

## INSANITY IN CRIMINAL LAW

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### Introduction

Criminal law in itself has quite some connotations. Basically it deals with all those wrongs and offences, which, due to having achieved a certain degree of gravity or seriousness, are classified and considered as offences *against the State itself*. Thus the state uses its considerable resources to *personally* sue to offender. There exists in criminal law alone, not only damages but penal activity. In other words the state with its authority metes out punishments and penalties. Thus, appropriate reliefs and concessions have to exist for special cases.

The universally uniform practise is to test for *mens rea* or *criminal intent*. Basically there is no sort of strict or absolute liability whatsoever. This is because being convicted of criminal deeds is a lifechanging and sordid affair. Hence we have this provisional safeguard that automatically weeds out non culpable and equitably innocent victims of prosecution from liability.

Broadly, across most legal systems, there exist pre set statutory or otherwise-derived defenses set in the law that ensure that the absence of *mens rea* becomes obvious, and is de jure qualification for acquittal. One such defense is *insanity*. It is of many names in many regions.

(The obvious sociological relevance of this topic is about the concern of punishing innocent persons, as well as the contrasting argument of whether it is utilitarian to let people go because of this defense.)

Thus this project shall focus on two main research questions with subsections within.

- i. What are the current statuses of the legal systems with regard to the defense of insanity?
- ii. Is any change required to be made to the current statuses of these legal systems, towards improving or diminishing the power of this defense of insanity? (This shall also deal with the idea of not treating lunatics as entirely 'sentient' and hence muse on the notion of 'putting them down' on 'utilitarian grounds', at the instance of their commission of crimes.)

## RESEARCH METHODOLOGY

One of the major portions of this project is a comparative analysis between the legal systems of India, to represent the common law; the United States of America, to represent a semblance of what was jurisprudentially known as 'civil' (codified) law; and the Saudi Arabia, Vatican City and Israel to show theocratic or ethnocratic legal systems, all with regard to the defense of insanity in criminal law.

Also, art forms shall be used, such as poetry and fiction, to show the understanding of the insane mind and its relevance with culpability of an act.

Legal philosophies are also analyzed, such as Foucault's explanation of the Penitentiary model and the basic global stance on lunatic rights and the socially accorded treatment to insane persons is questioned.

Also, philosophical concepts like virtue ethics among persons vis-a-vis virtues being traits of *acts* themselves, determinism and degrees and rankings of desires and resistibility of impulses are dealt with.

This paper does not have a polar opinion to proffer as such. The bulk of it shall be a factual analysis of what the current legal situation is globally, followed by an enquiry as to whether change is required.

## FICTIONAL SCENARIOS

Before proceeding on to artworks and their relation to analyses of insane culpabilities, we must first find why these works are allowed to constitute authorities in this paper.

For one, insanity is not entirely a legal and jurisprudential issue. It also has a predominantly medical angle. However this is also not the whole story. Insanity comprises a social side too.

In other words society and prominent members of the public deserve a say too in their conception of insanity, as envisioned by the sane; as law formulators are merely representatives of the sane.

The first work presented is *The Rime Of The Ancient Mariner*. This is a medieval fantasy ballad by Samuel Taylor Coleridge.

It includes a scenario where a sailor commits an act that doesn't make logical sense. Basically here I draw a parallel between *criminal intent* and *logical reasoning*. To elaborate, I mean to say that where there is no reason for a person to have committed the act, a massive measure of the benefit of the doubt should be accorded to him. This is because the non-existence of a logical link between an act and the perpetrator throws the intent behind committing that act into questionable nature.

However in this context 'reason', 'logical link', 'sense' and 'reasoning' do not merely imply a prudential outcome or a benefit of some sort. It could be something as minute and simple as emotional satisfaction, or even something as obtuse and bizarre as masochistic pleasure.

However it simply should not, in my opinion, accommodate an act perpetrated with no pleasure, satisfaction or a utile and foreseeable end.

