanity in English law and its influence on Indian laws.

It is also to be noted that insanity defence is a legal concept and hence, merely suffering from a mental illness is not adequate to prove insanity. To prove insanity the burden of proof is on the accused, who needs to provide the court with evidence, like "preponderance of the evidence" in the civil case. The focus of this paper is on the idea of insanity in law and how it became a loophole in the present judicial system.

KEYWORDS:- *Insanity Defence, M'Naghten, Durham test*

INTRODUCTION

Insanity defence continues to be an unsolved problem in criminal laws in India. Also known as the mental disorder defence, it is mostly used in criminal prosecutions. It acts as an excuse in a criminal case, in which the defendant is not liable for their wrongful actions due to a temporary mental state or persistent psychiatric disorder at the time of the criminal act. It is based on the conjecture that while committing the crime, the defendant was suffering from grievous mental disorder and hence, was incompetent in acknowledging the nature of the crime and distinguishing right from wrong behaviour, thus, making himself not lawfully responsible for the crime.

The idea of responsibility relates to our most fundamental beliefs about human nature and dignity and daily experience of innocence, guilt and punishment.[1] Giving punishment to someone, who is not liable for the crime, is a violation of fundamental rights under the Constitution of India. Moreover, it serves the due process of law, If the person is not in a state to defend himself in the court of law, invoking the principles of natural justice.[2]
The mentally disordered offenders whose disorder deprived them of rational understanding of their conduct at the time of the crime, are exempted by the affirmative defence of legal insanity which applies to these basic human rights.

"Actus Non-Facit Reum Nisi Mens Sit Rea," is a well-established legal maxim, which implies that without a guilty mind, an act does not make an offender liable. The guilty mind (Mens Rea) or criminal intention of the offender is an imperative element for committing a crime. However, the insanity defence is a law that protects someone incapable of appreciating the nature of the act done by him.

The insanity defence is not a clinical (medical) concept, but a legal concept. That means, to prove that a person is insane, the mere aspect that he is suffering from a mental sickness is

[1] Morse SJ, Bonnie RJ. Abolition of the insanity defense violates due process. *J Am Acad Psychiatry Law.* 2013
[2] Gostin LO, Larry OG. *A Human Condition: The law relating to mentally Abnormal Offenders.* Vol. 2. MIND; 1977

by itself not adequate. The burden of proving the defence of insanity by substantial evidence falls on the defendant. It is frequently admitted that incapacity to perpetrate crimes excuses the person from punishment.

The legislation of most civilized nations has recognized this. Even under Indian law, Section 84 of the Indian Penal Code (IPC) deals with the "act of a person of unsound mind" and comes from the "*M'Naghten Rule*." Nevertheless, in the recent past, a few U.S. states (such as Utah, Montana, Kansas and Idaho) have forbidden insanity defence.[3] In its 42nd report, the Law Commission of India made an attempt to reanalyze Section 84 of the Indian Penal Code, however, no modifications were made.

HISTORY

The insanity law as a defence has been in existence for many centuries; but, it took a legal position from the last three centuries. Various tests were practised to declare if someone is legally insane, like the Insane Delusion test[4], the Wild Beast test[5], and the test of capacity to distinguish between right and wrong[6]. The foundation of the landmark M'naghten rule was laid by these three tests

***R* v. Arnold (1724)** was the first case, which dealt with the insanity law**,** wherein Edward Arnold attempted to kill Lord Onslow and was tried for the same. Later the evidence showed that the accused was suffering from mental illness. Tracy, J. observed:

Since the accused was under the affiliation of God and couldn't differentiate between good and unlawful, and didn't be cognisant of what he did, although he committed a criminal act, still he would not be liable of any offence against any law whatsoever.Therefore, according to the prior mentioned case, a person can request protection if, due to the insanity of his

[3] Neville K. *The Insanity Defense: A Comparative Analysis Senior Honors Theses. Paper 244.* 2010
[4] *Hadfield Case. 1800*
[5] *R. v. Arnold. 1724*
[6] *Bowler's case. 1812*

mind, he was incompetent of distinguishing between evil and good and didn't apprehend the nature of the act perpetrated by him. This test is also recognised as the “Wild Beast Test.”

