

DEFENCE OF INSANITY IN INDIA AND ENGLAND: COMPARATIVE LEGAL PARADIGM

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Abstract

The law of insanity provides protection to persons with insanity. It plays a vital role in giving protection from criminal liability to such persons who cannot understand the nature of their acts due to their insanity. The basis of law of insanity lies in the maxim "Actus non facit riem, nisi men sit rea" which means that no man can be proved guilty unless he has guilty mind. Whenever an insane person commits crime due to the effect of his insanity he does not have a guilty mind to understand that what he is doing is something prohibited by law. Thus in such a situation, the insane persons stands in a position which is even worse than that of an infant. The considerable population of the world comprises of people with mental abnormalities. Though the essence of defence of insanity can be traced back to the ancient times but the present day law on this is based on the M'Naghten Rule. The English criminal law system has adopted the M'Naghten Rule the way it is. The Indian criminal law system has laid down the defence of insanity under section 84 of Indian Penal Code. This defence is based on the M'Naghten Rule but there are some differences. Therefore this paper will critically discuss the law relating to the defence of insanity under the English criminal law system and the Indian criminal law system and will examine the similarities and differences in both the laws.

Keywords: Criminal Law, Defence, Guilty, Insanity, Mental abnormalities, M'Naghten Rule

Introduction

The acts and omissions in violation of Criminal Law are regarded as crime and are backed by penal sanction. Thus the person who does such violation of Criminal Law is liable for punishment. The Criminal Law before it can hold a person responsible for any act or omission, presumes that he has the knowledge of the consequences and nature of his acts. However this principle is not absolute and there are certain exceptions to this General Rule and thus in spite of having committed the crime, a person can be excused. In certain situations a person may be excused due to the fact that he holds a prestigious position whereas in certain other situations a person may be excused for not having a guilty mind. As it is the cardinal principle of Criminal Law which says that, a man is not guilty unless he has a guilty mind, this principle is based on the Latin maxim of "Actus non facit riem, nisi men sit rea"¹, it can be said that in order to commit a criminal offence, mens rea is generally taken to be an essential element of crime. The maxim, "furiosus nulla voluntas est"², indicates that, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime. It is believed and presumed that, every normal and sane human being possesses some degree of reason to be responsible for his conduct and acts unless contrary is proved, but a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behavior.³

The persons of unsound mind are of vulnerable nature. There is a complete chance of their exploitation in a situation where no protection is sought to them. The law which protects a person of unsound mind, and provides a defence from the criminal liability to the person of unsound mind is known as the Law of Insanity. Whenever an insane person commits crime due to the effect of his insanity he does not have a guilty mind to understand that what he is doing is something prohibited by law. The law of insanity has proved to be of practical importance in understanding the situation and mental position of insane person and has granted them exemption from criminal liability under certain reasonable circumstances.

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In the modern times, the standard for claiming a defence of 'not guilty by reason of insanity' has changed through the years from strict guidelines to a more lenient interpretation, and back to a more strict standard again. Although definition of legal insanity differs from place to place, generally a person is considered insane and is not responsible for criminal conduct if, at the time of the offence, as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or the wrongfulness of his acts. This reasoning is, because willful intent is an essential part of most offences, a person who is insane is not capable of forming such intent. Mental disease or defect does not alone constitute a legal insanity defence. The defendant has the burden of proving the defence of insanity by clear and convincing evidence.

Methodology

Researcher has adopted the doctrinal method of research for the purpose of this particular research. Doctrinal research helps to formulate the legal 'doctrines' through the analysis of legal provisions. The analysis and interpretation of legal propositions with particular facts leads to new dimensions of basis of research area. Doctrinal research is therefore concerned with the innovation and expansion of legal doctrines with the help of textbooks or journal articles. The present research can be called as doctrinal as it is a research which has been carried out on a legal proposition by way of analyzing present statutory provisions and principles laid by legislative as well as judicial authorities. Researcher has used the primary and secondary sources for the chief portion of analysis of legal connotations. It has been concerned with the interpretation and understanding of the authoritative sources as well.

Observations

In most criminal jurisdictions, insanity is one of the defences that exempt a person from the criminal liability. This is because of the basic principle of the criminal law, according to which every person is presumed to be sane and to possess a sufficient degree of reason to be held responsible for his crimes. Thus, a person who lacks the rational capacity of thinking and understanding in certain circumstances is recognized by the criminal law as not being liable for his criminal acts and thus is excused from convictions. The principle or presumption of rational capacity operates as one of the preconditions and prerequisites for fixing the criminal liability. The defence of insanity is thus based on the principle that a mad man cannot be punished for his criminal acts, as he did not possess the required *mens rea* to constitute a crime. The English and Indian criminal law systems accept the defence of insanity which is very much based on the principle of *non composita mentis*.⁴ As both of these criminal law systems have validly incorporated this defence on the similar footings, it can be said that there are certain similarities and as well as certain differences in the law governing this defence.