In this context, a sailor and his crew are stuck in the Arctic until an albatross touted to have divine qualities flies in its vicinity, and this incident somehow leads to the melting of icebergs and freedom of the ship. While the bird is hailed and petted the crew encounters no shortage of good fortunes. It is in this setting that all of a sudden the narrator-sailor nocks his bow and shoots the bird dead with an arrow, full of regret and horror at the act.

At length did cross an Albatross, Thorough the fog it came; As if it had been a Christian soul,  
We hailed it in God's name.

It ate the food it ne'er had eat, And round and round it flew. The ice did split with a thunder-fit;  
The helmsman steered us through!

And a good south wind sprung up behind; The Albatross did follow,  
And every day, for food or play, Came to the mariner's hollo!

In mist or cloud, on mast or shroud, It perched for vespers nine;  
Whiles all the night, through fog-smoke white, Glimmered the white Moon-shine.'

'God save thee, ancient Mariner! From the fiends, that plague thee thus!—  
Why look'st thou so?'—With my cross-bow I shot the ALBATROSS.

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The next situation is *The Snake* by D.H.Lawrence.

This context is a lot more lucid and clear than the previous one. Here the poet sees a snake that he admires very much. After some time it starts proceeding towards a hole in the earth, intending to disappear underground. The poet inwardly protests at this failed opportunity to keep looking at the majestic snake, and without thinking, throws a rock at it as it moves down the hole. His intended effect was to protest at its exit, but the opposite happened. The snake quickly sped down the hole, scared and indignified. The act had the exact opposite result from what was intended. However the poet himself is vindictive and sorry about his deed, despite the obvious bona fide interest and the lack of intent to commit the wrong of chasing away the snake. So the complex question of whether this is a parallel to temporary insanity as a defense, or whether the point of the matter is to show that lack of culpability at the time of commission is not a total defense that should make one immune to prosecution.

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A sort of horror, a sort of protest against his withdrawing into that horrid black hole,  
Deliberately going into the blackness, and slowly drawing himself after,  
Overcame me now his back was turned.

I looked round, I put down my pitcher, I picked up a clumsy log  
And threw it at the water-trough with a clatter.

I think it did not hit him,  
But suddenly that part of him that was left behind convulsed in undignified haste.  
Writhed like lightning, and was gone  
Into the black hole, the earth-lipped fissure in the wall-front,  
At which, in the intense still noon, I stared with fascination.

And immediately I regretted it. I thought how paltry, how vulgar, what a mean act!  
I despised myself and the voices of my accursed human education.

And I thought of the albatross; And I wished he would come back, my snake.

For he seemed to me again like a king, Like a king in exile, uncrowned in the underworld,  
Now due to be crowned again.

And so, I missed my chance with one of the lords; Of life.

**And I have something to expiate: A pettiness.**

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### CATCHING FIRE

This is an illustration that shows how a person could have perpetrated an act without understanding his or her own reasons for the same, and thus how embracing the consequences of the act become appropriately more difficult. Naturally the parallel this paper raises is not meant to give heed to convicts not being able to embrace their lives as recorded criminals, but rather to show how the results of an act do not make sense to a person without a lucid intent, and hence it could be argued that there is no intent at all.

The case is as follows:

Suzanne Collins' Hunger Games trilogy takes place in a dystopian future where the sovereign unit commits human rights transgressions freely. As per the law chosen children must fight each other to the death until only one survives. However the protagonist, faced with a situation to fight her mate, doesn't want to go to her locality with the blood of a friend and a fellow citizen on her hands, and hence plans on a course of double suicide for the two of them. Interestingly, since this clashes with the agenda of the Law to have a victor in this homicidal program, there was no other choice but to let *both* the persons live. Later hell was raised about how this type of blackmail forced the hand of the state. The protagonist ruminates about the exact reason why she decided to embark on that ruinous course and finds out that she isn't totally or consciously aware of the reason!

[The 'berries' refer to a toxic fruit in the Hunger Games universe, called 'nightlock'.]