The second test emerged in ***Hadfield’s* case (1800).** Hadfield was an army officer. He was discarded from the army on the ground of insanity and was later tried for attempting to assassinate King George III. Lord Thomas Erskine, the counsel of Hadfield, defended him and proved in front of the justice that he only behaved to kill the King and on the ground of delusion out of lunacy from which the accused was suffering, he is not guilty.
It was stated by Erskine that the fact of fixed insane delusion determines insanity and that the defendant acted under such delusion which is the main reason for his crime. This test was noted as the “*Insane Delusion Test*.”

Lastly, the third test was evolved in ***Bowler’s case (1812)*** wherein, Le Blanc, J. stated that the judges' panel has to decide whether the accused was competent of differentiating right from wrong or under the control of an illusion when he perpetrated the offence. The courts, after the Bowler’s case, placed more emphasis on the competency of the accused to differentiate between right and wrong. Although the test was unclear.

INSANITY DEFENCE INSIDE INDIA

Most Indian laws are influenced by British common law although Indian laws have gone more into the realistic aspect of the issues on availing the defence of insanity.
In 1860, the Indian Government attempted to modernize the legal standard for insanity defence and developed a new law for it as a section in the Indian Penal Code.
Section 84 of IPC discusses insanity and deals with the act of a person with an unsound mind, under which the provisions are completely based on the McNaughton case held by the House of Lords. However, it should be observed that the people who framed the IPC did not use the term "insanity" in IPC instead used a more comprehensive sentence "mental soundness".

Section 84 of IPC - "Act of a person of unsound mind"

The provisions under this section state that nothing is an offence if it is committed by a person who, at the time of commission, because of unsound mind, was incompetent of understanding the nature and outcomes of the act he/she is doing. Also, the person was unaware of the fact that the same is prohibited by law.

Essential ingredients under Section 84 of the Indian Penal Code (IPC) are given below -

1. The accused must be suffering from unsoundness of mind during the commission of the act.
2. He was incompetent to understand the nature of the act.
3. The act he committed was either wrong or contrary to legislation.

Under the above-mentioned criteria, insanity is legal insanity. Hence, the accused could be acquitted once proven.

If an act is 'wrong', it is not necessarily 'contrary to the law.' The legal and medical interpretation of insanity differs significantly from each other. Not every kind of madness or insanity is recognized as an adequate excuse by law.

Modern criminal legislation is based on the notion that people are not harm causing factors but are morally accountable. To be considered criminally liable, two fundamental principles, beyond a reasonable doubt, have to be proven, which are also embodied by Section 84 -

- **"Actus non facit reum nisi mens sit rea"** - It implies an act is not wrong unless done with a guilty intent[7].
- **"Furiosi nulla voluntas est"** - It implies that someone with a mental disorder has no free will. Hence, he/she can commit no wrongful act[8].

[7] Ashworth A, Horder J. *Principles of Criminal law.* Oxford, UK: Oxford University Press; 2013.
[8] Gerber RJ. *The Insanity Defense.* Port Washington, New York: Associated Faculty Press; 1984

Section 84 releases a person with mental disorders from his liabilities, because of the absence of mens rea (guilty intent).

Courts may get assistance from psychiatrists to decide whether any mental disorders affect a person's ability to create the intention required to make that person legally liable.

INSANITY DEFENCE OUTSIDE INDIA

The U.S. legislation brought it the "Irresistible Impulse Test" in 1884. This test, when performed on a diseased mind, who happens to be mentally unstable, turns out to be identified as a lawful excuse in English case laws. In the U.S.A, by 1967, this defence got pertinent in almost 18 states out of 51 states.

This "Irresistible impulse" as a defence was formed in the leading case of *Lorena Bobbit* (1993) wherein, the defendant, on June 23rd, 1993, for the purpose of harming her husband, brought a knife from her kitchen and cut off his penis while he was asleep. Her advocates argued that she was suffering from domestic violence, committed by her husband during her marriage and that her husband also raped her before she perpetrated this crime. She couldn't control her actions, even though she was fully aware of the repercussions, and appealed that she was constrained by an irresistible impulse. For the first time, this defence was used in its original form by the state of Virginia. It was further held that she was not guilty because she was unstable and was suffering from insanity.