The history of law of insanity can be traced from the European Countries in their criminal law system. The law relating to the defence of insanity is based on the M'Naghten's Rule, this rule has been established and propounded in the year 1843 by the judges of Queen's Bench in the Courts of England. The M'Naghten Rule thus has served to be the basis of the defence of insanity under the English Criminal law system and it has been subsequently accepted by some other jurisdictions and the Commonwealth countries. In the recent years due to the advancement of scientific knowledge of mental functioning has created new variations. Yet, in spite of these alternative formulations, the M'Naghten Rules continue to form part of English law and some other Commonwealth jurisdictions including India.⁵

According to the M'Naghten's Rule '*To establish the defence of insanity, it must be clearly proved that at the time of committing the act the accused was laboring under such a defect of reason due to the defect of mind as not to know the nature and quality of the act he was doing, or if he knew it, then did not know that he was doing was wrong*'⁶ This explanation cannot be taken as a full proof definition, because it fails in explaining various aspects of insanity.

Therefore, it is imperative to note that the terms 'insanity' has a highly specific meaning in criminal law. It is not necessarily used in its medical sense but it shall be understood in its legal meaning. Thus legally, insanity as a defence refers to legal insanity and not medical insanity. The term 'legal insanity' refers to certain requirements that need to be satisfied by the accused person in accordance with specific rules set by the law. Legal insanity is a concept narrower than medical insanity. Because the analysis put forward by law and medical are not similar always. The legal and medical concept of insanity may overlap, for example, certain mental diseases such as schizophrenia, paranoia or lunacy are classified as medical insanity and can also come under the defence of insanity or unsoundness of mind provided the other conditions are satisfied to meet the criteria of legal insanity.

English Law on defence of insanity

The English criminal law regards insanity as a valid defence from criminal responsibility. The basic definition for insanity is based on the M'Naghten Rules. These rules are not concerned with medical definitions of insanity. In the case of M'Naghten, the judges had stated the principles relating to insanity as follows:

1. Everyone is presumed sane and to possess a sufficient degree of reason to be responsible for their crimes until the contrary is proved.
2. To establish the defence of insanity it must be clearly proved that at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as
 - (a) Not to know the nature and quality of the act he was doing, or
 - (b) If he did know it, not to know what he was doing was wrong.⁷

Therefore, the accused person in order to plead insanity as a defence, must prove on the basis of the facts that he was suffering from a defect of reason, arising from a disease of the mind, due to which he either did not know the nature and quality of the act, or he did not realize that his actions were wrong.

Indian Law on defence of insanity

Insanity as a defence under the Indian Criminal law is provided under section 84 of the Indian Penal Code. The term 'insanity' however is not used under this provision. The Indian Penal Code uses the phrase 'unsoundness of mind'. Under the code the defence of insanity or which can be also called as the defence of unsoundness of mind, derives its source from the M'Naghten's Rule. Section 84 of Indian Penal Code provides for an act of a person of unsound mind:

*'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.'*⁸

It is important to note, however, that instead of the word 'insanity' the makers of the code have preferred the expression 'unsoundness of mind.' This has been deliberately done. 'Insanity' has a very limited scope whereas 'Unsoundness of mind' covers a much wide area. Any kind of mental derangement caused by any reason whatever may be unsoundness of mind but the same may not be insanity always.

Following elements are to be established for this defence:-

1. The accused was in a state of unsoundness of mind at the time of doing the act.
2. He was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

The term 'wrong' is different from 'contrary to law'. If anything is 'wrong'; it is not necessary that it would also be 'Contrary to law'. The legal conception of insanity differs considerably from the medical conception. It is not every form of insanity or madness that is recognized by law as a sufficient excuse.⁹

Defence of insanity in England and India : Comparative Analysis

Looking at both provisions relating to the defence of insanity, researcher has subtly made an attempt to compare between English law and Indian law considering respective criminal justice system. The defence of insanity and defence of unsoundness of mind are the terminologies which has different significance as well as approach in English law and Indian laws respectively.