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The berries. I realize the answer to who I am lies in that handful of poisonous fruit. If I held them out to save Peeta because I knew I would be shunned if I came back without him, then I am despicable. If I held them out because I loved him, I am still self-centered, although forgivable. But if I held them out to defy the Capitol, I am someone of worth. The trouble is, I don't know exactly what was going on inside me at that moment. Could it be the people in the districts are

right? That it was an act of rebellion, even if it was an unconscious one? Because, deep down, I must know it isn't enough to keep myself, or my family, or my friends alive by running away. Even if I could. It wouldn't fix anything. It wouldn't stop people from being hurt...

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Another major piece of literature being analyzed is the Batman comic, The Killing Joke. This is however studied as a counter to the Foucault-Penapticon model.

### **Legal Systems across the World-A Comparative Analysis:**

Some of the common features internationally are derived from the common law, As once upon a time most nations were in some form or the other colonized under the Great Britain. Even The United States has derived some of the legal tests and principles in the Common Law.

#### *Some of them are as follows:*

In Great Britain common law was the major source of law. This is nothing but a compendium of landmark judicial verdicts. No other statute prevails.

The above stance has been firmly iterated in British Law. The major case law is Sweet vs. Parsley<sup>1</sup>.

The case was presided over by Lord Diplock in the apex court, the House of Lords.

In this case it was firmly established that mens rea is absolutely necessary for any crime, and further the following maxim was brought up:

*Furious nulla voluntas est Furious absentis loco est.*

This means that *a mad person who has no will is like...a mad person who is absent*. In other words it was staunchly held that a person who has no free will and cannot determine the effects of his or her actions shall be treated the same way as they would be in case they were not present at the place of commission when it happened.

Diplock also said that an act does not make a person guilty of a crime unless his mind be so guilty.

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<sup>1</sup>[1970] AC 132, [1969] 2 WLR 470, 53 Cr App R 221, [1969] 1 All ER 347, [HL](#), reversing [1968] 2 QB 418

### Legal Conventions:

#### WILD BEAST TEST:

This evolved in 1724 in the Arnold case. The judge declared that a person could escape the clutches of the law only if his or her understanding, memory and awareness of act equates to that of a infant, brute or wild beast.

#### GOOD AND EVIL TEST:

In the 1800 R vs. Madfield case it was held that Wild Beast test was unreasonable and that mere capacity to distinguish between good and evil is enough.

#### Mc'Naghten Rules:

R vs Mcnaghten rules were established in 1843. According to these, the following needed to be established for insanity.

Insanity had to be proved and onus was on the defense; sanity was the assumed norm.

At time of commission insanity to the degree of ignorance of nature of act must be proven.

Knowledge of the moral status of the act is not about an ambiguous good or bad, but with regard to the specific act in question.

These rules have been incorporated *globally*.

Another interesting fact is that legal insanity is of two types: *dementia naturalisor insanity from birth*, and *dementia adventitia/accidentialis*-an individual who becomes insane after birth.

### Status of Indian Law:

Indian law consists of statutes and precedents for the most part. In criminal law we have three statutes primarily of which we shall consider two for our study; the Indian Penal Code 1860 and the Code of Criminal Procedure 1973.

The former is a substantive text that defines offences, whereas the latter is a procedural law that is used to determine the treatment accorded by State against these offences.

In the Indian Penal Code the first reference to persons of unsound mind is in section 84.

Scholars have opined that the Indian Penal Code has used the phrase 'unsound mind' to have broad implications that fit all situations. . This was so that insanity need not be defined and rather all circumstances wherein there was no possible comprehension of the scope of the act, (consequentially, morally and/or legally), would fall under this ambit of the phrase 'of unsound mind'.

Interestingly there is a difference between the Indian Penal Code and the Indian Lunacy Act, with the former being more flexible on sanity and hence more efficient in finding guilt. The latter in its section 65(2) says that sanity is the *capability to manage affairs*. However, the Indian Penal Code in its implications and judicial expansion points to the notion that being able to *discern morality* is enough for proving sanity.

### **Provisions:**

Section 84 of the Indian Penal Code states that *nothing is an offence which is done by a person who, at the time of doing it, by reason of unsound mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to the law.*

The basic principle of *ejusdem generis* is that statutory provisions must be *dissected*. And that is how we can find the ingredients of any such provision.