Thus, insanity is considered a valid defence of crime by English criminal law. It was believed that the fundamental meaning of insanity is based on the M'Naghten Rules. However, these rules are not related to the medical definitions of insanity. In M'Naghten's case, the following were the insanity principles which the judges declared:

1. **The accused is presumed to be mentally sane and sound, and to have sufficient reason, until he/she is proved otherwise, to be liable for his/her crime.**
2. **In order to prove the insanity defence, it must be manifested that the accused acted under such a defect of reason, as a mental illness, at the time of the act.**
3. He did not comprehend the qualities and nature of the act he committed, or

4. He did not know that the crime he perpetrated was wrong.

POSITIVE ASPECTS OF INSANITY DEFENCE LAWS

1. It mostly leads to a possible acquittal in instances, where the mental state of the accused is proved to the court. Whether he gets charged with any punishments or acquittal, that depends upon the mental condition he is possessed with. In India where a person who has been accused of a crime is regarded as a lesser human, this defence acts as a relief to a mentally challenged person. If availed, the accused by this defence, can be released and acquitted.

2. For someone who is mentally challenged, this defence is a life-giver because the person's state is equivalent to that of a child, who doesn't understand what he/she is doing and is unfamiliar with the repercussions. Thus, imposing oppressive charges on mentally ill people would be against morality.

3. This defence prevents the death penalty to an insane person because although he confessed his crime, he is incompetent to understand the seriousness of the crime he has committed. Hence, giving capital punishment to such a person is unjustified, instead, any lenient penalty could be charged to him.

4. It provides an immediate atmosphere of guilt. Insanity defence cases are slightly different as compared to others. In these cases, the accused is required to admit that he has committed the crime but he does not understand what he did. He is simply incompetent to distinguish between what is wrong and what is right. Here, the mental status of such a person may become a supporting or opposing element for his defence of insanity.

NEGATIVE ASPECTS OF INSANITY DEFENCE LAWS

1. Insanity defence can also be misused for acquittal and to escape from punishment. It is exceedingly difficult to test whether the accused was of sound mind or unsound mind when the crime was committed. Eventually, it depends upon the prudence of the judge on the matter and his judgment. The Insanity Law has been prohibited in many countries, considering the existing misuse of this defence lately. Countries like Thailand, Germany, Argentina and many others in England have already abolished this defence. It's because the misuse of this defence in numerous cases wherein, deadly criminals get discharged on the ground of insanity completely demeans the very concept the law was built upon.

2. It's already been discussed before that for the accused to prove the plea of insanity and avail this defence is a huge challenge. Although medical insanity could be proven easily, it’s a burdensome task to prove legal insanity because the defendant has to give substantial evidence to prove it. Even if the defendant manages to provide proof of his actual mental state, it is upon the judges to accept or deny the defence of insanity. Therefore, it still doesn't provide any guarantee of acquittal or solution to the accused. It is very challenging to fulfil the necessary principles of Section 84 IPC, due to which in many legitimate cases of insanity the innocent is charged and sentenced.

3. One of the significant points here is that it can lead to increased trial expenses. To prove the insanity the accused will have to hire a specialist to prove the mental disorder in the court. Similarly, the prosecution will do the same. A lot of money will get spent on this process. Moreover, amongst all these, a much less number of matters go successful in taking the defence of indemnity.