1. Presence of insanity:

Both Indian and English criminal laws state that if the accused wants to plead insanity or unsoundness of mind as a defence then he is required to prove that he was insane at the time of doing or committing the offence. Though the phrase used is different in both the laws, "at the time of committing the act" is used under the M'Naghten's Rule and "at the time of doing the act" is being used under the Indian Penal Code, it has the same legal implication and meaning. Thus the prime requirement is that the accused person must be insane at the time of doing the criminal act or during the commission of the offence. This is a very significant test for legal insanity, as opposed to medical insanity.

2. Defect of reasoning capacity

The second point to be taken into consideration is with regards to the defect of reason. The M'Naghten's Rule states that a person must have suffered a defect of reason from disease of the mind at the time of committing the crime whereas the Indian Penal Code, on the other hand requires a person to be in a state of unsoundness of mind at the time of doing the criminal act. Thus we have to take into consideration the exact meaning of the term 'disease of mind' and 'unsoundness of mind'. In English law, the concept of disease of the mind, it can be said that the law is not concerned with the brain, but with the mind. What is important is that there shall be some derangement of the mental faculties affecting the functioning of the mind and it shall result in the impairment of the mental faculties of reasons, understanding and memory. The concept of disease of the mind is certainly wider than disease of the brain. Thus it can be said that the defect of reason must be caused by the disease of the mind. This indicates that the defect must result from some internal degenerative or damage causing factors and not due to the impact of external factors and thus it must be more than that of a temporary nature.¹⁰

But comparatively, as noted earlier, the phrase used in the Indian Penal Code is 'unsoundness of mind', and not 'insanity'. Whereas insanity according to the English criminal law is referring to the defect of reason from disease of the mind, but, the terminology of unsoundness of mind under section 84 is not being defined and thus it can be said that it does not carry the same meaning as insanity. However, it refers to a more comprehensive term as compared to insanity, covering not only persons who are suffering from the defect of reason resulting from the disease of the mind, but those who are incapable of knowing the nature of the act or those who do not know either the act is wrong or contrary to the law. After the analysis of the Section 84 it can be said that the unsoundness of mind is a relative concept. A person is considered unsound if his mental faculties have been impaired and has become destitute of reason, intelligibility and coherence of thought. The unsoundness of mind may occur due to varied reasons and degrees.¹¹

3. Inability to know nature of act

It is important requirement in the English criminal law for an accused raising the defence of insanity to establish that he did not know the nature and quality of his act, or he did not know that the act is wrong. Indian law also requires that the accused must by reason of unsoundness of mind,

be incapable of knowing the nature of the act or he did not know whether the act is wrong or contrary to the law. At this point, there is a significant difference between the phrase "incapable of knowing" under the Indian Penal Code, and the phrase "did not know" under the M'Naghten Rules. It appears here that the capacity to know a thing is quite different from what a person knows. Thus if a person has a capacity to know the nature of his act, he cannot be protected under the Indian Penal Code. Under the English law, the question is simply whether the accused knew what he was doing. This shows that the test of unsoundness of mind under section 84 of the Indian Penal Code is stricter than that under the English Criminal law.

4. Wrong vs. Contrary to law:

However, if the accused at the above stage is still aware of the physical nature or quality of his act, he may have to satisfy the next element to plead insanity defence or defence of unsoundness of mind. The other condition is that he did not know what he was doing was wrong. This is the position in M'Naghten's Rule. Under the Indian Penal Code, the phrase used is that 'he is doing what is either wrong or contrary to law.' It can be said that the term 'wrong' under the Section 84 cannot mean 'contrary to law' since the alternative phrase 'contrary to law' is given in the section. However it can be said that, both clauses in M'Naghten's Rule and the Indian Penal Code are providing a saving clause to the accused to defend himself under insanity or unsoundness of mind. Thus under the English criminal law although the accused may know the nature and quality of his act, yet if he did not know that his act is legally wrong, he can be exempted from his criminal responsibility. Whereas for Indian Penal Code, the accused has an alternative to prove, that either he did not know the act was wrong or he did not know the act was contrary to the law. The term 'wrong' can be interpreted to mean moral wrong because of the presence of the term 'contrary to the law'. Thus under the Indian Penal Code the accused has to prove that he due to the unsoundness of mind did not either know that his acts were either morally or legally wrong.¹²