One of the ingredients in the afore-mentioned section is TIME OF COMMISSION. Then we have the independent variable that this section deals with, unsoundness of mind, which may be of two different (but not mutually exclusive) types. Either incapability of knowing the nature of the act, or awareness of morality and/or illegality must be satisfied for the application of this section's definition of an act as NOT an offence.

Most cases have shown that the terms 'nature of act' is understood as consequences or effects.

Interestingly this section's three fold understanding of the effects of unsoundness of mind is based on the three conditions laid down by the Calcutta High Court Bench in the Ashiruddin Ahmed vs. The King<sup>2</sup> case.

### Cases:

#### HAZARA SINGH VS THE STATE<sup>3</sup> :

An infidel wife was killed by her husband, with nitric acid.

The act was committed in the heat of the moment without a lucid desire to do so, but this was not accepted as grounds for *not being culpable*. While it was obvious that this offender required therapy, that alone did not qualify as legal insanity, or unsoundness of mind.

#### VIDYA DEVI vs. STATE OF RAJASTHAN<sup>4</sup> :

This was the major landmark case in which it was held that all sorts of medical insanity did not constitute *legal insanity*. In other words legal insanity was only a subset of the masthead of medical insanity, and only components of this part were regarded as legal defense. These types have been elaborated in further cases.

Furthermore, this distinction between medical and legal insanity has also been upheld in the cases Hussainvs State of Kerala<sup>5</sup> and BaburamMahali<sup>6</sup> case.

#### THE LAXMI CASE:<sup>7</sup>

Here the previous case was overruled in favor of the notion that mere ignorance would not suffice for unsoundness of mind. Rather, *incapability* of knowledge was sought.

This case involved a father sacrificing a son for 'Kaali' goddess.

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<sup>2</sup> (1949) 50 Cri LJ 225

<sup>3</sup> AIR 1958 P H 104, 1958 CriLJ 555

<sup>4</sup> 2004 CriLJ 2332, RLW 2004 (2) Raj 1261, 2004 (2) WLC 691

<sup>5</sup> Appeal (crl.) 780 of 1998

<sup>6</sup> (2005) 3 CALLT 331 HC 2006 (3) CHN 614

<sup>7</sup> AIR 1959 All 534, 1959 CriLJ 1033

Basically, if the *capacity to DISCRIMINATE exists*, ‘belief’ is immaterial to constituting unsoundness.

### KANBI KURJI DUBA CASE<sup>8</sup>

A person suffered from the delusion that his own son was born to his wife from another man, and lived a mythological fantasy, and killed his child and wife. He couldn’t comprehend at all the fact that the law was against him and that he was being tried of crime, and in court boasted of his deed with moral self righteousness. However the rule of three from the Ashiruddin case was reinstated and he was held liable and not unsound of mind, due to his awareness of the nature of the act.

These are other cases that expound on the meanings of these terms applied to build these criteria. For instance the Shivraj Singh<sup>9</sup> expounds on the meaning of the word ‘wrong’.

Other cases include the Madhya Pradesh vs Ahmadulla<sup>10</sup>.

### DAYABHAI CHAGANBHAI THAKKAR VS. GUJARAT:<sup>11</sup>

Here it was firmly established that the legal insanity in question MUST be active at the time of the act.

### **UNITED STATES OF AMERICA’S LAW:**

All the British rules and legal conventions mentioned above have to an extent influenced American law. However the US also traces the descent of its defence of insanity to the ancient Babylonian Hammurabi code!

While this ancient code was heavily discriminatory to the then-existing classes and births, intent was one thing it DIDNT compromise on was that INTENT IS NECESSARY TO COMMIT A CRIME<sup>12</sup>.

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<sup>8</sup> AIR 1960 Guj 1, 1960 CriLJ 1200

<sup>9</sup> WP NO. 1765/2015

<sup>10</sup> 1961 AIR 998

<sup>11</sup> 1964 AIR 1563, 1964 SCR(7) 361

<sup>12</sup> www.avalon.law.yale.edu

Another major source of American legal treatment accorded to insanity is the American Legal Institute's Definition.