MYTHS REGARDING INSANITY DEFENCE

Charles Ewing rightly said " you have to be crazy to plead insanity"

Movies and reality are two very disparate things. Insanity defence, as it has been shown in movies is not the definite scenario.There are various propagandas and stories around insanity defence. And there is a major role of the media in exaggerating these stories. Some of the most common myths are;

1. **Insanity defence is excessively overused:**- insanity defence is profoundly rare, it's so occasional that a lot of attorneys and judges have not seen it being practiced. And this is the reason why the media has made up a fable around it, hence the myth itself. Research shows that only 1% of the criminal cases employ insanity defence and only a quarter of them are successful[9]. Another research indicates that only 0.5% cases use this defence. Another research by Hans in 1986 found that while the plea of insanity was successful only 1% of the times but the subjects of this study had a misconception that 14% of such cases were successful[10].
2. **Insanity defence is only used in murder cases:-** murder cases which have insanity defence are the ones which are chiefly promulgated in the media, but that doesn't mean that this defence is not used in other crimes. Approximately 60-70% cases involving insanity defence are non-violent crimes. Furthermore the people who are charged with violent and non-violent crimes, pleading insanity as a defence are rarely successful.
3. **NGRI acquitted people are quickly released:-** it is a common fallacy that insane offenders spend less time in jail or prison than a normal offender, in violent or non-violent crimes. Rather insanity acquittee spend double the time in a psychiatric hospital than a sane offender does, for the same crime. It's more difficult being in a ward with the strictest rules so that the person does not harm himself or other patients. A Californian study has revealed that "those found NGRI of non-violent

[9] Erwin (2008) research.
[10] "An analysis of public attitudes towards insanity defence"- Hans (1986)

crimes were confined for periods over nine times as long"[11]. This study also showed that although the time of confinement for murder by an insane person was much less than that of convicted offenders, but confinement, of NGRI for other violent crime by such a person was twice as long. There are times when an insane person has to be under total surveillance even when he is released from the ward. Another study by Silver, Cirincione, and Steadman (1994), which was an eight-state study, found that the general public believed that 50.6% of insanity defendants were hospitalised and 25.6% of them were released. The reality regarding this is very different: only 15.3% of them were immediately released and a whooping 84.7% were hospitalised[12].

4. **It is a battle of experts:-** it is a prevalent viewpoint that in all cases of insanity defence, experts are needed to justify the presence of mental illness, and that these "experts" would say only what " they are paid to say" in the court. After the Hinckley case the engagement of experts in such cases was heavily interrogated because a psychiatric expert's opinion about the offender's mental health would rouse sympathy in the mind of the judge and jury, which would conclusively give birth to wrong decisions. And this is what happened in Hinckley's case when he shot president Ronald Reagan in 1981, to impress actress Jodie Foster, but was found not guilty of insanity[13]. But the pragmatic reality is completely different. According to a Hawaii survey and data there was a compatibility and agreement between the examiners in 92% of the cases. Another study of Washington in regards to Durham test found that ⅔ -¾ of all insanity defence acquittals were irrefutable (this test was done almost 35 years ago)

[11] Perlin, " 'The Borderline Which Separated You from Me,' " 1405 (discuss- ing research reported in Steadman et al., Before and After Hinckley, 94)
[12] Silver, E., Cirincione, C., & Steadman, H. J. (1994). Demythologizing inaccurate perceptions of the insanity defense. Law and Human Behavior, 18(1), 63–70. https://doi.org/10.1007/BF01499144
[13] United States v. Hinckley, after the verdict of this case the public was outraged and against the decision. An ABC pool found that 85% of the public thought that justice was not done.One article stated, "It's the system which found him innocent that's insane...a legal system that totally disregards the issue of guilt or innocence and instead relies on so-called psychiatric experts to tell us whether a man who committed a deliberate attack should be acquitted because he watched too many movies". After this a lot of reforms were done regarding insanity defence. Various meetings were done regarding the use of insanity defence. Burden of proof was shifted to the defence. Congress and half of the states limited the use of this defence etc.

5. **Defendants are 'faking it':-** There are instances where the defendants were actually faking it, but it's difficult to keep up with the charade because these defendants, even after NGRI ,are kept under surveillance and every action they make are recorded and studied by their psychiatrists. The most common indication of the misconception that a person is faking insanity is due to the fact that the person's appearance does not correspond with the common notion of an insane individual.

   The statistics talk differently though. A survey done around an eight year period found that 115 out of total 141 individuals were diagnosed with schizophrenia and there were only 3 cases where the evaluator was unable to diagnose the defendants[14]. Another survey finds that about 84% of the acquitted of NGRI were diagnosed with mental disorder of some kind, in their life even before they committed the crime[15].