6. Position of Diminished Responsibility :

Diminished responsibility has a very close relationship with the offence of insanity since it involves the mental state of the accused. This defence has been emphasized by the English criminal law particularly under the Homicide Act, 1957 but it is to be noted that this defence is only applicable to the offence of murder, whereas insanity is a defence to any criminal charges. Section 2 of the Homicide Act 1957 provides for diminished responsibility as a defence to murder, which entitles the accused not to be acquitted altogether, but to be found guilty only of manslaughter. Unlike insanity, it is not a general defence but it may only be pleaded in a defence to a charge of murder, and is not required for other offences apart from murder. Most defendants would prefer a conviction for manslaughter on the ground of diminished responsibility to an acquittal by reason of insanity, so the importance of M'Naghten Rules has been greatly reduced since 1957. Unlike the plea of insanity, it is immaterial whether or not the accused understood what he was doing and could know that it was wrong. If he succeeds in his defence he will be found not guilty of murder, but guilty of manslaughter.¹³

Unlike the English law, Indian criminal law does not have any statutory defence of diminished responsibility. This is apparent from the Section 300 of the Indian Penal Code relating to the offence of murder. There are five special exceptions for the offence of murder but none of them refers to the plea of diminished responsibility. Therefore it is submitted here that whenever an accused while killing someone is suffering from an abnormality of mind as to impair his mental responsibility for his acts, the same defence of unsoundness of mind under section 84 shall be pleaded by him. The situation is different from the English criminal law because the provision of diminished responsibility under the English Homicide Act 1957 gives the alternative to the accused person either to plead diminished responsibility or insanity as a defence. It will depend on the degree of seriousness of the abnormality of mind suffered by the accused person. Since the Indian Penal Code only provides the general rule for unsoundness of mind, perhaps it could be said that the abnormality of mind in diminished responsibility is one of the types of unsoundness of mind if it is

proved medically and legally. Therefore, under the Indian criminal law, there is no way that an unsound person if it is established, can be found guilty of manslaughter, but he shall be acquitted and be dealt with under the provisions of the Criminal Procedure Code. Thus the researcher suggests that there is a need to amend the section 84 of the Indian Penal Code in line with the English law to include the defence of Diminished responsibility under its ambit.

7. Defence of Automatism

Generally the criminal law provides a defence for the illegal acts and omissions of the person, only when such acts and omissions are involuntarily done by him. Involuntary acts are those which are beyond the control of the person accused. Automatism is in form of involuntary acts. Whenever a defensive insanity has been pleaded by the accused and is being rejected due to insufficiency of evidence regarding the mental stage of the accused then in such a situation the accused can raise an alternative defence of automatism. Automatism can also be raised in certain rare circumstances in which insanity is not pleaded as a defence. In cases of automatism accused is required to produce some evidence regarding his state of mind proving that he was under the influence of automatism at the time when he committed crime. The English law classifies Automatism into non-insane automatism and insane automatism. Under the non-insane automatism the law grants a direct acquittal of the accused without any special provisions for state intervention after the acquittal, whereas the acquittals under the defence of insane Automatism are followed by the state interventions in form of the medical care of the accused. However it is important to note that the defence of automatism is recognized only under the English law.

The Indian Penal Code has not expressly recognized the concept of voluntariness and its subset of automatism. Thus the researcher suggests that the Parliament shall introduce legislative amendments to the Indian Penal Code, with an objective of expressly incorporating the basic principle of the criminal law, that a person is not guilty of a crime unless his or her conduct was voluntary. Based on this the legislation would need to define an 'act' as meaning willed conduct and shall amend the section 33 of the Indian Penal Code¹⁴. It would also need to add volitional incapacity to the cognitive ones presently mentioned in the defence of unsoundness of mind under Section 84, and of intoxication under Section 85.

8. Irresistible Impulse:

Irresistible impulse is a form of insanity. It is in form of mania which generally coexists with complete sanity. Irresistible impulse is commonly known as impulsive homicidal maniac. Its prime characteristics are the complete absence of motive. Generally the person under irresistible impulse targets and makes his near and dear ones the victim of his excessive impulse. For an impulse to be the irresistible impulse it is very important that such impulse is the one which cannot be resisted and simply not the one which was not deliberately resisted. There are certain situations in which a person gets struck by severe impulse and if it is possible for him to resist such an impulse then he shall resist it because in such a case such resistance becomes his legal duty.

The criminal law recognizes insanity as a defence, however only legal insanity is accepted and the person suffering from medical insanity while he committed an offence cannot claim the defence of such a nature. In order to derive the protection available under section 84 IPC, it is necessary that the accused due to the reason of unsoundness of mind was incapable of knowing the nature of his acts or he was unable to know that, that what he was doing was either wrong or contrary to law. Thus the irresistible impulse is not recognized as a ground of exemption in Courts of England and India because the crimes committed under irresistible impulse does not fall within the scope the legal insanity as is required under the M'Naghten's Rule and the Section 84 of Indian Penal Code.