The American legal institute compares and contrasts two independent and interrelated concepts of Insanity and Diminished Capacity. This is a detailed piece of statutory defences. Basically insanity is the more stringent defence that is equivalent to the stance of not guilty. However the United States has the peculiar 'diminished capacity' plea where a few faculties are hindered, which could be said to be equivalent to pleading to a lesser charge!<sup>13</sup>

United States v. Hinckley<sup>14</sup>, a recent successful use of the insanity defense:

On March 30, 1981, John W. Hinckley, Jr., shot President Ronald Reagan, attempting to assassinate him. His defense attorneys did not dispute that he had planned and committed the attack. His attorneys instead argued that he was acting according to the impulses of a diseased or impaired mind.

### **The legal argument**

Hinckley's attorneys argued that Hinckley had not acted of his own volition, but that his life was controlled by his pathological obsession with the movie, *Taxi Driver*, starring Jodie Foster. In that movie, the title character stalks the president and fights in a shootout. Hinckley's attorneys said he saw the movie 15 times, and identified with the hero and was seeking to reenact the events of the movie in his own life.

Hinckley's attorneys argued that Hinckley was schizophrenic. They argued that the movie was the actual planning force behind the defendant's assassination attempt against the President.

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<sup>13</sup>[www.law.cornell.edu](http://www.law.cornell.edu)

<sup>14</sup>United States Court of Appeals, District of Columbia Circuit.

John W. HINCKLEY, Jr., Appellant, v. UNITED STATES of America, Appellee.

97-3094. No.

Decided: April 14, 1998

- See more at: <http://caselaw.findlaw.com/us-dc-circuit/1097314.html#sthash.XKW12t12.dpuf>

The judge allowed the defense to introduce evidence, in the form of a CAT scan, that Hinckley's brain showed signs of shrunken brain tissue, one of the common symptoms of schizophrenia. The prosecution opposed this evidence, on the grounds that the technical nature of the evidence would cause the jury to place too heavy an emphasis on it. The judge rejected this argument, on the grounds that the evidence was relevant.<sup>15</sup>

*This case is similar to the Durham case<sup>16</sup> which provided a landmark in the context of IRRESISTIBLE IMPULSE.*

Interestingly, right after the Hinckley incident, president Reagan used the Congress to pass the Comprehensive Crime Control Act 1984 after which the onus of proof in clear insanity at the time of the commission of the act is entirely on the defence!

The defence is based on evaluations by forensic mental health professionals with the appropriate test according to the jurisdiction. Their testimony guides the jury, but they are not allowed to testify to the accused's criminal responsibility, as this is a matter for the jury to decide. Similarly, mental health practitioners are restrained from making a judgment on the issue of whether the defendant is or is not insane or what is known as the "ultimate issue".<sup>17</sup>

The United States Supreme Court (in Penry v. Lynaugh<sup>18</sup>) and the United States Court of Appeals for the Fifth Circuit (in Bigby v. Dretke<sup>19</sup>) have been clear in their decisions that jury instructions in death penalty cases that do not ask about mitigating factors regarding the defendant's mental health violate the defendant's Eighth Amendment rights, saying that the jury is to be instructed to consider mitigating factors when answering unrelated questions. This ruling suggests specific explanations to the jury are necessary to weigh mitigating factors.

Texas as seen in PenryvsLynaugh and numerous other contemporary cases as well as media and other forms of information is one of the most despotic users of the democratic death penalty, globally.

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<sup>15</sup> [www.law.cornell.edu](http://www.law.cornell.edu)

<sup>16</sup> *Durham v. U.S.* (214 F.2d 862)

<sup>17</sup> *Shapiro, David L. (1991). Forensic Psychological Assessment: An Integrative Approach. Needham Heights, MA: Simon & Schuster. p. 69. ISBN 0-205-12521-2.*

<sup>18</sup> *Penry v. Lynaugh*, 492 U.S. 302

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