INSANITY TESTS

M'Naghten Insanity Test:-

This test is one of the oldest tests used for determining insanity. It originated in England in 1843. There is an interesting story behind this test. Daniel M'Naghten was the person on whose respect this name was given to this test. Daniel tried to shoot Sir Robert Peel (Prime Minister of England), under a delusion that Sir Robert was trying to kill him, but he mistakenly shot his secretary (Edward Drummond), who later on died. The nation was flabbergasted because he was found not guilty by reason of insanity[16]. He was so mentally inept that he had to be tricked and cajoled into pleading "not-guilty". Because this case was bizarre, there was a lot of criticism from the public which conclusively led to this test for insanity, and is still popularly used.

This test is also denominated as "right-wrong test". The attribute of this test is that it focuses on the empirical or cognitive/cerebral factors of a person instead of physical factors.

[14] Rodriguez, LeWinn, and Perlin, "The Insanity Defense Under Siege,
[15] Warren et al., "Criminal Offense, Psychiatric Diagnosis, and Psycholegal Opinion."
[16] Queen v. M'Naghten (2010) (M'Naghten's Case, 8 Eng. Rep. 718 [1843])

By and large this test centres around whether the defendant could discern between right and wrong actions and that his actions were wrong. The paramount element of this test is to determine that the defendant was suffering from a "mind defect" while committing the crime. He must be cognitively impared to such a terminus that he cannot differ right from wrong.

Now, there are various different opinions about the definition of " wrong". One such delineation is " legally wrong" where it's thought that the person didn't know whether his act was illegal or legal[17]. Another such definition is " morally wrong" where it's gathered that the person didn't know that his act was not acceptable and deemed appropriate by the society[18]. Whatever the definition may be, if there is even an inkling that evidence can be spurious or the act can be covered up by the defendant, then it's clear that the defendant had the ability and knowledge about the nature of his criminal act and ergo it would refute his entire claim.

THE IRRESISTIBLE IMPULSE TEST:-

The Alabama Supreme Court was the first court to espouse this test in 1887 in the case of Parsons v. State. In this case the court particularized that even if the person knew the difference between right and wrong, he was going through a mental disease where he couldn't control his actions and thus committed a crime[19]. Resulting to this the court found that the defendant was not guilty by reason of insanity, even if he knew right from wrong.

This test was a kind of elongation to the M'Naghten test. There were numerous people of the opinion that other facts should also be involved while delineating insanity, and so this test was proposed. Various commentators suggested that physical as well as mental particulars should be considered. This test is fairly easier to prove than the M'Naghten test

[17] State v. Crenshaw (2010)
[18] State v. Skaggs (2010)
[19] The court said : the duress of such mental disease [that] he had ... lost the power to choose between right and wrong" and that "his free agency was at the time destroyed," and thus, "the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely."

due to its flexible qualifications. Howbeit, it has lost its charm in the recent years and many states have opted it out off their consideration[20]

DURHAM TEST:-

Also called the "product test" or " but- for" test. This rule actualised from a case from the U.S in 1954 in Durham v. United States[21]. Here the court held that the accused cannot be responsible for any act which was done as a result of mental disability. This test was created by Judge David L. Bazelon who was also trying the Durham case. His agenda was to displant the old M'Naghten rule and take assistance from the irresistible impulse test. The foundation of this rule was to purely determine whether the accused was under a mental disease while committing the crime.

Durham rule was alleged to be a simple and clear test for insanity and weather all the criticism faced by other tests but it failed to do so. It was speculated by Bazelon that this rule would help to gather and present more information about psychological , scientific and human behavioural aspects, in the courtroom and that medical experts can easily present their findings. As this rule failed to stand, it was later rejected by the same court in 1972 in the case United States v. Brawler[22]. It was replaced by the American Law Institute and its standards.