It can be said that if the accused person had committed a crime under the influence of irresistible impulse then it is no defence if he committed the crime after knowing that what he was doing was either wrong or contrary to law. Thus the mere fact that the accused had acted on basis of

some sudden impulse without any concrete motive, will not in general afford a basis for plea of insanity. The circumstances of any act being motiveless are not a ground on the basis of which the existence of an irresistible influence can be inferred. Thus it can be said that the decision of the law makers to keep the irresistible impulse out of the scope of the ambit of the defence of insanity or defence of unsoundness of mind, as given under the M'Naghten's Rule and the Section 84 Indian Penal Code respectively is appropriate and justified in not recognizing irresistible impulse as a criminal defence.

Conclusion

Thus the researcher intends to conclude by saying that, in order to mold the age old M'Naghten's rule to suit the modern day scientific study of human mind and its functioning, it shall be modified and amended to incorporate the conceptions of volitional and emotional aspects of the mind, because according to the modern psychology and psychiatry the mind cannot be split up into water tight, unrelated and autonomously functioning compartments. The mind and body are one unit in which each part influences, and is influenced by the whole. Every case of insanity of mind cannot therefore be fitted into the straight jacket formula of the legal definition prescribed in the M'Naghten's Case. Thus it can be said that there is a great need to modify and rectify the M'Naghten's Rule. With regards to the defence of the unsoundness of mind under the Indian Penal Code it can be said that there is a need to amend the law as specified under the Section 84 of the Code. The researcher thus suggests some changes which shall be incorporated under Section 84 to make it stand on a parallel footing with the law of insanity defence as it is under the English criminal law system.

Firstly the researcher suggests that there shall be a well defined definition of the term, 'unsoundness of mind' to avoid the several controversies and confusions which arise in understanding and differentiating between the 'disease of mind' and the actual unsoundness of mind sought by the Code or the so called 'legal insanity' for the purpose of making the defence available to the accused.

Secondly the researcher suggests that Section 84 of the Code shall be amended to incorporate the partial defence of Diminished Responsibility for the insane persons committing murder. This change shall be made on the equal footings with the defence of diminished responsibility as it is been accepted under the defence of insanity as specified under the English criminal law.

Thirdly the researcher suggests that the scope of Section 84 shall be expanded to incorporate the defence of automatism under the defence of unsoundness of mind, in the similar manner in which the English criminal law system recognizes it.

Thus after having analyzed the law relating to the defence of insanity under the English criminal law system and then comparing it with the law relating to the defence of insanity under the Indian criminal law system, it can be said that this defence is not popularly sought by the accused persons with the fear of the stigma of insanity which would be eventually attached to them and the admission to the mental hospitals with several interventions with the state after the defendant's acquittal on the special verdict of 'not guilty by reason of insanity'. Most importantly the defence of insanity has been subject to intense criticism, and the researcher intends to state that the M'Naghten's Rule is based on too narrow concept of the nature of mental disorder, it has the outmoded language which gives rise to problems of interpretation and that the rule is based on the now obsolete belief in the pre-eminent role of reason in controlling social behavior. The Rule is not therefore a satisfactory test of criminal responsibility and thus needs to be reformed.

References

¹ 'Actus nan facit reum, nisi mens sit rea' it means that an act does not make a person legally liable unless the mind is legally blameworthy. This maxim forms the basis for defining the two elements that must be proved before a person can be convicted of a crime, the *actus reus* which means the guilty act and *mens rea* which means the blameworthy mind

² '*Furiosi nulla voluntas est*' it means a mad man has no free will. There must be as an essential ingredient in a criminal offence, some blameworthy condition of mind, and such condition of mind cannot justly be imputed to mad men who are under a natural disability of distinguishing between good and evil.

³ Eugene J. Chesney, 'Concept of Mens Rea in the Criminal Law' (1939) 29 *Journal of Criminal Law and Criminology* 627: <http://scholarlycommons.law.northwestern.edu/jclc/vol29/iss5/2>>accessed 12 January 2016

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⁶ R v. Daniel M'Naghten,(1843) 8 Eng Rep 718

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⁸ Indian Penal Code 1860, s 84

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¹³ Sutherland, Reid and Thompson, 'Discussion Paper on Insanity and Diminished Responsibility'(2003) 122, Scottish Law Commission, Edinburg University Press : <http://www.scotlaw.gov.uk>>accessed 17 January 2016

¹⁴ Indian Penal Code 1860, s 33. Act and Omission- The word 'act' denotes as well a series of acts as a single act; the word 'omission' denotes as well a series of omissions as a single omission.