MODEL PENAL CODE TEST:-

This is also termed "ALI Test" or " Substantial Capacity Test". This was developed in 1955 by model penal code and model penal code was completed in 1962[23]. Feckly half of the states and federal government adopted this test because of its malleable nature in determining insanity. This test is an amalgamation of both the M'Naghten test and irresistible impulse test. There are just two elements at work in this test and they are as follows:

1. Like M'Naghten and irresistible impulse test, the defendant must suffer from a mental defects or disease while committing the offence, and

[20] 18 U.S.C., 2010
[21] 214 F.2d 862
[22] 471 F.2d 969 (en banc)
[23] (Rolf, C. A., 2010)

2. The defendant must have a cognitive impurity along with loss of control over his actions, just as given in both the previous tests.

Overall the test states that "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 [wrongfulness] of his conduct or to conform his conduct to the requirements of law"[24]. This test has an expansive scope so it's fairly elementary to determine insanity. Here the definition of "wrong" is clear and held as " criminally wrong or legal wrong", which was a point of debate in the M'Naghten test. Another point of differentiation is the definition of the word " know", here "know" was replaced with " appreciate", as opposed to the irresistible impulse test. This means that a person's emotional facets should come into picture as well, while determining his mental capacity.

This test however lost its oomph and favour after John Hinckley's case. When Hinckley was found not guilty by reason to insanity for attempted murder of the President Ronald Regan in 1981 where he tried to impress actress Jodie Foster after watch a movie called "taxi driver". The court held that he identified with the movie's character ''Travis Bickel'' and committed the act. Although he didn't show any foregoing signs of mental disease he was still considered NGRI. Due to public outrage and disgruntlement at the verdict many states and the federal government chose to switch to a more rigid M'Naghten test. They also shifted the burden of proof to the defendant.

BURDEN OF PROOF

In insanity defence cases the question of furnishing evidence for the same, is a conundrum. To successfully win an insanity defence one has to deny that he was sane. The defendant has to prove that he was insane and the prosecution has to corroborate that the accused was sane, beyond a reasonable doubt.

[24] (Model Penal Code § 4.01(1))

It is common knowledge that a person is said to be sane until proven otherwise[25]. And it's the basic duty of the prosecution to prove the presence of a criminal act or the offence. But the burden of proving the presence of insanity falls upon the defendant and they must evince it by balance of probabilities.

In India the burden to prove insanity falls upon the accused as per section 105 of Indian Evidence Act, as well as the presence of certain circumstances and situations leading up to the offence. As per the conditions given under sec 84 of IPC, the accused must rig-out all sorts of evidence, like documents (oral or written), testimonies, any previous mental disease incident etc. These evidence must perspicuously stipulate that the accused was incapable of knowing that his act was wrong or against the law and that he was suffering from a mental disease while committing the act[26]. Here the prosecutor has to prove the presence of offence, "beyond reasonable doubt" but its not necessary for the accused to prove his insanity " beyond reasonable doubt"[27]. So, in such a scenario where the defendant fails to concretely prove his insanity, then the insufficient evidences provided will create a doubt regarding mens rea or other ingredients, resulting to which court would have to acquit the defendant on the ground that the prosecution did not constructively perform their general duty[28]

In U.S, in the majority of states, the burden of proof of insanity falls upon the defendant. In other remaining states the burden falls upon the prosecution to prove the sanity of the defendant, beyond reasonable doubt. In federal courts and in Arizona the burden falls upon the defendant and he must prove it with "clear and convincing evidences"[29],[30]

[25] State of M.P v. Ahmadull (AIR 1961 SC 998)
[26] State of Rajasthan v. Shear Ram and Vishnu Dutta (2012,1SCC 602), Elavarasan v. State RbIoP [2011 (7) SCC 110].
[27] Sudhakaran v. State of Kerala [2010 (10) SCC 582], T.N. Lakshmaiah v. State of Karnataka. (2002,1 SCC 219).
[28] Dahyabhai Chhaganbhai Thacker v. State of Gujarat (1964, 7 SCR 361).
[29] 18 U.S.C.S. Sec. 17(b), A.R.S. Sec. 13-502(C).
[30] Meaning of " clear and convincing evidence":- Clear and convincing evidence is a higher level of burden of persuasion than "preponderance of the evidence," but less than "beyond reasonable doubt." It is employed intra-adjudication in administrative court determinations, as well as in civil and certain criminal procedure in the United States.

DIFFERENCE BETWEEN MEDICAL INSANITY AND LEGAL INSANITY.

Insanity covers profuse grounds and has a vast definition. Although nowhere in IPC its definition is given, its meaning must be differentiated from medical insanity. Something considered as medical insanity does not necessarily mean that it comes under the ambit of legal insanity.

Insanity has divergent meanings in different states of affairs. Legal insanity is colossally different from medical insanity. Just because a person is considered mentally insane by doctors doesn't dispense him from his crimes. In legal insanity, only the presence of mental disease, while committing the act, is to be considered. There is no role of psychiatrists, their function is only to give their opinion and findings about the presence of mental diseases, they are just experts of that field. After that the court decides whether the person was functioning under a mental disease or not and should he be held liable.

Medical insanity is a disease of the brain which leads to the person being abnormal. There are basically 4 types of such insanity, namely:

1. Idiocy
2. Lunatic
3. Non cosmos mantis by illness (not of sound mind)
4. Insane under intoxication.

An idiot person is insane by birth. He is a person who cannot even count or comprehend basic things. If a person is considered " unsound of mind" does any criminal act then he will be provided protection against criminal liabilities[31].

The court looks for legal insanity not medical insanity. So only the provisions of sec 84 IPC must be kept in mind while diagnosing insanity in the court. As per sec 84 two factors must be kept in mind:

[31] (1 Hale PC 30)

1. That the person was suffering from a mental defect or illness while committing the act.
2. That the person couldn't differentiate between right and wrong or that his actions were against the law.

The question arises as to when one should certify whether protection can be provided under sec 84 or not. The best time to determine it is, when the crime was committed. The happenings of the crime are of the essence because merely stating that a particular form of crime was done, does not justify the liability in insanity defence cases, because only " unsoundness of mind" causes cognitive abnormality, which comes naturally and hence is exempted from criminal liability. Trifling delusion of a psychopath does not mean his actions can be protected from liability.[32]

Just because a person is suffering from a simple ailment which causes him usability in emotional will, or that the person has recurring fits, or he is queer in his behaviour, etc, all these conditions does not imply that such a person can be provided protection against their criminal act.

It is facile to prove mental insanity just through medical papers and prescription letters. Whereas legal insanity is complex, the defendant has to provide evidence that he was, is and continues to suffer from a mental disease and that he cannot differentiate between right and wrong actions. Basically, just because a person has mental illness, he cannot be exempted from his criminal liability.[33]

CONCLUSION

This paper discusses the overview of insanity defence and whether it has become a loophole from criminal liability. While the paper accents on various elements of insanity defence, it also busts some propagandas surrounding it. The discussion also explains the insanity laws outside India and inside India along with its positive and negative impacts. The tests for

[32] Bapu and Gajraj Singh vs State of Rajasthan, Appeal (crl.) 1313 of 2006
[33] Kalpana Patgiri v. State of Assam, 2013 (5) GLR 139,

insanity defence are the focal point of the discussion which are thematic to the content and provide for some key conclusions. This augments the constitution of the paper as the contents are detailed and diverse and touch all the crucial points of discussion.

Criminal trials are very delicate as even a single interference with the process can change the whole outcome of the trial. Tampering with the veil of justice can lead to many more ravaging reverberations. Time and time again the members of the legal confraternity and its leaders have pressed the need for ameliorating and preserving the legal policies especially for criminal based scenarios. When justice is evaded due to gaps in provisions and policies then it can completely tip the scale of justice off-balance.

One of the most influential aspects behind insanity defence is the media coverage and how it actually pushes forward some make believe facts about the said defence. Countries have recurrently tried to articulate a proper interpretation of the principles and policies under this defence. In some parts it has been fruitful whereas in other countries it has led to a complete abolition of insanity defence. Many countries have also been able to restructure the whole policies surrounding insanity defence successfully. There have been numerous changes and improvements in the legal system of India, such as; revamping of Adultery law and decriminalization of Section 377. India is a fast- paced developing country so it's a tad bit difficult to keep up with laws and their standards but the law makers are constantly trying to preserve and improve such standards and redefine the laws governing 'insanity defence'.

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